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limited to canaries, finches, lovebirds, parrots, parakeets, cockatiels, and mynah birds.

Double-frontage lot means any lot, not a corner or through lot, having two or more property lines abutting to a street right-of-way or easement.

Drive-through means an establishment or portion thereof where a patron is provided products or services without departing from his automotive vehicle or in which the patron may temporarily depart from his vehicle in a nonparking space while servicing it, such as a do-it-yourself car wash or fuel pump. The terms “drive-through,” “drive-in,” and “drive-up” are synonymous. Drive-throughs are classified as Type 1 when they serve land uses with lower volumes and limited hours such as banks and pharmacies, and Type 2 when they serve land uses that typically have higher volumes and/or extended hours such as convenience stores, automobile fuel pumps, and car washes. See § 34-620(g) regarding the prohibition on drive-through lanes for restaurants and § 34-676(f) regarding drive-through lanes in the DOWNTOWN zoning district.

Drug paraphernalia. See § 34-1551.

Dwelling unit means a room or rooms connected together, which could constitute a separate, independent housekeeping establishment for a family, for owner occupancy, or for rental or lease on a weekly, monthly, or longer basis as specified in this code for various zoning districts, and physically separated from any other rooms or dwelling units which may be in the same structure, and containing sleeping and sanitary facilities. The term “dwelling unit” shall not include rooms in certain assisted living or continuing care facilities (see § 34-1415) or in lawful accessory apartments in owner-occupied homes (see § 34-1178(d)). See also *Guest unit* and *Living unit*.

Dwelling unit, types.

- (1) *Single-family* means a single conventional detached building designed for one dwelling unit and which could be used for occupancy by one family.
- (2) *Two-family* means a single conventional detached building designed as two dwelling units attached by a common wall or roof.
- (3) *Live/work unit* means a single dwelling unit in a detached building, or in a multifamily or mixed-use building, that also accommodates

limited commercial uses within the dwelling unit. The predominate use of a live/work unit is residential, and commercial activity is a secondary use. See § 34-1773.

- (4) *Work/live unit* means a single dwelling unit in a detached building, or in a multifamily, mixed-use, or commercial building, where the predominate use of the unit is commercial. See § 34-1774.
- (5) *Mobile home* means a building, manufactured off the site in conformance with the Federal Mobile Home Construction and Safety Standards (24 CFR 3280 et seq.), subsequently transported to a site complete or in sections where it is emplaced and tied down in accordance with ch. 15C-1, F.A.C., with the distinct possibility of being relocated at a later date. See §§ 34-1921–1950.
- (6) *Multiple-family building* means a group of three or more dwelling units within a single conventional building, attached side by side, or one above another, or both, regardless of whether the land on which the building is located is under common, single, or individual ownership. Freestanding dwelling units with at least one wall on a side or rear property line are also considered to be part of multiple-family buildings. Dwelling units, other than caretaker’s quarters, which are included in a building which also contains permitted commercial uses shall also be deemed to be multiple-family dwelling units.
- (7) *Caretaker* means a single dwelling unit, whether in a freestanding building or part of another structure, that is permitted in some zoning districts as an accessory use to house an on-site caretaker.

Easement means a grant of a right to use land for specified purposes. It is a nonpossessory interest in land granted for limited use purposes.

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

Enlargement and to enlarge. An enlargement is an addition to the floor area or volume of an existing building, or an increase in that portion of a tract of land occupied by an existing use.

Entrance gate means a mechanized control device which is located near the point of access to a development which serves to regulate the ingress of

vehicles to the interior of the development for the purpose of security and privacy.

Environmentally sensitive land means any lands or waters, the development or alteration of which creates or has the potential to create a harm to the public interest due to their value as sources of biological productivity, as indispensable components of various hydrologic regimes, as irreplaceable and critical habitat for native species of flora and fauna, or as objects of scenic splendor and natural beauty. Among these types of land are those designated wetlands.

Equivalent means the state of correspondence or virtual identity of two land uses or zoning districts that exhibit similar levels of effects on each other and the community at large as defined by such factors as their intensities and schedules of use and activity, their demands for services and infrastructure such as roads and water and sewer systems, their impacts on natural resources and other similar parameters. The term “equivalent” is not synonymous with the term “compatible.”

Essential service building means a free-standing building or structure exceeding 6 feet in height or 100 square feet in area that, except for its size would qualify as an “essential services.” See division 14 of article IV of this chapter.

Essential service equipment means an above-ground structure that exceed 27 cubic feet, but less than 6 feet high and 100 square feet in area, and that except for its size would qualify as “essential services” See division 14 of article IV of this chapter.

Essential services means the erection, construction, alteration, or maintenance, by a public or private utility company for the purpose of furnishing adequate service by such company for the public health, safety, or general welfare, of electrical and communication cables, poles, and wires, and water and sewer collection, transmission or distribution mains, drains, and pipes, including fire hydrants. This definition includes necessary transformers, switching equipment, meters, pumps, and similar equipment which is less than 27 cubic feet in size, but does not include communication towers which are regulated by division 11 of article IV of this chapter or telephone booths or pay telephone stations which are regulated by

§§ 34-638(d)(2)e and 34-2019(b). This definition shall not be interpreted to include buildings, structures, or uses listed as “essential service equipment” or “essential service building” (as defined herein). See division 14 of article IV of this chapter.

Existing only. When this term (or its abbreviation EO) is used in Table 34-1, it describes a specific land use that is permitted only if that use lawfully existed on the same property on August 1, 1986. Such lawfully existing use shall have the same rights as a permitted use and may be expanded or reconstructed on the same parcel in accordance with all applicable regulations.

Family means one or more persons occupying a dwelling unit and living as a single, nonprofit housekeeping unit, provided that a group of five or more adults who are not related by blood, marriage, or adoption shall not be deemed to constitute a family. The term “family” shall not be construed to mean a club, monastery, convent, or institutional group.

Family day care home, as defined in F.S. § 403.302, means an occupied residence in which child care is regularly provided for children from at least two unrelated families and which receives a payment, fee, or grant for any of the children receiving care, whether or not operated for profit. A family day care home shall be allowed to provide care for one of the following groups of children, which shall include those children under 13 years of age who are related to the caregiver:

- (1) A maximum of four children from birth to 12 months of age.
- (2) A maximum of three children from birth to 12 months of age, and other children, for a maximum total of six children.
- (3) A maximum of six preschool children if all are older than 12 months of age.
- (4) A maximum of 10 children if no more than 5 are preschool age and, of those 5, no more than 2 are under 12 months of age.

Floor area means the total area of every story of a building, or portion thereof, within the surrounding exterior walls of the building or structure.

Floor area ratio. See § 34-633.

Food and beverage service means the provision of food or beverages for members and guests of a membership organization or recreation hall but not available to the general public. See the provisions of article IV, division 5, of this chapter relating to on-premises consumption of alcoholic beverages.

Garage sale or **yard sale** mean an informal sale of used household or personal articles, such as furniture, tools, or clothing, held on the seller's own premises, or conducted by several people on one of the sellers' own premises. Garage and yard sales are limited to not more than one week in duration, with sales limited to two garage or yard sales per year. See *Residential accessory use*.

Glare means bright or brilliant light emitting from a point source of light, or reflected or refracted from a point source of light, with an intensity great enough to:

- (1) reduce an observer's ability to see;
- (2) cause an observer to experience momentary blindness or a temporary loss of visual performance or ability; or
- (3) cause an observer with normal sensory perception annoyance or discomfort to the degree which constitutes a nuisance.

Golf course means a tract of land laid out for at least nine holes for playing the game of golf and improved with tees, greens, fairways, and hazards. Miniature golf is classified as a *Recreation facility, commercial* and not as a golf course.

Gross floor area includes the total floor area of a building within the surrounding exterior walls. See also § 34-633.

Group quarters means a building in which a number of unrelated individuals that do not constitute a family live and share various spaces and facilities for, for example, cooking, eating, sanitation, relaxation, study, and recreation. Examples of group quarters include assisted living facilities, rooming houses, and other similar uses.

Guest unit means a room or group of rooms in a hotel/motel or bed-and-breakfast inn that are designed to be used as temporary accommodations for one or more people traveling together. All guest units provide for sleeping and sanitation, although sanitation may be provided through shared bathrooms. Guest units may be equipped with a

partial or full kitchen. See division 19 of article IV of this chapter.

Habitable means space in a structure available for living, sleeping, eating, cooking, or any commercial purposes. However, storage space is not considered to be habitable space.

Hardship means an unreasonable burden that is unique to a parcel of property, such as peculiar physical characteristics. Economic problems may be considered but may not be the sole basis for finding the existence of a hardship.

Health care facility means an establishment such as a nursing home or hospice that is primarily engaged in furnishing medical, nursing, or other care to persons residing on the premises, but not including hospitals.

Helistop means an area, either at ground level or elevated on a structure, licensed, or approved for the landing and takeoff of helicopters, but without auxiliary facilities such as parking, waiting room, fueling, and maintenance equipment.

Hidden path means an interconnected system of pedestrian and bicycle pathways throughout the town that improves mobility and promotes community interaction (see Objective 2-A of the Fort Myers Beach Comprehensive Plan).

Home care facility means a conventional residence in which up to three unrelated individuals are cared for, but without provision for routine nursing or medical care.

Home occupation means a business, occupation, or other activity undertaken for gain carried on by an occupant of a dwelling unit as an accessory use which is clearly incidental to the use of the dwelling unit for residential purposes and which is operated in accordance with the application provisions of article IV, division 18, of this chapter. See also *Dwelling unit, live/work unit* and *Dwelling unit, work/live unit*.

Hospital means a medical establishment that offers services more intensive than those required for room, board, personal services, and general nursing care, and offers facilities and beds for use beyond 24 hours by individuals requiring diagnosis, treatment, or care for injury or infirmity.

Hotel/motel means a building, or group of buildings on the same premises and under single control, which are kept, used, maintained or advertised as, or held out to the public to be, a place where sleeping accommodations are supplied for pay to transient guests for periods of one day or longer. See division 19 of article IV of this chapter.

Independent living unit means a unit which is authorized only as a part of a licensed continuing care facility (CCF), which may be equipped with a kitchen.

Intensity means a measurement of the degree of customarily nonresidential uses based on use, size, impact, bulk, shape, height, coverage, sewage generation, water demand, traffic generation, or floor area ratios. See also §§ 34-633–634.

Land means earth, water, and air above, below, or on the surface, and includes any improvements or structures customarily regarded as land.

Land use means the development that has occurred on the land, the development that is proposed by a developer on the land, or the use that is permitted or permissible on the land under the Fort Myers Beach Comprehensive Plan or an element or portion thereof, land development regulations, or a land development code, as the context may indicate.

Landscape architect means a professional landscape architect duly registered and licensed by the state.

Laundromat means a business that provides washing, drying, dry cleaning, or ironing machines for hire for customers to use on the premises.

Lawful or lawfully means a building, use, or lot which was permitted by right, special exception, variance, special permit, or other action at the time it was built, occupied, or subdivided, and such building, use, or lot was located in compliance with the comprehensive plan and zoning regulations for the district in which located, or in accordance with the terms of the variance.

Light trespass means light emitting from a point source of light that falls outside the boundaries of the property on which the point source of light is located and which constitutes a nuisance to a reasonable person of normal sensory perception.

Live-aboard means the use of a boat as a living unit.

Living unit means any temporary or permanent unit used for human habitation. See *Dwelling unit* and *Guest unit*.

Loading space, off-street means a space logically and conveniently located for pickups or deliveries or for loading or unloading, scaled to delivery vehicles expected to be used and accessible to such vehicles when required off-street parking spaces are filled.

Local planning agency. See article II, division 3 of this chapter.

Lock-off accommodations means a single guest unit or living unit designed in such a manner that at least one room and a bathroom can be physically locked off from the main unit and occupied as a separate unit. Each portion may have a separate outside entry, or share a common foyer with separate lockable interior doors, or share a lockable door or doors separating the two units. See § 34-632 and division 19 of article IV of this chapter.

Lot means a parcel of land considered as a unit. See also *Lot, corner*.

Lot area means the total horizontal area within the lot lines.

Lot, corner means:

- (1) A lot located at the intersection of two or more streets where the corner interior angle formed by the intersection of the two streets is 135 degrees or less; or
- (2) A lot abutting a curved street if straight lines drawn between the intersections of the side lot lines and the street right-of-way or easement to the foremost point of the lot form an interior angle of less than 135 degrees.

Lot line means a line which delineates the boundary of a lot.

Lot line, front means the lot line which separates the lot from a street right-of-way or easement.

Lot line, rear means that lot line which is parallel to or concentric with and most distant from the front lot line of the lot. In the case of an irregular or triangular lot, a line 20 feet in length, entirely within the lot, parallel to or concentric with and at the

maximum possible distance from the front lot line, shall be considered to be the rear lot line. In the case of a through lot, there shall be no rear lot line. In the case of a double-frontage lot, the line directly opposite from the front line shall be designated as either a rear line or a side line depending upon the designation of the adjacent property. In the case of corner lots, the rear lot line shall be the line most nearly parallel to or concentric with and most distant from the front lot line most prevalent along the block.

Lot line, side means any lot line which is not a front or rear lot line.

Lot measurement, depth.

- (1) For lots lawfully created prior to January 28, 1983, depth of a lot shall be considered the distance between the midpoints of straight lines connecting the foremost points of the side lot lines in the front and the rearmost points of the side lot lines in the rear.
- (2) For lots lawfully created after January 28, 1983, depth of a lot shall be considered to be the distance between the front lot line and the rear lot line as measured at the midpoint of the front lot line to the midpoint of the rear lot line. To determine the midpoint of a curved line, a straight line is drawn connecting the points of intersection of the curved line with the side lot lines. A line drawn perpendicular to the midpoint of the straight line to the point it intersects the curved line shall determine the midpoint of the curved line for purposes of this chapter.

Lot measurement, width.

- (1) For lots lawfully created prior to January 28, 1983, width of a lot shall be considered to be the average distance between straight lines connecting front and rear lot lines at each side of the lot, measured as straight lines between the foremost points of the side lot lines in front (where they intersect with the street line) and the rearmost points of the side lot lines in the rear.
- (2) For lots lawfully created after January 28, 1983, width of a lot shall be considered to be the distance between the side lot lines (or a front and side lot line for corner lots) as measured along the minimum required street setback line. See § 34-637(c) for exceptions.

Lot, through means any lot having two opposite lot lines abutting a street right-of-way or easement.

Manufactured housing. See *Building, conventional*.

Manufacturing means establishments which are primarily engaged in the mechanical or chemical transformation of materials or substances into new products, as well as establishments primarily engaged in assembling component parts of manufactured products if the new product is not a permanent structure or other fixed improvement.

Marina means a commercial water-dependent use located on property adjacent to water with direct access to a navigable channel. The primary function must be to provide commercial dockage, mooring, storage, and service facilities for watercraft and land-based facilities and activities necessary to support the water-dependent use. The term “marina” does not include boatyards, nor does it include cruise ships and similar uses that draw large amounts of vehicular traffic (see § 34-620(f)), nor does it apply to docks, davits, boathouses, and similar docking facilities that are accessory or ancillary and subordinate to:

- (1) residential buildings that are located on the same premises and under the same ownership or control as the docks, davits, boathouses, boat ramps, and similar docking facilities; and
- (2) commercial establishments that are not water-dependent uses.

Marina accessory uses means uses normally ancillary and subordinate to a marina, including but not limited to: boat dealers; sale of marine fuel and lubricants, marine supplies, boat motors, and boat parts; restaurant or refreshment facility, boat rental, minor boat rigging, boat repair and service, and motor repair. However, no dredge, barge, or other work dockage or service is permitted and no boat construction or reconstruction is permitted. See *Boatyard*.

Membership organization means an organization operating with formal membership requirements with the intent to pursue common goals or activities.

Mini-warehouse means any building designed or used to provide individual storage units with separate exterior doors as the primary means of access to individuals or businesses for a fee. The

storage units must be used solely as dead storage depositories for personal property, inventory, and equipment and not for any other use.

Mixed-use building means a single building that contains two different land uses, such as commercial and residential uses, or commercial and civic uses.

Mobile home. See *Dwelling unit, types*.

Moor means to secure a vessel with lines.

Multiple-family building. See *Dwelling unit, types*.

Multiple-occupancy complex means a parcel of property under one ownership or singular control, or developed as a unified or coordinated project, with a building or buildings housing more than five occupants conducting a business operation of any kind.

Nonconforming building, nonconforming lot, or nonconforming use – see definitions in § 34-3202 of article V of this chapter.

Notary, notarize(d). Whenever the terms “notarize” or “notarized” appear, they expressly include and contemplate the use of the written declaration set forth under F.S. § 92.525, so long as the cited statutory requirements are met, except that written declarations may not include the words “to the best of my knowledge and belief” as this limitation is not permitted by the provisions of this code.

Offices, general or medical mean a room or group of rooms where a business, government, profession, agency, or financial institution provides its services, but excluding uses listed as residential, lodging, retail, marine and civic in division 2 of article III of this chapter and otherwise classified by this code, and excluding uses that the director deems to have potential impacts that differ substantially from conventional office uses. Incidental retail sales and indoor storage may be provided in conjunction with these services. The following types of establishments are not considered to be offices for the purposes of this chapter: *Automobile rental Drive-throughs (Type 1 or Type 2)*; and *Wholesale establishments*. See also *Administrative office*.

Opaque means the quality of blocking visibility through a material. For instance, concrete is 100%

opaque; clear glass is 0% opaque; and a picket fence with 3-inch pickets separated by 3 inches of space is 50% opaque.

Parasailing operations office means a land-based site that can qualify for a parasailing activity license in accordance with chapter 27 of this code.

Parasailing operations offices are permitted as resort accessory uses and also by special exception in certain zoning districts.

Parcelization means dividing a given unit of real property into multiple parcels, units, or fractions. Examples of parcelization include, but are not limited to, divisions of land, fractional or timeshare units for specific periods of time, condominiums, and cooperatives.

Park, neighborhood means a recreational area open to the public and no larger than one acre that primarily serves the immediately surrounding neighborhood.

Park, community or regional means a recreational area open the public and larger than one acre that is designed to serve the entire community or larger areas.

Parking garage means a building or structure that allows the parking of motor vehicles on two or more levels, whether the garage is provided only for vehicles of occupants of the principal use or the garage is available for the use of the general public. However, for the purposes of this chapter, a building containing two or more levels of parking only for the vehicles of occupants of the principal use shall not be considered a parking garage if is built below and fully within the perimeter of the remainder of the principal building.

Parking lot, accessory means an area of land set aside for the temporary parking of vehicles owned or leased by the owner of the premises, guests, employees, or customers of the principal use. See *Commercial accessory use*.

Parking lot, shared permanent means a parking lot which constitutes the principal use of the property and which is available to the public for a fee, or which may be leased to individual persons or assigned to specific businesses or properties.

Parking lot, seasonal means a area of land set aside temporarily to provide parking to meet seasonal demands, as set forth in § 34-2022.

Personal services means establishments primarily engaged in providing frequent or recurrent services involving the care of a person or his or her personal goods or apparel, such as beauty and barber shops, clothing alterations and repair, health clubs, and laundry drop-off points. The following types of establishments are not considered to be personal services for the purposes of this chapter: *Automobile rentals*, *Car wash*, *Laundromat* (whether self-service or operator-assisted); and *Mini-warehouse*. This chapter contains specific regulations for certain personal services (for example, see §§ 34-3066–3100 on tattoo studios and body piercing).

Personal watercraft operations office means a land-based site that can qualify for a personal watercraft vendor's license in accordance with chapter 27 of this code. Personal watercraft operations offices are permitted as resort accessory uses and also by special exception in certain zoning districts.

Place of worship means a structure or structures designed primarily for accommodating an assembly of people for the purpose of religious worship, including related religious instruction, church, or synagogue ministries involving classes for 100 or less children during the week, and other church or synagogue sponsored functions which do not exceed the occupancy limits of the building.

Planned development. See article III, division 6 of this chapter.

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

Plaza means an unroofed public open space designed for pedestrians that is open to the sidewalk on at least one side.

Point source of light means a manmade source emanating light, including but not limited to: incandescent, tungsten-iodine (quartz), mercury vapor, fluorescent, metal halide, neon, halogen, high-pressure sodium, and low-pressure sodium light sources, as well as torches, campfires, and bonfires.

Premises means any lot, area, or tract of land.

Premises, on the same means being on the same lot or building parcel or on an abutting lot or adjacent building in the same ownership.

Principal building. See *Building, principal*.

Principal use. See *Use, principal*.

Processing and warehousing means the storage of materials in a warehouse or terminal and where such materials may be combined, broken down or aggregated for transshipment or storage purposes where the original material is not chemically or physically changed. The term “processing and warehousing” shall mean an establishment essentially for storage and shipment as opposed to a manufacturing establishment.

Property line. See *Lot line*.

Recreation hall means a building owned or operated by a condominium or homeowners' association for a social or recreational purpose, but not for profit or to render a service which is customarily carried on as a business.

Recreation facilities.

- (1) *Recreation facilities, commercial* means recreation equipment or facilities not classified as a *Park, neighborhood or Park, community or regional*, or as personal, private-on-site, or private-off-site recreation facility, but instead operated as a business and open to the public for a fee. (*Golf courses* are defined separately in this section.)
- (2) *Recreation facilities, personal* means recreation equipment or facilities such as swimming pools, tennis, shuffleboard, handball or racquetball courts, swings, slides, and other playground equipment provided as an accessory use on the same premises and in the same zoning district as the principal permitted use and designed to be used primarily by the owners, tenants, or employees of the principal use and their guests. See *Residential accessory use*.
- (3) *Recreation facilities, private ON-SITE* means recreation hall, equipment, or facilities such as swimming pools, tennis, shuffleboard, handball, or racquetball courts, swings, slides, and other playground equipment which are owned, leased or, operated by a homeowners', co-op, or condominium

association and located in the development or neighborhood controlled by the association.

- (4) *Recreation facilities, private OFF-SITE* means recreation hall, equipment, or facilities such as swimming pools, tennis, shuffleboard, handball, or racquetball courts, swings, slides, and other playground equipment which are owned, leased or operated by a homeowners', co-op, or condominium association for use by the association's members and guest, but which are not located in the development or neighborhood controlled by the association.
- (5) *Recreation facility, public* means a recreation facility operated by a governmental agency and open to the general public.

Recreational vehicle means a recreational vehicle type unit which is so defined in F.S. § 320.01(b). It is primarily designed as temporary living quarters for recreational, camping or travel use, and has its own motive power or is mounted on or drawn by another vehicle. Because the statutory definition set forth in F.S. § 320.01(b) changes, the definition of the term "recreational vehicle," as used in this chapter, is intended to change with such statutory changes so as to be consistent with them. See also § 34-694.

Recreational vehicle park means a parcel (or portion thereof) or abutting parcels of land designed, used or intended to be used to accommodate two or more occupied recreational vehicles. See § 34-694 and division 31 of article IV of this chapter.

Recreational vehicle park, expanded means the preparation of additional sites, by the construction of facilities for servicing the sites on which the recreational vehicles are to be located (including the installation of utilities, final site grading, pouring of concrete pads or the construction of streets). This shall not be interpreted to include pads for utility rooms, enclosures or storage sheds where explicitly permitted. See division 31 of article IV of this chapter.

Religious facilities means religious-related facilities and activities, which may include but are not limited to bus storage facilities or areas, convents, rectories, monasteries, retreats, church or synagogue ministries involving classes for more than 100 children during the week, and assisted living facilities.

Rental of beach furniture means a business that provides beach chairs, umbrellas, and similar equipment for a fee. Rental of beach furniture is permitted as a resort accessory use and also by right in certain zoning districts. See divisions 1 and 2 of ch. 14 and § 34-3151.

Residence. See *Dwelling unit and Living unit*

Residential accessory use means the use of a structure or premises that is customarily incidental and subordinate to the principal use of a residential structure. See *Use, principal*. Typical residential accessory uses are: carports and garages; decks, gazebos, patios, and screen enclosures; dock, personal (§ 34-1863); fences and walls (division 17 in article IV); garage sales or yard sales (see definition in this section); recreation facilities, personal; seawalls (ch. 26); and storage sheds. Division 2 and other portions of article IV provide regulations for many residential accessory uses.

Resort means a mixed-use facility that accommodates transient guests or vacationers as well as longer-term residents. Resorts contain at least one hotel/motel and at least 50 total units, which include a combination of dwelling units and guest units and may also include timeshare units, and provide food service, outdoor recreational activities, and/or conference facilities for their guests.

Resort accessory use means the use of a structure or premises that is customarily incidental and subordinate to a resort. See *Use, principal*. Typical resort accessory uses are: *Amusement devices* (§§ 34-2141–2145 and 34-3042); *Golf courses*; *Parasailing operations office* (ch. 27); *Personal watercraft operations office* (ch. 27); and *Rental of beach furniture* (ch. 14).

Restaurant means an establishment whose principal business is the sale of food or beverages to customers in a ready-to-consume state. See § 34-620(f) regarding the prohibition on drive-through lanes for restaurants.

Retail store means an establishment operating within a fully enclosed building that provides goods and incidental services directly to consumers where

(3) **Decisions and authority.**

- a. In exercising its authority, the town council shall consider the recommendation of the local planning agency where applicable, but may, in conformity with the provisions of this chapter, reverse, affirm, or modify the recommendation, or remand the recommendation to afford due process.
- b. The town council shall not approve any zoning action other than that published in the newspaper unless such change is more restrictive than the proposed zoning published.
- c. The town council has the authority to attach special conditions to any approval of a request for a special exception, development of regional impact, planned development rezoning, or variance within their purview, deemed necessary for the protection of the health, safety, comfort, convenience, or welfare of the general public. Such special conditions must be reasonably related to the action requested.
- d. The decision of the town council on any matter listed in this section is final. If a decision of approval is not obtained, or if a tie vote results from a motion to grant a request or from a motion to deny a request, then the matter being considered shall be deemed to have been denied, unless a majority of the members present and voting agree by motion, before the next agenda item is called, to take some other action in lieu of denial. Such other action may be moved or seconded by any member, regardless of his vote on any earlier motion.

(4) **Denials.**

- a. **Denial with prejudice.**
 1. Except when specifically stated otherwise, a denial by the town council is a denial with prejudice.
 2. If an application is denied with prejudice, no similar application for rezoning, special exception, or variance covering the same property, or portion of the property, shall be resubmitted or initiated for a period of 12 months from the date of denial. However, this shall not preclude the application for a different rezoning, special exception, or variance which in the opinion of the director is substantially different from the request originally denied.
- b. **Denial without prejudice.**

1. When the town council denies without prejudice any application, it is an indication that, although the specifically requested action is denied, the town council is willing to consider the same request after modifications have been made, or an application for other action, without the applicant having to wait 12 months before applying for consideration of the modified request or other action.
 2. Any resubmitted application shall clearly state the modifications which have been made to the original request or other changes made in the application.
- (5) **Rehearings.** Any rehearings of decisions under this section shall be in accordance with § 34-93.
 - (6) **Special magistrate.** Final decisions under this section may be the subject of a request for relief under F.S. § 70.51 or 70.001 (see §§ 34-94 and 34-95).
 - (7) **Judicial review.** Judicial review of final decisions under this section shall be in accordance with section 34-96.

Sec. 34-85. Rezoning.

- (1) **Function.** The town council shall hear and decide all applications for changes in zoning district boundaries.
- (2) **Considerations.** In reaching its decision, the town council shall consider the following, whenever applicable:
 - a. Whether there exists an error or ambiguity which must be corrected.
 - b. Whether there exist changed or changing conditions which make approval of the request appropriate.
 - c. The impact of a proposed change on the intent of this chapter.
 - d. The testimony of any applicant.
 - e. The recommendation of staff and of the local planning agency.
 - f. The testimony of the public.
 - g. Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.
 - h. Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.

- i. Whether urban services are, or will be, available and adequate to serve a proposed land use change.
 - j. Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.
 - k. Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
 - l. Whether the location of the request places an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.
 - m. For planned development rezonings, see § 34-216 for additional considerations.
- (3) **Findings.** Before granting any rezoning, the town council shall find that the requested zoning district complies with:
- a. The Fort Myers Beach Comprehensive Plan.
 - b. This chapter.
 - c. Any other applicable town ordinances or codes.
 - d. For planned development rezonings, see § 34-216 for additional findings.
- (4) **Authority.**
- a. When rezoning land to conventional zoning districts or redevelopment districts (see §§ 34-612(1) and (2)), the town council shall not impose any special conditions or requirements beyond those contained in this code, except as authorized by subsections 34-87(4)b. related to variances and 34-88(4)b. related to special exceptions.
 - b. In reaching decisions on planned development rezonings (see § 34-612(3)), the town council shall proceed in accordance with § 34-216 and shall have the authority to adopt a master concept plan, establish permitted uses, attach special conditions, and grant deviations from this code in accordance with §§ 34-932–933.

Sec. 34-86. Appeals from administrative action.

- (1) **Function.** The town council will hear and decide appeals where it is alleged there is an error in any order, requirement, decision, interpretation, determination, or action of any administrative official charged with the

administration and enforcement of the provisions of this code, or any other ordinance or portion of this code which provides for similar review; provided, however, that:

- a. No appeal to the town council shall lie from any act by such administrative official pursuant to:
 - 1. An order, resolution, or directive of the town council directing him to perform such act; or
 - 2. Any ordinance or other regulation or provision in this code which provides a different appellate procedure.
 - b. The appeal to the town council shall be in writing on forms provided by the director, and shall be duly filed within 30 calendar days, but not thereafter, after such act or decision by the administrative official. The appeal shall specify the grounds for the appeal.
 - c. No appeal shall be considered by the town council where it appears to be a circumvention of an established or required procedure. Specifically, in no case may an appeal be heard when the town council determines that the case should more appropriately be heard on a request for a variance.
 - d. Appeals from administrative action do not require a public hearing before the local planning agency.
- (2) **Considerations.**
- a. In reaching its decision, the town council shall consider the following criteria, as well as any other issues which are pertinent and reasonable:
 - 1. Whether the appeal is of a nature properly brought for decision, or whether there is an established procedure for handling the request other than through the appeal process (i.e., a variance or special exception, etc.).
 - 2. The intent of the ordinance which is being applied or interpreted.
 - 3. The effect the ruling will have when applied generally to this code.
 - b. Staff recommendations, the testimony of the appellant, and testimony of the general public shall also be considered.
- (3) **Authority.**
- In exercising its authority, the town council may reverse, affirm, or modify any decision or action of any administrative

official charged with the administration or enforcement of this chapter.

Sec. 34-87. Variances.

- (1) **Function.** The town council shall hear and decide all requests for variances from the terms of the regulations or restrictions of this code (except for administrative setback variances as provided in § 34-268) and such other ordinances which assign this responsibility to the town council, except that no use variance or procedural variance as defined in this chapter shall be heard or considered.
- (2) **Considerations.** In reaching its decision, the town council shall consider the following criteria, recommendations and testimony:
 - a. Whether the facts support the five required findings in subsection (3) below;
 - b. Staff recommendations and local planning agency recommendations;
 - c. Testimony from the applicant; and
 - d. Testimony from the public.
- (3) **Findings.** Before granting any variance, the town council must find that all of the following exist:
 - a. That there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or that the request is for a *de minimis* variance under circumstances or conditions where rigid compliance is not essential to protect public policy;
 - b. That the conditions justifying the variance are not the result of actions of the applicant taken after the adoption of the regulation in question;
 - c. That the variance granted is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question to his property;
 - d. That the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare; and
 - e. That the conditions or circumstances on the specific piece of property for which the variance is sought are not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

(4) **Authority.**

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

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

Sec. 34-88. Special exceptions.

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

pertaining to the use set forth in this chapter.

- (3) **Findings.** Before granting any special exceptions, the town council must find that the applicant has demonstrated that the requested special exception complies with the standards in this section and with:
 - a. The Fort Myers Beach Comprehensive Plan;
 - b. This chapter; and
 - c. Any other applicable town ordinances or codes.
- (4) **Authority.**
 - a. The town council shall grant the special exception unless it finds that granting the special exception is contrary to the public interest and the health, safety, comfort, convenience, and welfare of the citizens of the town, or that the request is in conflict with the criteria in this section.
 - b. In reaching its decision, the town council has the authority to attach special conditions necessary for the protection of the health, safety, comfort, convenience, or welfare of the general public. Such special conditions shall be reasonably related to the special exception requested.

Sec. 34-89. Developments of regional impact.

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

Sec. 34-90. Land development code interpretations.

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

Sec. 34-91. Comprehensive plan interpretations.

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

- (1) **Equitable estoppel.** In circumstances where development expectations conflict with the comprehensive plan but judicially defined principles of equitable estoppel may override the otherwise valid limitations imposed by the plan, such expectations may be recognized by the town through a resolution of the town council. Such applications shall not require a public hearing or recommendation from the local planning agency.
- (2) **Appeals of administrative interpretations.** Persons or entities whose interests are directly affected by the comprehensive plan have the right to certain administrative interpretations of the plan as described in ch. 15 of the plan. That section specifies the following procedures for appealing an administrative interpretation:
 - a. An administrative interpretation may be appealed to the town council by filing a written request within fifteen days after the administrative interpretation has issued in writing. In reviewing such an appeal, the town council shall consider only information submitted in the administrative interpretation process and shall review only whether the proper standards set forth in the comprehensive plan have been applied to the facts presented. No additional evidence shall be considered by the town council.
 - b. The town council shall conduct such appellate review at a public meeting to be held within thirty days after the date of the written request for appeal. The town council may adopt the administrative interpretation being appealed, or may overrule it, with a written decisions to be rendered by the town clerk in writing within thirty days after the date of the hearing.
- (3) **Legislative interpretations.** In order to apply the plan consistently and fairly, it will be necessary from time to time to interpret provisions in the plan in a manner which insures that the legislative intent of the town council which adopted the plan be understood

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

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

Sec. 34-92. Comprehensive plan amendments.

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

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

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

Sec. 34-93. Rehearing of decisions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DIVISION 3. LOCAL PLANNING AGENCY

Sec. 34-111. Agency established.

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

Sec. 34-112. Purpose and scope.

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

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

(a) The local planning agency shall consist of up to seven members appointed by the town council. No members of the local planning agency shall be salaried officials of the town. Membership on the local planning agency shall render a person ineligible for membership on any other advisory committee for the Town of Fort Myers Beach during his/her term of office. One spouse per household will be eligible for membership on the local planning agency during any given term of office. No current member of Town Council shall be eligible to serve on the local planning agency. Except for

inclusion of members required under Florida law, all members must be residents of, or owners of real property located within, the territorial limits of the Town of Fort Myers Beach at the time of application for membership on the local planning agency and during the period of service on the local planning agency. All applicants must apply on or before October 1 of the appointment year. Each application must include a short biography and short explanation as to why the applicant wishes to serve on the local planning agency.

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

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

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

(a) The term of office of a member of the local planning agency shall be staggered in increments of two years or until a successor has been appointed and has qualified, except that the respective terms of the members first appointed under Ordinance 08-11 shall be up to four members for a one-year term and three members for a two-year term. If otherwise qualified, a member may be repeatedly appointed for an additional term by Town Council without a limitation in number of terms served.

(b) Appointments shall be made annually at the first available meeting of the council in November. The term of any member which would otherwise expire in April, 2008, will be extended to the first available Town Council meeting in November, 2008, or until such member's successor has been appointed, whichever is sooner. The term of any member which would otherwise expire in April, 2009, will be extended to the first available Town Council meeting in November, 2009, or until their successor has been appointed, whichever is sooner.

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

Sec. 34-115. Forfeiture of office.

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

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

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

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

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

Sec. 34-117. Clerk.

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

Sec. 34-118. Rules and procedures.

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

proposed amendment. It shall keep a properly indexed record of its resolutions, transactions, findings, and determinations, which record shall be a public record. All meetings of the local planning agency shall be public meetings.

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

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

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

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

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

- island's present handicaps, and to prevent or minimize future problems.
- (3) Make or cause to be made any necessary special studies on the location, condition, and adequacy of specific facilities in the town or portion thereof. These may include, but are not limited to, studies on housing, commercial facilities, utilities, traffic, transportation, parking, and emergency evacuation.
 - (4) Review proposed land development codes and amendments thereto, and make recommendations to the town council as to their consistency with the comprehensive plan.
 - (5) Recommend to the town council annually whether the proposed capital improvements program is consistent with the comprehensive plan.
 - (6) Make administrative interpretations of the comprehensive plan when such interpretations are referred to the local planning agency by its legal counsel, in accordance with the ch. 15 of the comprehensive plan and § 34-124(3).
 - (7) Request legislative interpretations of the comprehensive plan in accordance with ch. 15 of that plan, when deemed appropriate by the local planning agency.
 - (8) Make recommendations to the town council on legislative interpretations that have been requested in accordance with ch. 15 of the comprehensive plan.
 - (9) Recommend action to the town council on any amendments that are proposed to the comprehensive plan.
 - (10) Monitor and oversee the effectiveness and status of the comprehensive plan and recommend to the town council such changes in the comprehensive plan as may from time to time be required, including preparation of the periodic evaluation and appraisal reports required by F.S. § 163.3191.
 - (11) Conduct such public hearings as may be needed for updating the comprehensive plan and such additional public hearings as are specified by law.
 - (12) Aid town officials charged with the direction of projects or improvements embraced within the comprehensive plan and generally promote the realization of the comprehensive plan.
 - (13) Cooperate with municipal, county and regional planning commissions and other agencies or groups to further the local

planning program and to assure harmonious and integrated planning for the area.

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

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

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

- (1) Prepare recommendations for changes to the boundaries of the various zoning districts, or to the regulations applicable thereto, to the town council.
- (2) Make recommendations on the following to the town council:
 - a. Applications for rezonings including planned developments.
 - b. Applications for developments of regional impact and Florida Quality Developments approval, which may or may not include a request for rezoning.
 - c. Special exceptions.
 - d. Variances from this code and any town ordinance which specifies that variances from such ordinance can only be granted by the town council.
 - e. Extensions of master concept plans for planned developments (see § 34-220(4)).
 - f. Any other applications that require action by the local planning agency pursuant to this code.
- (3) *Authority.*
 - a. The local planning agency shall serve in an advisory capacity to the town council with respect to zoning matters as set forth in subsections (1) and (2) of this section, and in such capacity may not make final determinations.
 - b. The local planning agency shall not recommend the approval of a rezoning, and the town council shall not approve a rezoning, other than the change published in the newspaper pursuant to § 34-236(b), unless such change is more restrictive and permitted within the land use classification as set forth in the Fort Myers Beach Comprehensive Plan.
 - c. In reaching its recommendations, the local planning agency shall have the authority to recommend special conditions to be attached to any request for a planned development, special exception, or variance.

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

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

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

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

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

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

- (1) Advising the local planning agency as to its legal responsibilities and options during the conduct of its business.
- (2) Preparing resolutions reflecting actions of the local planning agency.
- (3) Issuing administrative interpretations of the Fort Myers Beach Comprehensive Plan or referring requests for such interpretations to the local planning agency (see § 34-120(6)) when applications are submitted to the town clerk in accordance with chapter 15 of the comprehensive plan.

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

**DIVISION 4.
APPLICATIONS AND PROCEDURES**

Subdivision I. General Procedures

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

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

- (1) A landowner, or his authorized representative, for his own property; provided, however, that:
 - a. Except as provided in subsections (a)(1)b. and c. of this section, where there is more than one owner, either legal or equitable, then all such owners must jointly initiate the application or petition.
 1. This does not mean that both a husband and wife must initiate the application on private real property which is owned by them.
 2. Where the property is subject to a land trust agreement, the trustee may initiate the application.
 3. Where the fee owner is a corporation, any duly authorized corporate official may initiate the application.
 4. Where the fee owner is a partnership, the general partner may initiate the application.
 5. Where the fee owner is an association, the association or its governing body may appoint an agent to initiate the application on behalf of the association.
 - b. Where the property is a condominium or a timeshare condominium, as defined and regulated in F.S. chs. 718 and 721, respectively, an application or petition may be initiated by both the condominium association and no less than 75 percent of the total number of condominium unit owners, or by both the owners' association and no less than 75 percent of timeshare condominium unit owners.
 1. For purposes of this subsection, each individually owned condominium unit within the condominium complex and

be construed to injure the rights of tenants of previously completed and properly occupied phases.

Sec. 34-218. Binding nature of approval of master concept plan.

All terms, conditions, safeguards, and stipulations made at the time of the approval of a master concept plan shall be binding upon the applicant or any successor in title or interest to all or part of the planned development. Departure from the approved plans or failure to comply with any requirement, condition, or safeguard shall constitute a violation of this chapter.

Sec. 34-219. Administrative amendments to approved master concept plan.

(a) Amendments to an approved master concept plan or its attendant documentation may be requested at any time during the development of or useful life of a planned development.

(b) Amendments that may be approved by the director include, in general, any change which does not increase height, density, or intensity (i.e., number of dwelling units, hotel units, or floor area), decrease buffers or open space, or add additional land uses. The director shall not approve any change which results in a reduction of total open space, buffering, landscaping, and preservation areas or which adversely impacts on surrounding land uses.

- (1) This authority is granted to the director to eliminate unnecessary processing delays for proposed changes that are:
 - a. substantially similar to the prior approval; and
 - b. in conformance with all town regulations and plans.
- (2) Decisions by the director pursuant to this subsection may be appealed only as follows:
 - a. Appeals will not be considered for any of the following requests:
 - 1. an increase in height, density, or intensity (i.e., number of dwelling units, guest units, or floor area), or
 - 2. an additional land use, or
 - 3. a variance or deviation from this code, or
 - 4. a substantial change from previously approved architectural drawings or master concept plan.

- b. The appeal must be filed and processed in accordance with § 34-86. In addition, the appellant must provide a list and map of surrounding property owners and one set of mailing labels in accordance with § 34-202(6) and (7), and shall pay a fee established in accordance with the provisions of § 34-53.
- c. The director shall provide notice of the public hearing where this appeal will be considered using the procedures in § 34-236.
- d. Upon considering an appeal, the town council may uphold or repeal the director's decision, or may modify that decision by removing, adding, or modifying any conditions of approval.

(c) All other requests for amendments to a master concept plan or its auxiliary documentation shall be treated procedurally as an amendment to the planned development, with application information specified by § 34-214 and public hearings in accordance with § 34-216.

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

Master concept plans are subject to the following:

- (1) An approved master concept plan and its attendant documentation shall be deemed to be vacated unless the property owner obtains a development order for the first phase of the project within three years of the date of the original approval by the town council, consisting of no less than 20 percent of the lots, dwelling units, square footage, or other applicable measurements of intensity for the development in question unless a lesser percentage is approved by the town council.
- (2) Timeframes for approval of subsequent portions of the development may be governed by a phasing plan, which shall be included in the resolution rezoning the subject parcel. Phases may be defined by geographical areas, units of intensity, or any other units of measurement deemed appropriate by the town council. In the absence of a specific phasing plan in the resolution, subsequent phases must proceed as follows:
 - a. Within five years of the date of approval by the town council, the first phase must

- have been completed and a development order must have been obtained for the second phase, consisting of 50% of the project.
- b. Within eight years of the date of approval by the town council, the second phase must have been completed and a development order must have been obtained for the entire project.
- (3) Any phase for which a development order has not been obtained or for which development has not been completed by the time specified in the resolution shall be deemed vacated, along with all subsequent phases.
- (4) When any portion of a master concept plan is vacated pursuant to subsection (1), the vacated area will remain zoned planned development, but no additional development can occur or be approved until a new master concept plan is approved or the original master concept plan is extended, or until the property is rezoned by the town council.
- (5) Extensions of master concept plans may be granted as follows:
 - a. An approved master concept plan for a phase of or an entire planned development which has been or may be vacated due to a failure to proceed on the applicant's part may be extended by the town council for a period of no more than two years from the date of the extension based on the following findings of fact:
 - 1. The master concept plan is consistent with this code and the current Fort Myers Beach Comprehensive Plan, including, but not limited to, density, intensity, and concurrency requirements;
 - 2. The development shown by the master concept plan has not become incompatible with existing and proposed uses in the surrounding area as the result of development approvals issued after the original approval of the master concept plan; and
 - 3. The development shown by the master concept plan will not, by itself or in conjunction with other development, place an unreasonable burden on essential public facilities.
 - b. An application for an extension may be filed at any time up to one year after the

vacation of the master concept plan and must consist of the following:

1. A completed application form provided by the director;
 2. The approved master concept plan;
 3. The applicable zoning resolution;
 4. A written statement describing how the criteria listed in subsection (4)a. above have been met; and
 5. A fee, in accordance with an adopted administrative code.
- c. No more than two extensions may be granted for any development or phase thereof.
 - (6) Phasing plans may be amended in accordance with § 34-214.

Secs. 34-221--34-230. Reserved.

**DIVISION 5.
PUBLIC HEARINGS AND REVIEW**

Sec. 34-231. Definitions.

For purposes of this division only, certain terms are defined as follows:

Continuance means an action initiated by the applicant, staff, local planning agency, or the town council to postpone, to a later time or date, a public hearing after the notice of the public hearing has been submitted to the newspaper for publication as required in § 34-236.

Deferral means an action initiated by the applicant or staff to postpone, to a later time or date, a public hearing prior to the notice of the public hearing being submitted to the newspaper for publication.

Sec. 34-232. Required hearings.

(a) *Amendment or adoption of land use ordinances.*

- (1) Any proposed amendment to this chapter or to any land use ordinance, or adoption of any new land use ordinance, shall be enacted pursuant to the requirements set forth in F.S. § 166.041.

Mapping of Zoning Districts

Sec. 34-622. Uses groups and sub-groups.

(a) Allowable land uses are assigned by Table 34-1 to one of six use groups:

- (1) **Residential**
- (2) **Lodging**
- (3) **Office**
- (4) **Retail**
- (5) **Marine**
- (6) **Civic**

(b) Within each use group, Table 34-1 also assigns each allowable land use to one of three sub-groups:

- (1) **R** -Restricted
- (2) **L** -Limited (which includes all R uses)
- (3) **O** -Open (which includes all R and L uses)

(c) Within each use sub-group, uses are divided into two categories:

- (1) **Principal uses** are the primary purposes for which land is being used. Allowable principal uses are listed first.
- (2) **Accessory uses** are allowable only in conjunction with an allowable principal use, and only when the accessory use is incidental and subordinate to the principal use.

(d) Table 34-2 assigns these use sub-groups to the zoning districts provided by this code. However, uses in planned development zoning districts are further restricted in accordance with § 34-933.

(e) To determine the allowable land uses on a particular lot:

- (1) First, consult the zoning map to determine the lot's current zoning district (see division 1 of this article).
- (2) Consult Table 34-2 to determine which use sub-groups are allowable in that zoning district.
- (3) Consult Table 34-1 to determine which individual land uses can be placed in each allowable sub-group. Note that the sub-groups are cumulative, with all Restricted uses incorporated into Limited, and all Restricted and Limited uses incorporated into Open.
- (4) See § 34-2 for definitions of the individual land uses.

(f) To determine which zoning districts will permit a specific land use:

- (1) First, consult the definitions in § 34-2 to determine the appropriate terminology to describe the specific land use.
- (2) Consult Table 34-1 to determine which use sub-group (or sub-groups) include the desired land use.
- (3) Consult Table 34-2 to determine which zoning districts allow that use sub-group.
- (4) Consult the zoning map to determine which land has been assigned to those zoning districts.

Sec. 34-623–34-630. Reserved.

Table 34-1, Land Uses Assigned to Use Groups and Sub-Groups (p.1 of 2)

	<i>Residential</i>		<i>Lodging</i>		<i>Office</i>	
Restricted (R)	Community residential home	P	Rental of any permitted dwelling unit to a single family during any one-month period, with a minimum stay of one week (see §§ 34-2391–2410 for rules and exceptions)	P	AS ACCESSORY USES: Home occupation (no outside help) P Home occupation (with outside help) A	Restricted (R)
	Dwelling unit, single-family	P				
	Home care facility	P				
	AS ACCESSORY USES:		AS ACCESSORY USES:			
	Accessory apartment (1) (see § 34-1177)	SE				
	Accessory apartment (see § 34-1178)	EO				
	Residential accessory uses	P				
Temporary mobile home (§ 34-3046)	TP					
Limited (plus R uses) (L)	Dwelling unit: two-family (1) live/work (see § 34-1773)	P SE	Rental of any permitted dwelling unit to a single family for periods of one week or longer (see §§ 34-2391–2410 for rules)	P	AS ACCESSORY USES: Administrative office P	Limited (plus R uses) (L)
	Mobile home or RV park (VILLAGE district only, as restricted in § 34-694)	EO	Bed-and-breakfast inn (see § 34-1801)	SE		
	AS ACCESSORY USES:		AS ACCESSORY USES:			
	Accessory apartment (1) (see § 34-1177)	P	On-premises consumption of alcoholic beverages (see division 5 of article IV)	AA/ SE		
Open (plus R & L uses) (O)	Assisted living facility (see § 34-1411)	P	Bed-and-breakfast inn (see § 34-1801)	P	Automobile rental SE	Open (plus R & L uses) (O)
	Dwelling unit: multiple-family live/work (see § 34-1773)	P P	Hotel/motel (see § 34-1801)	P	Health care facility P	
	Rooming house	P	Rental of any permitted dwelling unit for periods of one day or longer	P	Offices, general or medical P	
	Timeshare units (provided these units qualify as dwelling units and meet residential density levels in § 34-632)	P	Resorts	P	Personal services P	
	AS ACCESSORY USES:		Timeshare units	P	Wholesale establishment SE	
	Golf course	EO	AS ACCESSORY USES:		AS ACCESSORY USES:	
	Recreation facility: private on-site private off-site	P SE	Resort accessory uses	P	Commercial accessory uses P	
	Subordinate commercial uses (see § 34-3021)	P	Personal services	P	Drive-through, Type 1 (2) P	
			Subordinate commercial uses (see § 34-3021)	P	Subordinate commercial uses (see § 34-3021) P	

(1) Provided density complies with the Fort Myers Beach Comprehensive Plan (see § 34-632).
 (2) Automobile fuel pumps and all drive-throughs (whether Type 1 or Type 2) cannot be constructed within the outer perimeter of the DOWNTOWN zoning district except as provided in § 34-676(f), whether the subject property is classified in the DOWNTOWN zone or in a Commercial Planned Development zone. See also § 34-620(g)(1) regarding the prohibition on restaurant drive-throughs.

Table 34-1, Land Uses Assigned to Use Groups and Sub-Groups (p. 2 of 2)

	<i>Retail</i>	<i>Marine</i>	<i>Civic</i>		
Restricted (R)	AS ACCESSORY USES: ATM	P	Dock (for sole use by occupants of principal use)	P	Restricted (R)
				Beach or bay access P Essential services (see § 34-1612(a)) P Hidden path P Park, neighborhood P AS ACCESSORY USES: Family day care home P	
Limited <i>(plus R uses)</i> (L)	Dwelling unit: work/live (see § 34-1774)	SE	Dock (for use by water taxi or water shuttle)	P	Limited <i>(plus R uses)</i> (L)
	Membership organization SE Recreation facilities, commercial SE Parking lot, seasonal (see § 34-2022) TP Temporary uses (see §§ 34-3041–3050) SE AS ACCESSORY USES: On-premises consumption of alcoholic beverages (see §§ 34-1261–1290) AA/SE		Marina EO/SE Parasailing operations office SE Personal watercraft operations office SE Rental of beach furniture P AS ACCESSORY USES: Dwelling unit, caretaker P Dock (may be leased to non-occupants of principal use) P	Communication tower (see § 34-1441–1550) SE Day care center, adult or child SE Essential service building (see § 34-1612(b)) SE Essential service equipment P Recreation facility: private off-site SE public P Transit terminal SE AS ACCESSORY USES: Dwelling unit, caretaker P Restaurant, accessory to private rec. facilities only SE	
Open <i>(plus R & L uses)</i> (O)	Automobile repair SE Bar or cocktail lounge AA/SE Car wash SE Dwelling unit: work/live (see § 34-1774) P Laundromat P Mini-warehouse SE Parking lot, shared permanent (34-2015(2)b.) SE Personal services P Restaurant (2) P Retail store, small P Retail store, large SE AS ACCESSORY USES: Commercial accessory uses P Drive-through: (2) Type 1 P Type 2 SE Automobile fuel pumps (2) SE		Boat dealer P Marina P AS ACCESSORY USES: Marina accessory uses P	Cultural facility SE Day care center, adult or child P Park, community or regional P Parking lot, shared permanent SE Place of worship P Religious facility SE School (see § 34-2381–2383) P Theater SE AS ACCESSORY USES: Helistop SE Restaurant, accessory only to public recreation facilities P Subordinate commercial uses (see § 34-3021) P	Open <i>(plus R & L uses)</i> (O)

(2) Automobile fuel pumps and all drive-throughs (whether Type 1 or Type 2) cannot be constructed within the outer perimeter of the DOWNTOWN zoning district except as provided in § 34-676(f), whether the subject property is classified in the DOWNTOWN zone or in a Commercial Planned Development zone. See also § 34-620(g)(1) regarding the prohibition on restaurant drive-throughs.

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

	<i>Residential</i>	<i>Lodging</i>	<i>Office</i>	<i>Retail</i>	<i>Marine</i>	<i>Civic</i>
	Use Groups and Sub-Groups (Restricted, Limited, Open)					
RS Residential Single-family	(R)	(R)	(R)	—	(R)	(R)
RC Residential Conservation	(L)	(L)	(R)	—	(R)	(R)
RM Residential Multifamily	(O)	(L)	(L)	(R)	(R)	(L)
CR Commercial Resort	(O)	(O)	(O)	(L)	(L)	(L)
CM Commercial Marina	—	—	(L)	(L)	(O)	(L)
CO Commercial Office	(O)	(L)	(O)	(L)	(L)	(O)
SANTOS	(L)	(L)	(O)	(L)	(L)	(L)
IN Institutional	(L)	(L)	(L)	(R)	(L)	(O)
CF Community Facilities	(R)	(R)	(L)	(R)	(L)	(O)
BB Bay Beach	— see § 34-651(b) —					
EC Environmentally Critical	— see § 34-652(d) & (e) —					
DOWNTOWN	(O)	(O)	(O)	(O)	(L)	(O)
SANTINI	(O)	(O)	(O)	(O)	(O)	(O)
VILLAGE	(L) ²	(L) ²	(L) ²	(L) ²	—	(L)
CB Commercial Boulevard	(O)	(L)	(L) ³	(L) ³	(L)	(O)
RPD Residential Planned Dev. ⁴	(R)(L)(O)	(R)(L)	(R)(L)	(R)(L)	(R)(L)	(R)(L)
CPD Commercial Planned Dev. ⁴	(R)(L)(O)	(R)(L)(O)	(R)(L)(O)	(R)(L)(O)	(R)(L)(O)	(R)(L)(O)

Note 1: See Table 34-1 for a specific list of Use Groups (Residential, Lodging, Office, Retail, Marine, and Civic) and Sub-Groups of each (Restricted, Limited, and Open).

Note 2: See § 34-692(3) which provides a pre-approved redevelopment option for the VILLAGE district that can also permit residential, lodging, office, and retail uses in the Open Sub-Group under specified conditions.

Note 3: See § 34-702–703 for exceptions and limitations on new and expanded commercial uses.

Note 4: See § 34-933. The resolution approving a planned development zoning district (RPD or CPD) will specify which of the use groups or sub-groups enumerated in Table 34-1 will be permitted on that parcel. Note that some potential use sub-groups are not listed above for the RPD zoning district because they may not be approved in any RPD zoning resolution.

Property Development Regulations For All Zoning Districts

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

Sec. 34-631. Building heights.

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

- (1) *Measured in stories*, the height includes enclosed or unenclosed space at ground level as the first story, provided it is six feet or more in height.
 - a. Space within a roofline that is entirely non-habitable shall not be considered to be a separate story, for example overhead space enclosed by a cathedral ceiling, cupola, or similar roof enclosure.
 - b. Any single story cannot exceed 16 feet in height, including structural members, except that the first story may be taller if required to comply with any regulation in this code.
- (2) *Measured in feet*, the height is the vertical distance between the base flood elevation and the top of the structural members that serve as the ceiling for the highest habitable story of the building.
 - a. Where ceilings are sloped, height is measured to the highest vertical point on a wall of the highest habitable story of the building.
 - b. For parking garages, height is measured to the top of the structural members of the

- highest ceiling, or if parking is allowed on the roof level, to the highest point on the rooftop parking level.
 - c. When determining maximum building heights only, base flood elevation (BFE) means the minimum required elevation for a property as established by the floodplain maps described in § 6-408, or the minimum 100-year storm elevation as established by the Florida Department of Environmental Protection for structures seaward of the 1991 coastal construction control line, whichever is higher for a particular property.
 - d. On July 31, 2006, FEMA released maps showing preliminary BFE increases that could become mandatory in 2007. Landowners who voluntarily meet the higher elevations shown on the preliminary FEMA maps may measure their building's height in feet from the higher elevation.
 - e. Landowners who to choose to elevate up to three feet above the heights in subsections c. or d. above may increase their maximum building height by the same number of feet.
- (3) Specific height regulations are provided for each zoning district.
- a. For conventional zoning districts, see Table 34-3 in division 4 of this chapter.
 - b. For redevelopment zoning districts, see individual districts in division 5 of this chapter.
 - c. For planned development zoning districts, see division 6 of this chapter.

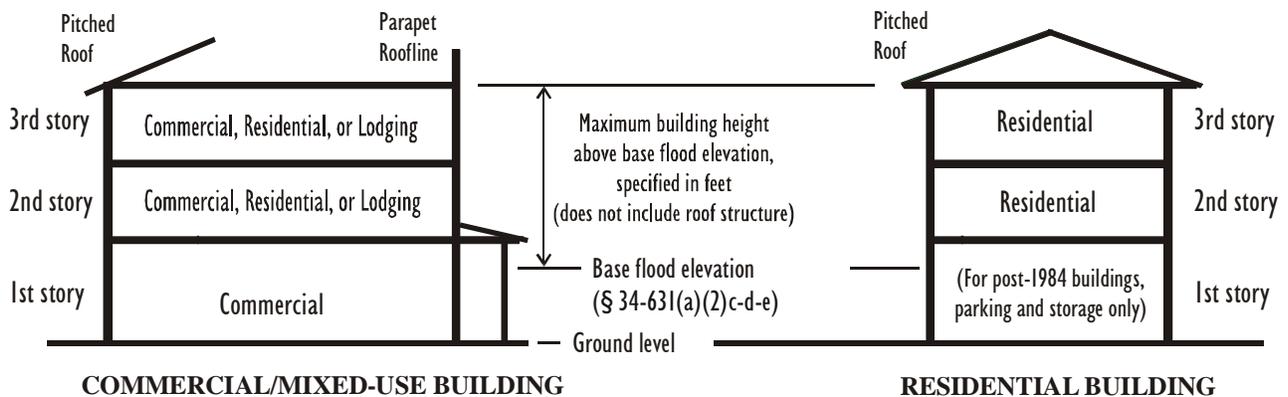


Figure 34-1-a

Property Development Regulations For All Zoning Districts

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

- (1) Roof structures and parapet walls may exceed the height limit defined in any zoning district provided there is no habitable space inside the roof structure.
- (2) Non-habitable architectural appurtenances such as cupolas, clerestories, and steeples may also extend above the height limit if they do not exceed an area of 250 square feet. A habitable roofed tower up to 150 square feet, whether open-sided or enclosed, may also qualify as an acceptable architectural appurtenance and extend above the height limit provided it is roofed in a manner consistent with the design of the building. Decks do not qualify as architectural appurtenances for the purposes of this subsection. Any proposed appurtenance taller than an additional 15 feet or larger than the specified sizes would require a variance from this code.
- (3) Mechanical or structural appurtenances such as elevator and stairwell enclosures, air-conditioning equipment, and antennas may also extend above the height limit provided these appurtenances:
 - a. do not exceed 250 square feet per type; and
 - b. screening is provided as required by this code (see, for example, § 6-2(f) for rooftop mechanical equipment).
- (4) When properties are being rebuilt pursuant to the buildback regulations in § 34-3237 and 34-3238, specific height regulations in those sections may supersede the height regulations established for that property's zoning district.
- (5) In those few cases where individual parcels of land are so surrounded by tall buildings on lots that are contiguous (or directly across a street) that the height regulations in this chapter would be unreasonable, landowners may seek relief through the planned development rezoning process, which requires a public hearing and notification of adjacent property owners. The town will approve, modify, or deny such requests after evaluating the level of unfairness that would result from the specific circumstances and the degree the specific proposal conforms with all aspects of this comprehensive plan,



Roofed towers, Figure 34-1-b

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

- (6) For amateur radio antennas/towers, see § 34-1175. For communication towers and commercial antennas, see § 34-1441–1550).
- (c) ***Space at ground level.***
- (1) Commercial space below the base flood elevation (at ground level) requires dry-floodproofing of the building (see §§ 6-401–474).
 - (2) Space below the base flood elevation in new residential buildings may be used only for parking and limited storage (see §§ 6-401–474).

Property Development Regulations For All Zoning Districts

Sec. 34-632. Density.

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

- (1) **Formula for computing density.** The maximum number of dwelling units allowed on a parcel of land is computed by taking the maximum number of dwelling units per acre the comprehensive plan allows on that parcel and multiplying it by the site’s lot area in acres, with the result rounded down to the nearest whole number (except as provided in subsection (3) below).
- (2) **Determining lot area.** For purposes of this section, a site’s lot area includes the gross acreage within the site’s private property line, minus wetlands, canals or other water bodies that extend beyond the site, minus all primarily commercial and other non-residential land, and minus any land designated “Recreation” on the Comprehensive Plan’s future land use map. For any site with wetlands or land designated “Recreation,” the maximum number of dwelling units shall be increased by one unit per 20 acres of such land.
- (3) **Existing subdivisions.** In existing subdivisions where lots are smaller than 15,000 square feet each:
 - a. Residential densities may be computed based on the actual lot size plus one-half the width of adjoining streets and water bodies, but in no case may more than 35 feet be counted as the allowance for one-half of an adjoining water body.
 - b. Computed densities greater than 1.5 DU/acre may be rounded up to two dwelling units where two-family and multifamily dwelling units are permitted.
 - c. This method for determining densities cannot be used for:
 1. Three or more lots that are being combined into a development project; or
 2. Any lot that was created after December 31, 1995, as described in § 34-3272.
- (4) **Mixed-use buildings.** Residential densities may be computed without deleting any acreage for commercial uses that are located on other floors of mixed-use buildings. However, any acreage used primarily for commercial purposes cannot be included in computations of residential density.
- (5) **Adjustments to density computations.** The following rules shall apply when measuring density for living units or guest units that may not also qualify as dwelling units:
 - a. When permitted on a property, certain other land uses such as assisted living facilities and hotels/motels are limited by using equivalency factors between those uses and dwelling units, such as provided in §§ 34-1415 and 34-1803.
 - b. For density purposes, each living unit shall count as one dwelling unit except where this code explicitly provides a different measure for measuring density (see, for example, § 34-1178(d) regarding accessory apartments in owner-occupied homes).
 - c. Lock-off accommodations in multiple-family buildings and timeshare units are living units and are calculated as separate dwelling units for density purposes.
 - d. Live-aboards are considered to be living units but not dwelling units as defined by the Fort Myers Beach Comprehensive Plan. Where live-aboards are permitted in accordance with § 34-1861, they are not subject to residential density computations.
- (6) **Density transfers.** The Town Council may, at its discretion, permit the transfer of residential and hotel/motel development rights from one parcel to another if the following conditions established by Policy 4-C-8 of the comprehensive plan are met:
 - a. the transfer is clearly in the public interest, as determined by the Town Council;
 - b. the parcels affected by the transfer are in close proximity to each other;
 - c. the density of residential or hotel/motel units being transferred is based upon

Property Development Regulations For All Zoning Districts

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

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

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

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

Sec. 34-634. Intensity and building coverage.

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

- (1) For purposes of this section, horizontal area means the area within the surrounding exterior walls (whether the walls are solid or screened). The term "horizontal area" does not include any area occupied by unroofed structures such as driveways, sidewalks, patios, outside stairways, or open swimming pools, and does not include any area whose roof is screened rather than solid such as swimming pool enclosures.

- (2) For purposes of this section, a site's lot area includes the gross square footage within the site's private property line, minus wetlands, canals, or other water bodies, and minus any land designated "Recreation" on the Comprehensive Plan's future land use map.

Sec. 34-635. Commercial design standards.

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

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

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

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

- (1) The building cannot exceed the density limits of the Fort Myers Beach Comprehensive Plan as they would apply to vacant land and the lots resulting from the subdivision must each conform to the dimensional regulations for lot size in the RC zoning district (see Table 34-3).
- (2) Existing buildings do not need to be brought into compliance with floodplain requirements for new development, as provided in article IV of ch. 6 of this code.
- (3) The entire building must meet the coastal construction requirements that apply to new development, as provided in article III of ch. 6 and in state regulations. Due to these requirements, habitable major structures and most minor structures must be located landward of the 1978 coastal construction control line (see §6-366).
- (4) The individual dwelling units must be separated by walls with at least 1-hour fire resistance rating as defined by the Florida Building Code.
- (5) The development must meet all other requirements of this code, including Table 34-2.

(b) **Multiple-family building.** All of the following requirements must be satisfied before the required limited review development order can be issued for further parcelization or subdivision of lawfully existing dwelling units:

- (1) The number of dwelling units in the existing building may exceed the density limits of the Fort Myers Beach Comprehensive Plan as they would apply to vacant land, but may not exceed the number of lawfully permitted units. The burden to demonstrate the lawful nature of the units is on the applicant. If the number of dwelling units exceeds the density

limitations of the Fort Myers Beach Comprehensive Plan as they would apply to vacant land, the interior square footage of the building, as defined in §34-3238(2)d.1., may not be increased, but may be exchanged on a square-foot for square-foot basis to provide larger but fewer dwelling units within the same interior area.

- (2) Existing buildings do not need to be brought into compliance with floodplain requirements for new development as provided in article IV of ch. 6 of this code. Owners of an existing building that cannot comply with these requirements may seek to replace the building by obtaining approval for pre-disaster buildback in accordance with § 34-3237.
- (3) The entire building must meet the coastal construction requirements that apply to new development, as provided in article III of ch. 6 and in state regulations. Due to these requirements, habitable major structures and most minor structures must be located landward of the 1978 coastal construction control line (see §6-366).
- (4) The individual dwelling units must be separated by walls with at least 1-hour fire resistance rating as defined by the Florida Building Code.
- (5) The development must meet all other requirements of this code, including Table 34-2.

(c) **Hotels/motels.** The special parcelization requirements in this section that apply to two-family and multiple-family buildings do not apply to hotels/motels that are being parcelized.

* **EDITOR'S NOTE:** Ordinance No. 07-04, which amended § 34-636, stated the following:
SECTION 3. PARCELIZATION. Anything in Chapter 34 of the Land Development Code notwithstanding, a change in the nature or form of the ownership of any property or properties, within any zoning or land use category, shall not in and of itself constitute parcelization of such property or properties or development thereof necessitating the approval thereof pursuant to the provisions of the Land Development Code. The provisions hereof shall supersede all provisions of Charter 34 of the Land Development Code inconsistent herewith.

Property Development Regulations For All Zoning Districts

Sec. 34-637. Minimum lot sizes.

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

- (1) Minimum lot areas, width, and depths are specified for various zoning districts.
 - a. For all conventional zoning districts, see Table 34-3.
 - b. For redevelopment zoning districts, as described for the individual districts in division 5 of this chapter.
 - c. For PD districts, see §§ 34-943 and 34-953.
- (2) Definitions and methods of measuring lot widths and depths are provided in § 34-2.

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

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

- (1) Certain nonconforming *residential* lots are subject to the smaller minimum lot areas, widths, and depths that are found in § 34-3274.
- (2) Certain nonconforming *commercial* lots are subject to the smaller minimum lot areas, widths, and depths that are found in § 34-3277.

(d) Essential services and essential service equipment shall not be required to meet the minimum required lot dimensions for the district wherein located (see § 34-1617).

Sec. 34-638. Minimum setbacks.

(a) **Generally.** Most zoning districts require minimum setbacks between all buildings and structures and the street, the side lot line, the rear lot line, and any water body.

- (1) Setbacks are minimum horizontal distances between a property line and the nearest point of all structures that ensure a minimum area without buildings. Detailed definitions are provided under “setback” in § 34-2.
 - a. Where an unusual lot configuration or orientation makes it unclear which property lines are street, side, or rear lot lines, the director will establish street, side, and rear lot lines for setback purposes after taking into account existing buildings on the same block as well as the intent of this code. Where access is provided by a shared driveway rather than a street, the director may determine that no street setback applies to that lot.
 - b. Once established through this process, the same setbacks will be applied by the director to other lots on that block.
- (2) There are two types of side setbacks:
 - a. *Side setbacks – waterfront lots.* Larger side setbacks are required for waterfront lots, defined as lots that immediately adjoin a tidally influenced body of water, whether artificial or natural (see definitions in § 34-2).
 - b. *Side setbacks – non-waterfront lots.* Smaller side setbacks are required for all other lots.
- (3) The distinction between street setback lines and build-to lines is explained in § 34-662.
- (4) Certain exceptions to minimum setbacks are provided in subsection (d) below.

(b) **Where to find minimum setback dimensions.** Minimum setback dimensions are specified as follows:

- (1) *For principal buildings:*
 - a. For all conventional zoning districts, see Table 34-3.
 - b. For redevelopment zoning districts, as described for the individual districts in division 5 of this chapter.
 - c. For RPD districts, see § 34-943.

Property Development Regulations For All Zoning Districts

- d. For CPD districts, see § 34-953.
 (2) *For accessory buildings*, see §§ 34-1174–1176.

(c) ***Additional wetlands buffers.*** New development must maintain a 75-foot separation between wetlands and buildings or other impervious surfaces, in accordance with Policy 4-C-12 of the Fort Myers Beach Comprehensive Plan.

- (1) This requirement does not apply to lawfully existing subdivided lots
- (2) This requirement also does not apply to a previously approved development order to the extent it cannot reasonably be modified to comply with this requirement (see ch. 15 of the Fort Myers Beach Comprehensive Plan for details).

(d) ***Exceptions to setback dimensions.*** In addition to the following general exceptions to minimum setbacks, commercial buildings that are subject to the commercial design standards may encroach into certain setbacks as provided in § 34-991–1010.

- (1) ***Exceptions to all setbacks.***
 - a. *Administrative setback variances.* Under certain limited circumstances, administrative variances can be granted to minimum setbacks as provided in § 34-268.
 - b. *Overhangs.* An overhang which is part of a building may be permitted to encroach into any setback as long as the overhang does not extend more than three feet into the setback and does not permit any balcony, porch, or living space located above the overhang to extend into the setback.
 - c. *Shutters.* A shutter which is attached to a building may be permitted to encroach one foot into the setbacks.
 - d. *Awnings and canopies.*
 1. Awnings and canopies which are attached to a building may be permitted to encroach three feet into the setbacks, as long as their location does not interfere with traffic, ingress and egress, or life safety equipment.

2. For purposes of this section, awnings and canopies may be attached to a nonconforming building and shall not be considered an extension or enlargement of a nonconformity, as long as the building is properly zoned for its use and the conditions as set forth in this section are met.

- e. *Essential services.* Essential services and essential service equipment shall not be required to meet the minimum setbacks for the district wherein located (see § 34-1617).
- f. *Two-family dwelling units.* If a two-family dwelling unit is on a lot of sufficient size to allow it to be subdivided into a separate lot under each dwelling unit (see Table 34-3), the side setback regulations in this section shall not be interpreted to forbid such subdivision. Existing two-family buildings that are being subdivided must be separated by not less than 1-hour fire resistance.
- g. *Mechanical equipment.* Mechanical equipment such as air conditioners may encroach up to three feet into rear and water body setbacks but must meet the same street and side setbacks as the building it serves. These requirements apply to new buildings and to new mechanical equipment but will not apply to replacement of mechanical equipment on existing buildings if the equipment was installed in conformance with prior regulations.

- (2) ***Exceptions to street setbacks.*** Certain structures are exempt from the street setback requirements as follows. See also § 34-1174.
 - a. ***Build-to lines.*** Some zoning districts do not have any street setback requirements but instead have build-to lines, as described in § 34-662. Awnings, canopies, balconies, bay windows, porches, stoops, arcades, and colonnades may extend forward of the build-to line provided that they comply with the commercial design standards (see § 34-995(e)).

Property Development Regulations For All Zoning Districts

- b. ***Porches, balconies, and stoops.*** Porches, balconies, and stoops may extend up to 10 feet into the street setback zone of residential buildings, provided that:
1. Any walls, screened areas, or railings in the setback zone extend no higher than 42 inches above the floor of the porch, balcony, or stoop; and
 2. No portion of a porch or balcony and no walls or screened areas may be closer than 10 feet to the edge of any street right-of-way or street easement.
- c. ***Mail and newspaper delivery boxes.*** Mail and newspaper delivery boxes may be placed in accordance with U.S. Postal Service regulations; however, the support for a mail or newspaper delivery box must be of a suitable breakaway or yielding design, and any mail or newspaper delivery box placed in an unsafe or hazardous location can be removed by the government agency with jurisdiction over the right-of-way at the property owner's expense.
- d. ***Bus shelters, bus stop benches, and bicycle racks.*** Bus shelters, bus stop benches, and bicycle racks may be located in any district without regard for minimum setbacks, provided the location of the structure is approved by the town manager. No advertising is permitted on bus stop benches.
- e. ***Telephone booths.*** Telephone booths and pay telephone stations may be located in any zoning district that permits multifamily or commercial uses without regard for minimum setbacks, provided that the location shall be approved by the director.
- (3) ***Water body setbacks.***
- a. ***Gulf of Mexico.*** Except as provided in this section or elsewhere in this code, no building or structure shall be placed closer to the Gulf of Mexico than set forth in ch. 6, articles III and IV, or 50 feet from mean high water, whichever is the most restrictive. See also special regulations for the EC zoning district in § 34-652 and the coastal zone restrictions in § 34-1575.
 - b. ***Other bodies of water.*** Except as provided in this section or elsewhere in this chapter, no building or structure shall be placed closer than 25 feet to a canal or to a bay or other water body. For purposes of measuring setbacks from a canal, bay, or other body of water, the following will be used:
 1. If the body of water is subject to tidal changes and the property does not have a seawall, the setback will be measured from the mean high water line.
 2. If the body of water is not subject to tidal changes and the property does not have a seawall, the setback will be measured from the control elevation of the body of water if known, or from the ordinary high water line if unknown.
 3. If the property has a seawall, the setback will be measured from the seaward side of the seawall, not including the seawall cap.
 - c. ***Exceptions for certain accessory structures.*** Certain accessory buildings and structures may be permitted closer to a body of water as follows:
 1. ***Fences and walls.*** See division 17 of this article.
 2. ***Shoreline structures.*** See § 34-1863 and ch. 26.
 3. ***Nonroofed structures.*** Swimming pools, tennis courts, patios, decks, and other nonroofed accessory structures or facilities which are not enclosed, except by fence, or which are enclosed on at least three sides with open-mesh screening from a height of 3½ feet above grade to the top of the enclosure,

Property Development Regulations For All Zoning Districts

shall be permitted up to but not closer than:

- a- Five feet from a seawalled canal or seawalled natural body of water;
- b- Ten feet from a nonseawalled artificial body of water; or
- c- Twenty-five feet from a nonseawalled natural body of water;

whichever is greater. Enclosures with any two or more sides enclosed by opaque material shall be required to comply with the setbacks set forth in subsections (d)(3)a. and (d)(3)b. of this section.

4. *Roofed structures.*

- a- Accessory structures with roofs intended to be impervious to weather and which are structurally built as part of the principal structure shall be required to comply with the setbacks set forth in subsections (a) and (b) of this section.
- b- Accessory structures with roofs intended to be impervious to weather and which are not structurally built as part of the principal structure may be permitted up to but not closer than 25 feet to a natural body of water, and ten feet to an artificial body of water.

(4) *Exceptions for certain nonconforming lots.*

- a. Certain nonconforming *residential* lots are subject to the modified side and rear setback requirements that are found in § 34-3273.
- b. Certain nonconforming *mobile home* lots in the VILLAGE zoning district are subject to the modified side and rear setback requirements that are found in § 34-694.
- c. Certain nonconforming *commercial* lots are subject to the modified side and rear setback requirements that are found in § 34-3277.

Secs. 34-639--34-640. Reserved.

Property Development Regulations For All Zoning Districts

Conventional Zoning Districts

DIVISION 4. CONVENTIONAL ZONING DISTRICTS

Sec. 34-641. General purpose.

The purpose of conventional zoning districts is to control land use in a uniform way throughout each zoning district, with similar use and dimensional regulations applying to all parcels within that district. Article IV of this chapter also contains supplemental regulations that apply to multiple zoning districts.

Sec. 34-642. RS (Residential Single-family) zoning district.

(a) The purpose of the RS zoning district is to provide stable neighborhoods where single-family detached homes are the predominant land use.

(b) In the RS zoning district, allowable uses are defined in Table 34-2 and property development regulations are contained in Table 34-3.

Sec. 34-643. RC (Residential Conservation) zoning district.

(a) The purpose of the RC zoning district is to recognize certain older neighborhoods that had been zoned for duplex, multifamily, or mobile homes purposes prior to incorporation of the town. Some lots in this district are large enough to accommodate a second dwelling unit (see Table 34-3 and §§ 34-632, 34-1177, and 34-1178).

(b) In the RC zoning district, allowable uses are defined in Table 34-2 and property development regulations are contained in Table 34-3.

Sec. 34-644. RM (Residential Multifamily) zoning district.

(a) The purpose of the RM zoning district is to designate suitable locations for a wide variety of multifamily residences.

(b) In the RM zoning district, allowable uses are defined in Table 34-2 and property development regulations are contained in Table 34-3.

Sec. 34-645. CR (Commercial Resort) zoning district.

(a) The purpose of the CR zoning district is to designate suitable locations for motels, resorts, and related services.

(b) In the CR zoning district, allowable uses are defined in Table 34-2 and property development regulations are contained in Table 34-3.

Sec. 34-646. CM (Commercial Marina) zoning district.

(a) The purpose of the CM zoning district is to allow commercial marinas in suitable waterfront locations to provide boaters with access to the water and related services.

(b) In the CM zoning district, allowable uses are defined in Table 34-2 and property development regulations are contained in Table 34-3.

Sec. 34-647. CO (Commercial Office) zoning district.

(a) The purpose of the CO zoning district is to allow office uses on land that is visible to the traveling public or on land that can serve as a transition between commercial and residential uses.

(b) In the CO zoning district, allowable uses are defined in Table 34-2 and property development regulations are contained in Table 34-3.

Sec. 34-648. SANTOS zoning district.

(a) The purpose of the SANTOS zoning district is allow a mixture of residential and low-intensity commercial uses that will separate the intense commercial uses along Estero Boulevard from the residential portions of the Venetian Gardens subdivision. This zoning district implements the recommendations of the Santos/Palermo Circle Planning Study (February, 1999) and Policy 4-C-11 of the Fort Myers Beach Comprehensive Plan.

(b) In the SANTOS zoning district, allowable uses are defined in Table 34-2 and property

Sec. 34-1552. Determination of paraphernalia.

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

- (1) Statements by an owner or by anyone in control of the object concerning its use.
- (2) The proximity of the object, in time and space, to a direct violation of state law.
- (3) The proximity of the object to controlled substances.
- (4) The existence of any residue of controlled substances on the object.
- (5) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons who he or she knows, or should reasonably know, intend to use the object to facilitate a violation of state law. The innocence of an owner, or of anyone in control of the object, as to a direct violation of this code or state law shall not prevent a finding that the object is intended for use, or designed for use, as drug paraphernalia.
- (6) Instructions, oral or written, provided with the object concerning its use.
- (7) Descriptive materials accompanying the object which explain or depict its use.
- (8) Any advertising concerning its use.
- (9) The manner in which the object is displayed for sale.
- (10) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor of or dealer in tobacco products.
- (11) Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise.
- (12) The existence and scope of legitimate uses for the object in the community.
- (13) Expert testimony concerning its use.

Sec. 34-1553. Manufacture and delivery of drug paraphernalia.

No land or structure shall be used or permitted to be used, and no structure shall hereafter be erected, constructed, moved, altered, or maintained in any zoning district, for the purpose of delivering, possessing with intent to deliver, or manufacturing with intent to deliver drug paraphernalia, knowing,

or under circumstances where one reasonably should know, that it will be used:

- (1) To plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of state law; or
- (2) To inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of state law.

Secs. 34-1554--34-1570. Reserved.

**DIVISION 13.
ENVIRONMENTALLY SENSITIVE AREAS**

Sec. 34-1571. Purpose of division; areas of concern.

Several of the goals, objectives, and policies set forth in the Fort Myers Beach Comprehensive Plan address development as it relates to the preservation, protection, enhancement, and restoration of the natural resources of the town.

- (1) Coastal resources including:
 - a. Marine: Gulf of Mexico.
 - b. Estuarine: Coastal bays, coastal lagoons, coastal tributaries, forested saltwater wetlands, nonforested saltwater wetlands and sea grass beds.
 - c. Terrestrial: Beaches, dunes, coastal ridge, overwash plain, and zones of archaeological sensitivity (see ch. 22).
- (2) Other natural resources including:
 - a. Wetlands as defined in this code.
 - b. Areas which provide critical habitat of rare and endangered plant and animal species listed in the publication Official Lists of Endangered and Potentially Endangered Fauna and Flora in Florida, as periodically updated.
 - c. Areas of rare and unique upland habitats as indicated in Lee County's 1988 coastal study, including but not limited to the following:
 1. Sand scrub (320).
 2. Coastal scrub (322).
 3. Those pine flatwoods (411) which can be categorized as mature due to the absence of severe impacts caused by

logging, drainage, and exotic infestation.

4. Slash pine/midstory oak (412).
5. Tropical hardwood (426).
6. Live oak hammock (427).
7. Cabbage palm hammock (428).

The numbered references are to the Florida Land Use Cover and Forms Classification System (FLUCFCS), level III (FDOT, 1985).

Sec. 34-1572. Applicability of division.

All areas proposed for development or rezoning which are designated as Wetlands on the future land use map, or which come under the criteria set forth in § 34-1571, shall be subject to the general as well as the specific regulations set forth in this division.

Sec. 34-1573. Environmental assessment report.

When environmentally sensitive ecosystems occur, as identified by the town, county, the U.S. Army Corps of Engineers, the state department of environmental protection, the South Florida Water Management District or other applicable regulatory agency, the developer or applicant shall prepare an environmental assessment that examines the existing conditions, addresses the environmental impacts, and proposes means and mechanisms to protect, conserve, or preserve the environmental and natural resources of these ecosystems.

Sec. 34-1574. Compliance with applicable regulations; new roads, development, or expansion of existing facilities.

(a) Any use permitted or permissible in environmentally sensitive areas shall be subject to all applicable state and federal regulations as well as applicable town regulations.

(b) Except in instances of overriding public interest, new roads, private land development, or the expansion of existing facilities within Wetlands or on the sandy beaches that are designated in the Recreation category in the Fort Myers Beach Comprehensive Plan shall be prohibited.

Sec. 34-1575. Coastal zones.

(a) Development, other than minor structures as defined in § 6-333, is prohibited seaward of the 1978 coastal construction control line. This line has been incorporated into the future land use map of the Fort Myers Beach Comprehensive Plan as the landward boundary of the beachfront Recreation category (see also Policy 5-D-1.v), and as the landward boundary of the EC zoning district (see § 34-652). Regulations for minor structures in the EC zoning district (seaward of the 1978 coastal construction control line) are found in § 6-366.

(b) Minor structures do not include structures supported by or extensions of the principal structure. The minor structures identified as acceptable in this section are considered expendable under design wind, wave, and storm forces.

(c) No vehicular or foot traffic from developments or access strips to crossovers will be allowed to cross over directly on dune ridges or beach escarpments. Access to the beach must be via elevated dune walkovers (see §§ 6-366 and 10-415(b)).

(d) No development will be permitted which alters the dune system, except for excavations for the installation of pilings necessary for the construction of elevated structures as permitted by the state department of environmental protection.

Sec. 34-1576. Reserved.

Sec. 34-1577. Wetlands.

(a) Any development in or around wetlands shall be designed to protect the values and functions of the wetlands as set forth in ch. 14, article IV.

(b) No wetland shall be drained, filled, or excavated unless and except as part of an approved restoration or mitigation program.

Secs. 34-1578--34-1610. Reserved.

Hotels and Motels

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

Sec. 34-1801. Definitions and general requirements.

(a) The following definitions from § 34-2 are repeated here for convenience:

- (1) **Bed-and-breakfast inn** means a public lodging establishment with nine or fewer guest units that serves breakfast to overnight guests. A bed-and-breakfast inn may be located in a single building or in a cluster of separate buildings.
 - (2) **Guest unit** means a room or group of rooms in a hotel/motel or bed-and-breakfast inn that are designed to be used as temporary accommodations for one or more people traveling together. All guest units provide for sleeping and sanitation, although sanitation may be provided through shared bathrooms. Guest units may be equipped with partial or full kitchens.
 - (3) **Hotel/motel** means a building, or group of buildings on the same premises and under single control, which are kept, used, maintained, or advertised as, or held out to the public to be, a place where sleeping accommodations are supplied for pay to transient guests for periods of one day or longer.
 - (4) **Lock-off accommodations** means a single guest unit or living unit designed in such a manner that at least one room and a bathroom can be physically locked off from the main unit and occupied as a separate unit. Each portion may have a separate outside entry or share a common foyer with separate lockable interior doors, or may share a lockable door or doors separating the two units.
- (b) Hotels/motels and bed-and-breakfast inns must:
- (1) Be licensed as transient public lodging establishments with the Florida department of business and professional regulation; and
 - (2) Pay the levied tourist development tax promulgated by the county and the state sales tax; and

- (3) Provide and staff a front desk during regular business hours to arrange for the rental of guest units; and
- (4) Guest units may not be occupied by the same guest for more than 60 days in any year. "Guest" includes the guest's children and parents. "Year" means the period beginning October 1 and ending September 30 of each successive year.

Hotels/motels and bed-and-breakfast inns which do not meet these requirements will be subject to enforcement action (see § 34-266). Proposed developments that will not meet these requirements will not be approved as hotels/motels or bed-and-breakfast inns; if approved instead as multiple-family buildings, they will be subject to the density limitations and property development regulations for multiple-family buildings.

(c) Guest units in new hotels/motels and bed-and-breakfast inns may be sold as timeshare units or as hotel condominiums provided that they meet all requirements of this code for hotels/motels or bed-and-breakfast inns.

(d) Guest units in existing hotels/motels and bed-and-breakfast inns that are being parcelized to timeshare units or hotel condominiums do not need to comply with the special parcelization requirements of § 34-636.

Sec. 34-1802. Size of guest units.

(a) **Method of measurement.** For purposes of this division, the size of a guest unit is the actual square footage within each guest unit including balconies and private patios, but not including common facilities such as corridors, stairways, shared bathrooms, or other common spaces including utility areas or parking spaces.

(b) **Hotels/motels.** Individual guest units in a hotel/motel must be at least 180 square feet in size, except as provided in § 34-1803(b)(2).

(c) **Bed-and-breakfast inns.** Individual guest units in a bed-and-breakfast inn must be at least 120 square feet in size.

Hotels and Motels

Sec. 34-1803. Allowable intensity.

(a) **Hotels/motels.** When a hotel/motel is permitted on a property, guest units can be substituted for the dwelling units that would be allowed on that property (see § 34-632 regarding density). The maximum number of guest units can be computed by multiplying the maximum number of dwelling units by the appropriate equivalency factors:

- (1) The following table indicates the equivalency factors that apply to properties in various land-use categories in the Fort Myers Beach Comprehensive Plan:

<i>Comprehensive Plan land-use category:</i>	<i>Equivalency factors for guest units of various sizes¹ (in square feet):</i>		
	<i>< 450</i>	<i>450 to 750</i>	<i>750 to 1,000</i>
Mixed Residential Boulevard	2.0	1.5	1.0
Pedestrian Comm. ²	2.5	2.0	1.5
(all others)	3.0	2.5	2.0
	0.0	0.0	0.0

¹ see § 34-1802
² see also § 34-1803(b)

- (2) Guests units exceeding these equivalency factors or exceeding 1,000 square feet each may be allowed under exceptional circumstances as described in the Comprehensive Plan if approved as a deviation through a planned development rezoning. Before approving such a deviation, the town council must find that:
 - a. All other aspects of the development (height, traffic, intensity of use, etc.) are compatible with the surrounding area;
 - b. The proposal clearly exceeds all standards of the Fort Myers Beach Comprehensive Plan; and
 - c. In no case can equivalency factor increases exceed the maximum intensities allowed by the Fort Myers Beach Comprehensive Plan.
- (3) Where lock-off accommodations are provided, each keyed room will be counted as a separate guest unit.

(b) **Hotels on Old San Carlos Boulevard.** The 1999 Old San Carlos Boulevard – Crescent Street Master Plan encourages mixed-use buildings with second and third floors over shops on Old San Carlos Boulevard. To help implement this plan, an alternate method is provided by Comprehensive Plan Policy 4-C-6 for computing maximum hotel intensities for properties between Fifth to First Streets that lie within 200 feet east and west of the centerline of Old San Carlos Boulevard. In this situation and location only:

- (1) Guest units may be substituted for otherwise allowable office space without using the equivalency factors in § 34-1803(a), provided that all other requirements of this code are met including minimum parking requirements and maximum floor-area-ratios.
- (2) These guest units must contain at least 250 square feet each.
- (3) The standard height limit at this location is three stories. Under no circumstances may a deviation be granted that would allow these guest units in any building taller than four stories. (The ground level is counted as the first story.)

(c) **Bed-and-breakfast inns.** The intensity of bed-and-breakfast inns shall be calculated in the same manner as for hotel/motels, except that inns with three or fewer guest rooms per building are exempt from the requirement to use equivalency factors to measure their intensity.

Sec. 34-1804. Parking.

(a) **Hotels/motels.** The minimum requirement for off-street parking is 1.2 parking spaces for guest units up to 450 square feet and 1.5 spaces for each larger guest unit. Ancillary uses located in separate buildings and available to nonguests must provide parking spaces in accordance with the requirements of division 26 of this article.

(b) **Bed-and-breakfast inns.** The minimum requirement for off-street parking is 1 parking space for each guest room plus 1 space for the owners' quarters.

Hotels and Motels

Sec. 34-1805. Additional regulations for bed-and-breakfast inns.

(a) Whenever guests are present, the owner or operator must live on the premises or on abutting property, or if the inn is in a cluster of separate buildings the owner or operator must live in one of the buildings.

(b) The maximum continuous length of stay for guests is 90 days.

(c) Each guest unit must be accessed by a common corridor or outside door rather than through another guest unit or dwelling unit.

(d) Food service is limited to breakfast and/or snacks and may be served only to overnight guests.

(e) A single non-illuminated identification sign up to four square feet in area may be mounted onto each building.

Sec. 34-1806. Replacing a nonconforming hotel/motel.

(a) A nonconforming hotel/motel can be replaced with a new building in one of the following manners:

- (1) In full conformance with all current provisions of this code as they apply to a new hotel/motel on vacant land; or
- (2) In the same manner as provided for enlargements to the various types of nonconforming buildings as provided in § 34-3234; or
- (3) As provided in the *pre*-disaster buildback regulations found in § 34-3237 or the *post*-disaster buildback regulations found in § 34-3238.

(b) If a nonconforming hotel/motel is being replaced by a multiple-family building, the existing number of guest units cannot be used as the basis for rebuilding more dwelling units than are permitted on undeveloped land by the Fort Myers Beach Comprehensive Plan. The equivalency factors in § 34-1803 are not applicable to replacement of an existing hotel/motel with a new multiple-family building.

Sec. 34-1807. Conversions of existing buildings.

(a) Any hotel or motel proposing to parcelize its guest units to timeshare units or to a hotel condominium does not need to comply with the special parcelization requirements of § 34-636.

(b) Any hotel or motel proposing to convert its guest units to dwelling units, or any residential building proposing to convert its dwelling units to hotel/motel guest units, will be required to comply with density limitations of the Fort Myers Beach Comprehensive Plan, all applicable parking regulations, and all other regulations of this code including equivalency factors that affect the allowable number of hotel/motel guest units.

Secs. 34-1808--34-1830. Reserved.

DIVISION 20. LIGHTING STANDARDS

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

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

- (1) to curtail and reverse the degradation of the night time visual environment by minimizing light pollution, glare, and light trespass through regulation of the form and use of outdoor lighting, and
- (2) to conserve energy and resources while maintaining night-time safety, utility, security, and productivity.

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

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

- (1) Emergency lighting required for public safety and hazard warning luminaires required by federal or state regulatory agencies;
- (2) Outdoor light fixtures producing light directly by the combustion of fossil fuels such as kerosene and natural or bottled gas;
- (3) Low wattage holiday decorative lighting fixtures (comprised by incandescent bulbs of less than 8 watts each or other lamps of output less than 100 lumens each) used for holiday decoration; and
- (4) Lighting for public roads except as provided in § 14-77.

Sec. 34-1832. Definitions.

The following words, terms, and phrases, when used in this division, shall have the following meanings, unless the context clearly indicates a different meaning:

Back-lighted means a surface that is at least partially transparent and is artificially illuminated from behind.

Direct light means light emitted directly from the lamp, off the reflector or reflector diffuser, or through the refractor or diffuser lens, of a luminaire.

Footcandle means the quantify of light striking a surface, measured in lumens per square foot.

Full cutoff means that a light fixture in its installed position does not emit any light, either directly or by reflection or diffusion, above a horizontal plane running through the lowest light-emitting part of the fixture. Additionally, the fixture in its installed position does not emit more than 10% of its total light output in the zone between:

- (1) the horizontal plane through the lowest light-emitting part of the fixture, and
- (2) 10 degrees below the horizontal plane (80 degrees above the vertical plane).

Lumen means a unit of light emission. For example, incandescent light bulbs with outputs of 60, 75, and 100 watts emit approximately 840, 1170, and 1690 lumens respectively.

Luminaire means a complete unit for producing artificial light, commonly referred to as a lighting fixture.

Mercury vapor means a high-intensity discharge light source that is filled with mercury gas under pressure and which emits a blue/white light.

Non-essential lighting means lighting that is not necessary for an intended purpose after the purpose has been served. For example, lighting for a business sign, architectural accent lighting, and parking lot lighting may be considered essential during business or activity hours, but is considered non-essential once the activity or business day has concluded.

Shielded means that an outdoor light fixture that is fully and permanently blocked by a physical device or by its integral design from discharging light in specific directions.

Sec. 34-1833. Technical standards for lighting.

(a) **Generally.** This section contains minimum and maximum standards that apply whenever outdoor lighting is provided.

- (1) In addition to the standards and criteria in this section, there are standards for artificial lighting near sea turtle nesting habitat in ch. 14, article II of this code.
- (2) When specific standards are not addressed in these sources, the standards of the Illuminating Engineering Society of North America (IESNA) will apply.

(b) **Specific standards.**

(1) **Illuminance.** The following table indicates minimum and maximum illumination levels. These levels are specified for general use categories and are measured in footcandles on the task surface (for example, the lighted parking lot or walkway) with a light meter held parallel to the ground, facing up, unless otherwise specifically stated.

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

NOTES:

(1) *The specified illumination levels are the initial levels to be measured at the time of final inspection for a certificate of compliance. Outdoor lighting must be maintained so the average illumination levels do not increase above the specified maximum values. The minimum illumination levels may decrease over time consistent with the Light Loss Factor (LLF) associated with the installed fixtures.*

Short-Term Rentals

(b) Operators are required to provide guests with the town's code of conduct for short-term rentals.

- (1) The town shall provide operators with a printed version of the code of conduct and a standardized agreement for compliance.
- (2) The operator shall provide guests of short-term rental units with the code of conduct and obtain the signature of guests on the agreement indicating that they are aware of and intend to comply with the code of conduct.
- (3) The code of conduct shall also be posted at the primary entrance/exit to each short-term rental unit.

(c) Operators must provide the town with a current local telephone number of a contact for each short-term rental unit. This telephone number must be answered 24 hours a day to respond to complaints. These telephone numbers are public records and will be available at town hall during regular business hours.

Sec. 34-2394. Enforcement and penalties.

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

(b) Persons who may be charged with a violation of this division include property owners, operators, rental agents, guests, and any other person using the structure where the violation has been committed.

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

- (1) Violations of F.S. ch. 509 shall also be considered to be violations of this division as follows:
 - a. Failure to maintain licensure or any other provisions of ch. 509.
 - b. Failure to eject guests who indulge in any conduct which disturbs the peace and comfort, as provided by § 509.141.
- (2) Repeated violations of this division on a registered property shall lead to cumulative penalties. These penalties shall accrue as follows whenever a violation results in a fine

being imposed on or paid or whenever a finding of violation is made by a judge or code enforcement special magistrate:

- a. First violation: \$250 fine.
- b. Second violation: \$500 fine.
- c. Third violation: six-month suspension of registration under § 34-2392.
- d. Fourth violation: two-year suspension of registration under § 34-2392.

After any period of three years during which there were no fines imposed or paid and no formal findings of violations of this division, the next violation shall be deemed to be the first violation for purposes of this section.

Secs. 34-2395–34-2410. Reserved.

DIVISION 33. SIGNS

Sec. 34-2411. Location and construction.

All signs shall be located, erected, and constructed in accordance with ch. 30, except where this chapter provides more explicit regulations for a specific use.

Secs. 34-2412--34-2440. Reserved.

DIVISION 34. SPECIAL EVENTS

Sec. 34-2441. Special events defined.

A special event is any social, commercial, or fraternal gathering for the purpose of entertaining, instructing, viewing a competition, or for any other reason that would assemble an unusual concentration of people in one location. Specifically excluded from this definition are any gatherings formed and/or sponsored by any recognized religion or religious society.

Sec. 34-2442. Permits for special events.

(a) The Town of Fort Myers has established a permitting process for special events through Ordinances 98-01 and 00-16 and any future amendments.

(b) No person, corporation, partnership, or other entity shall advertise or sell or furnish tickets for a special event within the boundaries of the town, and no such event shall be conducted or maintained, unless and until that person or entity has obtained a permit from the town to conduct such event.

(c) Special events on the beach shall also comply with § 14-11 of this code.

Secs. 34-2443--34-2470. Reserved.

DIVISION 35. RESERVED

Secs. 34-2471--34-3000. Reserved.

DIVISION 36. STORAGE FACILITIES AND OUTDOOR DISPLAY OF MERCHANDISE

Sec. 34-3001. Applicability of division.

(a) Except as provided in this section, the regulations set forth in this division shall apply to all outdoor display of merchandise which is offered for sale or rent, and to all storage facilities as defined in this division.

(b) The provisions of the division do not apply to garage or yard sales by residents of dwelling units on their own property in accordance with this code (see § 34-2) or to the mooring or docking of watercraft.

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

(a) Mobile vendors includes a person who sells food or other product or service to the public from a mobile dispensing vehicle which is self-propelled or otherwise readily moveable from place to place either operated from a base facility or not operated from a base facility.

(b) No mobile vendor shall be permitted to make sales from a vehicle while stopped on the right-of-way or other public property within the limits of the Town of Fort Myers Beach, except in accordance with § 34-3004.

(c) Mobile vendors and transient merchants must comply with all provisions of Ordinance 96-14, the Fort Myers Beach Transient Merchant Regulation Ordinance, and with all subsequent amendments.

Sec. 34-3003. Reserved.

Sec. 34-3004. Outdoor display of merchandise for sale or rent.

(a) Outdoor sales includes all sales or display of merchandise, food, and beverages between the outer wall of stores and public rights-of-way or, where permitted, on public rights-of-way, but does not include merchandise visible through windows or sold to customers using pass-through windows. Merchandise sold or displayed outdoors must not be placed closer than 3 feet to any sidewalk or bike path or to any right-of-way.