

ARTICLE IV, VII.
SUPPLEMENTARY DISTRICT
SUPPLEMENTAL REGULATIONS²

DIVISION 1. GENERALLY

Sec. 34-~~1169~~ ~~1141~~. Purpose and applicability of article.

The purpose of this article is to provide rules and regulations which supplement, modify, or further explain rules and regulations found elsewhere in this chapter, and, unless specifically noted to the contrary, the provisions of this article apply to all zoning districts.

Sec. 34-~~1170~~ ~~1142~~. Purpose of supplemental regulations.

(a) Regulations over and above those imposed by other sections of this chapter are necessary for certain uses which, because of their uniqueness or potential for substantial impact on surrounding land uses, warrant minimum standards which cannot properly be addressed in general provisions or property development regulations set forth in specific districts. The purpose of the supplemental regulations set forth in this article is to set forth the detailed regulations, including but not limited to the bulk, layout, yard size, and lot area, that apply to these uses.

~~(b) Some of the uses provided for in this article will exceed the minimum thresholds for developments of county impact (see § 34- 203) and will be required to apply for approval through the planned development procedure. The Board of County Commissioners may modify any of the requirements of this article in accordance with the procedures for a planned development application approval.~~

~~(b) (c)~~ The supplemental regulations set out in this article shall apply to the specified use regardless of whether it is a use permitted by right, ~~special permit or special exception, planned development rezoning, development of county impact or~~

² ~~Cross reference(s)--Development design standards, § 10-251 et seq~~

temporary use permit, as specified in the district use regulations in division 2 of article III of this chapter.

~~Secs. 34-1143--34-1170. Reserved.~~

**DIVISION 2. ACCESSORY USES,
BUILDINGS, AND STRUCTURES**

Sec. 34-1171. Applicability of division.

This division provides minimum regulations for those accessory uses, buildings, and structures customarily incidental and subordinate to the principal use or building, which are not specifically regulated elsewhere in this chapter.

Sec. 34-1172. Definitions.

For purposes of this division only, certain words or terms shall mean the following:

Accessory use means a use of a structure or premises which is customarily incidental and subordinate to the principal use of the structure or premises.

Commercial accessory use means the use of a structure or premises that is customarily incidental and subordinate to the principal use of a commercial structure or premises. See *Use, principal*. Typical commercial accessory uses are: *Parking lots, accessory; Storage, indoor; and Telephone booth or pay telephone station*. Various divisions of article IV of this chapter describe permitted commercial accessory uses. Uses that are listed separately on Table 34-1 of this code, such as drive-throughs and automobile fuel pumps, are not commercial accessory uses and are permitted only in zoning districts where they are explicitly identified in Tables 34-1 and 34-2.

Open-mesh screen means meshed wire or cloth fabric to prevent insects from entering the facility, including the structural members framing the screening material.

Residential accessory uses. See § 34-622(c)(42). 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 (§ 34-1013); decks, gazebos,

patios, and screen enclosures; dock, personal (§ 34-1863); fences and walls (division 17 in article IV); garage sales or yard sales (§ 34-2); recreation facilities, personal; seawalls (ch. 26); and storage sheds. Division 2 and other portions of article IV provide regulations for many residential accessory uses.

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

Roofed means any structure or building with a roof which is intended to be impervious to weather.

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

Sec. 34-1173. Development regulations.

(a) Permitted structures and uses: Unless specifically indicated to the contrary, accessory uses; and related buildings and structures that are customarily recognized as clearly incidental and subordinate to the principal use of the property are permitted by right when located on the same lot or parcel and in the same zoning category as the principal use, provided that: in conjunction with a permitted principal use, approved special exception or approved special permit subject to the county building code, this chapter, and all other applicable regulations:

(b) Time of construction:

- (1) Uses that are listed separately on Table 34-1 of this code, such as drive-throughs and automobile fuel pumps, are not accessory uses and are permitted only in zoning districts where they are explicitly identified in Tables 34-1 and 34-2. However, this limitation does not apply to uses that are explicitly listed in the definitions of residential, commercial, or resort accessory uses.
- (2) All uses, buildings, and structures must comply with all applicable development regulations and building codes.
- (3) Accessory buildings or structures may be built concurrently with a principal building or structure but, except as provided in

subsection (b)(2) of this section herein, no accessory use, building, or structure shall be commenced, erected, placed, or moved onto a lot or parcel prior to the principal use, building, or structure. (2) Exceptions are as follows:

a. Agricultural accessory structures in the AG district:

a. b. Fences or walls when in compliance with division 17 of this article.

b. c. Seawalls or retaining walls (see § 26-43(a) § 34-1863).

c. d. Docks accessory to residential uses ; personal (see § 26-43(a) § 34-1863). Only permitted if the lot meets the minimum lot size and dimensions required for a principal use.

(3) Accessory buildings or structures may be built concurrently with a principal building or structure:

(c) Attachment to principal building. Authorized accessory buildings or structures may be erected as part of the principal building or may be connected to it by a roofed porch, patio, or breezeway, or similar structure, or they may be completely detached, provided that:

- (1) Any accessory building or structure which is structurally a part of the principal building shall comply in all respects with the regulations for a principal building.
- (2) Any accessory building or structure not structurally made a part of the principal building shall comply with the location requirements set forth in § 34-1174.

Sec. 34-1174. Location and setbacks generally.

(a) Permitted locations. Except as may be provided elsewhere in this chapter, all accessory uses, buildings, and structures must be located on the same premises and must have the same zoning district or zoning classification as the principal use (see also § 34-616(b)). For purposes of this section, the a zoning classification contains must consist of the following groups of zoning districts:

(1) Districts described in article VI, division 2, of this chapter (agricultural districts);

(1) (2) Residential districts – RS, RC, RM, and SANTOS – described in article III VI, division 3, of this chapter; and (residential districts);

- ~~(3) Districts described in article VI, division 4, of this chapter (recreational vehicle park districts);~~
- ~~(4) Districts described in article VI, division 5, of this chapter (community facilities districts);~~
- ~~(2) (5) Commercial districts – CR, CM, CO, and CB – described in article III VI, division 6, of this chapter, (commercial districts);~~
- ~~(6) Districts described in article VI, division 7, of this chapter (marine-oriented districts);~~
- ~~(7) Districts described in article VI, division 8, of this chapter (industrial districts).~~

(b) **Setback from streets.** No accessory use, building, or structure shall be located closer to a street right-of-way line or street easement than the principal building, except for fences and wall as provided for in division 17, for garbage enclosures as provided for in § 6-11, as provided for in the exceptions to setbacks in § 34-637(d) division 30, subdivision III, of this article, or as set forth in this subsection.

~~(1) Accessory uses, buildings or structures in the RSC-1, RSC-2, RSA, RS, RM, TFC, TF and AG zoning districts may be closer to the street than the principal building as long as a minimum setback of 100 feet is maintained.~~

~~(1) (2) Accessory uses, buildings, and structures may be located on through lots as follows. For purposes of this subsection only, secondary street is defined as the street opposite the street which provides principal vehicular access as determined by the prior development pattern of that block.~~

- ~~a. On through lots with no dedicated buffer easement or residential project fence or wall, accessory uses, buildings, and structures may be placed closer to the secondary street than the principal building as long as the minimum setbacks for streets as set forth in § 34-637 division 30, subdivision III, of this article are maintained.~~
- ~~b. On through lots with a dedicated buffer easement of ten feet or more (located on the property) and immediately adjacent to the secondary street, accessory uses, buildings and structures shall not encroach into the easement.~~
- ~~c. On through lots with an abutting residential project fence or wall accessory use, buildings and structures shall be set~~

back a minimum of five feet from the property line.

~~(2) (3) In the following cases, accessory uses, buildings, and structures may be closer to the street than the principal building, but shall not be closer than the minimum setbacks for streets as set forth in § 34-637, division 30, subdivision III, of this article:~~

- ~~a. Accessory uses, buildings, and structures in the RSC-2 zoning district.~~
- ~~b. Any lot in which the rear lot line abuts a body of water:~~
 - ~~a. e. Swimming pools, tennis courts, shuffleboard courts, and other similar recreational facilities accessory to a multiple-family or townhouse development, or a hotel/motel, or a mobile home or recreational vehicle development, provided that: they are part of a planned development or a site plan approved in accordance with ch. 10, and~~
 - ~~2. They are aesthetically landscaped with berming or buffering which is adequate to screen the use from the street so as to prevent it from being a traffic distraction.~~
- ~~d. Garages or carports for residential, commercial or industrial uses.~~
- ~~b. e. Outdoor display of merchandise, where permitted, subject to the provisions of division 36 of this article, and ch. 30, pertaining to signs.~~

~~(c) **Setback from bodies of water.** No building or structure (except marine structures, docks and seawalls, which are subject to the setback requirements as set forth in ch. 26, article II) may be located closer to a bay, canal, or other body of water than the minimum setbacks required in § 34-2194 § 34-637(c)(3).~~

~~(d) **Setbacks from side and rear property lines.** Unless the side or rear property line abuts a body of water (see § 34-637(d) 2194), the following setbacks shall apply:~~

- ~~(1) **Agricultural accessory buildings and structures.** [deleted in its entirety]~~
- ~~(1) (2) **Residential accessory buildings and structures.** Except as provided in §§ 34-1175 and 34-1176, all accessory residential buildings and structures shall be set back a minimum of:~~

- a. Five feet from any rear property line that does not have access to an alley.
 - b. Zero feet from any rear property line that is served by an alley.
 - b. For non-waterfront lots, five feet from any side property line.
 - c. For waterfront lots, the same distance as is required from any side property line for principal buildings in that zoning district (see § 34-637) and shall be no closer to a side property line than the minimum required side setback for the district in which the property is located, or ten feet, whichever is less.
- (2) ~~(3)~~ ***Commercial and resort industrial accessory buildings and structures.*** All accessory buildings and structures for a principal commercial or ~~resort industrial~~ use shall be set back:
- a. ~~a minimum of ten feet from rear and side lot lines when abutting a commercial or industrial zoning district; and~~
 - a. b. In accordance with the side and rear setback requirements for a principal building in that zoning district for the district in which located or the minimum buffering requirements as set forth in ch. 10, whichever is greater, when abutting any district other than commercial or resort, or industrial.
 - b. When abutting another commercial or resort zoning district:
 - 1. Rear setbacks are not required.
 - 2. For non-waterfront lots, side setbacks are not required.
 - 3. For waterfront lots, the same distance as is required from any side property line for principal buildings in that zoning district (see § 34-637).

(e) **Administrative setback variances.** Under certain limited circumstances, administrative variances can be granted to minimum setbacks as provided in § 34-268.

(f) ~~(e)~~ **Prohibited locations.** Nothing contained in this chapter shall be construed as permitting placement of any accessory building or structure within a utility or other easement prohibiting such building or structure, or closer to adjacent property than permitted by the minimum buffer requirements set forth in ch. 10, or closer to any other building than permitted by the town county building code.

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

(h) **Fences.** Fences are subject to the setback requirements in division 17 of this chapter.

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

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

- (1) Dishes shall comply with the minimum maintain a ten-foot setback from all side and rear property lines setbacks for the zoning district in which located; and
- (2) Satellite dishes shall not be placed closer to the street right-of-way than the principal building; and
- (3) The height of the dish shall not extend beyond the height of the principal structure on the same lot.

~~(b) All commercial storage and display of satellite dishes shall meet the requirements of division 36 of this article.~~ ***Amateur radio antenna/towers.***

- (1) Amateur radio antenna/towers up to 75 feet in height are permitted in all zoning districts provided that antenna/tower supports and peripheral anchors are located entirely within the boundaries of the property.
- (2) Amateur radio antenna/towers over 75 feet in height may be permitted by special exception in any zoning district.

Sec. 34-1176. Swimming pools, tennis courts, porches, decks, and similar recreational facilities.

(a) ***Applicability.*** The regulations set out in this section apply to all swimming pools, tennis courts, shuffleboard courts, porches, decks, and other similar recreational facilities which are accessory to a permitted use, and which are not specifically regulated elsewhere in this chapter.

(b) ***Location and setbacks.***

- (1) ***Personal, private, and limited facilities.***
 - a. ***Nonroofed facilities.*** All swimming pools, tennis courts, decks, and other similar nonroofed accessory facilities shall comply with the following setback requirements:

1. Street setbacks as set forth in §§ 34-1174(b) and ~~34-637, 2192,~~
 2. Water setbacks as set forth in § ~~34-2194~~ § 34-634(c)(3).
 3. Rear lot line setback as set forth in § 34-1174(d).
 4. Side lot line setbacks as set forth in § 34-1174(d).
- b. *Open-mesh screen enclosures.* Swimming pools, patios, decks, and other similar recreational facilities may be enclosed with an open-mesh screen enclosure provided that the enclosure complies with the setback requirements set forth in § 34-1174, and provided further that:
1. At least three sides of the enclosure are open-mesh screening from a height of 3 1/2 feet above grade to the top of the enclosure.
 2. Enclosures with any two or more sides enclosed by opaque material shall be required to comply with all setbacks required for a principal building.
- It shall be the responsibility of the applicant to increase all required setbacks sufficient to provide maintenance access around the pool whenever the pool is proposed to be enclosed with open-mesh screening or fencing. A minimum increase in setbacks of three feet is recommended.
- c. *Roofed open-mesh enclosures.* Open-mesh screen enclosures may be covered by a solid roof (impervious to weather) provided that:
1. If structurally part of the principal building, the enclosure shall comply with all setback requirements for the principal building.
 2. Except when in compliance with the setback requirements for principal buildings, a solid roof over a screen enclosure shall be constructed as a flat roof with the pitch no greater than the minimum required for rain runoff.
- (2) *Commercial and public facilities.* All pools, tennis courts, and other similar recreational facilities owned or operated as a commercial or public establishment shall comply with the setback regulations for the zoning district in which located.

(c) **Fencing.**

- (1) *In-ground swimming pools, hot tubs, and spas.* Every swimming pool, hot tub, spa, or similar facility shall be enclosed by a fence, wall, screen enclosure or other structure, not less than four feet in height, constructed or installed so as to prevent unauthorized access to the pool by persons not residing on the property. For purposes of this subsection, the height of the structure shall be measured from the ground level outside of the area so enclosed. The enclosure may be permitted to contain gates, provided they are self-closing and self-latching.
- (2) *Aboveground swimming pools, hot tubs, and spas.* Aboveground pools, hot tubs, spas, and similar facilities shall fulfill either the enclosure requirements for in-ground pools or shall be so constructed that the lowest entry point (other than a ladder or ramp) is a minimum of four feet above ground level. A ladder or ramp providing access shall be constructed or installed so as to prevent unauthorized use.
- (3) *Exception.* A spa, hot tub, or other similar facility which has a solid cover (not a floating blanket) which prevents access to the facility when not in use shall be permitted in lieu of fencing or enclosure requirements.
- (4) *Tennis courts.* Fences used to enclose tennis courts shall not exceed 12 feet in height above the playing surface.

(d) **Lighting.** Lighting used to illuminate a swimming pool, tennis court, or other recreational facility shall be directed away from adjacent properties and streets, and shall shine only on the subject site.

(e) **Commercial use.** No swimming pool, tennis court, or other recreational facility permitted as a residential accessory use shall be operated as a business.

Sec. 34-1177. Accessory apartments not requiring owner-occupancy on the premises.

~~(a) Purpose.~~ The purpose of this section is to facilitate the provision of affordable housing or to strengthen the family unit or to provide increased opportunities for housing the elderly and persons with special needs.

~~(a) (b) Applicability.~~ This section sets forth the requirements for accessory apartments on larger lots, when subordinate to a single-family detached dwelling unit, with no requirement that the property owner live on the premises. If a property owner lives on the premises, an existing accessory apartment that does not meet the requirements of this section may be legal under the provisions of § 34-1178. The requirements of this section apply to accessory apartments whether they are listed as a permitted use or a use by special exception.

~~(b) (e) Definition.~~ For purposes of this section, the term “accessory apartment” means a dwelling living unit, with or without cooking facilities, constructed subordinate to a single-family dwelling unit that could be made and available for rent or lease.

~~(c) (d) Off-street parking.~~ In addition to the requirements of § 34-~~2020(d)(1)~~^a, one additional space shall be required for the accessory apartment; and all required parking must be provided on the site.

~~(d) (e) Maximum floor area; use; floodplain regulations.~~

(1) *Attached apartments.* If the accessory apartment is constructed as part of the principal building, the maximum floor area of the accessory apartment shall not exceed 50 percent of the floor area of the main dwelling unit.

(2) *Detached apartments.* If the accessory apartment is not constructed as part of the main dwelling unit, the maximum floor area shall be 850 ~~500~~ square feet or 50 percent of the floor area of the main dwelling unit, whichever is less. ~~In no event shall the maximum lot coverage permitted for the zoning district in which the property is located be exceeded.~~

(3) *Use.* The accessory apartment shall be limited to one family, as defined in this chapter.

~~(4) Floodplain and other regulations.~~ Nothing in this section shall be construed to waive the floodplain regulations in ch. 6, article IV or other regulations in this code, except as explicitly set forth.

~~(e) (f) Minimum lot size.~~ An accessory apartment may be permitted on a lawfully existing lot ~~of record~~ which conforms to the minimum lot size of the district in which it is located. However, in no case shall the lot area be less than 6,000 square feet.

~~(g) Garage conversions.~~

~~(1) Attached garages.~~ An attached garage may be converted to an accessory apartment.

~~(2) Detached garages.~~ A detached garage may be converted to an accessory apartment provided that the garage is not closer to the street right-of-way or easement than the principal dwelling unit. In no instance shall the conversion be permitted where the garage encroaches in the front setback. The minimum number of parking spaces shall be maintained after the conversion of an attached or detached garage.

~~(f) (h) Appearance.~~ The entrance to the accessory apartment, when constructed as part of the principal residence, should be designed in such a manner as to retain the appearance of a single-family residence.

~~(g) (i) Density.~~ ~~(1)~~ An accessory apartment, for the purposes of this section density, is termed a dwelling unit and the resulting density must comply in accordance with the Fort Myers Beach Comprehensive Lee Plan. ~~(2) For the purposes of establishing eligibility for bonus densities, an accessory apartment shall be considered an affordable unit.~~

Sec. 34-1178. Accessory apartments in owner-occupied homes.

(a) **Purpose.** The purpose of this section is to recognize and legalize certain existing accessory apartments where the immediate presence of a property owner is presumed to mitigate any negative effects that might result from the use or rental of such apartments.

(b) **Applicability.** This section sets forth special requirements for a single accessory apartment in an owner-occupied home. ~~The requirements of this section are applicable in any zoning district that allows residential uses without regard to the zoning district limitations provided in Table 34-694.~~ Nothing in this section authorizes or legalizes any construction that is not allowed by the flood-hazard regulations found in §§ 6-401 through 6-475 of this code.

(c) **Definition.** For purposes of this section, the term “accessory apartment” means a single living unit no larger than 850 square feet, with or without cooking facilities, that ~~was~~ is in existence as of December 15, 1997. For such an accessory apartment to remain lawful under this section, the property owner or an immediate family member must be in residence on the premises, or on an immediately adjoining lot, during any period when the apartment is not vacant.

(d) **Density.** An accessory apartment that meets the requirements of this section is ~~not termed a living unit but not~~ not a dwelling unit as defined by the Fort Myers Beach Comprehensive Use Plan and is not counted in residential density computations (see § 34-632(5)b.).

~~Sec. 34-1179. Commercial fishing equipment storage as accessory use to residence in Greater Pine Island area. [deleted in its entirety]~~

Sec. 34-1179. Trucks and commercial vehicles in residentially zoned districts.

Except for daytime deliveries or service calls, the following types of trucks or commercial vehicles may not be parked or stored on any lot in a conventional or redevelopment zoning district. Planned development zoning districts may allow the parking of these trucks if explicitly permitted by its zoning resolution:

- (1) A tractor-trailer or semi-trailer truck; or
- (2) A truck with two or more rear axles; or
- (3) A truck with a gross vehicle weight rating (GVWR) in excess of 12,000 pounds; or
- (4) Any truck and trailer combination resulting in a combined gross vehicle weight rating (GVWR) in excess of 12,000 pounds.

~~Sec. 34-1180. Additional dwelling unit on lot in agricultural districts. [deleted in its entirety]~~

Secs. 34-1180+--34-1200. Reserved.

DIVISION 3. ADULT ENTERTAINMENT, ADULT BOOKSTORES AND MASSAGE PARLORS SEXUALLY-ORIENTED BUSINESSES

Sec. 34-1201. Applicability of division.

This division shall apply to all sexually-oriented businesses (as defined in the Fort Myers Beach Sexually Oriented Businesses Regulation Ordinance, Ord. 96-04). ~~zoning districts wherein bookstores, entertainment or massage parlors would be permitted by right or by special exception.~~

Sec. 34-1202. Definitions.

Sexually-oriented business means a sexually-oriented business as defined in the Fort Myers Beach Sexually Oriented Businesses Regulation Ordinance, Ord. 96-04.

~~[previous definitions deleted in their entirety]~~

Sec. 34-1203. Purpose of division.

The purpose of this division is to provide reasonable regulations to alleviate the adverse effects of sexually-oriented businesses ~~adult bookstores, adult exhibitions and massage parlors~~ on adjacent and nearby uses of land.

Sec. 34-1204. Prohibited locations.

(a) No use of land for purposes governed by this division shall be located closer than 1,000 feet, measured on a straight line, from:

- (1) The closest wall of any building containing a similar use; or

- (2) ~~(b) No use of land for purposes governed by this division shall be located closer than 1,000 feet, measured on a straight line, from Any district which allows residential uses; or~~
- (3) ~~(c) No use of land for purposes governed by this division shall be located closer than 1,000 feet, measured on a straight line, from Any hotel, motel, restaurant, school (noncommercial), day care center (child), park, playground, place of worship, religious facility, public recreation facility, or cultural facility center, rooming house, boarding house or hospital.~~

Secs. 34-1205--34-1230. Reserved.

**DIVISION 4. AIRCRAFT
LANDING FACILITIES, PRIVATE**

~~Sec. 34-1231. Permit required. [deleted in its entirety]~~

~~Sec. 34-1232. State permit. [deleted in its entirety]~~

~~Sec. 34-1233. Land area and site. [deleted in its entirety]~~

~~Sec. 34-1234. Building setbacks. [deleted in its entirety]~~

~~Sec. 34-1235. Setbacks for approach zones. [deleted in its entirety]~~

~~Sec. 34-1236. Compliance with height restrictions. [deleted in its entirety]~~

~~Sec. 34-1237. Repair of aircraft and machinery. [deleted in its entirety]~~

Secs. 34-12318. Use of engine-propelled aircraft.

(a) No person shall take off or land any aircraft that is propelled by an engine within the limits of the Town of Fort Myers Beach unless the aircraft is registered with the Federal Aviation Administration or an aircraft owned by a governmental agency.

(b) In accordance with FAA requirements, no aircraft, as defined in subsection (a), shall fly over the land of the Town of Fort Myers Beach.

Secs. 34-12329--34-1260. Reserved.

DIVISION 5. ALCOHOLIC BEVERAGES

Sec. 34-1261. Definitions.

For purposes of this division and when referred to elsewhere in this chapter, certain terms or phrases shall have the following meaning:

Alcoholic beverage means distilled spirits and all beverages, other than medicine, intended for human consumption and containing one-half of one percent or more alcohol by volume.

Beer, wine, and liquor have the same meanings as provided in F.S. chs. 563, 564, and 565, respectively.

Bottle club [deleted]

Full course meals means items on a menu at a restaurant which include soups and salads, main dishes with side orders, and desserts.

Kitchen, commercial means a facility used for the preparation of food which is sold to the public and that is subject to state and local health department inspections.

Liquor license means a license issued by the state for the retail sale, service, and consumption of liquor.

Noise [deleted]

Package sales [deleted]

Park, only when used in this division, means a park facility which is owned, leased, or operated by a governmental agency. It does not include beach access strips.

Sale of, only when used in this division, includes the term “or service.”

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

Sec. 34-1262. Compliance with applicable regulations.

No structure, building, establishment, or premises shall be occupied, used, or maintained for the purpose of the retail sale, service, or consumption of

alcoholic beverages except in conformity with all applicable town county regulations, including this chapter, and with the applicable state regulations.

Sec. 34-1263. Sale for off-premises consumption.

~~(a) Package stores which have only a 1-APS state liquor license are exempt from this section, except for subsection (c) of this section.~~

(a) Where permitted. ~~(b)~~ The sale of alcoholic beverages for consumption off the premises shall be allowed in any zoning district where retail stores are a permitted use, provided that package stores must meet the additional regulations set forth in subsection (d) of this section.

~~as a permitted use as follows, provided that the regulations set forth in subsection (c) of this section are met:~~

- ~~(1) in any zoning district wherein package stores are listed as a permitted use, only when the establishment is licensed only as a package store; and~~
- ~~(2) In any retail sales establishment wherein the sale of alcoholic beverages for consumption off-site is clearly incidental to other retail sales commodities, such as in a grocery store, supermarket, or drugstore, and limited to PS series liquor licenses.~~

(b) Sealed containers only. ~~(c)~~ Only alcoholic beverages in original factory-sealed containers shall be permitted to be sold for off-premises consumption.

(c) State liquor laws. ~~(d)~~ In addition to the requirements of subsections (a) through (c) of this section, Any establishment primarily engaged in the sale of alcoholic beverages for consumption off-site shall also be required to comply with all applicable state liquor laws and § 1 of Ordinance No. 76-9 of the county.

(d) Location of package stores. ~~(e)~~ No package store or other establishment primarily engaged in the retail sale of liquor for consumption off-site shall be permitted closer than 500 feet to any place of worship, religious facility, school (noncommercial), day care center (child), park, or dwelling unit, or 500 feet from any other establishment primarily engaged in the sale of alcoholic beverages.

- (1) For purposes of this subsection, the distance shall be measured in a straight line from any public entrance or exit of the establishment to the nearest property line of the place of worship, religious facility, school (noncommercial), day care center (child), park, or dwelling unit, or any public entrance or exit of any other establishment primarily engaged in the sale of alcoholic beverages.
- (2) Where an establishment for the sale of alcoholic beverages is located in conformity with the provisions of this subsection, and a place of worship, religious facility, school (noncommercial), day care center (child), park, or dwelling unit is subsequently established in the proximity of such existing establishment, then the separation requirements shall not apply.
- (3) Notwithstanding subsection ~~(c)~~(d) (1) of this section, where a package store is located in a multiple-occupancy complex shopping center which is 25,000 square feet or greater in size, or in a retail sales establishment wherein the sale of alcoholic beverages for consumption off-site is clearly incidental to other retail sales commodities, such as in a grocery store, supermarket, or drugstore, the separation requirements from any dwelling unit shall not apply.
- (4) In any ~~PD~~; planned development zoning district; where the applicant is contemplating the sale of alcoholic beverages for consumption off the premises in an establishment which cannot meet the distance requirements set forth in subsection (d) ~~(c)~~ of this section, the applicant shall request a deviation from the requirements of subsection (d) ~~(c)~~.

Sec. 34-1264. Sale or service for on-premises consumption.

(a) *Approval required.* The sale or service of alcoholic beverages for consumption on the premises shall not be permitted until such location has been approved by the town county as follows:

- (1) *Administrative approval.* The director ~~of the department of community development~~ may ~~shall~~ administratively approve the sale or service of alcoholic beverages for consumption on the premises when in conjunction with the following uses if the proposed use satisfies the requirements

otherwise set forth in this division. When circumstances so warrant the director may ~~shall~~ determine that administrative approval is not the appropriate action and that the applicant must instead apply for approval as a special exception permit. Such circumstances may include the previous denial ~~by the director or by a hearing board~~ of a similar use at that location, the record of public opposition to a similar use at that location, and similar circumstances. When the director has approved a request for consumption on the premises at a location where the actual building has not been constructed, the director shall not, ~~within one year's time,~~ approve another request for consumption on the premises ~~within one year's time,~~ which could potentially violate the distance requirements. If the first building is completed within less than ~~the one year timeframe,~~ and it can be shown is physically demonstrable ~~that~~ the second use would not violate the prescribed distance requirements, ~~then~~ the director may approve the second location subject to all other requirements contained in this division.

- a. ~~County-owned airports, including liquor, beer, malt liquor and wine in restaurants, bars, lounges, concessions, concession stands and package stores at county-owned airports;~~
- a. ~~b. Bars or cocktail lounges~~ located in commercial ~~and industrial~~ zoning districts which permit bars or cocktail lounges, provided the standards set forth in subsections (b)(1) and (3) of this section are met;
- e. ~~Bottle clubs in commercial and industrial zoning districts which permit bars or cocktail lounges, provided the standards set forth in subsections (b)(1) and (3) of this section are met;~~
- d. ~~Bowling alleys, provided the standards set forth in subsections (b)(2)a and (b)(3) of this section are met;~~
- b. Charter, party fishing boat, or cruise ship, provided the standards of section (b)(3) are met. The COP approval is specific to the charter, party fishing boat, or cruise ship operating from a specific location and does not run with the land nor is it transferable.
- c. ~~c. Clubs and fraternal or membership organizations~~ located in commercial ~~and~~

~~industrial~~ zoning districts, where permitted, provided the standards set forth in subsections (b)(2)~~d~~ f and (b)(3) of this section are met;

~~d. f. Cocktail lounges in golf course, tennis clubs, or indoor racquetball clubs,~~ provided the standards set forth in subsections (b)(2)~~c d and e~~ and (b)(3) of this section are met;

e. ~~g. Hotels/motels,~~ provided the standards set forth in subsections (b)(2)~~h e~~ and (b)(3) of this section are met; and

f. ~~h. Restaurants groups H, III and IV, and restaurants with brew pub license requirements,~~ provided the standards set forth in subsections (b)(2)~~a b~~ and (b)(3) of this section are met.

(2) **Special exception permit.**

a. A special exception permit for consumption on the premises shall be required for:

1. Any establishment not covered by subsection (a)(1) of this section; or
2. Any establishment which provides outdoor seating areas for its patrons consuming alcoholic beverages, except that a ~~group H, III, or IV~~ restaurant may have outdoor seating approved administratively provided the outdoor seating area is not within 500 feet of a place of worship, religious facility, school (noncommercial), day care center (child), park, or dwelling unit under separate ownership.

b. The burden of proof that the granting of the special exception permit will not have any adverse effect on surrounding properties ~~shall lie~~ with the applicant.

c. A single special exception permit for consumption on the premises for a multiple-occupancy complex shopping center in a conventional zoning district shall be sufficient to permit consumption on the premises in every restaurant which exists or may be established within the multiple-occupancy complex shopping center.

(3) **Planned developments and planned unit developments.**

a. No administrative approval is necessary where an individual establishment or other facility proposing consumption on the premises is explicitly designated on the

master concept plan and is included on the approved schedule of uses.

- b. If consumption on the premises is shown as a permitted use on the approved schedule of uses for a multiple-occupancy complex shopping center, no administrative approval for consumption on the premises shall be required for restaurants within the multiple-occupancy complex shopping center.
- c. Consumption on the premises ~~shall not be permitted~~ for other uses within planned developments ~~and planned unit developments~~ require without an administrative approval or a special exception permit.

(b) **Location; parking.**

(1) **Prohibited locations.**

- a. Except as may be exempted in subsections (a)(1) of this section or as exempted in subsection (b)(2) of this section, no establishment for the sale or service of alcoholic beverages for consumption on the premises shall be located within 500 feet of:
1. ~~Five hundred feet of any~~ A place of worship, religious facility, school (noncommercial), day care center (child), or park;
 2. ~~Five hundred feet of~~ A dwelling unit under separate ownership, except when approved as part of a planned development; or
 3. ~~Five hundred feet of any~~ Another establishment primarily engaged in the sale of alcoholic beverages for consumption on the premises, excluding those uses listed under subsection (b)(2) of this section.

Distance shall be measured from any public entrance or exit of the establishment in a straight line to the nearest property line of the place of worship, religious facility, school (noncommercial), day care center (child), dwelling unit, or park, or to the closest public entrance or exit of any other establishment primarily engaged in the sale of alcoholic beverages.

- b. Where an establishment for the sale of alcoholic beverages is located in conformity with the provisions of this subsection, and a place of worship,

religious facility, school (noncommercial), day care center (child), park or dwelling unit is subsequently established in the proximity of such existing establishment, then the separation requirements shall not apply.

(2) **Exceptions to location standards.** Exceptions to location standards are as follows:

~~a. Bowling alleys [deleted in its entirety]~~

~~a. b. Restaurants groups II, III and IV,~~ provided that:

1. The restaurant is in full compliance with state requirements;
2. The restaurant serves cooked, full-course meals, prepared daily on the premises; and
3. Only a service bar is used and the sale or service of alcoholic beverages is only to patrons ordering being served meals, or, if the restaurant contains a cocktail lounge for patrons waiting to be seated at dining tables, the lounge shall be ~~so~~ located so that there is no indication from the outside of the structure that the cocktail lounge is within the building.
4. The other requirements of § 34-1264(k) shall be met.

~~b. c. Hotels/motels (4-COP-S license only); ; provided that nightclubs, cabarets, cocktail lounges or bars shall be located within the hotel or motel and under the same roof, which contains at least 100 guestrooms under the same roof, and provided further that the exterior of any such building shall not have storefronts or give the appearance of commercial or mercantile activity as viewed from the highways.~~

1. The hotel/motel contains at least 100 guest rooms under the same roof and that bars or cocktail lounges are located within the hotel or motel and under the same roof; and
2. The exterior of the building must not have storefronts or give the appearance of commercial or mercantile activity visible from the street.

If the use contains windows visible ~~which may be seen~~ from the street highway, the windows shall be of fixed, obscure glass. ~~Such nightclub~~ Access to the cocktail lounge or bar must ~~or cabaret shall be entered only through the lobby, and no~~

~~Additional entrances are not shall be permitted unless the. An additional entrance or door shall be permitted when the entrance or door opens into an enclosed courtyard or patio (away from the street side) which is enclosed and which is not The additional entrance may not be visible from the street. A fire door or exit shall be permitted, provided that the door or exit is equipped with panic type hardware and locks and is maintained in a locked position except in an emergency.~~

- ~~c. d. Golf course clubhouses (H-C (golf club) license only), provided that:~~
- ~~1. The golf course consists of at least nine holes, with a clubhouse, locker rooms, and attendant golf facilities, and comprises in all at least 35 acres of land.~~
 - ~~2. Failure of such club to maintain the golf course, clubhouse, and golf facilities shall automatically terminate the privilege of the cocktail lounge and sale of beer from the refreshment stands.~~
- ~~e. Tennis clubs and indoor racquetball clubs [deleted in its entirety]~~
- ~~d. f. Clubs and fraternal or Membership organizations (H-C license only), provided that:~~
- ~~1. such club or organization conforms to all the requirements of a private club as stated in F.S. ch. 561 and other applicable state laws, and~~
 - ~~2. providing that there are no signs of any type exhibited or displayed or other indications visible that can be seen from the exterior of the clubhouse, building, or structure that alcoholic beverages are served.~~

~~Before a certificate of use and occupancy to serve alcoholic beverages will be issued, the applicant must submit necessary data to prove that it is eligible for the use and complies with F.S. ch. 561 or other applicable state laws; provided, anything to the contrary notwithstanding. These requirements must be complied with, even though the club intends to serve only beer or wine.~~

- (3) **Parking.** Restaurants providing alcoholic beverages for consumption on the premises must comply with the parking requirements

set forth in § 34-2020(2)~~f~~. Any bar or cocktail lounge must provide parking in accordance with § 34-2020(2)e. All other uses must meet the parking requirements of the principal use.

(c) **Procedure for approval.**

(1) **Administrative approval.**

- a. **Application.** An applicant for a consumption on the premises permit shall submit, ~~on a form provided by the county,~~ the following information on a form provided by the town:
1. The name, address, and telephone number of the applicant.
 2. The name, address, and telephone number of the owner of the premises, if not the applicant.
 3. A notarized authorization from the property owner to apply for the permit.
 4. Location by STRAP and street address.
 5. Type of state liquor license being requested.
 6. A site plan, drawn to scale, showing:
 - i. The property in question, including all buildings on the property and adjacent property;
 - ii. Entrances to and exits from the building to be used by the public;
 - iii. A parking plan, including entrances and exits;
 - iv. The floor area of the building and proposed seating capacity. If a restaurant is proposing a bar or lounge for patrons waiting to be seated in the restaurant, the floor area and seating area of the lounge shall be shown in addition to the restaurant seating area.
 7. A town county map marked to indicate all of the property within 500 feet of the building to be used for consumption on the premises.
 8. An notarized affidavit executed by the applicant indicating that no place of worship, religious facilities, day care centers (child), noncommercial schools, dwelling units or parks are located within 500 feet of the building to be used.

~~b. Additional requirements for bottle clubs [deleted in its entirety]~~

~~b. c. Findings by director. Prior to approving a permit approval, the director shall~~

~~conclude~~ ascertain that all applicable standards have been met. In addition, the director shall make the following findings of fact:

1. There will be no apparent deleterious effect ~~of such use~~ upon surrounding properties and the immediate neighborhood as represented by property owners within 500 feet of the premises.
2. The premises are suitable in regard to their location, site characteristics, and intended purpose. Lighting ~~on the permitted premises shall~~ must be shuttered and shielded from surrounding properties.

(2) ***Special exception permit***

- a. Applications for special exceptions permits shall be submitted on forms supplied by the town county and shall contain the same information as required for administrative approval.
- b. Advertisements and public hearings shall be conducted in accordance with the requirements set forth in article II of this chapter.

(d) ***Temporary one-day permit.***

- (1) ***Intent; applicability.*** It is the intent of this subsection to require that nonprofit and for-profit organizations and establishments in the town unincorporated area of the county obtain a one-day temporary alcoholic beverage permit for the sale of alcoholic beverages at the specific location where an event is held. This subsection will pertain to but not necessarily be limited to the following uses:

- a. Grand openings or open houses at residential; ~~or commercial or industrial~~ developments;
- b. Special outdoor holiday or celebration events at bars and restaurants ~~which are or are not already special permitted~~;
- c. Weddings and other special occasions at clubhouses;
- d. Political rallies or events;
- e. Block parties; and
- f. Carnivals.

- (2) Only twelve temporary alcoholic beverage permits may be issued per year to a specific location. If more than twelve permits are

sought per year for a specific location, then the location must obtain a permanent alcoholic beverage special exception permit. If the event for which the temporary alcoholic beverage permit is sought continues for longer than one day, the applicant may petition the director for an extended permit. A temporary alcoholic beverage permit may not be issued for more than three days.

(3) ~~(2)~~ ***Procedure for approval.***

- a. Any owner, lessee, or tenant seeking approval for consumption on the premises for a temporary alcoholic beverage permit, must submit a written request to the director department of community development. The written request must include:
 1. The name and address of the applicant;
 2. A general description of the exact site where alcoholic beverages are to be sold and consumed;
 3. The type of alcoholic beverages to be sold and consumed; and
 4. ~~The payment of~~ A fee in accordance with the adopted fee schedule.
- b. The director will make a final decision within ten working days. The decision will be in the form of approval, approval with conditions or denial. The director may forward the request to other appropriate agencies for comment.
- c. The town council Board of County Commissioners will review all requests for temporary alcoholic beverage permits where an event will run longer than three days. Under no circumstances will a temporary alcoholic beverage permit be issued for more than ten days.

(e) ***Expiration of approval.*** After the following time periods, the administrative or special exception permit approval of a location for the sale and consumption of alcoholic beverages ~~for consumption~~ on the premises granted in accordance with pursuant to this section shall expire after the following periods of time, and shall thereafter become null and void:

- (1) In the case of an existing structure, the approval shall expire six months from the date of approval unless, within that period of time, operation of the alcoholic beverage establishment has commenced. For purposes of this subsection, the term “operation” shall

be defined as the sale of alcoholic beverages in the normal course of business.

- (2) In the case of a new structure, the approval shall expire one year from the date of approval unless, within that period of time, operation of the alcoholic beverage establishment has commenced. ~~However, if substantial construction is completed,~~ The director may grant one extension of up to six months if construction is substantially complete.

(f) **Transfer of permit.** Alcoholic beverage permits, ~~as noted in subsection 34-1264(i) excluding permits for bottle clubs,~~ issued by virtue of this section ~~are shall be deemed to be~~ a privilege running with the land. ~~The Sale of the real property which has been granted an alcoholic beverage permit shall automatically vest the purchaser thereof with all rights and obligations originally granted to or imposed on the applicant. Such privilege may not be separated from the fee simple interest in the realty.~~

(g) **Expansion of area designated for permit.** The area designated for an alcoholic beverage permit cannot be expanded without filing a new application for an alcoholic beverage permit in accordance with the requirements contained in this chapter. The new application must cover both the existing designated area as well as the proposed expanded area. All areas approved must be under the same alcoholic beverage permit and subject to uniform rules and regulations.

(h) **Nonconforming establishments.**

- (1) **Expansion.** A legally existing establishment engaged in the sale or service of alcoholic beverages which is made nonconforming by reason of ~~new~~ the regulations contained in this ~~chapter section~~ shall not be expanded without a special exception permit. The term “expansion,” as used in this subsection, shall include the enlargement of space for such use and uses incidental thereto, the expansion of a beer and wine bar to include intoxicating liquor, as that term is defined by the Florida Statutes, and the expansion of a bar use to a nightclub use. Nothing in this subsection; ~~however, shall be deemed~~ may be construed as an attempt to modify any prohibition or diminish make less restrictive any requirement of the laws of the state.

- (2) **Abandonment.** An establishment engaged in the sale or service of alcoholic beverages Any uses, created and established in a legal manner, which may thereafter become a nonconforming- use due to a change in regulations, as provided in division 3 of article V of this chapter. Nonconforming uses may continue until there is an abandonment of the permitted location for a continuous ~~nine- six-~~month period. For purposes of this subsection, the term “abandonment” shall mean failure to use the location for consumption on the premises purposes as authorized by the special exception, permit or administrative approval, or other approval. Once a nonconforming use is abandoned, it cannot be reestablished unless it ~~can~~ conforms to the requirements of this chapter; and ~~such use may be reestablished only after issuance of new permits are issued.~~

(i) **Revocation of permit or approval.**

- (1) The ~~town council Board of County Commissioners~~ has the authority to revoke an alcoholic beverage special exception, permit or administrative approval, or other approval upon any of the following grounds:
- A determination that an application for special exception permit or administrative approval contains knowingly false or misleading information.
 - Violation by the permit holder of any provision of this chapter, or violation of any state statute which results in the revocation of the permit holder’s state alcoholic beverage license by the state alcoholic beverage license board or any successor regulatory authority.
 - Repeated violation of any town county ordinance at the location within the 12-month period preceding the revocation hearing.
 - Failure to renew a state liquor license, or written declaration of abandonment by the tenant and owner of the premises if under lease, or by the owner himself if not under lease.
 - Abandonment of the premises. An establishment which continually maintains (renews) its state liquor license, even though it has suspended active business with the public, shall not be deemed to

have been abandoned for purposes of this subsection.

- f. Violation by the permit holder of any condition imposed upon the issuance of the special exception or administrative approval permit.
 - g. Violation of any of the minimum standards of the special exception permit.
- (2) Prior to revoking an administrative approval, ~~or special exception, or other approval permit~~ for alcoholic beverages, the town council Board of County Commissioners shall conduct a public hearing at which the permit holder may appear and present evidence and testimony concerning the proposed revocation. At the hearing, the town council board may revoke the permit if a violation described in this subsection is established by a preponderance of the evidence. The permit holder shall be notified of the grounds upon which revocation is sought prior to any hearing, and shall be given notice of the time and place of the hearing in the same manner as set forth in article II of this chapter.
 - (3) When an alcoholic beverage permit is revoked in accordance with ~~pursuant to~~ the terms of this subsection, ~~no the town may not consider a petition requesting an alcoholic beverage permit shall be considered by the county for~~ on the property for a period of 12 months from the date of final action on the revocation.
 - (4) Upon written demand of the town council, any owner or operator of an establishment with a COP license ~~shall, upon written demand of the Board of County Commissioners~~, must make, under oath, a statement itemizing ~~the what~~ the percentage of ~~his~~ gross receipts ~~that~~ are from the sale of alcoholic beverages. Failure to comply with such demand within 60 days of the date of demand shall be grounds for revocation of the special exception, administrative approval, or other approval permit.

(j) **Appeals.** All appeals of decisions by the director shall be in accordance with ~~pursuant to~~ procedures set forth in § 34-86 article II or article IV of this chapter for appeals of administrative decisions.

(k) **Alcoholic beverages in restaurants.** The sale of alcoholic beverages for on-premises consumption

in restaurants (see § 34-1264(b)(2)) must conform to the following regulations:

- (1) The sale of alcoholic beverages must be incidental to the sale of food, and restaurants permitted to serve alcohol shall provide that food service facilities will remain open serving appropriate food items on the menu at all times coincident with the sale of alcoholic beverages.
- (2) The sale of alcoholic beverages shall be permitted only when it accounts for no more than 49% of the combined gross sales attributable to the sale of food and all beverages during any continuous twelve-month period.
- (3) Restaurants selling alcoholic beverages shall keep separate books and records reflecting the gross sales of food and nonalcoholic beverages and the gross sales of alcoholic beverages for each month. The failure to keep the books and records required herein shall be a violation of this code.
- (4) The town manager or designee may, during normal working hours, request to inspect and audit the books and records of the business from which alcoholic beverages sales are made wholly for the purpose of verifying that the gross sales of alcoholic beverages are no more than 49% of the gross sales of food and all beverages during any continuous twelve-month period. Refusal of an owner or operator of such business to allow said inspection shall be a violation of this code. Should the audit reveal that this requirement is not being met, the town manager shall initiate enforcement proceedings for a violation of this code.
- (5) For any restaurant which has been selling alcoholic beverages for less than twelve months, the provisions of this section shall be interpreted and applied with respect to said lesser period of time.
- (6) These regulations may be enforced through the normal code enforcement procedures ~~in § 1-5 of this code (for example, § 1-5, or article V of ch.2)~~. In addition to these procedures, violations of these regulations may be restricted by injunction initiated by the Town of Fort Myers Beach, by any citizen thereof, or by any person affected by the violation of such regulations.

Secs. 34-1265--34-1290. Reserved.

DIVISION 6. ANIMALS

Sec. 34-1291. Keeping of animals. ~~Applicability of division.~~

The keeping, raising, or breeding of ~~horses and other~~ any livestock, including poultry, ~~of all kinds~~ usually and customarily considered as farm animals, and the keeping, raising, or breeding of reptiles, marine life, or animals not indigenous to the state, shall not be permitted ~~only as set forth in this division~~. This shall not be interpreted as applying to pet stores or hobbyists keeping aquariums or domestic tropical birds in their own homes.

~~Sec. 34-1292. Horses and other equines. [deleted in its entirety]~~

~~Sec. 34-1293. Goats, sheep and swine. [deleted in its entirety]~~

~~Sec. 34-1294. Noncommercial poultry raising. [deleted in its entirety]~~

~~Sec. 34-1295. Dairy barns; commercial poultry raising. [deleted in its entirety]~~

~~Sec. 34-1296. Other setbacks; exceptions to setback requirements. [deleted in its entirety]~~

~~Sec. 34-1297. Activities requiring special approval. [deleted in its entirety]~~

Secs. 34-1298--34-1320. Reserved.

DIVISION 7. ANIMAL CLINICS AND KENNELS FACILITIES

Sec. 34-1321. **Permitted activities.**

(a) Kennels, animal clinics, and boarding facilities are limited to the raising, breeding, treating, boarding, training, grooming, and sale of domestic animals.

(b) Kennels, animal clinics, and boarding facilities are permitted in any zoning district where Offices, general or medical are a permitted use.

Sec. 34-1322. **Enclosure of facilities.**

(a) ~~Except as specifically provided in this division,~~ All animal clinics, animal kennels, and boarding facilities shall be completely enclosed within an air conditioned, soundproof building and shall have no outdoor cages, pens, runs, or exercise facilities.

~~(1) Completely enclosed facilities.~~

~~(2) Facilities not completely enclosed. [deleted in its entirety]~~

Secs. 34-1323--34-1350. Reserved.

DIVISION 8. AUTOMOTIVE BUSINESSES; ~~DISPLAY, RENTAL, REPAIR, OR STORAGE OF~~ VEHICLES OR EQUIPMENT

Sec. 34-1351. **Automobile** ~~itive~~ repair and service.

(a) All services performed by an automobile ~~itive~~ repair ~~and service~~ establishment, including repair, painting, and body work activities, shall be performed within a completely enclosed building.

(b) Whenever an automobile ~~itive~~ repair ~~and service~~ establishment is within 75 feet of a residential use, all refuse and vehicle parts shall be stored within a completely enclosed area.

(c) New or expanded automobile repair establishments can be permitted only through approval of a suitable planned development zoning district (see § 34-620(d)).

Sec. 34-1352. Display, sale, ~~rental~~, or storage facilities for motor vehicles, boats, recreational vehicles, trailers, mobile homes or equipment.

(a) Applicability. This section applies to all establishments engaged in the outdoor display, sale, ~~rental~~, or storage of motor vehicles, ~~boats~~, recreational vehicles, trailers, construction equipment, and similar vehicles and equipment, ~~mobile homes, construction or farm equipment, or other similar items; except water-oriented rental establishments; outdoors, regulated by § 34-3151.~~

(b) New or expanded Prohibited uses. New or expanded establishments can be permitted only through approval of a suitable planned development zoning district (see § 34-620(d)).

- (1) ~~Except as provided in this section, No units shall be used as sales offices or storage space. Any sales office or storage space, other than for the units, shall be in a conventional building.~~
- (2) ~~A mobile home may be used as an office for sales of mobile home lots or units which are located within the mobile home development only.~~

(c) *Setbacks.*

- (1) All buildings and structures shall comply with the setback requirements for the zoning district in which the use is located.
- (2) All items covered by this section which are displayed or offered for sale ~~or rent~~ shall be set back a minimum of ten feet from any property line, unless ch. 10 sets forth a different setback, in which case the greater setback will apply.

(d) *Display and parking areas.*

- (1) No parking space or loading zone required by the parking regulations set forth in this chapter shall be used for the display of merchandise.
- (2) Areas used for display may be grass or other surface, provided it is maintained in a sightly, dustfree manner.

(e) *Storage areas.* Areas used for the commercial storage of motor vehicles, ~~boats~~, trailers, recreational vehicles, ~~mobile homes~~ and construction ~~or farm~~ equipment which is not being displayed for sale or rent shall be enclosed (see division 36 of this article), unless Storage, open is permitted through approval of a suitable planned development zoning district (see § 34-620(d)).

(f) *Lighting.* Artificial lighting used to illuminate the premises shall be directed away from adjacent properties and streets, shining only on the subject site.

Sec. 34-1353 Automobile rental.

New or expanded establishments renting automobiles or trucks must obtain a special exception for *Automobile rental* in accordance with division 2 of article III of this chapter.

Secs. 34-1354--34-1380. Reserved.

DIVISION 9. BUS DEPOTS, STATIONS AND TRANSIT TERMINALS

Sec. 34-1381. Purpose of division.

The purpose of this division is to set forth standards and criteria for the safe and efficient development of transit bus stations/depots and bus terminals whereby they may be permitted by ~~right or special exception:~~ in accordance with Tables 34-1 and 34-2. A central transit terminal is encouraged by Policy 7-D-1 of the Fort Myers Beach Comprehensive Plan to connect local trolleys and taxis with an airport shuttle service.

Sec. 34-1382. Site plan.

All applications for a ~~special exception or change of use for a bus station/depot or bus~~ transit terminal shall include a site plan, drawn to scale, indicating but not limited to following:

- (1) The location of the bus stalls.
- (2) Commuter parking, if provided.
- (3) Taxi waiting stalls.
- (4) Circulation pattern of the buses including within and through the parking lot.
- ~~(5) Bus ingress and egress points to or from the parking lot.~~
- ~~(5)~~ (6) The location of the any building housing the bus station/depot or bus transit terminal and the area designated for a waiting area, to include the storage and handling of luggage and parcels.

Sec. 34-1383. Access.

~~(a) The site plan shall be designed so that the location of ingress and egress points and turning radii are adequate for the anticipated vehicles, and the turning radii for buses are in accordance with the design standards as depicted in the latest edition of the publication of the American Association of State Highway and Transportation Officials (AASHTO); A Policy on Geometric Design of Highways and Streets, in order to provide safe and efficient maneuverability.~~

~~(b) All buses exiting a parking lot must enter the street right-of-way in a forward motion.~~

~~(c) The site plan shall ensure safe and adequate access to collector or arterial streets.~~

Sec. 34-1384. Parking generally.

(a) *Off-street Parking.* The parking for a bus station/depot or bus transit terminal where the loading and unloading of passengers, luggage, or parcels may occur shall meet the following minimum requirements:

- ~~(1) One parking space, excluding parking space for buses, shall be required per 100 square feet of total floor area dedicated to passenger waiting area, and one space shall be required per 1,000 square feet of total floor area dedicated to ticket sales or baggage or parcel handling areas.~~
- (1) (2) Parking spaces shall be required for all buses using the site. A minimum of one bus parking space shall be required for each bus carrier using the facility. If arrival and departure times run concurrently, then additional parking must be provided to ensure that each bus has a separate parking space.
- (2) (3) The parking spaces for each bus stall shall be designated by signage and pavement markings and.
- (4) Each bus parking stall shall be a minimum of 12 feet by 50 feet in size for parallel or diagonal parking.
- (5) All required parking shall have a paved, dustfree, all-weather surface.
- (3) (6) For every 12 daily scheduled bus arrivals and departures, or a portion thereof, at locations where passengers may disembark, one parking space for taxicabs and one parking space for commuters shall be required.

(b) *On-street parking.* In some instances, it may be appropriate for a transit terminal bus station/depot to have the buses parked within an adjacent road right-of-way. In all such instances, the location of the bus turnout, proximity to the transit terminal, bus station/depot and how the bus will enter and exit the turnout must be shown on the site plan.

~~Sec. 34-1385. Parking for bus terminals. [deleted in its entirety]~~

~~Sec. 34-1386. Modification of parking requirements. [deleted in its entirety]~~

~~Sec. 34-1387. Expansion of existing bus station/depot. [deleted in its entirety]~~

Secs. 34-1385~~8~~--34-1410. Reserved.

**DIVISION 10.
CARE AND ASSISTED LIVING FACILITIES
AND CENTERS**

Sec. 34-1411. Assisted living facilities. Adult congregate living facilities

(a) *Location.* Adult congregate Assisted living facilities (ACLF's) may be located in zoning districts by right or by special exception, as specified in the district use regulations, but provided that they are ~~shall be~~ subject to the maximum density ~~ranges~~ for the land use category applicable to the subject property, with density ~~shall be~~ calculated in accordance with §§ 34-1415, ~~91 through 1495~~ division 12, subdivision H, of this article.

(b) *Design.*

- (1) An adult congregate assisted living facility ~~permitted in a zoning district which permits only single-family residences shall~~ must be designed so as to appear as, and be compatible with, adjacent residential buildings, a single-family residence.
- (2) An adult congregate living facility permitted in a zoning district which permits only single-family, two-family attached or duplex dwelling units shall be designed so as to be compatible with such dwelling units.
- (3) An adult congregate living facility permitted in a multiple-family zoning district shall be designed so as to be compatible with surrounding multiple-family buildings.
- (4) An adult congregate living facility permitted in a CF district shall be designed so as to be compatible with the type of dwelling units which are adjacent thereto.

~~(c) Lot dimensions and setbacks. Adult congregate living facilities shall be subject to the property development regulations applicable to the zoning district within which they are located.~~

~~(c) (d) Parking. For parking requirements, see § 34-2020(d)(1). [remainder of subsection deleted]~~

Secs. 34-1412, 34-1413. Reserved.

Sec. 34-1414. Continuing care facilities.

(a) **Generally.** Continuing care facilities (CCF's) may only be located in a CFPD or RPD district, ~~if as enumerated on the master concept plan, provided that:~~

- (1) Continuing care facilities shall be subject to the maximum density ranges for the land use category applicable to the subject property, with density shall be calculated in accordance with § 34-1415, subsection (c) of this section.
- (2) ~~A continuing care facility must contain one or more health care facilities group I or H, for on-site patient care.~~

(b) **Design; required facilities.**

- (1) A continuing care facility shall provide housing for older persons pursuant to title VII USC.
- (2) A continuing care facility must provide full common dining facilities on the site. Individual units may be equipped with kitchens, but an average of at least one meal a day must be provided by the continuing care facility for all residents.
- (3) A continuing care facility must incorporate one or more resident services on the site, such as banking facilities, barbershops, or beauty shops, pharmacies, and laundry or dry cleaning.
- (4) A continuing care facility must provide a shuttle bus service or similar transportation service for residents.

~~(d) **Lot dimensions and setbacks.** Continuing care facilities shall be subject to the property development regulations applicable in the CFPD district.~~

~~(c) **(e) Parking.** For parking requirements, see § 34-2020(d)(1) et seq. division 26 of this article.~~

Sec. 34-1415. Density equivalents.

[content moved from § 34-1494]

(a) Where assisted living facilities (ALF), continuing care facilities (CCF), or other “group quarters” are provided in living units, each of which has its own cooking facilities, density equivalents will be calculated on a 1:1 ratio.

(b) Except as may be specifically set forth elsewhere in this chapter, where assisted living

facilities, continuing care facilities, or other “group quarters” are provided in living units or other facilities wherein each unit does not have individual cooking facilities and where meals are served at a central dining facility or are brought to the occupants from a central kitchen, density equivalents will be calculated at the ratio of four people being equivalent to one dwelling unit.

(c) Independent living units within a licensed continuing care facility will be calculated on the basis of two independent living units being equivalent to one residential dwelling unit.

Secs. 34-14165--34-1440. Reserved.

DIVISION 11. COMMERCIAL ANTENNAS AND COMMUNICATION TOWERS

~~Sec. 34-1441. Required approvals: *[deleted in its entirety]*~~

~~Sec. 34-1442. Location generally; compliance with airport hazard regulations: *[deleted in its entirety]*~~

~~Sec. 34-1443. Protection of adjacent property: *[deleted in its entirety]*~~

~~Sec. 34-1444. Setbacks for accessory buildings: *[deleted in its entirety]*~~

~~Sec. 34-1445. Fencing: *[deleted in its entirety]*~~

~~Sec. 34-1446. Warning signs for high-voltage facilities: *[deleted in its entirety]*~~

Sec. 34-1441. Purpose and intent.

(a) The purpose of this division is to regulate commercial antennas, the structures on which they are located, and communication towers.

(b) Cellular telephones and other personal communications services rely on a network of antennas. Due to its location, Fort Myers Beach can be served partially by nearby antennas on the mainland and partially by antennas placed on tall buildings within the town. Only rarely, if ever, will a free-standing communications tower be needed to support any type of commercial antenna. These regulations are designed to facilitate the location of commercial antennas on tall buildings and also to

provide a procedure for approving a new communication tower where it can be demonstrated conclusively that one is required.

(c) Amateur radio antenna/towers and satellite dishes are not regulated by this division; see § 34-1175.

Sec. 34-1442. Definitions

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

Alternative support structure means any man-made structure, except communication towers, including, but not limited to, buildings, power poles, light poles, clock towers, bell towers, steeples, water towers, and other similar structures suitable for the attachment of commercial antennas.

Commercial antenna means an exterior apparatus used for transmitting and/or receiving radio-frequency signals for the convenience of users not employed or residing on the premises.

Communication tower means a tower structure that is designed and constructed primarily to elevate one or more commercial antennas for communications purposes, whether such tower is mounted on the ground or on another structure.

Old tower means a communication tower that existed or was granted a special exception prior to [insert effective date of this ordinance].

New tower means a communication tower that requires approval under this section.

Sec. 34-1443. Commercial antennas mounted on alternative support structures.

(a) **Zoning districts.** Commercial antennas on alternative support structures may be approved in all zoning districts, except that no commercial antenna may be permitted on a single family, duplex, or two-family home or its accessory building or structure.

(b) **Administrative approval required.** The town manager may issue administrative approval for commercial antennas to be mounted on alternative support structures when they comply with the standards in subsection (c) and the remainder of this code. The town manager's decision may be appealed in accordance with § 34-86.

(c) **Standards.** Commercial antennas mounted on alternative support structures must meet the following standards:

(1) Neither the antenna, its supporting structure, or any ancillary structure may extend more than 10 feet above the highest existing point of the roof; and

(2) The antenna and related structures including equipment rooms shall be concealed from view or designed and maintained to blend into the surrounding environment.

a. Concealment may be accomplished using parapet walls or existing mechanical facilities, or through the use of screening devices such as lattice enclosures.

b. Blending may be accomplished through the physical arrangement of antenna elements and through painting or coating of surfaces to match the primary structure in a way that makes them visually unobtrusive.

(d) **Nonconformities.** The installation of a commercial antenna on a nonconforming building or a building containing a nonconforming use will not be deemed to constitute the expansion of the nonconformity.

Sec. 34-1444. Commercial antennas mounted on communication towers.

(a) **Required zoning approvals.** New communication towers suitable for commercial antennas may be approved by special exception, as provided in division 2 of article III of this chapter, subject to the additional requirements of this division. Special exception applications for communication towers must also include the same documentation required by Lee County through its land development code.

(b) **Required sharing of communication towers.** The owner/operator of any proposed new communication tower must enter into an agreement (shared-use plan agreement) with the town or county requiring the owner/operator of the proposed tower to honor all reasonably and technically feasible requests for shared use of the tower for additional commercial antennas.

(1) New towers must be designed to withstand a wind load of at least 120 mph (TIA/EIA Standard 222-F) and must accommodate three additional carriers with a minimum

- wind loading of 160 sq. ft. factored area including the mounting bracket.
- (3) Once a shared-use plan for a tower is approved, additional antennas may be added to that tower in accordance with the approved shared-use plan without additional special exception approval.

(c) Development standards for communication towers. The owner/operator of any new communication tower must also obtain a development order and comply with the specific development standards for communication towers required by Lee County through its land development code.

Secs. 34-14465--34-1550+470. Reserved.

~~DIVISION 12. DENSITY~~

~~*Subdivision I. In General*
[deleted in its entirety]~~

~~*Subdivision II. Residential Development*~~

~~Sec. 34-1491. Applicability of subdivision:
[deleted in its entirety]~~

~~Sec. 34-1492. Definitions:
[deleted in its entirety]~~

~~Sec. 34-1493. Calculation of total permissible housing units:~~

The Lee Plan establishes a standard and maximum residential density range permissible for each residential land use category. The procedure set forth in this section shall be used to determine the standard residential density as well as the total number of housing units which may be permitted within a development.

- ~~(1) *Proposed developments:* [deleted in its entirety, content moved to § 34-632]~~
~~(2) *Existing developments and lots:* [deleted in its entirety, content moved to § 34-3273]~~

~~Sec. 34-1494. Density equivalents:
[subject moved to 34-1415]~~

~~Sec. 34-1495. Density limitations for specific areas:
[deleted in its entirety]~~

~~*Subdivision III.
Housing Density Bonus for Provision of Low- and Moderate-Income Housing*
[deleted in its entirety]~~

~~*Subdivision IV. Captiva Island*
[deleted in its entirety]~~

**DIVISION 12=A.
DRUG PARAPHERNALIA**

Sec. 34-1551. Drug paraphernalia defined.

The term “drug paraphernalia” means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, transporting, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of state law. Drug paraphernalia includes, but is not limited to:

- (1) Kits used, intended for use, or designed for use in the planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived.
- (2) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances.
- (3) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance.
- (4) Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness, or purity of, controlled substances.
- (5) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances.
- (6) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substances.
- (7) Separation gins and sifters used, intended for use, or designed for use in removing twigs

- and seeds from, or in otherwise cleaning or refining, cannabis.
- (8) Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances.
 - (9) Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances.
 - (10) Containers and other objects used, intended for use, or designed for use in storing, concealing, or transporting controlled substances.
 - (11) Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body.
 - (12) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing cannabis, cocaine, hashish, hashish oil, or nitrous oxide into the human body, such as:
 - a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes, with or without screens, permanent screens, hashish heads, or punctured metal bowls.
 - b. Water pipes.
 - c. Carburetion tubes and devices.
 - d. Smoking and carburetion masks.
 - e. Roach clips, meaning objects used to hold burning material, such as a cannabis cigarette, that has become too small or too short to be held in the hand.
 - f. Miniature cocaine spoons and cocaine vials.
 - g. Chamber pipes.
 - h. Carburetor pipes.
 - i. Electric pipes.
 - j. Air-driven pipes.
 - k. Chillums.
 - l. Bongs.
 - m. Ice pipes or chillers.
 - n. A cartridge or canister, which means a small metal device used to contain nitrous oxide.
 - o. A charger, sometimes referred to as a “cracker,” which means a small metal or plastic device that contains an interior pin that may be used to expel nitrous oxide from a cartridge or container.

- p. A charging bottle, which means a device that may be used to expel nitrous oxide from a cartridge or canister.
- q. A whip-it, which means a device that may be used to expel nitrous oxide.

Sec. 34-1552. Determination of paraphernalia.

In determining whether an object is drug paraphernalia, the hearing examiner, 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 Lee Plan address development as it relates to the preservation, protection, enhancement, and restoration of the ~~coastal and inland~~ natural resources of the town county.

- (1) Coastal resources including: ~~The coastal zone is of special concern. The coastal zone includes but is not limited to the following natural systems:~~
 - 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: ~~areas of concern which may require special regulations are:~~
 - a. Wetlands as defined in this code. ~~Resource protection areas, as defined ch. 14, article IV, pertaining to wetlands protection.~~

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, ~~of the state game and fresh water fish commission~~, as periodically updated.

~~c. Areas which have significant impact upon the quality of groundwater and receiving waters:~~

~~d. Transition zones, which are lands that may be seasonally inundated for periods of from one to three months as indicated by water marks, and do not have depressional soils and are characterized by a mixture of plant species typical of uplands and wetlands:~~

~~c.~~ e. Significant Areas of rare and unique upland habitats (RU) as indicated in the 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 resource protection or transition zone areas on the future land use ~~plan~~ 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 county 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 resource protection and transitional zones shall be prohibited.

Sec. 34-1575. Coastal zones.

(a) Development, other than minor structures, is prohibited shall not be allowed seaward of the coastal construction control line as established by the state department of environmental protection, as such line existed in 1988. This line has been incorporated into the future land use map of the Fort Myers Beach Comprehensive Plan as the landward boundary of the beachfront Recreation category (see also Policy 5-D-1.v), and as the landward boundary of the EC zoning district (see § 34-652).

(b) For purposes of this section, minor structures mean:

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

(c) 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.

~~(b) Development within the coastal zone must be compatible with protection of natural systems and in accordance with applicable coastal construction codes.~~

~~(d) (e) 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.~~

- ~~(e) (f) No development will be permitted which:~~
- ~~(1) Could restrict, impede, impound or otherwise interfere with tidal flow or drainage in coastal zone waters; or~~
 - ~~(2) 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. Islands: *[deleted in its entirety]*

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.

Sec. 34-1578. Floodplains: *[deleted in its entirety]*

Secs. 34-15789--34-1610. Reserved.

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

Sec. 34-1611. Purpose of division.

The purpose of this division is to set forth the development regulations for uses defined in § 34-2 as essential services, and essential service equipment, and essential service buildings, facilities group I (§ 34-622(c)(13)).

Sec. 34-1612. Where permitted uses.

(a) All buildings or structures classified as essential services, as defined in § 34-2, or as essential service facilities group I (§ 34-622(c)(13)), are permitted by right as shown in Table 34-1 in all zoning districts when necessary for the day-to-day operation of the service, subject to the requirements set forth in this division.

(b) New or expanded essential service equipment, as defined in § 34-2, is permitted by right as shown in Table 34-1 when necessary for the day-to-day operation of the service, subject to the requirements set forth in this division.

(c) New or expanded essential service buildings, as defined in § 34-2, are permitted by special exception as shown in Table 34-1 if the building(s) are sited, constructed, and maintained to appear as a conventional building that would be permitted in the site's zoning district. All other new or expanded essential service buildings can be permitted only through approval of a suitable planned development zoning district (see § 34-620(d)).

Sec. 34-1613. Reserved. ~~Setbacks: [deleted in its entirety]~~

Sec. 34-1614. Height of structures in visibility triangle.

No portion of any building or structure regulated by this division which exceeds two three feet in height shall be permitted within the visibility triangle set forth in § 34-3131, pertaining to vehicle visibility.

Sec. 34-1615. Maximum number of structures per residential block.

Not more than one structure or group of structures which collectively regulated by this division exceeding 150 cubic feet in volume shall be permitted on the same side of a street within any residential block, unless a minimum separation of four lot widths is observed between the structures.

Sec. 34-1616. Screening and buffering. Safety requirements:

~~All facilities regulated by this division shall comply with the safety requirements of the National Electrical Safety Code.~~

(a) Structures or equipment (excluding transmission poles) exceeding 3 feet in height, or which individually or collectively on the same parcel exceed 27 cubic feet in volume, must be of neutral, non-glare color or finish so as to make them as visually unobtrusive as possible.

(b) Structures or equipment (excluding transmission poles) exceeding 3 feet in height, or which individually or collectively on the same parcel exceed 80 cubic feet in volume, must be of neutral, non-glare color or finish and be shielded on all sides by shrubs at least 3 feet high at time of planting consistent with the requirements of § 10-420.

Sec. 34-1617. Exemptions from property development regulations.

~~Facilities classified as Essential services or essential service equipment facilities group I shall be exempt from the property development regulations which set forth minimum lot size, area, and dimensions, and setbacks.~~

Secs. 34-1618--34-1650. Reserved.

DIVISION 15. EXCAVATIONS ACTIVITIES

Subdivision I. Generally

Sec. 34-1651. Required approvals.

(a) Excavation for mining purposes. [deleted in its entirety]

(b) Excavations for purpose of water retention:

~~(1)~~ No manmade water detention or retention bodies shall be commenced prior to receiving approval in accordance with the provisions of ch. 10. A certificate to dig shall be obtained prior to receiving ~~the granting of~~ approval to excavate ~~for all~~ properties located within Level 1 or Level 2 zones of archaeological sensitivity pursuant to ch. 22.

~~(2)~~ This subsection shall not apply to water retention excavations one acre or less in area for bona fide agricultural purposes, or for maintenance and cleaning of existing manmade water bodies.

(c) Excavations for purpose of oil or gas exploration. [deleted in its entirety]

Secs. 34-1652--34-1710 +670. Reserved.

*Subdivision II. Mining
[deleted in its entirety]*

**DIVISION 16. RESERVED
FARM PRODUCE STANDS, U-PICK
OPERATIONS, ROADSIDE STANDS AND
PORTABLE KIOSKS
[deleted in its entirety]**

Secs. 34-1711~~8~~--34-1740. Reserved.

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

Sec. 34-1741. Applicability of division.

This division shall apply to all fences, walls, gatehouses; and entrance gates which are not specifically exempted in this division. This division shall not apply to seawalls (see ch. 26 § 34-1863 for regulations on seawalls).

Sec. 34-1742. Design and construction of fences and walls. Building permit:

(a) **Building permits required.** Except as provided in subsection (b) of this section or as may be specifically provided elsewhere in this chapter, All fences and walls that are over 25 inches in height shall comply with established building permit procedures.

(b) Exceptions are as follows:

- (1) Fences or walls less than 25 inches in height.
- (2) Fences used for bona fide agricultural purposes.

(b) **Design.** All fences and walls on each property must have reasonably uniform or complementary materials and design. Figure 34-27 shows several recommended designs for fences and walls.

(c) **Materials.** Fences and walls must be constructed of traditional building materials including brick, stone, stucco over concrete block, finished concrete, metal, vinyl, wood (natural, stained, or painted), and composite products manufactured specifically for fences and walls. Non-traditional fence materials such as tires, mufflers, hubcaps are prohibited. Chain link and other wire fences are not permitted in front yards (the area between a street right-of-way or easement and the minimum required street setback or build-to line).

(d) **Finished sides.** Fences and walls must be constructed to present a finished side to adjoining lots and any abutting rights-of-way. Where there is an existing fence, wall, or continuous landscape hedge on the adjoining parcel, the director may waive this provision administratively.

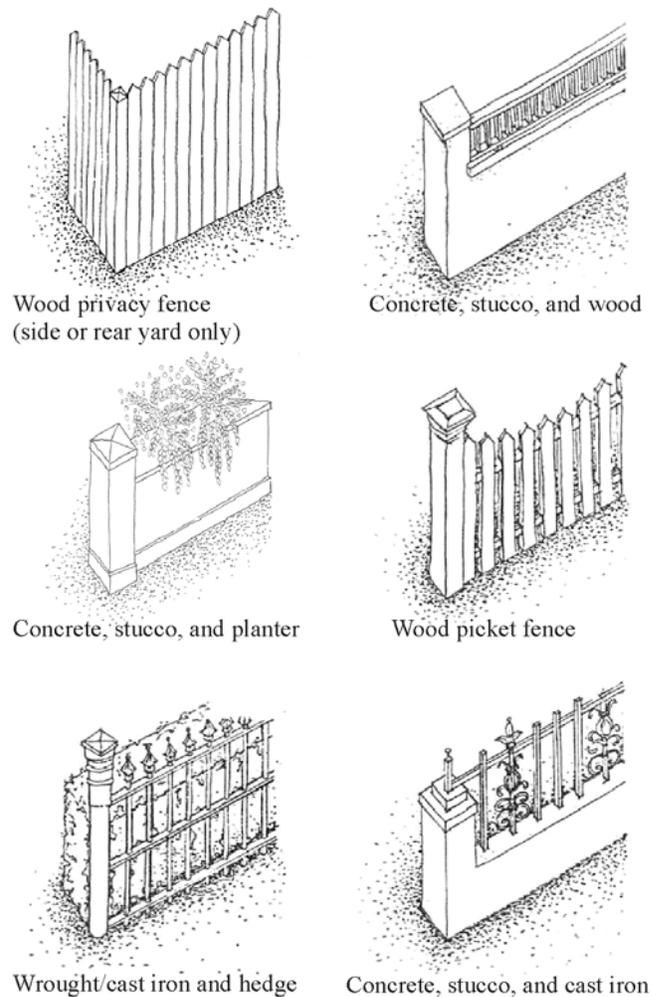


Figure 34-27

(e) **Maintenance.** After construction, fences and walls must be maintained with all original components and they must remain substantially vertical to serve their functions and aesthetic purposes. Structural integrity must not be compromised to the point that the fence would present a danger of flight or destruction during high winds.

Sec. 34-1743. Construction of fences:

(a) All fences shall be of sound construction and not detract from the surrounding area:

(f) **Dangerous fences.** (b) No barbed wire, spire tips, sharp objects, or electrically charged fences shall be erected except that a fence 72 inches high with three strands of barbed wire on top of the fence with six-inch spacing between the strands of barbed wire may be required or approved by the director around structures or equipment of potential hazard

to residents or passersby not otherwise protected. However, chain link and other non-decorative wire fences may not be used in front yards (the area between a street right-of-way or easement and the minimum required street setback or build-to line) on a parcel which is located in or within 100 feet of any residential area or residential zoning district under separate ownership, provided that the parcel is not already separated from the residential area or residential zoning district by a commercial or industrial zoned property or by an intervening street right-of-way or easement over 25 feet in width. This shall not be interpreted to mean that bona fide agricultural uses cannot use barbed wire or electrically charged fences to control livestock when located in districts permitting the raising, keeping or breeding of livestock. Also, this subsection shall not prohibit the use of barbed wire for temporary security fences around construction materials or equipment in conjunction with an active construction project.

Sec. 34-1743. Reserved.

Sec. 34-1744. Location and height of fences and walls.

(a) **Setbacks.** Except as may be specifically permitted or required by other sections of this chapter or chapter 10, no fence or wall, excluding seawalls, shall be erected, placed, or maintained:

- (1) Within Closer than five feet to any street right-of-way or street easement.
- (2) Closer to the Gulf of Mexico than permitted by ch. 6, article III.
- (3) Closer than five feet to the mean high-water line along natural water bodies, including canals created from sovereign lands, except that, where the canal is seawalled, the fence may be built immediately landward or on top of the seawall.

(b) **Height.** The maximum height for fences and walls, measured from the existing elevation of the abutting property, is illustrated in Figure 34-28 and described as follows: Except as may be specifically provided for elsewhere in this chapter, fences and walls may be erected, placed and maintained along any property line or on any residentially zoned property provided:

- (1) **Front yards.** In residential areas, Any fence or wall located in a front yard (between a street right-of-way or easement and the

minimum required street setback or build-to line) shall not exceed 42 inches three feet in height, except where a lesser height is

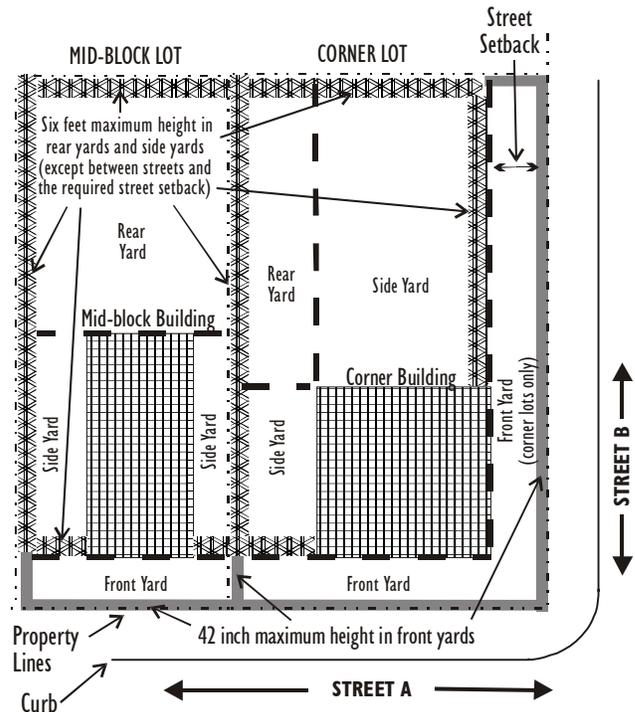


Figure 34-28

required to meet that fences may be increased to a maximum height of four feet provided that such fence is of open-mesh screening and does not interfere with vehicle visibility requirements (see § 34-3131) at traffic access points.

- (2) A residential project fence or wall may be increased to a maximum height of eight feet around the perimeter of the project upon a finding by the county engineer that there is no interference with vehicle visibility requirements (see § 34-3131) at traffic access points:

(2) **Side and rear yards.** (3) Except for a residential project fence, Any fence or wall located in a side or rear yard shall not exceed shall be limited to a maximum height of six feet in height, in the rear and side yards of residential areas. A fence within 25 feet of a body of water shall be of open mesh screening above a height of 3 1/2 feet.

a. For purposes of this requirement, the side yard does not include any shall be considered as that portion of the lot between a street and extending from the

minimum required street setback or build-to line to the rear lot line.

- b. Where a side or rear yard slopes downward from the street, a fence may be up to seven feet above the elevation of the abutting property to avoid unnecessary variations in the height of a fence.
- (3) **Near water bodies.** Within 25 feet of a body of water, those portions of a fence that exceed 42 inches in height cannot be more than 25% opaque (as viewed from perpendicular to the fence).
- (4) **Exceptions:**
- a. Architectural features. Fences and walls for residential project fences may include occasional architectural features such as columns, posts, gates, and arbors, cupolas, fountains, parapets, etc., at a height not exceeding 84 inches twice the fence or wall height. All such features must be visually compatible with the fence or wall design project and abutting properties.
- b. Administrative setback variances. Under certain limited circumstances, administrative variances can be granted to minimum setbacks as provided in § 34-268.
- b. Enclosure of high-voltage transformers. See § 34-1748.

(c) Determination of grade. For residential fences, other than residential project fences, grade shall be determined as the existing elevation of the lot. However, any fill placed on the lot which exceeds the average grade of the street shall be included in determining the maximum fence height.

Sec. 34-1745. Buffer for commercial and industrial uses.

All Some land commercial and industrial uses are required to shall provide a perimeter buffers in accordance with § 10-416, as required in ch. 10.

Sec. 34-1746. Reserved. Visibility at entrances and exits: *[deleted in its entirety]*

Sec. 34-1747. Construction in easements.

Nothing in this division shall be construed so as to permit the construction or placing of any construction within a public or private easement which prohibits such construction or placement.

Sec. 34-1748. Enclosure of high-voltage transformers and other utility equipment.

(a) All substation high-voltage transformers and any other utility structures or equipment of potential hazard to residents or passersby not otherwise protected shall be completely enclosed by a chainlink fence not less than eight feet in height. On top of the fence shall be three strands of barbed wire with a six-inch spacing in between each strand. However, chain link and other non-decorative wire fences may not be used in front yards (the area between a street right-of-way or easement and the minimum required street setback or build-to line).

(b) Distribution transformers shall comply with National Electrical Safety Code requirements.

Sec. 34-1749. Entrance gates and gatehouses.

(a) Entrance gates are not permitted on public or private streets. Decorative entrance features that do not restrict access may be placed along public or private streets provided permission is granted by the town and others entity with authority over the right-of-way or easement.

(b) Entrance gates may be placed on private property to control access to a parking lot that lawfully rents parking spaces to the general public. Adequate stacking space must be provided in front of the gate to avoid interference with traffic flow on adjoining streets. The following regulations apply to any entrance gate or gatehouse which controls access to three or more dwelling units or recreational vehicles, or any commercial, industrial or recreational facility:

- (1) An entrance gate or gatehouse not approved as part of a planned development is permitted by right provided it is not located on a publicly dedicated street or right-of-way, and:
- a. The gate or gatehouse is located a minimum of 100 feet back from any public street right-of-way or easement; or
- b. The gate or gatehouse is designed in such a manner that a minimum of five vehicles or one vehicle per dwelling unit, whichever is less, can pull safely off the public street while waiting to enter; or
- c. The development provides a deceleration-turning lane adjacent to the existing pavement for a distance of 300 feet leading into the access drive or road unless

otherwise required by the department of transportation and engineering services:

(c) ~~(2)~~ Access for emergency vehicles must be provided to any existing entrance gates on private streets.

(1) ~~a.~~ Any security gate or similar device that is not manned 24 hours per day must be equipped with an override mechanism acceptable to the local emergency services agencies or an override switch installed in a glass-covered box for the use of emergency vehicles.

(2) ~~b.~~ If an emergency necessitates the breaking of an entrance gate, the cost of repairing the gate and the emergency vehicle if applicable, will be the responsibility of the owner or operator of the gate.

(3) ~~Extension of fences or walls to an entrance gate or gatehouse:~~

~~a. A fence or wall may be extended into the required setback where it abuts an entrance gate or gatehouse, provided vehicle visibility requirements (see § 34-3131) are met.~~

~~Sec. 34-1750. Walls and fences along limited access or controlled access streets. [deleted in its entirety]~~

~~Secs. 34-1750+--34-1770. Reserved.~~

DIVISION 18. HOME OCCUPATIONS; LIVE/WORK AND WORK/LIVE DWELLINGS

Sec. 34-1771. Intent of division.

It is the intent of this division to allow the operation of:

(1) Home occupations, by right, in all districts permitting dwelling units, but to regulate them so that the average neighbor, under normal circumstances, will not be disturbed or inconvenienced by them; and

(2) Live/work and work/live dwelling units, by right or by special exception as specified in Tables 34-1 and 34-2 in § 34-622, but to regulate them so that their mixed-use character is compatible with their neighborhood and is maintained over time.

Sec. 34-1772. Home occupations. Permitted uses; operation:

(a) Any use of a residence for a home occupation as defined by this chapter shall be clearly incidental and subordinate to its use for residential purposes by its occupants and thus is considered to be a residential accessory use and is permitted in accordance with the regulations in this section in all zoning districts except EC.

(b) Such use shall be conducted entirely within the dwelling unit or customary accessory building.

(c) No employees or contractors other than members of the household immediate family residing in the dwelling shall be permitted to work at the residence, but may be employed to work elsewhere provided that the employees do not regularly come to the residence for equipment, vehicles, or supplies employed in the home occupation. Under special conditions, such as a handicapped person or retiree needing clerical assistance, the director may grant administrative approval to allow one employee who is not a resident of the home to work at the residence.

(d) There shall be no exterior indication that the dwelling is being used for any purpose other than a residence, except that one nonilluminated nameplate, not exceeding one square foot (144 square inches) in area, may be attached to the building on or next to the entrance.

(e) No commodities, stores, or display of products on the premises shall be visible from the street or surrounding residential area, and no outdoor display or storage of materials, goods, supplies, or equipment used in the home occupation shall be permitted on the premises. Vehicles and trailers for use by the business may not be parked or stored on the premises unless completely enclosed within a building.

(f) No equipment shall be used which creates noise, vibration, glare, fumes, or odors, or electrical interference outside the dwelling unit that are objectionable to the normal senses. No equipment or process shall be used which creates visual or audible interference in any radio or television receiver off the premises or causes fluctuations in line voltage off the premises.

~~(g) A home occupation shall not No use permitted by this division shall generate greater volumes of traffic than would otherwise be expected by normal residential uses. (h), and a home occupation shall not No use that attracts more than an average of ten total visits per week from customers, clients, and suppliers, to the dwelling unit may be permitted under this section.~~

Sec. 34-1773. Live/work dwelling units.

(a) A live/work dwelling unit is defined by this chapter as a single dwelling unit in a detached building, or in a multifamily or mixed-use building, that also accommodates limited commercial uses within the dwelling unit.

(b) The predominate use of a live/work unit is residential, and commercial activity is a secondary use. The quiet enjoyment expectations of residential neighbors takes precedence over the work needs of a live/work unit.

(c) Commercial uses in live/work units must be conducted entirely within the unit or customary residential accessory building.

(d) Up to two employees or contractors other than members of the immediate family residing in the dwelling may work in a live/work unit.

(e) Ground signs and pole signs are not permitted. Signage for live/work units is limited to up to four square feet of nonilluminated nameplates or blade signs that are attached to the building on or next to the entrance.

(f) No commodities, stores, or display of products on the premises shall be visible from the street or surrounding residential area, and no outdoor display or storage of materials, goods, supplies, or equipment used in the live/work unit shall be permitted on the premises.

(g) Required parking spaces shall be in accordance with the residential parking standards in § 34-2020, plus 1 space per employee.

(h) No equipment shall be used which creates noise, vibration, glare, fumes, or odors outside the dwelling unit that are objectionable to the normal senses.

(i) Commercial uses in live/work units are limited to *Office, general or medical* as defined by this chapter (see § 34-2). However, due to the residential nature of live/work units, visits from customers, clients, and suppliers shall average no more than a total of thirty visits per week.

Sec. 34-1774. Work/live dwelling units.

(a) A work/live dwelling unit is defined by this chapter as a single dwelling unit in a detached building, or in a multifamily, mixed-use, or commercial building, where the predominate use of the unit is commercial.

(b) Because the predominate use of a work/live unit is commercial, customary commercial impacts may take precedence over the quiet enjoyment expectations of residential neighbors.

(c) Commercial uses in work/live units must be conducted entirely within the unit or customary accessory building.

(d) Signs shall be in accordance with the standards for business signs in ch. 30.

(e) Required parking spaces shall be in accordance with the commercial parking standards in § 34-2020, plus 2 spaces for the dwelling unit.

(f) Commercial uses in work/live units are limited to *Office, general or medical; Personal services; Restaurant; and Retail store, small*, as defined by this chapter (see § 34-2).

Secs. 34-1775--34-1800. Reserved.

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

Sec. 34-1801. Definitions.

(a) 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.

(b) 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.

(c) For the purposes of this division, a Hotel/motel is defined as means a building, or group of buildings on the same premises and under single control, consisting of ten or more guest units sleeping rooms 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 or tenants. Hotels/motels are further categorized as efficiency or business.

(d) 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.

(e) Hotels/motels and bed-and-breakfast inns must be registered accordingly with the Florida department of business and professional regulation revenue as a bona fide hotel/motel operation and will be are required to pay the levied tourist development tax as promulgated by the county. Hotels/motels and bed-and-breakfast inns which are not registered with the department of revenue or hotels/motels do not paying the tourist tax will be subject to the density limitations and property development regulations for multiple family buildings.

- ~~(1) Efficiency hotel [deleted in its entirety]~~
- ~~(2) Business hotel [deleted in its entirety]~~
- ~~(3) Kitchen facilities [deleted in its entirety]~~

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).

(5) Minimum floor area per unit	120 sq. ft.	120 sq. ft.
(6) Maximum floor area per unit	350 sq. ft.	550 sq. ft.

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

Sec. 34-1803. Allowable intensity. Property development regulations.

Property development regulations for uses subject to this division are as follows:

	Business Efficiency	
(1) Minimum lot dimensions:		
a: Area	2 acres	20,000 s.f.
b: Lot width	150 feet	100 feet
c: Lot depth	200 feet	100 feet
(2) Setbacks:		
a: Street	In accordance with section 34-2192	
b: Water body	In accordance with section 34-2194	
c: Side and rear yards	20 feet	
(4) Rental units permitted		
a: Density multiplier for hotel/motel rental units (compared to dwelling units allowed under the Lee Plan future land use map)	1.0 units	1.0 units
b: Any proposed hotel/motel or expansion which will result in more than 50 rental units will be permitted only as a planned development.	equal one dwelling unit	equal one dwelling unit
c: A hotel/motel development submitted for approval as a planned development may exceed the equivalency factors in (4)a., if approved through the deviation process, provided all other aspects of the development (height, traffic, intensity of use, etc.) are found to be compatible with the surrounding area.		
d: Where a development proposes to have both types of rental units, the number of units will be prorated.		

(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

(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 nonconforming hotel/motel can be replaced 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.

Sec. 34-1807.3. Conversions.

Any hotel or motel proposing to convert to timeshare or dwelling units, or any residential building proposing to convert to timeshare or motel/hotel units, will be required to comply with density limitations of the Fort Myers Beach Comprehensive Lee Plan, all applicable parking regulations, and all other regulations of this code including equivalency factors that affect chapter affecting the proposed use.

~~Sec. 34-1804. Subordinate uses:~~

~~For regulations pertaining to subordinate uses, refer to § 34-3021.~~

~~Sec. 34-1805. Density limitation for Captiva Island.
[deleted in its entirety]~~

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

DIVISION 20. RESERVED
~~JUNK, SCRAP OR SALVAGE YARDS, DUMPS
AND SANITARY LANDFILLS
[deleted in its entirety]~~

Secs. 34-1831--34-1860. Reserved.

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

**Cross reference(s)--Marina design, § 10-257; marine facilities and structures generally, ch. 26; marine sanitation, § 26-111 et seq. marine-oriented districts, § 34-871 et seq.*

Sec. 34-1861. Boats, floating structures, floating equipment, and live-aboards.

(a) No boat, floating structure, or other floating equipment shall be moored to mangroves except for emergency purposes.

(b) No person shall discharge or permit or control or command to discharge any raw sewage, garbage, trash, or other waste materials into the waters of the town county.

(c) No boats, floating structures, or other floating equipment designed to accommodate one or more living units, or designed or used for retail sales, shall be permitted to anchor, moor, tie up, or otherwise be attached to any wharf, pier, or other structure emanating from real property or to real property itself within the town unincorporated areas of the county except in conformity with the regulations contained in this chapter and all other applicable town county ordinances.

(d) Except as provided in this subsection, no person shall live aboard any vessel under his command or control, which is moored to real property or to any dock, pier, seawall, or other structure attached to real property in the town unincorporated area of the county, except at a marina (see § 34-1862) which is properly zoned for such use under the provisions of this chapter. The provisions of this subsection shall not apply to:

- (1) Live-aboard vessels equipped with an approved discharge device that is listed by the United States Coast Guard as an approved marine sanitation device, and occupied by a licensed captain and his immediate family;

- (2) Commercial vessels, such as commercial fishing boats, tugs, barges, salvage vessels, passenger vessels, or cargo vessels, when used in commerce and navigation; or
- (3) The mooring of any vessel necessitated by an emergency.
- (4) Live-aboard vessels at a marina which is properly zoned for such use (see § 26-116).
- (5) Live-aboard vessels lawfully occupying a berth in a public mooring field managed by the town, provided the vessel is in compliance with all regulations.

The exceptions granted by subsections (d)(1) and (2) of this section are not intended to apply to personal fishing boats used for recreation or to fishermen with marine products licenses.

Sec. 34-1862. Reserved. Marinas, fish houses, and docking facilities: *[deleted in its entirety]*

Sec. 34-1863. Construction and maintenance of docks, seawalls, and other structures designed for use on or adjacent to waterways.

Construction, placement, erection, and maintenance of docks, mooring piles, seawalls, watercraft landing facilities, and other structures designed for use on or adjacent to waterways shall be in compliance with established building permit procedures and with ch. 26, article II. See also division 2 of this article regarding accessory uses, buildings, and structures.

Secs. 34-1864--34-1890. Reserved.

DIVISION 22. RESERVED
FARM LABOR HOUSING
[deleted in its entirety]

Secs. 34-1891~~5~~--34-1920. Reserved.

DIVISION 23. MOBILE HOMES

Sec. 34-1921. Mobile home subdivisions.

(a) New or expanded mobile home subdivisions are not allowed in the Town of Fort Myers Beach.

(b) A mobile home cannot be substantially improved or placed on any lot in any subdivision except:

- (1) to replace an existing mobile home, provided that:
 - a. a mobile home is in lawful existence on that lot and the lot has not been vacant for more than nine months,
 - b. the replacement or substantially improved mobile home is elevated so that its lowest floor is at or above the base flood elevation, in accordance with § 6-472(2)a. and
 - c. the move-on permit requirements of § 34-1923 are met; or
- (2) on a temporary basis in accordance with § 34-3046.

Sec. 34-1922. Mobile home parks.

(a) New or expanded mobile home parks are not allowed in the Town of Fort Myers Beach.

(b) A mobile home cannot be substantially improved or placed in any existing mobile home park except in some parts of the VILLAGE zoning district in accordance with the regulations set forth in subdivision III of division 5 of article III of this chapter, and in accordance with the elevation requirements of § 6-472(2)b. and the move-on permit requirements of § 34-1923.

Sec. 34-1923†. Move-on permit requirements.

(a) This section applies to mobile homes, and also to park trailers as that term is defined in § 34-694, in those zoning districts where either are permitted.

(b) No mobile home shall be relocated or moved onto any property without first obtaining a move-on permit from the ~~director, division of codes and building services:~~

(c) ~~Sec. 34-1922. Tiedowns:~~ All mobile homes shall be tied down in accordance with local, state, and federal and insurance regulations, including § 6-471(2) of this code and F.S. § 320.8325.

(d) ~~Sec. 34-1923. Skirting:~~ All mobile homes shall have removable skirting around the entire perimeter.

- (1) Skirting shall be of a durable material such as decorative block, concrete block, fiberglass, aluminum or vegetation. Junk doors or other scrap material is prohibited.
- (2) Skirting shall be maintained at all times by the resident.

Secs. 34-1924--34-1950. Reserved.

~~DIVISION 24:
MODEL HOMES, UNITS
AND DISPLAY CENTERS
[deleted in its entirety]~~

DIVISION 24. MOVING OF BUILDINGS

Sec. 34-1951~~209~~. Building relocation permit. *[moved from § 34-209]*

(a) *Compliance with applicable regulations.*
When a building is moved to any location within the town, the building or part thereof shall be made to conform to applicable provisions of the Florida Building Code and to all the provisions of this chapter within 90 days of the date of issuance of the moving permit.

(b) *Contents of application.* Any person desiring to relocate or move a building must first file with the director a written application on an official form. The application must include the following information furnished by the applicant and must be accompanied by the required application fee:

- (1) The present use of the building.
- (2) The proposed use of the building.
- (3) The building's present location and proposed new location by STRAP number, as well as by street numbers.
- (4) Certified survey of the proposed site with ground elevations, flood zone, and required elevation.
- (5) Plot plan showing lot dimensions, setbacks, location of existing structures, and location of building drawn to scale no more than ½-inch equals one inch and no less than one inch equals 50 feet. The plot plan should depict the roof overhang as well as the foundation.

- (6) Construction details, drawn to a scale of no larger than one-half inch equals one foot and no smaller than one-eighth inch equals one foot, including the following:
 - a. Foundation layout with connection details.
 - b. Floor plan, existing and proposed.
 - c. Mechanical plans, including air conditioning, electric system, and plumbing plans.
 - d. Elevations, front, side, and rear.
 - e. Flood elevations for the proposed new location shall be shown on the foundation layout and elevations.
- (7) Current termite inspection by licensed pest controller.
- (8) Photographs showing all sides of the building and the site where the building is proposed to be located.
- (9) Proof of notice to all owners of property abutting or across the street from the site where the building is proposed to be located.
- (10) A detailed written statement describing all proposed exterior alterations to the building after it is relocated. At a minimum, these details shall include methods and materials, and construction details as appropriate, regarding:
 - a. The height and method of elevating the building above grade;
 - b. Any proposed enclosure of space below the lowest habitable floor;
 - c. Any changes to exterior doors, windows, siding, awnings, and shutters;
 - d. Any porches or decks to be built, modified, or eliminated; and
 - e. Any changes to the roof other than routine maintenance or replacement with similar materials.

(c) **Criteria for suitability of building to proposed site.** The town manager shall determine whether the building to be relocated is suitable for its proposed site under one of the following categories:

- (1) **Historic buildings.** For buildings that, after relocation, would be eligible for historic designation pursuant to § 22-204(a)-(d):
 - a. Is the proposed use of the building permitted by the zoning district?
 - b. Has the property owner consented to historic designation of the site after the building is relocated?

- c. Has the property owner proposed improvements that restore the building while retaining its essential historic characteristics, consistent with the criteria in § 22-101-103?

- (2) **Other buildings.** For all other buildings:
 - a. Is the proposed use of the building permitted by the zoning district and similar to existing uses in the neighborhood?
 - b. Is the building reasonably compatible with the neighborhood when considering factors such as its size, age, and condition? If not, has the property owner proposed sufficient renovations or improvements to the building to achieve compatibility?

The town manager may place reasonable conditions on suitability decisions to bring applications up to these criteria or to ensure the performance of proposed improvements or renovations. Suitability decisions pursuant to this subsection are administrative decisions which may be appealed in accordance with § 34-86, article II of this chapter.

(d) **Inspection of building.** The director will have the building inspected to determine:

- (1) If the building can be brought into compliance in all respects with this chapter and other town regulations pertaining to the area to which the building is to be moved.
- (2) If the building is structurally sound and either complies with applicable portions of the Florida Building Code and other codes adopted by the town or can be brought into compliance with such codes.

(e) **Rejection of application.** The director must reject any application if:

- (1) The building fails to meet the suitability criteria in subsection (c), as determined by the town manager, or the inspection criteria in subsection (d) of this section;
- (2) In the opinion of the director, the moving of any building will cause serious injury to persons or property;
- (3) The building to be moved has deteriorated due to fire or other element to more than 50 percent of its market value, as that term is defined in § 6-405; or
- (4) The moving of the building will violate any of the requirements of the Florida Building Code, this code or other applicable town regulations.

Except for decisions as to the Florida Building Code, such decisions are administrative decisions which may be appealed in accordance with § 34-86, § 34-145(a) article II of this chapter.

(f) *Approval of building relocation permit.*

- (1) Upon approval of the application for building relocation, a licensed building relocation contractor representing the applicant must:
 - a. Apply for and receive all required permits from the departments of transportation of the county or state, if county or state roads will be used during the relocation;
 - b. Pay the required fees and obtain the building relocation permit and appropriate sub-permits.
- (2) Any building being moved for which a permit was granted may not remain in or on the streets for more than 24 48 hours unless an extension of an additional 24 hours is approved by the town manager.

Secs. 34-1952--34-1980. Reserved.

**DIVISION 25.
OFF-STREET LOADING AREAS**

Sec. 34-1981. Applicability of division.

(a) The off-street loading requirements of this division shall apply to commercial, ~~industrial~~, and other nonresidential uses.

(b) *[moved here from § 34-1145(f)(2)]*
Establishments are encouraged to schedule deliveries before or after their normal business hours. Deliveries that are made during normal hours may not obstruct parking aisles or parking entrances.

Sec. 34-1982. Access.

(a) Street access to off-street loading areas shall observe the same provisions as set forth for ~~off-street~~ parking lots in § 34-2013.

(b) Except as provided in § 34-1987, off-street loading areas shall be spatially or physically separated from ~~off-street~~ parking areas and pedestrian walkways.

~~(c) Service roads shall be a minimum of 12 feet wide for one-way usage and 24 feet for two-way operations.~~

Sec. 34-1983. Lighting, maintenance, and drainage.

Site lighting, maintenance, and drainage required for off-street loading areas shall comply with the provision of §§ 34-2015 and 34-2017.

Sec. 34-1984. Other use of loading areas.

Except as provided in § 34-2019, off-street loading areas shall not be utilized for the sale, repair, dismantling, or servicing of any vehicles or equipment, except on an emergency or temporary basis.

Sec. 34-1985. Screening.

When any off-street loading area is located adjacent to a residential use or zoning district, and is not otherwise entirely visually screened from it at ground level, there shall be provided a continuous visual screen along the lot line abutting the residential use in accordance with division 17 of this article or ch. 10, whichever is the most restrictive.

Sec. 34-1986. Loading area required; loading plan; location of loading area.

(a) All commercial, ~~industrial~~, and other nonresidential uses on sites larger than 1 acre shall be provided with an off-street loading area for receiving and shipment of commodities.

(b) A plan for off-street loading areas shall be provided as part of the site plan submitted in accordance with the regulations and procedures set forth in ch. 10, or, if the development is exempt from ch. 10, then a plan shall be submitted at time of application for a building permit and be reviewed by the director zoning and development review division for consistency with this division and this chapter.

(c) The location of all off-street loading areas shall embody the following provisions:

- (1) The required loading area shall be provided on the same lot or parcel it serves or within 300 feet of that parcel.

- (2) The surfaced portions of all loading areas, excluding driveways, shall observe a 20-foot setback from all right-of-way lines and a ten-foot setback from all property under separate ownership or control.
- (3) Loading spaces shall be so located as not to obstruct or otherwise hinder or endanger the movement of vehicles and pedestrians.
- (4) ~~[moved here from 34-1145(f)(1)] Off-street loading areas shall not be placed between the principal building and a the street right-of-way line. A separate loading area is not required, but when provided, the surfaced portions of loading areas are not required to be set back from side or rear lot lines.~~

Sec. 34-1987. Number of spaces.

- (a) Establishments which normally receive or ship commodities via small panel trucks or vans shall not be required to provide off-street loading areas and may utilize the parking area, provided:
 - (1) Deliveries normally are received before or after normal hours open to the public.
 - (2) No delivery truck remains in the parking lot for more than four hours.
 - (3) Deliveries do not interfere with normal pedestrian or vehicle movements.

(b) Establishments which receive or ship goods via large semitrailer or full trailer trucks shall provide a minimum of one loading space for the first 10,000 square feet of floor area, plus one space for each additional 20,000 square feet of floor area or major fraction thereof.

Secs. 34-1988--34-2010. Reserved.

DIVISION 26. OFF-STREET PARKING

Sec. 34-2011. Types of parking facilities.

Parking facilities in the Town of Fort Myers Beach take a variety of forms, generally classified as follows:

(a) **Single-purpose parking lots.** Single-purpose parking lots are designed to serve individual businesses, condominiums, or shopping centers. Single-purpose parking lots are usually located on the same site as the use they serve and may include parking spaces under a building or in a parking garage.

- (1) Most single-purpose parking lots are considered by this code to be accessory uses of land (§ 34-1171) and thus can be built to serve any permitted principal use on the same parcel of land.
- (2) Some single-purpose parking lots serve two or more non-abutting parcels, as provided in § 34-2018 for joint-use parking lots.
- (3) Surplus spaces in some single-purpose parking lots may be rented to the general public during peak periods, as provided in subsection 34-2019(a).

(b) **Shared parking lots.** Shared parking lots are open to the public, generally for a fee, regardless of the destination of the person parking there. Shared parking lots may be operated as a private business or by a governmental entity, and may include a surface parking lot and/or a parking garage.

- (1) Seasonal shared parking lots may obtain temporary use permits administratively for up to three-year periods as provided in § 34-2022 of this chapter.
- (2) Permanent shared parking lots are considered a principal use of a parcel of land and may be approved in certain zoning districts by special exception.
- (3) Parking garages that operate in whole or part as shared parking lots are also considered a principal use of land and may be approved only through the Commercial Planned Development zoning district (see §§ 34-620(d) and 34-676(e)).

(c) **On-street parking.** Governmental entities sometimes provide on-street parking spaces, usually with parking meters, that are available for use by the public regardless of their destination. On-street

parking is closely related to the functioning of the adjoining street and is provided as a public works project rather than being regulated as a land development activity by this code.

~~Sec. 34-2011. Applicability of division. [moved to 34-2020(a-b)]~~

Sec. 34-2012. Definitions.

For purpose of this division only, certain words or phrases are defined as follows:

~~*Drive-up.* The terms “drive-up” and “drive-through” are synonymous.~~

Employees means the regular working staff, ~~whether~~ paid, volunteer, or otherwise, at maximum strength and in full-time equivalent numbers, necessary to operate, maintain, or service ~~any~~ given facility or use under normal levels of service.

High turnover applies to parking lots where ~~in~~ ~~numerous~~ vehicles are parked for relatively short periods of time ranging from a few minutes to several hours. Customer parking for retail stores, restaurants, bars, offices, commercial or similar establishments is considered to be high turnover.

Low turnover applies to parking where ~~in~~ vehicles are parked for relatively long periods of time, such as employee parking during the day, uses such as beach parking or marina parking where customers typically leave their cars for periods of several hours or more, and ~~or~~ overnight parking in residential developments.

Parking aisle means an accessway within a parking lot which provides direct access to individual parking spaces.

Parking lot means an area of land designed, used, or intended for ~~the~~ parking of five or more vehicles.

Parking lot entrance means the accessway which provides ingress or egress from a street right-of-way or easement to a parking lot.

Parking space means an area of land designed or intended for ~~the~~ parking of one vehicle. Some parking spaces are designated as disabled handicapped spaces or standard spaces, depending on the purpose of the space.

Sec. 34-2013. Access.

~~(a) All parking lots shall be designed so as to permit vehicles exiting the parking lot to enter the street right-of-way or easement in a forward motion. [subject moved to § 34-2015(6)]~~

~~(a)~~ ~~(b)~~ Each parking lot shall have a distinct parking lot entrance. Such entrance shall meet the requirements of ch. 10, as well as the following:

- (1) Minimum width at the property line street for one-way entrances is 10 ~~15~~ feet.
- (2) Minimum width at the property line street for two-way entrances is 20 ~~25~~ feet.
- (3) Maximum width at the property line street is 25 ~~35~~ feet.

The director ~~department of transportation and engineering~~ may determine that high ~~high~~ traffic volumes, truck traffic, or other special circumstances warrant other requirements.

~~(b)~~ ~~(c)~~ Parking lot entrances shall not exceed a six percent grade for 20 feet into any lot or parcel, nor shall a parking lot entrance enter a street right-of-way or easement at an angle of less than 90 degrees unless a lesser angle is approved by the director ~~of transportation and engineering services.~~

Sec. 34-2014. Parking plan.

A parking plan shall be required for all uses, except single-family residence, ~~duplex, and two-family attached and single-family mobile home~~ dwelling units, and shall be submitted for review and approval in accordance with ch. 10. Developments which are not required to be approved in accordance with ~~exempt from~~ chapter 10 shall submit plans to the director zoning and development review division prior to issuance of a building permit. The plan shall accurately designate the required parking spaces, parking aisles, and parking lot entrance, as well as the relation of any ~~the~~ off-street parking facilities to the uses or structures such facilities are designed to serve.

Sec. 34-2015. Location and design generally.

The location and design of all parking lots shall embody the following provisions:

(1) Location of single-purpose parking lots.

Except for parking lots specifically zoned CP or as provided for in § 34-2018, All required Parking spaces that are required to support

specific land uses (see § 34-2020) shall be provided on the same premises and within the same or similar type zoning district as the use which they serve, except in the Downtown zoning district as provided in § 34-676(a). Joint-use parking lots are regulated by § 34-2018.

- (2) **Location of shared parking lots.** Shared parking lots may be constructed as follows:
 - a. Seasonal shared parking lots may obtain temporary use permits administratively for up to three-year periods as provided in § 34-2022 of this chapter. The location and certain design features of seasonal parking lots are regulated by § 34-2022.
 - b. Permanent shared parking lots are considered a principal use of a parcel of land and may be approved in certain zoning districts by special exception.
 - c. Parking garages that operate in whole or part as shared parking lots are also considered a principal use of land and may be approved only through the CPD (commercial planned development) zoning district (see §§ 34-620(d) and 34-676(e))
- (3) **Design.**
 - a. In addition to the requirements set forth in this division, all parking lots shall be designed in accordance with the setback, buffer, landscaping, and drainage, and other requirements set forth in ch. 10.
 - b. **Lighting.** If the parking lot is to be used at night, adequate lighting shall be provided for the driveways, ingress, and egress points, and parking areas of all commercial and industrial uses. Such lighting shall be so arranged and directed as to eliminate glare on any other use, and must comply with applicable sea turtle lighting restrictions in ch. 14.
 - c. **Stacking.** All individual parking spaces shall be accessible at all times from a parking aisle intended to provide access to the space. Stacking of vehicles (one behind the other) shall be permitted only where each dwelling unit has a specific garage or driveway appurtenant to it and in valet parking facilities wherein parking is performed only by employees of the facility.
 - d. **Exiting.** All parking lots spaces shall be provided with sufficient maneuvering room so as to allow an exiting vehicle to leave the parking lot in a forward motion, except where approved by the director under the following conditions:

- 1. The right-of-way is a local street and:
 - a- there is insufficient room on the parcel for vehicles to turn and exit in a forward direction, and
 - b- the number of parking spaces backing out are no more than the minimum required by this division to serve existing buildings; or
- b. The parking spaces are in the “Pedestrian Commercial” category of the comprehensive plan and do not unduly interfere with critical congested road segments or the normal usage of existing or proposed sidewalks.
- (6) **End spaces.** Parking lots utilizing 90° parking with dead-end aisles shall provide a turning bay for those spaces at the end of the aisle.
- (7) ~~c.~~ **Pedestrian system.** In any parking lot where more than one tier of parking spaces is to be developed, walkways ~~a pedestrian system~~ shall be provided which accommodates safe and convenient pedestrian movement from vehicles to building entrances and other walking destinations. If these walkways cross major parking aisles, the walkway shall be clearly differentiated from the surface of the aisle.

Sec. 34-2016. Dimensional requirements; delineation of parking spaces.

In addition to satisfying all other provisions of this division, the arrangement and spacing of off-street parking lots shall conform to the following requirements:

(1) ~~3)~~ **Minimum dimensional requirements.**

~~Minimum aisle widths.~~ Minimum aisle widths and parking space dimensions shall be as follows:

Angle of Parking	AISLE WIDTHS		PARKING SPACES	
	One-Way (feet)	Two-Way (feet)	Width (feet)	Length (feet)
Parallel	10 ±2	20	7	20
30°	±2	±2		
45° - 50°	11 ±2	20 ±2	8.5	
55° - 60°	14 ±8	22 ±4	8.5	
70° - 75°	17	22	8.5	
90°	20 ±2	22 ±4	8.5	18

(2) **Effect of minimum dimensions on size of parking lots.** The following table illustrates the effect of the minimum aisle and parking space dimensions on the size of parking lots, keyed to the dimensions indicated in Figure 34-29.

<u>DIMENSION (in feet):</u>		<u>45°</u>	<u>60°</u>	<u>75°</u>	<u>90°</u>
<u>Stall width</u>	A	<u>8.5</u>	<u>8.5</u>	<u>8.5</u>	<u>8.5</u>
<u>Stall width (parallel to aisle)</u>	B	<u>12.0</u>	<u>9.8</u>	<u>8.8</u>	<u>8.5</u>
<u>Aisle width (one-way travel)</u>	C	<u>11.0</u>	<u>14.0</u>	<u>17.0</u>	<u>20.0</u>
<u>Stall depth (interlock)</u>	D	<u>15.3</u>	<u>17.5</u>	<u>18.6</u>	<u>18.0</u>
<u>Stall depth (to wall)</u>	E	<u>17.5</u>	<u>19.1</u>	<u>19.4</u>	<u>18.0</u>
<u>Module (interlocking)</u>	F	<u>41.6</u>	<u>49.0</u>	<u>54.2</u>	<u>56.0</u>
<u>Module (wall to interlock)</u>	G	<u>43.9</u>	<u>50.6</u>	<u>55.0</u>	<u>56.0</u>
<u>Module (wall to wall)</u>		<u>46.0</u>	<u>52.2</u>	<u>55.8</u>	<u>56.0</u>

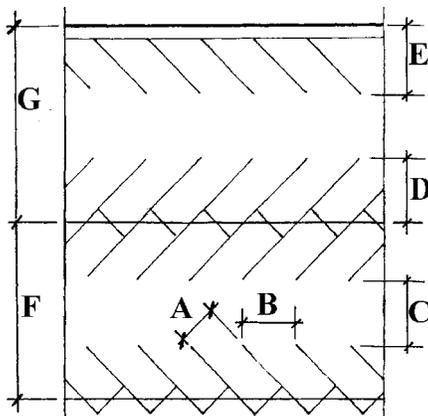


Figure 34-29

(3) **Disabled Parking space dimensions.**

Individual disabled parking space dimensions shall be as follows: a. Handicapped parking (all): 12 feet by 18 feet. Parking access aisles must be no less than 5 feet wide and must be part of an accessible route to the building or facility entrance. These However, the individual parking space dimensions do not preclude guarantee compliance with the Americans with Disabilities Act (ADA) of 1990.

- b. High and low turnover parking lots:
1. 90° parking: 9 feet by 18 feet.
 2. 30°, 45° or 60° parking: 8 1/2 feet by 18 feet.
 3. Parallel parking: 7 feet by 22 feet.

(4) **Delineation of spaces.**

- a. Paved parking lots.
1. Parking spaces shall be delineated by all-weather painted lines, not less than

four inches in width, centered on the dividing line between spaces.

2. Parking spaces which do not abut a curb, fence, wall, or other structure shall be provided with a parking block set two feet from the end of the parking space. Parking spaces for the disabled must be prominently outlined with blue paint, and must be repainted when necessary to be clearly distinguishable as a parking space designated for persons who have disabilities. Signs erected after October 1, 1996 must indicate the penalty for illegal use of these spaces.

b. Unpaved parking lots.

1. Perimeter parking spaces in unpaved parking lots shall be delineated by placing a parking block ~~three~~ two feet from the end of the parking space and centered between the sides of the space.
2. Where the ~~If~~ a perimeter space abuts a structure, the space may be indicated on the structure, in which case parking blocks shall not be required.

c. Temporary parking lots. (See § 34-2022.)

Where temporary parking lots are permitted, the Individual spaces do not need to be delineated provided the end of each space and all aisles are clearly delineated with temporary posts and ropes. [moved to § 34-2022(b)(5)]

Sec. 34-2017. Parking lot surfaces.

(a) **High turnover parking lots. (1) Parking aisles.** Except as provided in subsection (d) of this section, all high turnover parking lot aisles and parking spaces shall be provided with a paved; dustfree, all-weather surface, except for the open space beyond parking blocks. (2) Parking spaces. All parking spaces, except those seaward of the coastal construction control line, shall have a paved; dustfree, all-weather surface from the aisle to the parking block or curb. All handicapped parking spaces, including handicapped parking spaces seaward of the coastal construction control line, shall be paved with asphalt or concrete to provide a smooth surface without gaps or holes which would create a danger to the user. For all other parking spaces, The term “paved” shall be interpreted to mean and include asphalt, concrete, brick, paving blocks, porous (pervious) asphalt or concrete.

paving block and other similar types of treatments. Clean (washed) angular gravel (such as FDOT #57 stone) may also be used if stabilized as provided in subsection (b)(1).

(1) Any parking spaces that may be permitted, excluding handicapped parking spaces, located seaward of the 1978 coastal construction control line shall be stabilized with best management practices treatments approved by the director, county administrator or his designee.

(2) All disabled parking spaces, including disabled parking spaces seaward of the coastal construction control line, shall be provided without gaps or holes that would create a danger to the user.

(b) Low turnover parking lots. (†) Due to the low volume of vehicle turnover in this type lot, alternative unpaved surfaces may also be permitted provided that the areas are adequately drained and continuously maintained in a dustfree manner.

(1) Alternative surfaces may include stabilized surfaces of grass or clean (washed) angular gravel over a well-drained base, crushed shell or other similar porous materials. Stabilization may be accomplished by turfblocks (concrete or plastic) or proprietary cellular or modular porous paving systems installed in accordance with manufacturers' specifications.

(2) Crushed limerock that has not been washed or otherwise processed to remove fine particles will be permitted as a surface material only when designed, placed, and maintained in a manner that will:
a. prevent the flow of sediment-laden runoff from the lot, and
b. keep the surface dust-free at all times.

(3) Parking on grass or other The use of unimproved surfaces such as sand or dirt as approved parking shall be prohibited.

(4) Handicapped Disabled spaces must be paved with asphalt or concrete to provided with a smooth surface without gaps or holes which would create a danger to the user.

(c) Temporary parking lots. Temporary parking lots do not need to be surfaced, and may be maintained as a grass area or in a dustfree manner. *[subject moved to 34-2022(b)(6)]*

(c e) Reduced surfacing standards *Director discretion.*

(1) The zoning director is authorized to permit portions of high turnover parking lots (including parking lot aisles), to meet the surfacing standards for low turnover parking lots (§ 34-2017(b), above) when the reduced surfacing standard will be used in those portions of the parking lot expected to receive the lightest usage, such as overflow or employee parking areas, under the following circumstances:

a. The property is not located in the intensive development or central urban land use categories;

b. The proposed parking lot will contain no more than 25 spaces;

c. The proposed alternative surface will be adequately drained; and

d. The proposed alternative surface is consistent with the uses and the parking lot surfaces in the surrounding neighborhood.

(2) This subsection may not be construed inconsistently with the Americans with Disability Act (ADA) of 1990.

(3) The director's decision is discretionary in nature and may not be appealed pursuant to § 34-145(a) of this chapter.

(d) Reservation of spaces for future use. When a use or activity is required by this chapter to provide more than ten high turnover parking spaces, the zoning director may approve leaving up to 25 percent of the required spaces as landscaped areas reserved for future use, provided that:

(1) The applicant clearly shows ~~on the site plan~~ the reserved parking spaces on the site plan;

(2) The reserved parking areas shall not be counted towards ~~meeting~~ the minimum open space or landscaping or buffering requirements of this chapter or chapter 10;

(3) All drainage facilities shall be calculated and built as though the reserved parking areas were impervious surfaces; and

(4) The reserved parking areas shall not be used for any purpose other than landscaped open space or temporary overflow parking during special holiday seasons or sales.

Should the property owner decide to pave the reserved area for parking, he shall submit the original site plan or development order approval to the zoning director, who is hereby authorized to approve the paving provided that such paving

does not include any new entrances onto a public street. If the parking areas does involve new entrances, then a ~~small project~~ limited review development order is required.

Sec. 34-2018. Joint use of off-street parking lots.

(a) A single-purpose parking lot can provide some or all of the required parking spaces for two or more unrelated businesses, provided that such joint-use parking lot:

- (1) is built on a site where a commercial parking lot is permitted, and
- (2) is placed on the site so as not to violate any applicable build-to lines or block visibility of vehicles (see § 34-3131), and
- (3) is built to the same standards as a single-purpose parking lot, and
- (4) (a) Except where specifically approved as part of a planned development district, joint use of off-street parking lots shall be permitted only after application for and approval of a special permit (see § 34-203(c)(7)).
(b) Such shared parking lots shall be is located within 750 300 feet of, and contiguous to, each use and shall not be separated by a street right-of-way or easement which exceeds 25 feet in width.

(b) (c) No part of a parking lot used, designed or intended to satisfy required off-street parking for any use, shall be used to offset the parking requirements for another use unless The peak parking demands of the different uses clearly must occur at different times. The director may require an applicant to provide a technical analysis of the timing and magnitude of the proposed parking demands.

(c) Applications for joint-use parking lots must include: (5) Joint parking. a. The following shall be submitted with the application:

- (1) A notarized statement from all property owners involved indicating the use of each property and forecasting that the peak level of activities of each separate building or use which create a demand for parking will shall occur at different times.
- (2) Written agreements, covenants, contracts and the like, acceptable to the county, which ensure that the parking area is to be used jointly and establish the responsibility for

maintenance. A draft joint-use parking agreement, acceptable to the town attorney, that:

- a. specifically identifies the designated spaces that are subject to the agreement;
 - b. includes a statement indicating that the parties understand that these designated spaces cannot be counted to support any use other than those identified in the agreement;
 - c. identifies the current property uses, property owners, and the entity responsible for maintenance of the parking area.
 - d. (3) includes a backup plan to provide sufficient parking if the joint agreement is violated by either party.
- (3) Upon approval of the agreement by the town attorney, the agreement(s) must be recorded in the Lee County public records at the applicant's expense.
- b. Violation of the agreement for joint use of off-street parking is sufficient grounds for revocation of the special permit.
[relocated from § 34-203(g)(5)]

Sec. 34-2019. Other use of off-street parking lots.

(a) Parking spaces that are not in daily use and are located in parking lots having ten or more parking spaces and meeting the other requirements of this division may be rented to the general public during peak periods.

(b) (2) The following structures and uses may be approved in parking lots by the director provided that a site plan is submitted showing that the structure will not reduce the parking spaces required for the principal use, or create a traffic or pedestrian hazard:

- (1 a) Charitable or other similar dropoff collection stations.
- (2 b) Aluminum can or other similar receiving machines or facilities.
- (3 c) Photo pickup stations.
- (4 d) Telephone booths and pay telephone stations.
- (5 e) Automatic teller machines (ATM's).
- (6 f) Other similar uses which do not unreasonably interfere with the normal functioning of the parking lot.

(c) Except as provided in this section and for ancillary temporary uses as provided in § 34-3048,

required ~~off-street~~ parking areas shall ~~not in no~~ instance be utilized for the sale, display, or storage of merchandise, or for repair, dismantling, or servicing of any vehicles or equipment. (†) This shall not be interpreted to prohibit a residential property owner from the occasional servicing of his own noncommercial vehicle or conducting normal residential accessory uses.

Sec. 34-2020. Required parking spaces.

All uses permitted under this chapter shall be subject to the following minimum requirements:

~~Sec. 34-2011. Applicability of division:~~

(a) ***New developments.*** ~~All~~ New residential and nonresidential uses are shall be required to provide off-street parking spaces in single-purpose parking lots in accordance with the standards regulations specified in this section, division as modified by certain reductions as provided in the DOWNTOWN and SANTINI zoning districts (see division 5 of article III).

(b) ***Existing developments.*** (†) Existing buildings and uses ~~which have existing off-street parking spaces~~ may be modernized, altered, or repaired without providing additional parking spaces, provided there is no increase in total floor area or capacity. ~~Buildings which have been damaged in excess of 50 percent shall be required to comply with all applicable regulations.~~

(1 2) Existing buildings or uses ~~which are~~ enlarged in terms of floor area shall provide additional parking spaces; for the enlarged floor area in accordance with the standards specified in this section this division, for the total floor area.

(2 3) When the use of a building is changed to a different use which is required to have more parking than exists, the additional parking shall be provided in accordance with the standards specified in this section.

(c) ***Bicycle parking.*** Commercial, multifamily, and mixed-use buildings may eliminate one required parking space by providing and maintaining a bicycle rack able to hold four bicycles.

~~(e) Developments on islands without direct vehicular access to mainland: [deleted in its entirety]~~

(d) ***Minimum parking standards.***

- (1) ***RESIDENTIAL USES.*** ~~Dwelling, housing and living units.~~ For all common parking lots, ~~in addition to the spaces required in this subsection, additional parking spaces equal to ten percent of the total required shall be provided to accommodate guest parking:~~
- a. ***Dwelling units with individual driveways:*** Single-family, duplex, two-family attached, and mobile home units. The minimum requirement is 2.0 spaces for each dwelling unit. Stacking of vehicles in the driveway is permitted.
 - b. ***Townhouses.*** Minimum requirements are as follows:
 1. For townhouses with individual parking driveways, 2.0 spaces per dwelling unit. Stacking is permitted.
 2. For townhouses sharing a common parking lot, 2.0 spaces per dwelling unit. Stacking is not permitted.
 - b. c. ***Dwelling units with common parking lots: Multiple-family buildings.*** Minimum requirements are as follows:
 1. Studio or efficiency: 1.0 1.25 spaces per unit.
 2. One bedroom: 1.25 1.5 spaces per unit.
 3. Two bedrooms: 1.25 1.75 spaces per unit.
 4. Three or more bedrooms: 1.5 2.0 spaces per unit.
 5. Live/work units: 2.0 spaces per unit. Stacking of vehicles is not permitted except as provided in § 34-2015(5).
 - c. ***Timeshare units:*** Parking requirements are the same as for multiple-family buildings. If lock-off accommodations are provided, parking for the lock-off units will be calculated at 0.5 extra spaces per lock-off unit.
 - d. ***Living units without kitchens:*** Living units that do not contain customary cooking facilities within the individual units but instead have a central kitchen for food preparation and where meals are served in a central dining area or individual rooms must calculate parking requirements as follows: one parking space per four residents or four beds (whichever is greater), plus ten percent.
 - d. ***Adult congregate living facilities.*** ~~See § 34-1411.~~

- e. Group quarters, excluding living units subjects to § 34-2020(d)(1)d. adult congregate living facilities. The minimum requirement is one parking space per bedroom or one space per two beds, whichever is greater.
 - f. Hotels and motels. See division 19 of this article.
 - g. Health care facilities groups I and II; social services groups III and IV. The minimum requirement is one space per four beds.
 - h. Continuing care facilities. The minimum requirement is 0.75 space per one-bedroom living unit and 0.875 space per two-bedroom living unit. Requirements for adult congregate living facility units and health care facilities shall be calculated as provided in subsections (1)d and g of this section.
- (2) **COMMERCIAL USES.**
- a. Animal clinics. The minimum requirement is five spaces per veterinarian plus one space per employee.
 - b. Animal kennels. The minimum requirement is five spaces.
 - c. Automotive repair and service; automotive service stations. The minimum requirement is four spaces per service stall plus one space per employee.
 - d. Banks and financial establishments. The minimum requirement is one space per 300 square feet of total floor area. See also subsection (2)h of this section pertaining to drive-up facilities.
 - e. Bars and cocktail lounges. The minimum requirement is 15 ~~21~~ spaces per 1,000 square feet of total floor area. If outdoor seating is provided, an additional one space per four outdoor seats or 75 ~~50~~ square feet of outdoor seating area (whichever is greater) must be provided. See also subsection (2)h of this section, pertaining to restaurants, and subsection (4) ~~5~~ of this section.
 - f. Barbershops, beauty shops, etc. The minimum requirement is three spaces per operator (chair) or one space per 100 square feet of gross floor area, whichever is greater, with a minimum of five spaces.
 - b. Bed-and-breakfast inns. The minimum requirement is 1 parking space for each guest room plus 1 space for the owners' quarters.
 - c. g. Car washes. The minimum requirement is two spaces per car wash stall or space, plus drive-through facilities (see subsection (2)d of this section). Each individual car wash stall or space may count as one of the required two parking spaces per stall.
 - d. h. Drive-through facilities. Where permitted, any commercial establishment providing drive-through service windows or stalls shall provide separate vehicle stacking for those uses. For the purpose of this section, a stacking unit is defined as 18 feet in length and 9 feet in width. The total number of stacking units required is to be based on the type of business, as follows:
 1. Banks and financial establishments: Stacking lanes to accommodate three ~~five~~ cars per window.
 2. Car washes: Stacking to accommodate one car per service stall or three cars, whichever is greater.
 3. 2. Restaurants: New or expanded drive-through facilities are not permitted for restaurants (see § 34-620(f)). For existing drive-through facilities that are being lawfully reconfigured, stacking lanes to accommodate six ~~ten~~ cars per service lane, with a minimum of four ~~five~~ spaces preceding the menu board.
 4. 3. Other: i. Photo dropoff, laundry dropoff or other similar type dropoff facilities: Stacking for two ~~three~~ cars.
ii. All other: Stacking to accommodate three ~~five~~ cars per service lane.
 - e. Hotels and motels. The minimum requirement is 1.2 parking spaces for each guest unit up to 450 square feet and 1.5 spaces for each larger guest unit.
 - i. Funeral homes. ~~[deleted in its entirety]~~
 - f. j. Offices, excluding medical. This category includes offices of all types not specifically listed elsewhere, including banks and medical facilities, but not limited to business services group I, contractors and builders, insurance companies, nonstore retailers, personal services group IV, social services group I, and other similar offices. The minimum requirement is 2 ~~one~~ spaces per 1,000 ~~300~~

square feet of total floor area. See also subsection (2)d. of this section pertaining to vehicle stacking for drive-through facilities.

~~k. Offices, medical and health care facilities group III. The minimum requirement is one space per 200 square feet of total floor area.~~

~~g. Personal services. The minimum requirement is 5 spaces per 1,000 square feet.~~

~~h. Restaurants. With the exceptions noted below, the minimum parking requirements for restaurants is 8 spaces per 1,000 square feet of total floor area plus any outdoor seating area.~~

~~1. Restaurants/bakeries. When a store such as a bakery provides seating for customers to eat the bakery products made on the premises, the store must provide a minimum of one parking space per table or 50 square feet of seating area (whichever is greater) in addition to the parking required for the bakery:~~

~~1. Accessory restaurant. When a restaurant is located within the same building as the principal use, and is clearly provided primarily for the employees and customers of the principal use, no additional parking spaces are required. In all other cases, parking shall be as follows: The minimum requirement is 14 spaces per 1,000 square feet of total floor area, plus 14 spaces per 1,000 square feet of all area used for outdoor seating:~~

~~2. Bars and cocktail lounges. If the restaurant contains a cocktail lounge or bar, the minimum requirement is 8 14 spaces per 1,000 square feet of total floor area plus 5 seven additional spaces per 1,000 square feet of floor area used for the bar or cocktail lounge. If outdoor seating is provided, parking must also be provided for the area used for outdoor seating at these same rates.~~

~~3. Restaurants, fast food. The minimum requirement is 16 spaces per 1,000 square feet of total floor area plus one space per four outdoor seats, except as provided for in § 34-2021. See also~~

~~subsection (2) h. of this section pertaining to drive-up facilities:~~

~~i. m. Retail stores or business establishments, freestanding. This subsection applies to individual retail or business establishments, on separate parcels. The minimum number of parking spaces required shall be as specified in this subsection, but in no case shall be less than five spaces. Any retail establishment proposing drive-through facilities shall also meet the requirements of subsection (d)(2)d h of this section.~~

~~1. Building materials and sales (retail). The minimum requirement is one space per 300 square feet of indoor sales and office area, plus one space per employee.~~

~~Convenience food and beverage stores. The minimum requirement is 4 spaces per 1,000 square feet of total floor area. If more than 20% of the total floor area or 600 square feet, whichever is less, is used for the preparation and/or sale of food or beverages in a ready-to-consume state, parking for this area will be calculated the same as a restaurant.~~

~~One parking space per four pumps will be credited against the required parking.~~

~~2. Other retail or business establishments. Small products or commodities. This category includes stores specializing primarily in small (handheld) products, and is intended to include convenience stores; clothing stores; department stores; drugstores; food stores; hardware stores; hobby, toy and game shops; package stores; personal services groups I and H (excluding barbershops; beauty shops; specialty retail shops groups I, H and III; used merchandise stores group I; variety stores; and other similar type stores. The minimum parking requirement is 3 one spaces for each 1,000 200 square feet of total floor area. Required parking for areas within the principal building which are used only for dead storage and are not available to the public shall be computed at the rate of 2 one spaces per 1,000 600 square feet.~~

~~3. Large products or commodities. [deleted in its entirety]~~

4. *Very large products or commodities*.
[deleted in its entirety]
- n. *Schools and studios, commercial*. [deleted in its entirety]
- (3) ~~Commercial/industrial uses~~.
- a. *Manufacturing*. [deleted in its entirety]
- b. *Processing and warehousing*. [deleted in its entirety]
- c. *Services not listed elsewhere*. [deleted in its entirety]
- d. *Terminal, freight*. [deleted in its entirety]
- e. *Warehousing, private*. [deleted in its entirety]
- f. *Warehousing, public*. [deleted in its entirety]
- j. ~~g.~~ **Warehousing; (mini-warehouses)**. The minimum requirement is 1 space per 25 ~~ten~~ storage units ~~cubicles~~, with a minimum of 3 ~~five~~ spaces.
- k. ~~h.~~ **Wholesale establishments**. The minimum requirement is 1 space per company vehicle plus 1 space per 1,000 square feet of total floor area.

(3) ~~(4)~~ **MISCELLANEOUS USES**.

- a. *Airports*. [deleted in its entirety]
- b. *Boatramps*. [deleted in its entirety]
- c. *Bowling alleys*. [deleted in its entirety]
- d. *Clubs, fraternal or membership organizations*. [deleted in its entirety]
- e. *Day care centers*. [deleted in its entirety]
- a. ~~f.~~ **Educational institutions, including public, private and parochial**.
1. *Public schools*. Parking shall be provided in compliance with state law.
 2. *Private or parochial schools and day care centers*.
 - i. ~~Elementary and middle schools~~. The minimum requirement is one space per employee plus one space for each 40 students.
 - ii. ~~High schools~~. [deleted in its entirety]
 - iii. ~~Colleges, universities and trade and vocational institutions~~. [deleted in its entirety]
- g. *Essential service facilities*. The minimum requirement is one space per employee on the largest shift
- q. *Flea markets*. The minimum requirement is one space per 100 square feet of display area.
- h. *Golf courses*. [deleted in its entirety]

- i. ~~Hospitals (health care facilities group IV)~~. The minimum requirement is one space per bed, excluding bassinets and gurneys, plus one space per employee on the largest shift.
- b. ~~j.~~ **Marinas and other water-oriented uses**. Minimum requirements are as follows:
 1. ~~Boat slips~~: One Two spaces per two ~~three~~ slips.
 2. ~~Boat ramps~~: See subsection (4)b of this section.
 2. ~~3.~~ Dry storage: One space per six ~~four~~ unit stalls.
 3. ~~4.~~ Charter or party fishing boat services: One space per three people based on maximum passenger capacity of the boats using the dock or loading facility.
 4. ~~5.~~ Cruise ships: One space per three people based on the maximum passenger and crew capacity of the ship.
 5. Water taxis: Dedicated parking spaces are not required at stopping points for water taxis or water shuttles.
 6. Other uses: Other uses including accessory or ancillary marina uses such as restaurants, bars, or lounges, boat sales, etc. must be calculated separately in compliance with this division. Refer to subsection (5) of this section.
- k. ~~Miniature golf~~. [deleted in its entirety]
- c. Museums, art galleries, libraries, and other similar uses not covered elsewhere: The minimum requirement is one parking space for each 500 square feet of total floor area.
- d. ~~l.~~ **Places of worship and religious facilities**. Refer to division 27 of this article.
- e. ~~m.~~ **Recreation facilities, indoor, commercial**. The minimum requirement is There shall be provided at least one parking space for each 150 ~~100~~ square feet of total floor area.
- n. ~~Recreation facilities, outdoor, commercial~~. The parking requirement shall be determined by the director if the use is not listed in this section.
- o. ~~Tennis courts, commercial~~. [deleted in its entirety]
- f. ~~p.~~ **Theaters, auditoriums, meeting halls, stadia, arenas and other similar places of public assembly, museums, art galleries,**

libraries, and other similar uses not covered elsewhere. For such uses, there shall be provided either one parking space for each 300 square feet of total floor area, ~~or~~ The minimum requirement is one parking space for each four seats plus one space per employee, whichever of the two is greater. (See subsection (7) of this section.)

g. r. Carnivals, fairs, and amusement attractions and devices.

1. There shall be provided a The minimum requirement is five or ten parking spaces provided for each permanent amusement device.
2. If such uses are located in an existing parking lot, the parking lot must have enough spaces to comply with the minimum requirements for both the principal use and the carnival, fair or amusement attraction or device. Prior to obtaining a temporary use permit (see division 37 of this article) for the temporary use of a parking lot for a carnival, fair or amusement attraction or device, the applicant shall submit a site plan showing that there will be no net loss or reduction in the number of parking spaces required for any existing principal use which relies on the parking lot.
3. Such uses may not be located in an existing parking lot which is already nonconforming as to the number of spaces needed for the existing uses.

(4) ~~(5)~~ **COMBINED USES.** The number of parking spaces required for combined uses shall be the total of the spaces required for each separate use established by this schedule. Exceptions are as follows:

- a. Joint use of parking lots. except As provided in § 34-2018, and as provided for in this section.
- b. Multiple-occupancy complexes. This subsection applies to shopping centers and other multiple-occupancy complexes where five or more individual business office or retail establishments are located and which all share a common parking area. Specifically excluded from this subsection are: ~~(i)~~ theaters and hotels. ~~located outside of shopping centers or in~~

shopping centers smaller than 100,000 square feet, (ii) bowling alleys, and (iii) bars and cocktail lounges, and restaurants located outside of shopping centers or in shopping centers smaller than 50,000 square feet. Minimum requirements are as follows: *[remainder deleted]*

1. If the complex contains less than 25% of its gross floor area as restaurants, 2 spaces per 1,000 square feet.
2. If the complex contains 25% to 50% of its gross floor area as restaurants, 4 spaces per 1,000 square feet.
3. If the complex contains 50% to 75% of its gross floor area as restaurants, 6 spaces per 1,000 square feet.
4. If the complex contains over 75% of its gross floor area as restaurants, 8 spaces per 1,000 square feet.

b. *Planned developments:* *[deleted in its entirety]*

~~(5)~~ **(6) USES NOT SPECIFICALLY LISTED.**

Requirements of Off-street parking for uses not specifically mentioned in this chapter shall be the same as for the uses most similar to the one sought, it being the intent to require all uses to provide off-street parking.

~~(7)~~ **BENCH AND PEW SEATING:** *[deleted in its entirety]*

Sec. 34-2021. Reserved. Exception for fast order food establishments located in multiple use complex: *[deleted in its entirety]*

Sec. 34-2022. Seasonal Temporary parking lots.

(a) No temporary use permits for temporary parking lots shall be issued on Captiva Island or within the Gasparilla Island conservation district.

(a b) ~~In other areas of the county,~~ Temporary use permits (see §§ 34-224, 34-3041, and 34-3049) may be issued for seasonal temporary parking lots, subject to the following: (1) Temporary parking lots shall be allowed, in conjunction with an approved temporary use permit: Approval of seasonal parking lots can be for a single period of up to 8 months long, commencing on November 15 and continuing until July 15 (subsection 34-2022(b)); or for a single period of up to 3 years on a year-around basis (subsection 34-2022(c)). For the purposes of this

subsection, temporary permits for seasonal temporary parking lots may also be issued for all or part of such time period and shall not be limited to 30 days as set forth in § 34-3041(d).

(b) A seasonal parking lot approved for a single period of up to 8 months must comply with the following regulations:

- ~~(2 1)~~ A seasonal temporary parking lot shall only be permitted on vacant commercially or industrial zoned property or commercially or industrial zoned property with structures; provided that, on properties with structures, the structures are vacant and remain vacant.
- ~~(3 2)~~ Temporary parking lots shall only be permitted when adjacent to a collector or arterial road or within 660 feet of a collector or arterial road. However, in no instance shall ingress and egress to seasonal parking the lots shall not be through a residential neighborhood or residentially zoned district.
- ~~(4 3)~~ The applicant must submit to the director a parking plan, drawn to scale, indicating but not limited to the following: the location of access points, ropes, and posts, and the circulation pattern within the parking lot.
- ~~(5 4)~~ Individual spaces in seasonal parking lots do not need to be delineated provided the end of each space and all aisles are clearly delineated with temporary posts and ropes. The delineation of spaces for temporary parking lots shall be in accordance with ~~§ 34-2016(2)c.~~
- ~~(6 5)~~ The temporary Seasonal parking lots do not need to be surfaced, and may surface shall be maintained as a grass area or otherwise in a dust-free manner, in accordance with § 34-2017(e).
- ~~(7 6)~~ The temporary Seasonal parking lots shall be designed so as to permit vehicles exiting the lot to enter the street right-of-way in a forward motion. The seasonal temporary parking lot, where applicable, shall utilize an existing entrance or exit, except that no additional traffic shall be directed onto residential streets. Where no access exists, a the parking lot plan showing an acceptable temporary access point(s) may be approved shall be reviewed by the director county department of transportation and engineering.
- ~~(8 7)~~ If the temporary seasonal parking lot is to be used at night, adequate lighting shall be

provided for the driveway's ingress and egress points. The lighting shall be directed to eliminate glare on any other use.

- ~~(9 8)~~ The temporary seasonal parking lot shall be secured in a manner which will not permit ingress and egress except during the designated hours of operation.
- ~~(10 9)~~ The temporary seasonal parking lot shall not adjoin or be less than ten feet from residential uses or residentially zoned property.
- ~~(11 10)~~ A parking attendant shall be required during the posted hours of operation of the temporary seasonal parking lot.
- ~~(12 11)~~ The temporary seasonal parking lot shall only be used for the parking of operable motor vehicles, with no overnight parking or camping. No other temporary or permanent use of the property shall be allowed during the life of the temporary use permit for parking.
- ~~(13)~~ ~~§ 34-3048, pertaining to ancillary uses permitted in off-street parking lots, shall not apply to this section.~~
- ~~(14 12)~~ The maximum hours of operation shall be from 7:00 a.m. until 10:00 p.m., unless extended by the director in writing.
- ~~(15 13)~~ The parking spaces created through the approval of temporary seasonal parking lots shall not be used for calculating off-street parking requirements as set out in § 34-2020.
- ~~(16)~~ ~~Where approval for a temporary parking lot will extend beyond 30 days, the requirements of subsection (b)(17) of this section shall apply.~~
- ~~(14) b.~~ At intersections of parking lot entrances or exits with a street right-of-way or easement, no obstruction shall be planted or erected which materially obstructs the driver's view of approaching traffic or pedestrians (see § 34-3131).
- ~~(15) c.~~ Temporary Seasonal parking lot signs must comply with requirements for commercial development special occasion signs in § 30-151, except that the signs may remain in use for the duration of the temporary use permit. These signs must be created and displayed in a professional manner. The town manager may require the removal of any signs that do not comply with these standards, or which remain

visible after the expiration of the temporary use permit.

- (16) The town manager may require visual screening between a seasonal parking lot and any residentially zoned or used property. If additional screening is requested by the town manager, it must be installed within 30 days of written notice to the property owner or parking lot operator or the temporary use permit will be null and void.

(c) A seasonal parking lot approved for a single period of up to 3 years must comply with subsection 34-2022(b) and with the following additional regulations:

- (1) Compliance with all applicable regulations must be demonstrated on a paving, grading, and drainage plan acceptable to the director.
- (2) (17) a. Where a temporary seasonal parking lot abuts residentially zoned or used property, that portion of the parking lot shall be buffered by a continuous visual screen with a minimum opacity of 50 75 percent and a minimum height of three four feet. This screen may contain a combination of walls, fences, railings, and shrubs. Walls, fences, and railings may not exceed the maximum heights established by this code. The visual screen may be located as close as up to one foot from the right-of-way or street easement line but not closer than five feet from the edge of a travel lane. The town manager may require more extensive screening if the height, character, and location of the screen does not or may not adequately protect the abutting property from excessive impacts from the temporary seasonal parking lot. Additional screening as requested by the town manager must be installed within 30 days of written notice to the property owner or parking lot operator, or the temporary use permit will be null and void.

b. *[moved to 34-2022(b)(16)]*

c. *[moved to 34-2022(b)(17)]*

- (3) Where a seasonal parking lot abuts a street, that portion of the parking lot shall be buffered by a continuous visual screen with a minimum opacity of 25 percent and a minimum height of three feet. This screen may contain a combination of walls, fences, railings, and shrubs. The visual screen may

be located up to one foot from the right-of-way or street easement line.

- (4) Seasonal parking lot signs must comply with requirements for individual business establishment signs in § 30-153. These signs must be created and displayed in a professional manner. The town manager may require the removal of any signs that do not comply with these standards, or which remain visible after the expiration of the temporary use permit.

(d) Seasonal parking lots remaining in use for longer than three years are considered to be permanent shared parking lots and must be constructed to this division's standards for single-purpose parking lots, including landscape buffering. Permanent shared parking lots must be approved by special exception (see § 34-2015(2)b.).

Secs. 34-2023--34-2030 ~~2050~~. Reserved.

DIVISION 26-A. **PERFORMANCE STANDARDS**

Sec. 34-2031 ~~623~~. Performance standards, environmental quality.

All uses and activities permitted by right, ~~special permit~~, special exception, or temporary use permit in any zoning district, including planned development districts, shall be constructed, maintained, and operated so as to:

- (1) comply with all local, state, and federal air, water and noise, and water pollution standards, and
- (2) not adversely impact water quality.

Sec. 34-2032. Performance standards, creation of nuisance.

All uses and activities permitted by right, special exception, or temporary use permit in any zoning district, including planned development districts, shall be constructed, maintained, and operated so as to:

- (1) not be injurious or offensive and thereby constitute a nuisance to the owners and occupants of adjacent premises, nearby residents, or to the community, by reason of the emission or creation of noise, vibration, smoke, dust, or other particulate matter, toxic

or noxious waste materials, odors, fire or explosive hazard, or glare; ~~and nor shall anything be placed, constructed or maintained that would in any way constitute a nuisance to owners or residents or to the community, or adversely impact water quality and water needs.~~

- (2) not cause light from a point source of light to be directed, reflected, or refracted beyond the boundary of the parcel or lot, onto adjacent or nearby residentially zoned or used property or onto any public right-of-way, and thereby constitute a nuisance to owners or occupants of adjacent premises, nearby residents, or to the community; and
- (3) ensure all point sources of light and all other devices for producing artificial light are shielded, filtered, or directed in such a manner as to not cause light trespass.

Secs. 34-2033--34-2050. Reserved.

DIVISION 27. PLACES OF WORSHIP AND RELIGIOUS FACILITIES

Sec. 34-2051. Property development regulations.

~~(a) *Noncommercial or nonindustrial districts.*
[deleted in its entirety]~~

~~(b) *Commercial and industrial districts.* All Places of worship and all religious facilities located in a zone permitting both residential and commercial uses as principal uses shall adhere to the commercial property development regulations of that its zoning district.~~

Sec. 34-2052. Parking.

(a) *Places of worship.* Parking for places of worship shall be provided at the ratio of one parking space for each three seats within the sanctuary or main assembly hall, whichever is greater. ~~See § 34-2020(7) for computation of parking requirements for pew seats. Where benches, pews or other similar seating arrangements are used, each 24 lineal inches shall be counted as one seat.~~

(b) *Religious facilities.* Parking for religious facilities shall be the same as for places of worship, with additional parking for ancillary facilities as required in division 26 of this article; provided that,

where the ancillary facilities will not be used at the same time, parking shall be based upon the peak anticipated attendance at any one time, for all facilities.

(c) *Parking on grass.* Up to ~~75~~ 50 percent of the parking spaces required for the sanctuary or main assembly hall of a place of worship may be provided as parking on grass, provided the regulations set forth in the following sections of division 26 of this article, pertaining to ~~off-street~~ parking requirements, are met:

- ~~(1) § 34-2013, concerning parking lot access.~~
- ~~(2) § 34-2014, concerning parking plans.~~
- ~~(3) § 34-2015(1), concerning location.~~
- ~~(4) § 34-2015(2), concerning design, subsections a, c and d.~~
- ~~(5) § 34-2016(1)b, concerning dimensional requirements.~~
- ~~(6) § 34-2016(3), concerning aisle widths.~~

Sec. 34-2053. Expansion of existing place of worship.

Expansion of existing places of worship, lawfully existing as of August 1, 1986, by right or by special exception, is hereby declared a legal use. Additions, renovations, or other expansion of the main place of assembly may be permitted upon application for and approval of a building permit in accordance with all applicable ~~town~~ county regulations, ~~without the requirement of special exception approval. Any expansion which would constitute a religious facility will require a special exception, except in those zoning districts where permitted by right.~~

Secs. 34-2054--34-2080. Reserved.

DIVISION 28. RESERVED **PLANT NURSERIES** *[deleted in its entirety]*

Secs. 34-2081~~2~~--34-2110. Reserved.

DIVISION 29. PRIVATE CLUBS, FRATERNAL CLUBS AND MEMBERSHIP ORGANIZATIONS CLUBS

Sec. 34-2111. Applicability of district use regulations to membership organizations.

The listing in this code of ~~limited enumeration of a private, fraternal, or membership organizations club use~~ is not meant to limit or abridge the rights of assembly in any way. Such organizations are not prohibited from meeting in various traditional and appropriate places. For example, a service club's weekly meeting at a restaurant in a district not otherwise allowing a ~~fraternal, membership organization, or private clubs~~ shall not constitute a zoning violation. However, where such an organization is the principal user of real property for meetings, entertainment, and food and beverage service, such a meeting place, hall, or clubhouse shall be permitted only where this use is explicitly enumerated.

Secs. 34-2112--34-2140. Reserved.

**DIVISION 30:
PROPERTY DEVELOPMENT REGULATIONS**

*Subdivision I. In General
[deleted in its entirety; content
has been moved to § 34-636]*

*Subdivision II. Height
[deleted in its entirety; content
has been moved to § 34-631]*

*Subdivision III. Setbacks
[moved to § 34-637]*

*Subdivision IV. Lots
[deleted in its entirety]*

*Subdivision V. Gasparilla Island
[deleted in its entirety]*

*Subdivision VI. McGregor Boulevard
[deleted in its entirety]*

**DIVISION 30.
SPORTS/AMUSEMENT PARKS AND
RECREATIONAL FACILITIES**

[relocated from division 35 of this chapter]

Sec. 34-2141. 2471. Applicability of division.

(a) The regulations set forth in this division for recreation specific sports/amusement parks and facilities are in addition to any other applicable regulations. In the case of conflict, the most restrictive regulations shall apply.

(b) This chapter defines five types of recreation facilities (see § 34-2):

(1) Recreation facilities, commercial, which are permitted by special exception in certain zoning districts.

(2) Recreation facilities, personal, which are considered to be residential accessory uses.

(3) Recreation facilities, private ON-SITE, which are permitted by right in certain zoning districts.

(4) Recreation facilities, private OFF-SITE, which are permitted by special exception in certain zoning districts.

(5) Recreation facilities, public, which are permitted by right in certain zoning districts.

(c) This chapter also defines Park, neighborhood and Park, community or regional (see § 34-2), both of which are permitted by right in certain zoning districts.

~~Sec. 34-2472. Required approvals: [deleted in its entirety]~~

Sec. 34-2142. 2473. Minimum lot area and setbacks.

(a) All ~~sports/amusement parks and recreation~~ facilities, whether a principal use or accessory use, shall be located on property meeting the minimum lot size and dimensions of the zoning district in which located as well as any additional area, width, or depth required to permit full compliance with all setbacks, ground cover, open space, buffering, drainage, and parking requirements as set forth in this chapter or ch. 10, whichever is most applicable.

~~Sec. 34-2474. Setbacks.~~

~~(b) (a) Minimum setbacks for uses subject to this division are as follows:~~

- ~~(1) Street setbacks shall be as set forth in § 34-2192.~~
- ~~(2) Water body setbacks shall be as set forth in § 34-2194.~~
- ~~(3) Side and rear setbacks shall be as set forth in the property development regulations of the zoning district in which located, except as provided in this division.~~

~~(c) (b) Additional setback requirements for specific uses are as follows:~~

- ~~(1) Recreation facilities, commercial outdoor sports/amusement parks, amusement devices, and water slides. Amusement devices, water slides, miniature golf, and other commercial outdoor sports/amusement parks and recreation facilities not specifically regulated shall be located not less than 50 feet or a distance equal to the height of the structure or device, whichever is greater, from any property under separate ownership, provided further that such setback shall be 100 feet from any adjacent property with residential zoning zoned RS, TF, TFC, RM, MH or RPD, or any existing residential use.~~
- ~~(2) Arenas, stadiums and racetracks. [deleted in its entirety]~~
- ~~(3) Bleachers and other seating facilities. [deleted in its entirety]~~
- ~~(4) Drive-in theaters. [deleted in its entirety]~~
- ~~(5) Golf driving range not part of an approved golf course. [deleted in its entirety]~~
- ~~(2) (6) Recreation halls and private clubs. Recreation halls and ancillary facilities and membership organizations private clubs shall be located at least 40 feet from any residential dwelling and situated in a manner so as to encourage pedestrian and bicycle traffic.~~
- ~~(7) Outdoor shooting ranges. [deleted in its entirety]~~
- ~~(3) (8) Other facilities. The following Other facilities are specifically regulated elsewhere in this code, such as swimming pools and tennis courts in division 2 of this article. chapter:
 - ~~a. Marinas, § 34-1862.~~
 - ~~b. Stables, boarding and commercial, division 6 of this article.~~~~

~~e. Swimming pools and tennis courts, division 2 of this article.~~

~~Sec. 34-2475. Access. [deleted in its entirety]~~

~~Sec. 34-2143, 2476. Accessory uses.~~

~~(a) Accessory uses, buildings, or structures for sports/amusement parks and recreational facilities which are customarily incidental to the principal use may be permitted. Such uses include but are not limited to restroom facilities, maintenance sheds, refreshment stands (with no alcoholic beverages unless approved in accordance with division 5 of this article), pro shops (where applicable), and administrative offices.~~

~~(b) During daylight hours, drive-in theater parking areas may be used for a flea market, provided no buildings are erected in connection with such use. Drive-in theaters may also be used to provide off-site parking for arenas, stadiums, etc., in accordance with § 34-2478, if approved by the Board of County Commissioners.~~

~~(b) (e) Food and beverage service, limited, is permitted in any recreation hall; provided, however, no alcoholic beverages shall be distributed or consumed on the premises except in compliance with division 5 of this article.~~

~~Sec. 34-2144, 2477. Lighting.~~

~~Artificial lighting used to illuminate the premises of sports/amusement parks and recreational facilities shall be directed away from adjacent properties and streets.~~

~~Sec. 34-2478. Parking. [deleted in its entirety]~~

~~Sec. 34-2145, 2479. Sound systems.~~

~~Sound systems for sports/amusement parks and recreational facilities shall meet the requirements of the town's county noise control ordinance, Ordinance Nos. 96-24 as may be amended from time to time 82-32 and 83-22.~~

~~Secs. 34-2146--34-2350. Reserved.~~

**DIVISION 31. RECREATIONAL VEHICLES
AS PERMANENT RESIDENCES**

~~Sec. 34-2351. Use as permanent residence. [moved to § 34-694(a)]~~

Sec. 34-2351. Recreational vehicle subdivisions.

(a) New or expanded recreational vehicle subdivisions are not allowed in the Town of Fort Myers Beach.

(b) A recreational vehicle cannot be substantially improved or placed on any lot in any subdivision except:

- (1) for parking of a single recreational vehicle for purposes of dead storage, or
- (2) on a temporary basis in accordance with § 34-3046.

Sec. 34-2352. Recreational vehicle parks.

(a) New or expanded recreational vehicle parks are not allowed in the Town of Fort Myers Beach.

(b) A recreational vehicle cannot be substantially improved or placed in any existing recreational vehicle park except in the VILLAGE zoning district in accordance with the regulations set forth in subdivision III of division 5 of article III of this chapter, and in accordance with the requirements of § 6-472(3).

Secs. 34-2353--34-2380. Reserved.

DIVISION 32. SCHOOLS

Sec. 34-2381. All schools.

(a) All schools, whether run by government, religious, or non-profit agencies or operated as businesses, may be located only in the following categories on the future land use map in accordance with Policy 4-B-14 of the comprehensive plan:

- (1) Mixed Residential,
- (2) Boulevard,
- (3) Pedestrian Commercial, or
- (4) Recreation (but never seaward of the 1978 coastal construction control line).

(b) The maximum intensity of new or expanded schools shall not exceed a floor area ratio of 0.50 (see § 34--633).

Sec. 34-2382+. Noncommercial schools.

(a) *Public schools. Permitted districts.* All noncommercial schools constructed by the district school board on land owned by the district school board are permitted by right in any zoning district, provided the site complies with § 34-2381(a). Also permitted by right in any zoning district is Florida Gulf Coast University, located in the Lee Plan University Campus category, including all facilities normally associated with a public university. Development of Florida Gulf Coast University will be in accord with a campus master plan adopted pursuant to F.S. § 240.155.

(b) *Other noncommercial schools.* All Other noncommercial schools are permitted by right or are required to obtain special exception approval prior to any new construction or expansion of an existing facility, in accordance with the district use regulations in, provided the site complies with § 34-2381(a).

(b) *Access.* Access requirements for new schools are as follows:

- (1) Whenever possible, elementary schools will have access to local or collector streets; and
- (2) Secondary schools must have access to a collector or arterial street.

(c) *Location.* No school site will be approved which, in the opinion of the hearing examiner, is exposed to physical constraints, hazards or nuisances which are detrimental to the health and

safety of students and to the general operation of the school.

Sec. 34-2383. Schools operated as businesses.

Schools that are operated as private businesses are permitted wherever this code allows *Offices, general and medical* (see division 2 of article III of this chapter), provided the site complies with § 34-2381(a).

Secs. 34-2384~~2~~--34-2390~~2410~~. Reserved.

DIVISION 32-A. SHORT-TERM RENTALS

OPTION ONE: *[original proposal]*

Sec. 34-2391. Restrictions on short-term rentals.

Table 34-2 restricts the rental of any permitted dwelling unit in certain zoning districts to one family during any 28-day period (see the “Restricted” sub-group of the “Lodging” use group in Table 34-1). The following exceptions apply to this restriction:

- (1) This restriction on short-term rentals does not apply to:
 - a. Any land between Estero Boulevard and the Gulf of Mexico.
 - b. Any land with frontage on the bay side of Estero Boulevard.
 - c. Any land on the bay side of Estero Boulevard that lies entirely within 200 feet of the edge of the Estero Boulevard right-of-way.
- (2) Dwellings units on property that qualifies for any of these three exceptions may be rented to one family for periods of 7 days or longer, in lieu of the 28-day restriction that would otherwise have applied.

Sec. 34-2392–34-2410. Reserved.

OPTION TWO: *[workshop proposal]*

Sec. 34-2391. Restrictions on short-term rentals.

Table 34-2 restricts the rental of any permitted dwelling unit in certain zoning districts to one family during any 28-day period (see the “Restricted” sub-group of the “Lodging” use group in Table 34-1). The following exceptions apply to this restriction:

- (1) This restriction on short-term rentals does not apply to any land between Estero Boulevard and the Gulf of Mexico.
- (2) This restriction on short-term rentals also does not apply to any land that fronts on the bay side of Estero Boulevard or which lies entirely within 200 feet of the edge of the Estero Boulevard right-of-way.
- (3) This restriction on short-term rentals also does not apply to any other properties that are recognized by the Town of Fort Myers Beach as having had pre-existing short-term rentals as of October 22, 2002, in accordance with § 34-2392.

Sec. 34-2392. Registry of certain pre-existing short-term rental units.

(a) Dwelling units in certain zoning districts are not permitted to be rented to more than one family during any 28-day period due to restrictions found in Tables 34-1 and 34-2. The owner of any such dwelling unit that was being lawfully used for more frequent rentals as of October 22, 2002, may apply for registration under this section to continue more frequent rentals.

- (1) Upon verification by the town and placement of such dwelling units on a registry of pre-existing short-term rentals, the owners of registered dwelling units may continue to rent those units for to one family for period of 7 days or longer.
- (2) This right shall run with the land and shall not be affected by the transfer of the property to subsequent owners.
- (3) If short-term rentals of a particular dwelling unit are terminated for any reason for any 12-month period, short-term rentals may not thereafter be reinstated in that dwelling unit.
- (4) Dwelling units on land that is not affected by the restrictions in Tables 34-1 and 34-2 limiting rentals to no more than one family during any 28-day period should not be

submitted for registration. Such units will not be placed on the registry of pre-existing short-term rentals.

(b) Applications for registration of lawful pre-existing short-term rental shall be submitted to the town manager by [insert date here: 6 months after effective date of this provision]. Each application must include:

- (1) Name of the applicant, if different than the property owner, and the applicant's mailing address and telephone number.
- (2) Name of current property owner (and previous owner, if property has been transferred since October 22, 2002).
- (3) Street address and STRAP number of parcel.
- (4) Number of rental dwelling units at that address that are part of the application.
- (5) Evidence of lawful pre-existing rental use of each dwelling unit in the application as of October 22, 2002. Such evidence must include
 - a. Evidence that each dwelling unit was licensed by the state of Florida as a "resort dwelling" or as a public lodging establishment, in accordance with F.S. § 509.241.
 - b. Evidence of regular payment of Lee County's 3% tourist development tax on rentals of each dwelling unit.
 - c. Evidence of regular payment of Florida's 6% sales tax on rentals of each dwelling unit.
- (6) If desired, other evidence of lawful pre-existing rental use of the dwelling unit (such evidence is not required for registration but may include rental contracts, tax returns, etc.).
- (7) A local telephone number with a contact that is available 24 hours a day.
- (8) Notarized signatures of the property owner (and the applicant, if different than the property owner) attesting to the truth and accuracy of all information submitted with the application and consenting to inspection of the premises at reasonable hours to determine compliance with town and fire codes.

(c) The town manager will evaluate each application and notify applicants in writing within 60 days whether each dwelling unit is being registered with the town as a pre-existing short-term

rental or whether the dwelling unit does not qualify for registration. Reasons for disqualification will be stated in the written notice.

- (1) All applications and written responses are public records and will be available for inspection at town hall.
- (2) Registrants may supplement their application at any time to provide a different local telephone number with a contact that is available 24 hours a day.

(d) Decisions by the town manager pursuant to this subsection may be appealed to the town council by the applicant or adjoining property owner in accordance with § 34-86. In addition to the criteria in this subsection, the town council may consider evidence submitted by the appellant alleging equitable considerations for registration of a dwelling unit despite noncompliance with a particular requirement of this division. The town council shall consider the advice of the town attorney when evaluating allegations for equitable relief.

Sec. 34-2393–34-2410. Reserved.

OPTION THREE: [task force proposal]

NOTE – if Option Three is chosen:

- (1) *The following restriction in Table 34-1 of this code (page 76) would also be eliminated: “Rental of any permitted dwelling unit to one family during any 28-day period (see § 34-2391–2410 for exceptions)”*
- (2) *The following restriction in Table 34-1 would be moved from the “Limited” sub-group to the “Restricted” sub-group: “Rental of any permitted dwelling unit to one family, for periods of 7 days or longer”*

Sec. 34-2391. Purpose and intent.

The purpose and intent of this division is to:

- (1) Provide safe, clean, and comfortable accommodations to guests staying in short-term rental units;
- (2) Provide information to guests on relevant town regulations;
- (3) Educate guests about local standards of respectful conduct in residential neighborhoods; and
- (4) Create and protect a compatible atmosphere between short-term rental properties, resident property owners, and residential neighborhoods.

Sec. 34-2392. Definitions.

Guest means any patron, customer, tenant, lodger, boarder, or occupant of a short-term rental unit.

Operator means the owner, licensee, proprietor, lessee, manager, assistant manager, or appointed agent of a short-term rental unit.

Short-term rental unit means any single-family or two-family dwelling unit, or a unit in multiple family building with three or four dwelling units, which is rented more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented for periods of less than 30 days or 1 calendar month, whichever is less.

Sec. 34-2393. State licensure and town registration.

(a) All short-term rental units must be licensed by the state of Florida as a “resort dwelling” or a “public lodging establishment,” pursuant to F.S. § 509.241.

(b) In addition to licensure with the state of Florida, within 90 days of [insert effective date of this provision], the operator of each short-term rental unit located in the town must submit a short-term rental license application to the town, and within an additional 90 days must have obtained registration from the town. Thereinafter, a new registration application must be completed annually or upon change of ownership or property manager. The license application shall include:

- (1) Name of the operator, if different than the property owner, and the operator’s mailing address and telephone number.
- (2) A local telephone number with a contact that is available 24 hours a day.
- (3) Name of current property owner and evidence of ownership.
- (4) Street address and STRAP number of parcel.
- (5) Number of rental dwelling units at that address that are part of the application.
- (6) Evidence that each dwelling unit is licensed by the state of Florida as a “resort dwelling” or as a public lodging establishment, in accordance with F.S. § 509.241.
- (7) Notarized signature of the operator consenting to inspection of the premises at reasonable hours to determine compliance with town and fire codes.

Sec. 34-2394. Term of registration and fee.

Each registration is valid for one year, renewable by January 1 of each calendar year. The operator must notify the town within 30 days of any change in the telephone number of the local contact or any change in the operator of any registered short-term rental unit.

- (1) The application and fee shall not be deemed late until January 31 of the applicable calendar year.
- (2) The annual application fee shall be \$120 per short-term rental unit.
- (3) The fee shall be pro-rated for new applications made after January 31; renewal registrations shall not be prorated.

- (4) Failure to receive a license or complete a renewal by January 31, in combination with the use of a dwelling unit for short-term rentals, shall be a violation of this code.

Sec. 34-2395. Acknowledgment by guests of code of conduct.

The operator is required to provide guests with the town's code of conduct for short-term rentals (see § 34-2396).

- (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.

Sec. 34-2396. Code of conduct.

The following code of conduct applies to operators and guests of short-term rental units:

- (1) **Maximum Occupancy:** Occupancy of each short-term rental unit shall not exceed more than 2 guests for every bedroom in each unit, plus 2 additional guests. Occupancy of single-family homes must also be consistent with the definition of "family" that is found in § 34-2 of the Fort Myers Beach land development code, which defines a family as one or more persons occupying a dwelling unit and living as a single, nonprofit housekeeping unit, provided that a group of five or more adults who are not related by blood, marriage, or adoption shall not be deemed to constitute a family.
- (2) **Refuse Collection:** Refuse containers shall not be moved to the street more than 24 hours prior to scheduled curbside collections nor remain there more than 24 hours after scheduled collections, as required by § 6-11 of the Fort Myers Beach land development code. In addition, if a property owner or property manager is unable to comply with this requirement around the weekly pick-up day, arrangements for additional refuse collection must be secured by the operator.

- (3) **Quiet Hours:** Between the hours of 10:00 PM and 7:00 AM, all guests shall observe quiet hours. This means all outdoor activity, including swimming, shall be kept to a reasonable noise level that is non-intrusive and respectful of neighbors. Town of Fort Myers Beach Ordinance 96-24 sets limits on noise levels during quiet hours and these levels must be obeyed by all guests.
- (4) **Mandatory Evacuations:** All guests staying in short-term rental units must comply with mandatory evacuations due to hurricanes and tropical storms, as required by state and local laws.

Sec. 34-2397. 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) Violations of F.S. ch. 509 by an operator shall also be considered to be violations of this division as follows:

- (1) Failure to maintain licensure or any other provisions of ch. 509.
- (2) Failure to eject guests who indulge in any conduct which disturbs the peace and comfort, as provided by § 509.141.

(c) 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.

(d) Violations of this division by a guest shall subject the guest to the general penalty provisions of this code.

(e) Violations of this division by an operator or any guests of that operator shall subject the operator to cumulative penalties. This penalties shall accrue as follows whenever a violation results in a fine being imposed on or paid by the operator or whenever a finding of violation is made by a judge or code enforcement hearing examiner:

- (1) First violation: \$250 fine.
- (2) Second violation: \$500 fine.
- (3) Third violation: six-month suspension of all registrations.
- (4) Fourth violation: two-year suspension of all registrations.

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

Sec. 34-2398–34-2410. Reserved.

OPTION FOUR: *[Neighbors for Neighborhoods proposal]*

NOTE – if Option Four is chosen: *The following restriction in Table 34-1 of this code (page 76) would be modified as follows: “Rental of any permitted dwelling unit to one family for a period of 28 days or longer ~~during any 28-day period~~ (see § 34-2391–2410 for exceptions)”*

Sec. 34-2391. Exceptions to short-term rental restrictions.

Table 34-2 restricts the rental of any permitted dwelling unit in certain zoning districts to one family for a period of 28 days or longer (see the “Restricted” sub-group of the “Lodging” use group in Table 34-1). The following exceptions apply to this restriction:

- (1) This restriction on short-term rentals does not apply to:
 - a. Any land between Estero Boulevard and the Gulf of Mexico.
 - b. Any land with frontage on the bay side of Estero Boulevard.
 - c. Any land on the bay side of Estero Boulevard with frontage on a street that intersects Estero Boulevard and that lies entirely within 200 feet of the edge of the Estero Boulevard right-of-way.
- (2) Dwellings units on property that qualifies for any of these three exceptions may be rented to one family for periods of 7 days or longer, in lieu of the 28-day restriction that would otherwise have applied.
- (3) In addition, this restriction on short-term rentals is modified in § 34-2392 for certain other properties that are recognized by the Town of Fort Myers Beach as having had pre-existing short-term rentals as of May 21, 2002.

Sec. 34-2392. Registry and amortization of certain pre-existing short-term rental units.

(a) The Town of Fort Myers Beach hereby provides a limited amortization period for certain properties that would otherwise be restricted immediately by Table 34-2 from any rentals to more than one family for a period of 28 days or longer. This amortization period applies only to properties that are recognized by the Town of Fort Myers Beach as having had more frequent rentals as of May 21, 2002.

(b) In order to qualify for this limited amortization period, the owner of any such dwelling unit that was being lawfully used for more frequent rentals as of May 21, 2002, may apply for registration under this section.

- (1) Upon verification by the town and placement of any such dwelling unit on a registry of pre-existing short-term rentals, the owners may continue to rent those units for to one family for period of 7 days or longer until January 1, 2008, as long as the property remains licensed.
- (2) This right is limited to the owners of the property as of May 21, 2002, and shall not be transferable to subsequent owners.
- (3) Dwelling units on land that does not qualify for the amortization period should not be submitted for registration. Such units will not be placed on the registry of pre-existing short-term rentals.
- (4) If short-term rentals of a particular dwelling unit are terminated for any reason for any 12-month period, short-term rentals may not thereafter be reinstated in that dwelling unit.

(c) Applications for registration of lawful pre-existing short-term rental shall be submitted to the town manager by *[insert date here: 3 months after effective date of this provision]*. Each application must include:

- (1) Name of the applicant, if different than the property owner, and the applicant's mailing address and telephone number.
- (2) Name of current property owner and proof of ownership on May 21, 2002.
- (3) Street address and STRAP number of parcel.
- (4) Number of rental dwelling units at that address that are part of the application.
- (5) Evidence of lawful pre-existing rental use of each dwelling unit in the application as of May 21, 2002. Such evidence must include
 - a. Evidence that each dwelling unit was licensed by the state of Florida as a "resort dwelling" or as a public lodging establishment, in accordance with F.S. § 509.241.
 - b. Evidence of regular payment of Lee County's 3% tourist development tax on rentals of each dwelling unit.
 - c. Evidence of regular payment of Florida's 6% sales tax on rentals of each dwelling unit.

(6) If desired, other evidence of lawful pre-existing rental use of the dwelling unit (such evidence is not required for registration but may include rental contracts, tax returns, etc.).

- (7) Notarized signatures of the property owner (and the applicant, if different than the property owner) attesting to the truth and accuracy of all information submitted with the application and consenting to inspection of the premises at reasonable hours to determine compliance with town and fire codes.
- (8) The name, address, and local telephone number of the rental manager with assurance that a contact is available 24 hours per day, seven days a week for the purpose of promptly responding to complaints.
- (9) The initial application fee for pre-existing short-term rental shall be \$120 per rental unit.

(d) The town manager will evaluate each application and notify applicants in writing within 60 days whether each dwelling unit is being registered with the town as a pre-existing short-term rental or whether the dwelling unit does not qualify for registration. Reasons for disqualification will be stated in the written notice. All applications and written responses are public records and will be available for inspection at town hall.

(e) Decisions by the town manager pursuant to this subsection may be appealed to the town council by the applicant or adjoining property owner in accordance with § 34-86. In addition to the criteria in this subsection, the town council may consider evidence submitted by the appellant alleging equitable considerations for registration of a dwelling unit despite noncompliance with a particular requirement of this division. The town council shall consider the advice of the town attorney when evaluating allegations for equitable relief.

(f) A notice of vacation rental, including the contact information in § 34-2392(c)(8), will be sent by the town to all property owners located within 300 feet of the dwelling unit after final action has been taken on each application.

Sec. 34-2393 Terms of registration and fee.

(a) The initial registration and each renewal of a lawful pre-existing short-term rental is valid for one year, renewable by January 1 of each calendar year. The renewal application must contain:

- (1) Any changes to the initial application information described in § 34-2392(c).
- (2) An affidavit stating that short-term rentals of the dwelling unit has not terminated for any reason for any 12-month period since May 21, 2002.
- (3) Notarized signatures of the property owner (and the applicant, if different than the property owner) attesting to the truth and accuracy of all information submitted with the renewal application and consenting to inspection of the premises at reasonable hours to determine compliance with town and fire codes.
- (4) The annual renewal fee shall be \$120 per short-term rental unit.

(b) Renewal applications shall be processed using the procedures found in § 34-2392(d)–(f).

Sec. 34-2394–34-2410. Reserved.

OPTION FIVE: [*“adjacent owner” proposal*]

Sec. 34-2391. Restrictions on short-term rentals.

Table 34-2 restricts the rental of any permitted dwelling unit in certain zoning districts to one family during any 28-day period (see the “Restricted” sub-group of the “Lodging” use group in Table 34-1). The following exceptions apply to this restriction:

- (1) This restriction on short-term rentals does not apply to:
 - a. Any land between Estero Boulevard and the Gulf of Mexico.
 - b. Any land with frontage on the bay side of Estero Boulevard.
 - c. Any land on the bay side of Estero Boulevard that lies entirely within 200 feet of the edge of the Estero Boulevard right-of-way.
 - d. Dwellings units on property that qualifies for any of these three exceptions may be rented to one family for periods of 7 days or longer, in lieu of the 28-day restriction that would otherwise have applied.
- (2) In addition, this restriction on short-term rentals also does not apply to any other dwelling unit where the immediate presence of a property owner can be presumed to mitigate any negative effects that might result from the short-term rental. To qualify for this exception, the owner of the dwelling unit or an immediate family member must be in residence on the premises, or on an immediately adjoining lot, during any period when the dwelling unit is rented to one family for a period of 7 to 28 days.

Sec. 34-2392–34-2410. Reserved.

DIVISION 33. SIGNS

Sec. 34-2411. Location and construction.

All on-site and off-site signs shall be located, erected, and constructed in accordance with ch. 30.

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

~~DIVISION 34. SPECIAL SETBACK REGULATIONS FOR SPECIFIC USES
[deleted in its entirety]~~

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
SPORTS/AMUSEMENT PARKS AND RECREATIONAL FACILITIES
[relocated to division 30 of this chapter]

Secs. 34-2471~~80~~--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 the display, sale, or rental of motor vehicles, boats, recreational vehicles, trailers, mobile homes, construction or farm equipment (see § 34-1352); or to junk, scrap or salvage yards (see division 20 of this article); or to refuse, trash dumps and sanitary landfills (see division 20 of this article); or to garage or yard sales by residents of dwelling units on their own property in accordance with this code (see § 34-2622(c)(42)); or to the mooring or docking of aircraft or watercraft.

~~Sec. 34-3002. General setback requirements:
[deleted in its entirety]~~

Sec. 34-3002 1712. Mobile vendors prohibited.

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

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

Sec. 34-3003. Reserved. Lighting: *[moved to § 34-3004(c)]*

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

~~(a) Display setbacks. [deleted in its entirety]~~

~~(b) Display area. [deleted in its entirety]~~

(a) Outdoor sales includes all sales or display of merchandise, food, and beverages between the outer wall of stores and public rights-of-way or, where permitted, on public rights-of-way, but does not include merchandise visible through windows or sold to customers using pass-through windows.

(b) This code allow outdoor display and sales of merchandise only as follows:

- (1) In farmers' markets or other special events authorized by the town;
- (2) Beach furniture (in accordance with § 14-5);
- (3) Bicycles, motorbikes, and motorcycles (by dealers or rental agencies in zoning districts where they are permitted);
- (4) Boats (by boat dealers in zoning districts where they are permitted);
- (5) Personal watercraft (in accordance with § 27-49);
- (6) On private property in the Downtown zoning district (in accordance with § 34-677(c)(1)); and
- (7) On public property in parts of the Downtown zoning district (in accordance with § 34-677(c)(2)).

(c) Artificial lighting used to illuminate premises subject to this division shall be directed away from adjacent properties and streets, shining only on the subject site. [moved from § 34-3003]

(d) The outdoor display and sales of merchandise, food, and beverages is prohibited within the town limits, except in accordance with this section.

Sec. 34-3005. Storage facilities.

(a) Indoor storage.

- (1) *Permitted districts.* Except for warehouses and miniwarehouses, indoor storage is permitted within any zoning district when accessory to the permitted principal use of the property. Warehouses and miniwarehouses are permitted only in zoning districts for which it is specifically stated that such uses are permitted.

- (2) *Setbacks.* All buildings used for indoor storage which are located on the same lot as the principal building shall comply with the setback requirements for accessory buildings. Buildings used for indoor storage which are not on the same lot as the principal building, but are on the same premises, shall meet the setbacks set forth in the district regulations for principal buildings.

(b) Open storage.

- (1) *Fencing and screening.* All commercial ~~or industrial~~ outdoor storage shall be shielded behind a continuous visual screening at least eight feet in height when visible from a residential use or residential zoning district, and six feet in height when visible from any street right-of-way or street easement. ~~The fence shall be located not less than five feet from the right-of-way or street easement line (see division 17 of this article).~~
- (2) *Storage area.* Storage areas do not need to be paved. Grass or other ground cover may be used provided it is kept in a sightly and dustfree manner.

(c) Use of vehicles, truck trailers, or shipping containers for storage. Vehicles, truck trailers, shipping containers, and other similar structures may not be used to store goods, produce, or other commodities unless approved on a temporary basis in accordance with § 34-3044.

(d) ~~(e)~~ Bulk storage of flammable liquids.

- (1) *Firewalls or dikes required.* Whenever aboveground tanks for storage of gasoline, gas, oil, or other flammable liquids are located on any land where such use is permitted, such tanks shall be surrounded by an unpierced firewall or dike of such height and dimensions as to contain the maximum capacity of the tanks. All storage tanks and adjacent structures shall meet the requirements of the Board of Fire Underwriters.
- (2) *Exceptions.* Storage tanks containing liquified petroleum, commonly known as bottled gas, are specifically excluded from the provisions of this subsection.

Secs. 34-3006--34-3020. Reserved.

**DIVISION 37. SUBORDINATE
AND TEMPORARY USES**

Subdivision I. In General

Sec. 34-3021. Subordinate uses.

(a) **Purpose.** The purpose of this section is to provide for certain commercial uses provided such uses are clearly subordinate to a permitted principal uses of Cultural facilities; Hotels/motels; Multiple-family buildings; Park, community or regional; or Resorts. and are in compliance with the regulations set forth in this section.

~~(b) Subordinate commercial uses for mobile home or recreational vehicle developments.
[deleted in its entirety]~~

~~(b) Permitted uses; restrictions. (c) Other subordinate commercial uses.~~

- (1) The subsection applies to subordinate commercial uses for ~~hotels/motels, multiple-family buildings, social services groups III and IV (§ 34-622(c)(46)), health care facilities groups I, H, and IV (§ 34-622(c)(20)), cultural facilities groups I and H (§ 34-622(c)(10)), and office complexes containing 50,000 square feet or more of floor area on the same premises.~~ The uses listed in subsection ~~(b c)(2)~~ of this section shall be permitted when clearly subordinate to the principal use, subject to the following requirements:
 - a. The subordinate retail use shall be totally within the building(s) housing the principal use;
 - b. The subordinate retail use shall not occupy more than ten percent of the total floor area of the principal use; and
 - c. Public access to the subordinate commercial uses shall not be evident from any abutting street.
- (2) Uses permitted are:
 - a. ~~Personal services groups I and H (§ 34-622(c)(33)).~~
 - b. ~~Pharmacy.~~
 - b. c. Specialty Retail store, small groups I and H (§ 34-622(c)(47)).
 - c. d. Restaurant group H (§ 34-622(c)(43)).
 - e. ~~Rental or leasing establishment group I (§ 34-622(c)(39)).~~

Secs. 34-3022--34-3040. Reserved.

Subdivision II. Temporary Uses

Sec. 34-3041. Generally.

(a) **Purpose.** The purpose of this subdivision is to specify regulations applicable to certain temporary uses which, because of their impact on surrounding land uses, require a temporary use permit.

(b) **Permit required.** No temporary use shall be established until a temporary use permit has been obtained from the department director in accordance with the requirements of § 34-3050. Some temporary uses may qualify as special events that are regulated by Ordinance 98-01 as amended, or may qualify as special events on or near the beach, which are further regulated by § 14-11 of this code.

(c) **Lighting.** No permanent or temporary lighting shall be installed without an electrical permit and inspection.

(d) **Time limit.**

- (1) All uses shall be confined to the dates specified by the director, on the temporary use permit; provided, however, that:
 - a. Except as provided for seasonal parking lots in §§ 34-2022 and for other uses in §§ 34-3043 through 34-3047, the director may not authorize a temporary use for ~~the~~ more than 30 days; and
 - b. If no time period is specified on the temporary use permit, then the temporary use permit will expire and the use must be abated within 30 days from the date of issuance.
- (2) A temporary use permit may not be renewed or reissued to the same applicant or on the same premises for a similar use for a period of six months from the date of expiration of the previous temporary use permit.

(e) **Hours of operation.** Hours of operation shall be confined to those specified in the permit.

(f) **Cleanup.** The site shall be cleared of all debris at the end of the temporary use and all temporary structures shall be removed within 48 hours after termination of the use. A cash bond of a minimum of \$25.00 and not to exceed \$5,000.00 ~~shall be~~

~~posted~~ or a signed contract with a disposal firm may ~~shall~~ be required as a part of the application for a temporary use permit to ensure that the premises will be cleared of all debris during and after the event.

(g) **Traffic control.** Traffic control as may be required by the county sheriff's department and the county department of transportation shall be arranged and paid for by the applicant.

(h) **Damage to public right-of-way.** A cash bond of a minimum of \$25.00 and not to exceed \$5,000.00 may shall be required posted with county to ensure the repair of any damage resulting to any public right-of-way as a result of the event. ~~Any bond meeting the standards in subsection (f) of this section shall also be deemed sufficient to meet the requirements of this subsection.~~

Sec. 34-3042. Carnivals, fairs, circuses, and amusement devices.

(a) **Location of amusement devices and other structures.** Refer to § 34-2142(a) and (b) for setback requirements.

- ~~(1) Setback from street for amusement devices: [deleted]~~
- ~~(2) Setback from bodies of water for amusement devices: [deleted]~~
- ~~(3) Setbacks from side and rear property lines for amusement devices: [deleted]~~
- ~~(4) Setbacks from habitable structures for amusement devices: [deleted]~~
- ~~(5) Placement of amusement devices in easement: [deleted]~~
- ~~(6) General setback requirements: [deleted]~~

(b) **Off-street parking.** Refer to § 34-2020(3)g. ~~(4)r.~~ for off-street parking requirements.

(c) **Hours of operation.** The hours of operation shall be limited to 10:00 a.m. to 10:00 p.m., unless otherwise extended by the director in writing.

~~(d) Excluded areas.~~ No temporary use permits under this section shall be issued for Captiva Island or within the Gasparilla Island conservation district.

~~(d) (e)~~ **Special event permit.** In addition to a temporary use permit, a carnival, fair, circus, or amusement device, or other event may shall be subject to the provisions of the town's county's

special events ordinance, No. 98-01 as amended (see also division 34 of this article). ~~permit, as applicable.~~

Sec. 34-3043. Christmas tree sales.

(a) Christmas tree sales may be permitted in any ~~agricultural, commercial, or industrial~~ district, provided that:

- (1) No parking lot required for another use shall be used for display of trees; and
- (2) Temporary off-street parking for at least five vehicles shall be provided utilizing an existing or approved parking lot entrance or driveway.

(b) The maximum length of time for display and open-lot sales shall be 45 days.

Sec. 34-3044. Temporary contractor's office and equipment storage shed.

A contractor's office or construction equipment shed may be permitted in any district where use is incidental to an ongoing construction project with an active building permit or development order. Such office or shed shall not contain sleeping or cooking accommodations. The contractor's office and construction shed shall be removed within 30 days of the date of final inspection for the project.

~~Sec. 34-3045. Horse shows and exhibitions: [deleted in its entirety]~~

Sec. 34-3045. Alcoholic beverages.

Temporary one-day permits for the service of alcoholic beverages may be permitted in accordance with § 34-1264(d)

Sec. 34-3046. Temporary use of mobile home.

(a) **Rehabilitation or construction of residence following disaster.**

- (1) When fire or ~~natural or human-caused~~ disaster has rendered a single-family residence unfit for human habitation, the temporary use of a mobile home or recreational vehicle located on the single-family lot during rehabilitation of the original residence or construction of a new residence may be permitted subject to the regulations set out in this section.

- (2) The maximum duration length of the use shall be 18 months after the date the President of the United States issues a disaster declaration. If no disaster declaration is issued, the maximum duration of the use is 6 months, but The director may extend the permit once for a period not to exceed 60 days in the event of circumstances beyond the control of the owner. Application for an extension shall be made at least 15 days prior to expiration of the original permit. ~~Additional extensions may only be allowed by the board of zoning adjustments.~~

(b) Rehabilitation or construction of damaged business or commercial uses following disaster.

- (1) Business or commercial uses damaged by a major or catastrophic disaster that are necessary for the public health and safety or that will aid in restoring the community's economic base may be permitted to use a mobile home or similar type structure to carry out their activities until the damaged structure(s) is rebuilt or replaced according to applicable development or redevelopment regulations.
- (2) The maximum duration of the temporary use is 9 months after the date the President of the United States issues a disaster declaration. If no disaster declaration is issued, the maximum duration of the use is 6 months. The director may extend the permit once for a period not to exceed 60 days in the event of circumstances beyond the control of the owner. Application for an extension shall be made prior to expiration of the original permit.

~~(b) Construction of residence in AG district.
[deleted in its entirety]~~

(c) Conditions for use.

- (1) Required water and sanitary facilities must be provided.
- (2) The mobile home or recreational vehicle shall be removed from the property within ten days of the issuance of after the certificate of occupancy is issued for the new or rehabilitated residence, business, or commercial use, or upon expiration of the temporary use permit, whichever occurs first.

- ~~(3) Placement or setting of the mobile home, shall adhere to ch. 6, article IV, pertaining to floodplain management.~~

Sec. 34-3047. Temporary telephone distribution equipment.

Telephone distribution equipment may be granted a temporary permit during planning and construction of permanent facilities, provided that:

- (1) The equipment is less than six feet in height and 300 cubic feet in volume; and
- (2) The maximum length of the use shall be six months, but the director may extend the permit once for a period not to exceed six additional months in the event of circumstances beyond the control of the telephone company. Application for an extension shall be made at least 15 days prior to expiration of the original permit. ~~Additional extensions may only be allowed by the board of zoning adjustments.~~

Sec. 34-3048. Ancillary temporary uses in parking lots.

(a) The following ancillary temporary uses may be permitted in parking lots upon application and issuance of a temporary use permit (see § 34-3050 ~~210~~):

- (1) Seasonal promotions.
- (2) Sidewalk or parking lot sales.
- (3) Fairs and carnivals (see § 34-3042).
- (4) Tent sales.
- (5) Flea markets by nonprofit organizations.

(b) In approving a temporary use permit, the director shall require that the area of the lot to be used is clearly defined and that the use will not obstruct pedestrian and vehicular movements to portions of the lot not so used.

Sec. 34-3049. Seasonal Temporary parking lots.

~~Seasonal Temporary~~ parking lots may be permitted in commercial and industrial zoning districts, ~~excluding commercial and industrial zoning districts on Captiva Island and within the Gasparilla Island conservation district,~~ provided that they are in compliance with § 34-2022.

Sec. 34-3050~~210~~. Temporary use permits.

[moved from § 34-210]

(a) **Applicability.** ~~The county,~~ Any person desiring to conduct any of the temporary uses described in ~~article VII, division 37, this subdivision H, of this chapter~~ shall be required to submit an application for a temporary use permit.

(b) **Initiation of application.** An application for a temporary use permit may be initiated by the town ~~county~~ or any individual authorized in accordance with § 34-201(a).

(c) **Submission of application.**

- (1) No application shall be accepted unless it is presented on the official forms provided by the director ~~department~~.
- (2) Before an application may be accepted, it must fully comply with all information requirements enumerated in the application form as well as the requirements set forth in subsection (d) of this section.
- (3) The applicant shall ensure that an application is accurate and complete. Any additional expenses necessitated because of any inaccurate or incomplete information submitted shall be borne by the applicant.

(d) **Additional required information.** In addition to the application information, the applicant shall submit satisfactory evidence of the following:

- (1) Evidence shall be submitted that adequate sanitary facilities meeting the approval of the county health department are provided.
- (2) Evidence shall be submitted that sounds emanating from the temporary use shall not adversely affect any surrounding property.
- (3) Evidence shall be submitted that all requirements as to providing sufficient parking and loading space are assured.
- (4) When deemed necessary, a bond shall be posted, in addition to an agreement with a responsible person sufficient to guarantee that the ground area used during the conduct of the activity is restored to a condition acceptable to the director ~~department~~.
- (5) All applications for temporary permits, excluding those for the temporary use of mobile homes during construction of a residence following a natural disaster (see § 34-3046), shall provide public liability and property damage insurance. This requirement

may be waived by the town council ~~Board of County Commissioners~~ at a regular meeting, after advertisement on the agenda.

- (6) Evidence shall be submitted that, where applicable, the applicant for a proposed use has complied with town ordinances ~~No. 91-26 of the county~~, pertaining to special events, including Ordinances No. 98-1, 00-16, and any later amendments (see also division 34 of this article).
- (7) Evidence shall be submitted that the law enforcement and fire agencies who will be coordinating traffic control or emergency services have been advised of the plans for a temporary use and that they are satisfied with all aspects under their jurisdiction.

(e) **Inspection following expiration of permit; refund of bonds.** Upon expiration of the temporary permit, the director ~~department~~ shall inspect the premises to ensure that the grounds have been cleared of all signs and debris resulting from the temporary use and shall inspect the public right-of-way for damages caused by the temporary use. Within 45 days after a satisfactory inspection report is filed, the director ~~department~~ shall process a refund of the bonds. An unsatisfactory inspection report shall be sufficient grounds for the town ~~county~~ to retain all or part of the bonds posted to cover the costs which the town ~~county~~ would incur for cleanup or repairs.

Secs. 34-3051--34-3054. Reserved.

Subdivision III. Special Events

Sec. 34-3055. Special events.

(a) A special event is any social, commercial, or fraternal gathering for the purpose of entertaining, instructing, viewing a competition, or for any other reason that would assemble an unusual concentration of people in one location.

(b) See division 34 of this chapter for a summary of permitting rules for special events.

Secs. 34-3056~~0~~--34-3060~~70~~. Reserved.

DIVISION 38. TALL STRUCTURES

Sec. 34-~~3061~~+008. Permit for tall structures.

~~(a) It shall be the duty of the director to administer and enforce the requirements prescribed in this subdivision within the territorial limits over which the county has jurisdiction through the permitting process. The director shall implement airspace notification procedures through the use of the county airspace notification map, as developed by the county port authority, to assist the department in determining when a proposed structure or object would require a tall structures permit. This airspace notification map shall be reviewed annually with the county port authority's attorney and executive director, or their designees, to ensure currency. The various surfaces displayed on the county airspace notification map are defined as follows. The penetration of the imaginary surfaces outlined in this section shall require review by the county port authority under the provisions provided in this section:~~

- ~~(1) Publicly owned, public-use county airports.:
[deleted in its entirety]~~
 - ~~(2) Other county airports:
[deleted in its entirety]~~
 - ~~(3) Heliports. Any construction or alteration of a greater height than an imaginary surface extending outward and upward from any point of any public or private state-licensed county heliport at a slope of 25 to 1 (one foot vertically for every 25 feet horizontally) for a distance up to a height of 125 feet above mean sea level.~~
 - ~~(4) Airport surveillance radar notification areas:
[deleted in its entirety]~~
 - ~~(5) Other areas. Any construction or alteration of a greater height than 125 feet above mean sea level shall require a tall structures permit.~~
- ~~(b) If the director determines, for any proposed construction, including adding height to any existing structures, and for all alterations, repairs or additions that will change the use of the structure, or for erecting, altering or repairing any object of natural growth, that the height of the proposed structure or object exceeds the height limitations outlined on the county airspace notification map as determined by the director, then the An applicant is required to obtain a tall structures permit prior to the~~

issuance of any further development orders or permits.

~~(b) (e)~~ Applications for a tall structures permit shall include the height and location of derricks, draglines, cranes, and other boom-equipped machinery, if such machinery is to be used during construction.

- ~~(1) (d)~~ Applicants intending to use derricks, draglines, cranes, and other boom-equipped machinery for such construction, reconstruction, or alteration as is consistent with the provisions of this subdivision shall, when the machine operating height exceeds the height limitations imposed by this subdivision, require a tall structures permit.
- ~~(2)~~ Upon obtaining this permit through the procedures outlined in this section, the applicant shall mark, or mark and light, the machine to reflect conformity with the Federal Aviation Administration's or the county port authority's standards for marking and lighting obstructions, whichever is more restrictive, and shall be required in such cases to inform the county port authority, through this tall structures permit process, of the location, height, and time of operation for such construction equipment use prior to the issuance of any construction permit to the applicant.

~~(c) (e)~~ The permitting procedures for a tall structures permit are outlined as follows. If a tall structures permit application is deemed necessary by the director, as determined through the use of the county airspace notification map, the following procedures shall apply:

- ~~(1)~~ The director ~~department~~ shall give a written notice to the applicant that a tall structures permit is required and that no further permits or development orders can be issued until a tall structures permit is obtained.
- ~~(2)~~ The applicant shall then submit a completed tall structures permit application to the Lee County Port Authority, 16000 Chamberlin Parkway, Ft. Myers, Florida 33913. The county port authority shall review the application, and the following procedures will apply:
 - a. If the county port authority determines that the proposed construction or alteration represented in the application does not violate the provisions of Federal Aviation

Regulations, part 77, or the provisions of this subdivision or any other application of federal or state rules and regulations or does not adversely affect the airspace surrounding any county airport, the port authority shall indicate such determination on the tall structures permit application.

The signed tall structures permit application will then be returned to the applicant. The applicant shall present the tall structures permit application to the administrative director in order that a tall structures permit may be issued. If the signed tall structures permit application is accompanied with stipulations of compliance as determined by the county port authority, it is the responsibility of the administrative director to ensure that these stipulations are adequately addressed prior to the issuance of a tall structures permit.

- b. If the county port authority determines that the proposed construction or alteration violates the notification criteria of Federal Aviation Regulations, part 77, or otherwise violates any provisions of this subdivision or any other applicable federal or state rules or regulations, the county port authority will notify the applicant in writing that the proposed construction or alteration may adversely affect the airspace surrounding county airports and require that a notice of proposed construction or alteration be filed with the Federal Aviation Administration for review through the submittal of Federal Aviation Administration Form 7460-1 as required by Federal Aviation Regulations, part 77. The county port authority shall suspend the tall structures permit application process until Federal Aviation Administration findings of aeronautical effect are received and reviewed.
- c. It is the responsibility of the applicant to forward the Federal Aviation Administration's findings of aeronautical effect, along with a copy of the completed original Federal Aviation Administration Form 7460-1, to the county port authority in order to continue the tall structures permit process.
- d. The tall structures permit application shall not be issued if the proposed construction or alteration is found to violate the

provisions of this subdivision or any other applicable federal or state rules or regulations. No tall structures permit will be issued if all Federal Aviation Administration and county port authority comments are not addressed to the satisfaction of the county port authority.

The applicant shall be forwarded a written notice if the tall structures permit is denied, from the county port authority. This written notice shall specify the reason for objections and suggestions for compliance under this subdivision and all other applicable federal or state rules and regulations.

- e. After reviewing the Federal Aviation Administration's comments pertaining to the Federal Aviation Administration Form 7460-1, if the county port authority determines that the proposed construction or alteration does not adversely affect any other requirements pertaining to county airports, the port authority shall return to the applicant the signed tall structures permit application. The applicant shall present a copy of the tall structures permit application, along with all port authority comments and stipulations, to the director in order that a tall structures permit may be issued. If the signed tall structures permit application is accompanied with stipulations of compliance, it is the responsibility of the director to ensure that these stipulations are adequately addressed prior to the issuance of a tall structures permit.

(d) ~~(f)~~ If the director determines that all procedures and application approvals are in compliance with the provisions outlined in this section, then a tall structures permit will be issued to the applicant.

(1) ~~(g)~~ No tall structures permit shall be issued prior to obtaining a determination of acceptability and compliance from the county port authority.

(2) ~~(h)~~ Temporary or conditional tall structures permits pending completion of the Federal Aviation Administration's or the county port authority's review shall not be issued.

Secs. 34-3062--34-3065. Reserved.

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

Sec. 34-3066. Purpose of division.

This division regulates the placement of tattoo studios and body-piercing salons. The purpose is to reduce the permanent effects of impulsive behavior by separating establishments or concentrations of establishments that indelibly mark the human body from bars and restaurants that serve alcoholic beverages.

Sec. 34-3067. Definitions.

Body-piercing means for commercial purposes the act of penetrating the skin to make, generally permanent in nature, a hole, mark, or scar. "Body piercing" does not include the use of a mechanized, presterilized ear-piercing system that penetrates the outer perimeter or lobe of the ear or both.

Body-piercing salon means any temporary or permanent place, structure, or business that is licensed under the provisions of F.S. § 381.0075 to perform body piercing.

Establishment means a body-piercing salon or tattoo studio as defined in this division, but does not include the practice of any state-licensed physician or osteopath who may attempt to cover up existing tattoos.

Expanded means the enlargement or relocation of an establishment to begin using floor space that was not previously used by the establishment for daily business.

Tattooing means the placement of indelible pigment, inks, or scarification beneath the skin by use of needles for the purpose of adornment or art. "Tattooing" includes the practice of permanent makeup and micropigmentation.

Tattoo studio means any temporary or permanent place, structure, or business used for the practice of tattooing.

Sec. 34-3068. Minimum spacing required for new, expanded, or relocated establishments.

OPTION 1: No new, expanded, or relocated tattoo studio or body-piercing salon shall be placed

within 1,000 feet of any bar, cocktail lounge, or restaurant that serves alcoholic beverages for consumption on the premises. This distance shall be measured from any public entrance or exit of the establishment in a straight line to the nearest property line of the property containing the bar, cocktail lounge, or restaurant.

OPTION 2: No new, expanded, or relocated tattoo studio or body-piercing salon shall be placed within the outer perimeter of the Downtown zoning district, whether the subject property is currently classified in the Downtown zone or in a Commercial Planned Development zone.

OPTION 3: No new, expanded, or relocated tattoo studio or body-piercing salon shall be placed within 2,000 feet of any lawfully existing establishment. This distance shall be measured from any public entrance or exit of the new, expanded, or relocated establishment in a straight line to the nearest property line of the existing establishment.

Sec. 34-3069. Existing establishments.

Any tattoo studio or body-piercing salon that is lawfully operating on the effective date of this division may continue in operation for a period of three years, but during that period such establishment may not be expanded, relocated, or transferred to a new owner unless the business's location conforms with the locational requirements for a new establishment.

[DELETE THIS SECTION IF OPTION 3 IS CHOSEN FOR SECTION 34-3068]

Secs. 34-3070–34-3100. Reserved.

DIVISION 38. UNITS OF HIGH IMPACT
[deleted in its entirety]

**DIVISION 39. USE, OCCUPANCY, AND
CONSTRUCTION, AND MOVING
REGULATIONS**

Sec. 34-3101. Compliance with applicable regulations.

No building, structure, land, or water shall hereafter be used or occupied, and no building, structure or part thereof shall hereafter be erected,

constructed, reconstructed, located, moved, or structurally altered, and no land shall be cleared, graded, excavated, or filled, or otherwise altered, except in conformity with the regulations specified in this chapter for the district in which it is located, the Fort Myers Beach Comprehensive ~~Lee~~ Plan and all other applicable town county ordinances.

Sec. 34-3102. Reserved. Number of principal buildings on lot. *[deleted in its entirety]*

Sec. 34-3103. Permit for moving building.

No building or part of any building shall be relocated or moved through or across any sidewalk, street, alley, or highway within the town unincorporated area of the county unless a permit has first been obtained from the director division of codes and building services in accordance with the procedures and application requirements for building relocation as set forth in § 34-1951, 34-209, as well as a structure moving permit from the department of transportation and engineering services in accordance with the structures moving ordinance if so adopted. Buildings or structures that have been designated as historic resources pursuant to ch. 22 shall also obtain a certificate of appropriateness as provided in § 22-105.

Sec. 34-3104. Clearing, grading, or filling of land. *[substance moved to § 34-3101]*

Secs. 34-31045--34-3130. Reserved.

DIVISION 40. VEHICLE VISIBILITY

Sec. 34-3131. Vehicle visibility at intersections.

(a) Corner lots; driveways on Estero Boulevard. On all corner lots, and on all driveways entering onto Estero Boulevard, no obstruction shall be planted or erected which materially obstructs traffic visibility within the triangular space bounded by the two intersecting right-of-way lines visibility triangle as shown in Figure 34-30, and a straight line connecting the two points on the street right-of-way lines 25 feet from their intersection. No structures (except along Old San Carlos Boulevard) or at and plantings masses shall be permitted between two three feet and six ten feet above the average grade of each street within this triangular space.

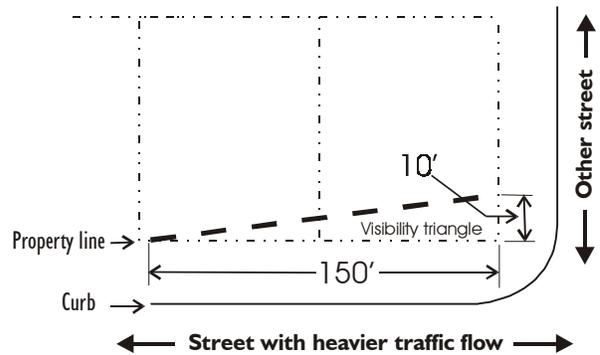


Figure 34-30

(b) All other driveways and parking lot entrances. At all other intersections of driveways or parking lot entrances with a street right-of-way or easement, no obstruction shall be planted or erected which materially obstructs the driver's view of approaching traffic or pedestrians within a visibility triangle as shown in Figure 34-31 on both sides of the driveway. No structures (except along Old San Carlos Boulevard) or plantings shall be permitted between two feet and six feet above the average grade of each street within this triangular space.

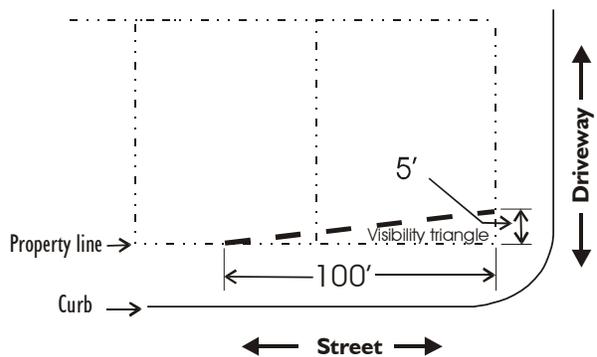


Figure 34-31

Secs. 34-3132--34-3150. Reserved.

DIVISION 41. WATER-ORIENTED RENTALS ACTIVITIES

Sec. 34-3151. Water-oriented rental establishments; outdoors.

(a) Applicability. This section addresses is to provide specific standards for those outdoor rental activities that may be permitted on occur on commercially zoned property adjacent to the Gulf of Mexico and are not located fully within a building.

This section is supplemented by the specific standards for personal watercraft rental businesses and parasail activities that are found in ch. 27 of this code.

(b) ***Permitted districts.*** These activities Water-oriented rentals are permitted only in resorts as resort accessory uses and in certain zoning districts where permitted by right or by special exception (see division 2 of article III of this chapter), commercial zoning districts that permit boat rentals and leasing or rental establishments, group I. Locations for personal watercraft rental businesses and parasail activities are further restricted by § 27-51(a).

(c) ***Location.*** The activity or activities must be located on development properties, landward of the water body setback line for the Gulf of Mexico, unless approved by special permit, and must be situated so that they are not readily visible from any public street right-of-way or easement. There may not be any indication from any street that these activities are this activity is occurring except as allowed by § 27-51(c)(5).

(d) ***Setbacks.*** The activity ~~must~~ may be located no closer than ten feet to within the side property lines and may not be permitted seaward of the minimum waterbody setback for the Gulf of Mexico as set forth in § 34-2194 § 34-637(d)(3). ~~without a special permit.~~ Exceptions are:

- (1) Beach chairs and umbrellas may be displayed or placed anywhere landward of the mean high water line.
- (2) Personal watercraft rental operations and parasail activities that are authorized by this code are permitted seaward of the mean high water line as set forth in ch. 27.

(e) ***Time limitations.*** The rental activity may not occur after sunset or before sunrise, and movement of personal watercraft is further restricted by § 27-49(4). Artificial lighting is prohibited.

(f) ***Storage during sea turtle nesting season.*** No structures or equipment of any kind may be left on the beach before or after regular business hours between the hours of 9:00 PM and 7:00 AM from May 1 until October 31. See also §§ 14-5, 14-78, and 27-49(9). The equipment not being displayed for rent must be stored in an enclosed structure or removed from the property when not in use.

(g) ***Signage.*** The only signage permitted shall be those signs specifically authorized by § 27-51(c). Signage visible from any street right-of-way or street easement is prohibited. Only one on-site identification sign will be permitted. The sign must be located on the beach side of the building, facing the beach and may not exceed 25 square feet.

(h) ***Parking.*** A minimum of five parking spaces will be provided for the outdoor water-oriented rental establishments. Any other use of the property must comply with the off-street parking requirements set forth in article VII, division 26 of this chapter.

Secs. 34-3152--34-3200. Reserved.