



SPIKOWSKI PLANNING ASSOCIATES

MEMORANDUM

TO: Terry Stewart, Town Manager
FROM: Bill Spikowski
DATE: April 5, 2010
SUBJECT: Latest Update to Land Development Code for Fort Myers Beach

Attached to this memo are replacement pages to the Fort Myers Beach Land Development Code for distribution to interested parties. These pages include all changes made by the Town Council via Ordinances 06-13, 07-03, 07-04, 07-09, 08-03, 08-09, 08-11, 09-01, and 09-02 (through December 21, 2009).

Those holding LDC binders that have been updated through Ordinances 05-21 and 06-18 should use the attached pages to replace the obsolete pages in their code binder. Obsolete pages can be discarded.

- Table of Contents: replace existing table of contents page
- Chapter 6: replace entire existing Chapter 6
- Chapter 10: replace existing pages 1-2 and 27-28
- Chapter 14: replace entire existing Chapter 14
- Chapter 27: replace existing pages 1-4
- Chapter 30: replace existing pages 5-6 and 15-22
- Chapter 34: replace existing pages 5-6, 13-20, 27-36, 45-46, 57-68, 127-128, 135-138, and 161-162

The entire Land Development Code, including these latest revisions, can be downloaded and printed at no cost from this web page: <http://www.spikowski.com/beach.htm> Replacement pages for previous amendments (including Ordinance 06-18) were circulated in December 2006.

Also available on that web page is a single Adobe PDF file with a compilation of the entire code that can be used for searching for words or other text strings throughout the code from most Adobe Acrobat/Reader products. This compilation of the entire code is available here:
http://www.spikowski.com/New_CHnn-AllChaptersThru09-02.pdf

cc: Town Attorney, Community Development Director

TOWN OF FORT MYERS BEACH, FLORIDA

LAND DEVELOPMENT CODE

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

FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 6 MAINTENANCE CODES, BUILDING CODES, AND COASTAL REGULATIONS¹

ARTICLE I. PROPERTY MAINTENANCE CODES

Division 1. Maintenance Code

- Sec. 6-1. Purpose and definitions.
- Sec. 6-2. Exterior surfaces of buildings.
- Sec. 6-3. Exterior storage.
- Sec. 6-4. Public rights-of-way and sidewalks.
- Sec. 6-5. Nuisances.
- Sec. 6-6. Inoperative vehicles on public property.
- Sec. 6-7. Noise.
- Sec. 6-8. Required landscaping, buffers, and native vegetation.
- Sec. 6-9. Lot mowing.
- Sec. 6-10. Building numbers.
- Sec. 6-11. Refuse containers.
- Sec. 6-12. Disposal of swimming pool water.
- Sec. 6-13. Stormwater drainage on the beach.
- Sec. 6-14. Neighborhood flooding.
- Sec. 6-15. Accessory structures.
- Sec. 6-16–6-30. Reserved.

Division 2. Housing Code

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

Division 3. Unsafe Building Abatement Code

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

ARTICLE II. BUILDING CODES

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- Sec. 6-41. Applicability of article.

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

- Sec. 6-42. Penalty for violation of article; additional remedies.
- Sec. 6-43. Conflicting provisions.
- Sec. 6-44. Enforcing officers.
- Sec. 6-45. Permit fees.
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- Sec. 6-72. Intent of division.
- Sec. 6-73. Boards established; jurisdiction.
- Sec. 6-74. Delegation of authority to Lee County's boards of adjustment and appeals.
- Secs. 6-75--6-79. Reserved.
- Sec. 6-80. Right of appeal; notice of appeal.
- Sec. 6-81. Variations and modifications.
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Division 3. Building Code

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- Sec. 6-112. Wind-borne debris region and basic wind speed map.
- Sec. 6-113. Compliance with outdoor lighting standards.
- Sec. 6-114. Compliance with NPDES erosion control standards.
- Secs. 6-115--6-120. Reserved.

Division 4. Existing Buildings Code

- Sec. 6-121. Purpose.
- Sec. 6-122. Adoption; amendments.
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Division 5. Contractor Licensing

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- Sec. 6-333. Definitions.*
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- Sec. 6-408. Basis for establishing flood regulations.*
- Sec. 6-409. Reserved.*
- Sec. 6-410. Conflicting provisions.*
- Sec. 6-411. Reserved.*
- Sec. 6-412. Warning and disclaimer of liability.*
- Secs. 6-413--6-440. Reserved.*

Division 2. Administration

- Sec. 6-441. Designation of administrator.*
- Secs. 6-442--6-443. Reserved.*
- Sec. 6-444. Applications and certifications.*
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- Sec. 6-471. General standards.*
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ARTICLE I. PROPERTY MAINTENANCE CODES

DIVISION 1. MAINTENANCE CODE

Sec. 6-1. Purpose and definitions.

(a) The purpose of this division is to protect the comfort, health, repose, safety, and general welfare of residents of the Town of Fort Myers Beach by:

- (1) establishing minimum property and building maintenance standards; and
- (2) providing for the abatement of nuisances affecting the general public.

(b) The maintenance and nuisance standards in this division are supplementary to standards that are found in other portions of this code and in other ordinances adopted by the Town of Fort Myers Beach.

(c) "Abandoned Property" means:

- (1) all tangible personal property that does not have an identifiable owner and that has been disposed of on private property in a wrecked, inoperative, or partially dismantled condition or that has no apparent intrinsic value to the rightful owner; or
- (2) property that has been mislaid on private property but that is in a substantially operable, functional condition or has an apparent intrinsic value to the rightful owner.

(d) "Trash" means:

- (1) any accumulation of animal, fruit, or vegetable waste that is subject to decomposition, decay, or putrefaction; or
- (2) debris, garbage, lumber, sawdust, or other waste materials; or
- (3) material that does not meet other definitions set forth herein and that may have some real or perceived value to the owner or occupant of private property upon which it is located but that constitutes by its existence a nuisance in that it devalues the underlying or adjacent property, creates a public nuisance, nuisance per se, or attractive nuisance as

defined by law, or threatens the public health, safety, or welfare.

(e) "Nuisance grasses and/or weeds" means grasses and/or weeds that are not regularly cared for and maintained and that exceed 12 inches in height and/or underbrush or undergrowth or other noxious vegetation.

Sec. 6-2. Exterior surfaces of buildings.

(a) All building walls and roofs shall be maintained in a secure and attractive manner. Deteriorated structural and decorative elements of any building wall or roof shall be repaired or replaced in a workmanlike manner to match as closely as possible the materials and construction of the building.

(b) All exterior surfaces other than decay-resistant wood and other weather durable finishes shall be protected from the elements by paint or other protective covering applied according to manufacturers' specifications. Loose material, including peeling paint, shall be removed and replaced.

(c) Doors and windows shall be maintained as follows:

- (1) All doors and windows shall be secured in a tight-fitting and weatherproof manner.
- (2) Sashes with rotten wood must be repaired or replaced.

(d) Ground level storefront windows facing a public right-of-way shall be maintained in an unbroken and clean state.

- (1) No window facing a public right-of-way shall be removed, enclosed, or covered, except that damaged windows may be boarded up for a reasonable temporary period while repairs are being arranged. Any building renovations approved under this code must treat such windows as an integral part of the building facade.
- (2) All awnings or canopies facing or visible from the public right-of-way shall be maintained in good condition. Torn or loose awnings shall be promptly repaired or replaced.

(e) All roofs shall be maintained in a secure and watertight condition.

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

Sec. 6-3. Exterior storage.

(a) No temporary or permanent storage of materials or equipment will be allowed on any vacant parcel except in compliance with the regulations for the use of such property as set forth in ch. 34 of this code, or in conjunction with an active building permit.

(b) Equipment, materials, and furnishing not designed for use outdoors, such as automotive parts and tires, building materials, and interior furniture, may not be stored outdoors.

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

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

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

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

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

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

Sec. 6-5. Nuisances.

(a) No person owning, leasing, operating, or having control of any premises with the town will maintain, keep, or permit any nuisance as described in this section.

(b) The existence of any of the following conditions or conduct is hereby declared to constitute a public nuisance:

- (1) A condition or use that causes a substantial diminution of value of property in the vicinity of the condition or use.
- (2) Buildings that are abandoned.
- (3) Buildings that are boarded up, except when placed for temporary hurricane protection and removed within 30 days.
- (4) Buildings that are partially destroyed and not rebuilt within a reasonable temporary period while repairs are being arranged,
- (5) Partially constructed buildings that are not completed within a customary construction period or for which building permits have expired.
- (6) Any attractive nuisance dangerous to children such as excavations, untended and unfenced swimming pools, or abandoned or broken equipment or machinery.
- (7) Overt blocking of drainage swales or pipes so as to cause flooding or adversely affect surrounding property.
- (8) Excessive or untended accumulations of trash or abandoned property, including scattered trash and litter that remains on commercial parking lots for a period longer than 24 hours.
- (9) Outdoor storage on private property of boats or motor vehicles which are not affixed with a current registration decal.
- (10) Accumulation of nuisance grasses and/or weeds.
- (11) Any other condition or use that constitutes a nuisance to the public which is continually or repeatedly maintained, the abatement of which would be in the best interest of the health, safety, and welfare of residents of the town.

Sec. 6-6. Inoperative vehicles on public property.

(a) The keeping, storing, or parking of an inoperative vehicle on any public property, including public streets and rights-of-way, is hereby declared to be a nuisance. It shall be unlawful for any person to allow any inoperative vehicle to remain on public property. The notice and removal procedures set forth in F.S. §§705.105 through 705.104 may be used by town and law enforcement personnel.

(b) If a vehicle becomes disabled while on public property, it shall be removed within 24 hours.

Sec. 6-7. Noise.

Unreasonable levels of noise are regulated by Fort Myers Beach Ordinance No. 96-24.

Sec. 6-8. Required landscaping, buffers, and native vegetation.

Any landscaping, buffers, and native vegetation planted or preserved in accordance with a development order or rezoning approval shall be maintained in at least the same condition as required for the original installation or preservation. Ch. 10 of this code describes the current plant maintenance standards.

Sec. 6-9. Lot mowing.

(a) It is the duty of every person to maintain their property so that nuisance grasses and/or weeds do not accumulate thereon. Such accumulations impair the economic welfare of property and contribute to fire hazards and/or health hazards within the town.

(b) The town will issue to the property owner of record a first notice of violation regarding the existence of nuisance grass and/or weeds on property. This will be issued via first class mail or posting the property. The property owner of record must abate the nuisance within 10 days, after which time the director may instruct employees or contractors of the town to enter the property and abate the nuisance. The cost of such abatement will be levied as an assessment against the property.

The director will prepare an assessment bill for the entire cost of abatement.

(c) Within 5 days of receipt of the first notice of violation by mail or posting, the owner of the property may make a written request to the director for a hearing on the issue of whether the condition alleged in the notice does not exist or does not constitute a nuisance. Such hearing will be scheduled and conducted before the special magistrate as set forth elsewhere in this code.

(d) Unless a hearing is requested and held as set forth in subsection (c), the town will send a second notice, that may contain an invoice detailing any and all costs including administrative costs incurred by the town if the town abates the nuisance, along with a request for payment of these costs, to the property owner within 30 days of the date of the first notice. In the event the amount set forth on this notice is not paid in full within 30 days, an assessment lien indicating these costs, signed by the director, will be placed against the property and recorded in the official records of Lee County, Florida. The lien will incorporate interest at the statutory rate on the unpaid balance of the assessment until the balance is paid in full.

Sec. 6-10. Building numbers.

(a) Every building in the town shall continuously display the building number assigned to it by Lee County so that the building can be readily identified from the street by emergency personnel.

(b) Posted building numbers shall be at least 3 inches high. Numbers on commercial, institutional, or multifamily buildings that are set back more than 50 feet from the street shall be at least 8 inches high. Building numbers shall be in a color that contrasts with the immediate background and must be clearly visible from the adjoining street.

Sec. 6-11. Refuse containers.

(a) Refuse containers shall not be moved to the street more than 24 hours prior to scheduled curbside collections nor remain there more than 24 hours after scheduled collections.

(b) Any refuse containers that are not movable in accordance with subsection (a) shall be opaquely screened from view from streets and adjoining

properties. This screening may be achieved by landscaping or by virtue of the location of the container on the site. Screening may also be achieved by walls or opaque fencing provided the wall or fence does not exceed the maximum height permitted for that location (see §§ 34-1171 et seq. and 34-1744). If the nonmovable refuse container would be visible above the allowable height, it must be replaced with a shorter container.

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

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

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

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

Tidal waters can become polluted and beaches can be eroded when pipes or culverts discharge directly onto the beach. Point sources of discharge from private property directly onto the beach are prohibited. This prohibition includes drainage collected from parking lots or other paved surfaces and stormwater from the roofs of buildings. Point sources of discharge from private property that were in lawful existence as of April 18, 2005, must be eliminated within 36 months.

Sec. 6-14. Neighborhood flooding.

(a) Chapter 10 of this code requires stormwater management systems for new development (see § 10-321). Development that is not subject to those requirements, such as single-family and two-family dwellings on existing lots, can also flood

surrounding lots and streets, especially if the lot is raised higher than adjoining properties or if rainfall is concentrated by gutters and downspouts and discharged without an opportunity for infiltration.

(b) To minimize neighborhood flooding from normal daily rainfall, a fill permit must be obtained from the town when fill material is to be placed on lots that would raise the elevation more than an average of 6 inches above adjoining lots. The fill permit application must show how normal rainfall will have an opportunity to infiltrate into the ground within the lot using one or more of the following methods or equivalent solution:

- (1) Gutters and downspouts that collect rainwater must discharge into exfiltration trenches (french drains), or into a subsurface drainfield that meets the construction standards of F.A.C. 64E-6.014(5) (the percolation, depth, location, and setback standards for drainfields need not be met), or onto substantially flat and porous surfaces such as:
 - a. Sodded lawns.
 - b. Clean (washed) gravel or sand over a well-drained base.
 - c. Porous (pervious) paving.
- (2) Roof areas not served by gutters and downspouts must not drain to impervious surfaces, and must not drain to pervious surfaces that are sloped in excess of 5%. Surfaces not meeting these requirements must be designed to detain or deflect rainfall, for instance through the use of earthen ridges, curbs, or retaining walls that prevent average rainfall from running onto adjoining lots or streets.

(c) Additions to, renovations of, and replacements for single-family and two-family dwellings that include the installation of gutters and downspouts must also obtain a fill permit showing discharge from the downspouts being directed to the same standards as for filled lots.

Sec. 6-15. Accessory structures.

All accessory structures, including detached garages, fences, walls, and seawalls, will be maintained in good repair and with structural soundness.

Sec. 6-16–6-30. Reserved.

DIVISION 2. HOUSING CODE

Sec. 6-31. Adoption; amendments.

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

Chapter 1, Administration.

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

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

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

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

Exception: Section 103.5 is deleted.

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

104 Inspections

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

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

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

Chapter 2, Definitions.

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

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

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

Chapter 3, Minimum Standards for Basic Equipment and Facilities.

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

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

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

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

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

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

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

DIVISION 3. UNSAFE BUILDING ABATEMENT CODE

Sec. 6-36. Adoption; amendments.

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

Chapter I, Administration.

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

Chapter II, Definitions.

Chapter III, Inspection and Notice of Noncompliance.

Chapter IV, Appeals.

Chapter V, Rules of Procedure for Hearing Appeals.

Chapter VI, Implementation.

Chapter VII, Recovery of Cost of Repair or Demolition.

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

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

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

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

**ARTICLE II.
BUILDING CODES**

DIVISION 1. GENERALLY

Sec. 6-41. Applicability of article.

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

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

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

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

Sec. 6-43. Conflicting provisions.

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

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

Sec. 6-44. Enforcing officers.

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

Sec. 6-45. Permit fees.

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

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

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

Sec. 6-71. Applicability of division.

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

Sec. 6-72. Intent of division.

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

Sec. 6-73. Boards established; jurisdiction.

Lee County has established a construction board of adjustment and appeals known as the Lee County board of adjustment and appeals through chapter 6, article 2, division 2 of the Lee County Land Development Code. The purpose of that board is to hear and decide appeals from the

decision of the county's building official and fire official or their designees on any of the various standard codes regulated and enforced by the county except the plumbing code and mechanical code. Lee County has also established separate boards of adjustment and appeals to arbitrate matters involving the plumbing code and mechanical code.

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

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

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

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

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

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

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

Sec. 6-81. Variations and modifications.

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

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

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

Sec. 6-82. Decisions.

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

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

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

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

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

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

DIVISION 3. BUILDING CODE

Sec. 6-111. Adoption; amendments.

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

Chapter 1, Administration.

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

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

103.2 Right of entry.

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

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

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

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

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

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

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

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

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

Section 104.1.4 is amended to read as follows:

104.1.4. Minor repairs.

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

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

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

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

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

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

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

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

Chapter 33, Site Work, Demolition and Construction.

Section 3311.5 is added, to read as follows:

3311.5 Trash containers.

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

Chapter 34, Existing Buildings.

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

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

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

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

3401.2.2.1 If the occupancy classification or any occupancy subclassifications of any existing building or structure is changed to a more hazardous occupancy, the building, electrical, gas, mechanical, and plumbing systems shall be

made to conform to the intent of the technical codes as required by the building official.

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

3401.5 Special historic buildings

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

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

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

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

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

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

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

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

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

**DIVISION 4.
EXISTING BUILDINGS CODE**

Sec. 6-121. Purpose.

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

Sec. 6-122. Adoption; amendments.

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

Chapter 1, Administration.

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

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

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

Chapter 2, Definitions and Abbreviations.

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

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

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

Chapter 4, Means of Egress.

Chapter 5, Fire Protection.

Chapter 6, Light, Ventilation and Sanitation.

Chapter 7, Building Services.

Chapter 8, Maintenance.

Appendix A, Rehabilitation Guidelines.

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

DIVISION 5. CONTRACTOR LICENSING

Sec. 6-231. Contractor licenses required.

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

- (1) state-certified contractors holding an active state certificate of competency;
- (2) state-registered contractors holding an active state registration and Lee County certificate

of competency. A Lee County certificate of competency alone is not sufficient if state statute requires that the contractor also hold a state certificate or registration;

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

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

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

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

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

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

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

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

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

- (1) Air conditioning contractor – Class A
- (2) Air conditioning contractor – Class B
- (3) Air conditioning contractor – Class C
- (4) Alteration and repair (non-structural) contractor
- (5) Building contractor
- (6) Cement, concrete and masonry contractor
- (7) Cement finishing contractor
- (8) Demolition contractor

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

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

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

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

(b) The policies, procedures, and safeguards applicable to the Lee County Construction Licensing Board according to Lee County

Ordinance No. 96-20 are hereby adopted by the Town of Fort Myers Beach for all actions of the Board regarding violations alleged to have occurred within the town.

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

Sec. 6-235. Owner-builder exemption.

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

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

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

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

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

Sec. 6-236. Other exemptions.

The licensing provisions of this article do not apply to:

- (1) Any employee of a duly licensed contractor who is acting within the scope of the employer's license or with the employer's knowledge and permission. However, if the employer is not licensed to perform the type of services the employee is contracting to perform, then the employee is not exempt if the employee:
 - a. Holds himself or his employer out to be licensed or qualified by a licensee to perform services outside the scope of the employer's license;
 - b. Leads the consumer to believe that the employee has an ownership or management interest in the company; or
 - c. Performs any of the acts which constitute contracting for services outside the scope of the employer's license.

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

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

perform the construction services under the design-build contract.

Sec. 6-237. Penalties.

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

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

ARTICLE III. COASTAL CONSTRUCTION CODE

DIVISION 1. GENERALLY

Sec. 6-331. Origin.

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

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

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

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

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

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

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

Sec. 6-333. Definitions.²

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 6-334. Variances.

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

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

**DIVISION 2.
COASTAL CONSTRUCTION STANDARDS**

Sec. 6-361. Generally.

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

Sec. 6-362. Reserved.

Sec. 6-363. Reserved.

Sec. 6-364. Special requirements near beaches.

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

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

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

- (1) Locational criteria for minor structures are found in § 6-366(b).
- (2) Construction of a rigid coastal or shore protection structure designed primarily to protect a minor structure is not permitted; see article II of ch. 26 for detailed regulations.

Sec. 6-365. Reserved.

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

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

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

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

- c. Licensed beach vendors may place rental equipment and/or a temporary movable structure in accordance with § 14-5, ch. 27, and § 34-3151 of this code.
- (2) Minor structures that are not permitted by right may be approved in the EC zoning district through the special exception process or as deviations in the planned development rezoning process. Such minor structures may include stairways, walkways, ramps, fences, walls, decks, bathhouses, viewing platforms, gazebos, chickees, patios, and other paved areas. These structures should be located as close to the landward edge of the EC zoning district as possible and must minimize adverse effects on the beach and dune system. See §§ 34-88, 34-932(b), and 34-652 for details.
- (3) Minor structures not qualifying by right, by special exception, or through another provision of this code are not permitted in the EC zoning district. See § 34-652 for details.

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

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

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

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

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

Sec. 6-367. Public access.

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

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

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

**ARTICLE IV.
FLOODPLAIN REGULATIONS**

DIVISION 1. GENERALLY

Sec. 6-401. Reserved.

Sec. 6-402. Findings of fact.

(a) The Town of Fort Myers Beach is subject to periodic inundation which may result in the loss of life and property, as well as health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

(b) These flood losses are caused by the occupancy in flood hazard areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated or floodproofed or otherwise unprotected from flood damages.

Sec. 6-403. Purpose of article.

It is the purpose of this article to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion; and
- (2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.

Sec. 6-404. Objectives of article.

The objectives of this article are to:

- (1) Protect human life and health;
- (2) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (3) Minimize prolonged business interruptions;

- (4) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in floodplains; and
- (5) Help maintain a stable tax base by providing for the sound use and development of floodprone areas in such a manner as to minimize future flood blight areas.

Sec. 6-405. Definitions.³

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

Accessory structure means a building or structure which is customarily incidental and subordinate to a principal building or to the principal use of the premises, and located on the same premises.

Addition means any walled and roofed expansion that increases the floor space of an existing building in which the addition is connected by a common loadbearing wall other than a firewall. Any walled and roofed addition which is connected by a firewall or is separated by independent perimeter loadbearing walls is considered new construction.

Appeal means a request for a review of the coordinator's interpretation of any provision of this article. A request for a variance from the precise terms of this article is not an appeal.

Area of special flood hazard means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. The entire Town of Fort Myers Beach has been designated an area of special flood hazard by the Federal Emergency Management Agency (see § 6-408).

³*Cross reference(s)--Definitions and rules of construction generally, § 1-2.*

Base flood means the flood having a one percent chance of being equaled or exceeded in any given year, as determined by the maps described in § 6-408.

Breakaway walls means any type of walls, whether solid or lattice, and whether constructed of concrete, masonry, wood, metal, plastic, or any other suitable building materials, which are not part of the structural support of the building and which are designed and constructed to collapse under specific lateral loading forces without causing damage to the elevated portion of the buildings or the supporting foundation system on which they are used.

Building means any structure built for support, shelter, or enclosure for any occupancy or storage.

Coastal high-hazard area means the area subject to high-velocity wave action from storms or seismic sources. The coastal high-hazard area is identified as Zone V on the flood insurance rate map

Coordinator means the town's flood insurance coordinator, who has been designated by the town manager to implement, administer, and enforce these floodplain regulations.

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

Development means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, dredging, filling, grading, paving, excavating,

drilling operations, or storage of materials or equipment.

Elevated building means a building built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, columns (posts and piers), or shear walls.

Existing, when referring to a building or structure, means that construction had commenced on the building or structure, or portion thereof, prior to August 31, 1984.

Existing manufactured home park or manufactured home subdivision means a parcel or contiguous parcels of land divided into two or more manufactured home lots or sites for rent or sale for which the construction of facilities for servicing the lot or site on which the manufactured home is to be affixed, including, at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets, was completed prior to August 31, 1984.

Expansion to an existing manufactured home park or manufactured home subdivision means the preparation of additional sites by the construction of facilities for servicing the sites on which the manufactured homes are to be affixed, including the installation of utilities, either final site grading or pouring of concrete pads, or the construction of streets.

Flood and **flooding** mean a general and temporary condition of partial or complete inundation of normally dry land areas from:

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

Flood insurance rate map (FIRM) means the official map of Fort Myers Beach on file with the coordinator, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones for Fort Myers Beach, including base flood elevations and coastal high hazard areas (V zones).

Floodproofing means any combination of structural and non-structural additions, changes, or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures,

and/or their contents. There are three major kinds of floodproofing in coastal areas:

- (1) Elevation of the lowest floor is the most common and economical method for floodproofing structures and is the only acceptable method under this code for floodproofing new or substantially improved residential structures.
- (2) For dry floodproofing, a commercial building is made watertight up to the base flood elevation and strengthened to resist all hydrostatic and hydrodynamic loads and to counter the effects of buoyancy. See § 6-472(4).
- (3) For wet floodproofing, damage to a building is avoided by allowing flood waters to temporarily fill the building to equalize loads and prevent buoyancy. See §§ 6-446(e) and 6-472(5)b.

Floor means the top surface of an enclosed space in a building, i.e., top of slab in concrete slab construction or top of wood flooring in wood frame construction. The term does not include the floor of a garage used for parking vehicles.

Functionally dependent facility means a facility which cannot be used for its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of passengers. The term does not include longterm storage, manufacture, sales, or entertainment facilities.

Highest adjacent grade means the highest elevation of the ground surface, either prior to or after construction whichever is higher, next to the proposed walls of a structure.

Historic structure means any structure that is:

- (1) Listed individually in the National Register of Historic Places or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register of Historic Places; or
- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the secretary to qualify as a registered historic district; or
- (3) Individually listed on a state inventory of historic places in states with historic

preservation programs which have been approved by the Secretary of the Interior and also listed on a local inventory of historic places, either individually or as a contributing structure in a historic district, pursuant to ch. 22 of this code.

Lowest floor means the lowest floor of the lowest enclosed space, including any floors below grade. An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage, is not considered a building's lowest floor provided that such enclosure is not built so as to render the structure in violation of the non-elevation design requirements of this article.

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

Manufactured home means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. This definition includes mobile homes and most park trailers (those larger than 400 square feet and/or not towable by a light duty truck), as defined in F.S. § 320.01(2), but does not include other types of recreational vehicles, as defined in F.S. § 320.01(1). However, a manufactured building as defined in F.S. ch. 553, pt. IV is not considered a manufactured home.

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

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

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

on the site, nor the value of the structure after the proposed improvements are completed. Any proposed value submitted via private appraisal that exceeds the Property Appraiser's valuation by more than 35 percent shall be subject to peer review by a qualified local appraiser or a new independent appraisal, to be commissioned by the coordinator, with the full cost of the review or new appraisal paid by the applicant to the town prior to initiation of the process. In lieu of submitting a private appraisal, an applicant may obtain an independent appraisal through the coordinator, with the full cost paid to the town prior to initiation of the process.

Mean sea level means the average height of the sea for all stages of the tide. It is used as a reference for establishing various elevations within the floodplain. For purposes of this article, the term is synonymous with North American Vertical Datum of 1988 (NAVD 88), to which base flood elevations shown on the flood insurance rate map are referenced.

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

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

New construction means structures for which the start of construction commenced on or after May 1, 1990, and includes any subsequent improvements to such structures.

New manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be

affixed, including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads, is completed on or after August 31, 1984.

Primary frontal dune means a continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and overtopping from high tides and waves during major coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from a relatively steep slope to a relatively mild slope.

Reconstruction means an improvement to an existing building that substantially replaces all or a portion of an existing building with a new building, or physically moves an existing building to a different location.

Recreational vehicle means, for floodplain management purposes, a vehicle which is:

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

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

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

Registered land surveyor means a land surveyor registered or licensed by the state of Florida to practice land surveying, or who is authorized to practice surveying in Florida under a reciprocal

registration or licensing agreement with another state. This term includes professional surveyors and mappers registered by the state of Florida.

Rehabilitation means an improvement to an existing building that does not expand its external dimensions.

Repair means the replacement or renewal of nonstructural elements of an existing building.

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

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

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

Start of construction, for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Public Law 97-348), includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory structures, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

Substantial damage means damage of any origin sustained by a structure, whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. Actual repair work need not have been performed on flood-related damage.

Substantial improvement means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cumulative cost of which equals or exceeds, over any five-year period, 50 percent of the market value of the structure either before the start of construction of the improvement or, if the structure has been damaged

and is being restored, before the damage occurred. The term “substantial improvement” includes structures that have incurred “substantial damage” or “repetitive loss,” regardless of the actual repair work performed. The term “substantial improvement” does not, however, include either:

- (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to ensure safe living conditions; or
- (2) costs of alterations or improvements whose express purpose is the mitigation of future storm damage, provided they do not exceed 50 percent of the market value of the structure over any one-year period; examples of such mitigation include the installation of storm shutters or shatterproof glass, strengthening of roof attachments, floors, or walls, and minor floodproofing.
 - a. Storm mitigation improvements may be made during the same year as other improvements, but the total cost of improvements of both types that are made over any one-year period may not exceed 50% of the market value of the structure.
 - b. The annual allowance for storm mitigation improvements is not applicable to any costs associated with a lateral or vertical addition to an existing structure or to the complete replacement of an existing structure; or
- (3) any alteration of a “historic structure” provided that the alteration would not preclude the structure’s continued designation as a “historic structure.”

Variance means a grant of relief to a person from the requirements of this article which permits construction in a manner otherwise prohibited by this article where specific enforcement would result in unnecessary hardship.

Sec. 6-406. Penalty for violation of article.

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

Sec. 6-407. Applicability of article.

This article shall apply to the entire Town of Fort Myers Beach. No structure or land shall be located, extended, converted, or structurally altered without full compliance with the terms of this article.

Sec. 6-408. Basis for establishing flood regulations.

The entire Town of Fort Myers Beach has been designated an area of special flood hazard by the Federal Emergency Management Agency (FEMA). FEMA maps illustrating the minimum federal floodplain regulations as adopted on August 28, 2008, and all revisions thereto, are adopted by reference and declared to be a part of this article. These flood insurance rate maps show base flood elevations and coastal high-hazard areas (V zones) for the entire town and are available for inspection at town hall and at the Lee County Department of Community Development Building, 1500 Monroe Street, Fort Myers, or can be viewed at www.fema.gov, or can be purchased by calling 1-800-358-9616. The individual map panels are numbered as follows:

<i>General area shown</i>	<i>Panel number</i>	<i>Latest</i>
Bowditch	120673 0553F	8/28/08
Bowditch – Lovers Ln.	120673 0554F	8/28/08
Lovers Ln. – Gulfview	120673 0558F	8/28/08
Gulfview – Mound Rd.	120673 0566F	8/28/08
Mound Rd. – Buccaneer	120673 0567F	8/28/08
Buccaneer – Big Carlos	120673 0569F	8/28/08

Sec. 6-409. Reserved.

Sec. 6-410. Conflicting provisions.

Where this article and any other part of this code conflict or overlap, whichever imposes the more stringent restriction shall prevail.

Sec. 6-411. Reserved.

Sec. 6-412. Warning and disclaimer of liability.

The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This article shall not create liability on the part of the town council, or by any officer or employee thereof, for any flood damages that result from reliance on this article or any administrative decision lawfully made thereunder.

Secs. 6-413--6-440. Reserved.

DIVISION 2. ADMINISTRATION

Sec. 6-441. Designation of administrator.

The town manager shall designate a flood insurance coordinator (“coordinator”) to administer and implement the provisions of this article on behalf of the Town of Fort Myers Beach.

Sec. 6-442. Reserved.

Sec. 6-443. Permit required.

All land-disturbing activities and improvements to land that are defined in this article as “development” must comply with all provisions of this article and must obtain permits in accordance with the procedures in this division.

Sec. 6-444. Applications and certifications.

(a) The provisions of this article will be enforced concurrently with review of proposed building permits and development orders. No separate application is required. However, the following information is required on the plans submitted for review:

- (1) Elevation, in relation to mean sea level, of the proposed lowest floor of all structures;
- (2) Elevation in relation to mean sea level to which any nonresidential structure will be floodproofed;
- (3) A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure meets the floodproofing criteria in § 6-472, when dry or wet floodproofing is proposed; and
- (4) An operation and maintenance plan when dry floodproofing is proposed:
 - a. At a minimum this plan must identify who is responsible for maintenance and installation of the flood barriers that will protect wall and door openings and where the flood barriers will be stored when not in use.
 - b. This plan must also provide a realistic estimate of the manpower, time, and equipment required for installation.
 - c. This plan must also include a binding requirement for present and future owners to conduct a test installation before May 31 of each year of all flood

barriers, with 10 days' advance written notice provided to the town manager to allow the manager or coordinator to witness this test.

- d. The plan must also include a binding requirement that upon completion of each annual test, a written report will be submitted by the owners to the coordinator within 30 days to document the results of the test and set forth any corrective measures that may be necessary, including proposed revisions to the operation and maintenance plan as to responsibility for maintenance, installation, and storage of flood barriers.

(b) Prior to issuance of approvals, applicants must supply evidence that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.

(c) A permit holder must submit to the coordinator a floor elevation or floodproofing certification after the lowest floor is completed, or, in instances where the structure is subject to the regulations applicable to coastal high-hazard areas, after placement of the horizontal structural members of the lowest floor:

- (1) Within 21 calendar days of establishment of the lowest floor elevation, or floodproofing by whatever construction means, or upon placement of the horizontal structural members of the lowest floor, whichever is applicable, it shall be the duty of the permit holder to submit to the coordinator a certification of the elevation of the lowest floor, floodproofed elevation, or the elevation of the lowest portion of the horizontal structural members of the lowest floor, whichever is applicable, as built, in relation to mean sea level. Such certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by a registered land surveyor or professional engineer.
- (2) When floodproofing is utilized for a particular building, the certification shall be prepared by or under the direct supervision of a registered professional engineer or architect

and certified by a registered professional engineer or architect.

- (3) Any work done within the 21-day calendar period and prior to submission of the certification shall be at the permit holder's risk.

(d) The coordinator shall review the floor elevation survey data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further progressive work being permitted to proceed. Failure to submit the survey or failure to make the corrections required by this section shall be cause to issue a stop work order for the project.

Sec. 6-445. Appeals.

Any affected person may file an appeal alleging that there has been an error in any requirement, decision or determination made by the coordinator in the enforcement or administration of this article. Such appeals shall be processed and decided in the same manner as for appeals under ch. 34 of this code.

Sec. 6-446. Variances.

(a) Variances from base flood elevation requirements may only be granted upon a clear showing by the applicant that an exceptional hardship would result from compliance with the requirements. If a variance is granted, the coordinator shall notify the applicant, in writing, that:

- (1) The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage; and
- (2) Such construction below the base flood level increases risks to life and property.

Such notification shall be maintained with a record of all variance actions.

(b) Variances shall only be granted upon a determination, based upon competent substantial evidence presented by the applicant, that:

- (1) It will not result in increased flood heights, additional threats to public safety or extraordinary public expense, create nuisances, cause fraud on or victimization of

- the public, or conflict with existing regulations or ordinances; and
- (2) The lot or parcel in question is so small or has such unusual characteristics that the prescribed standards cannot be met without some relief so as to allow a reasonable use of the property.

(c) Variances shall only be issued upon a determination that the variance being granted is the minimum necessary, considering the flood hazard, to afford relief.

(d) Variances may be issued for repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

(e) Variances may be issued to allow non-residential buildings other than those already identified in § 6-472(5) to contain wet-floodproofed space below the base flood elevation, provided:

- (1) the building is not in the coastal high-hazard areas; and
- (2) such action is determined to be in the public interest.

Any such buildings must meet the technical standards for wet floodproofing found in § 6-472(5)b.

(f) A variance is a deviation from the exact terms and conditions of this article. Requests for variances shall be processed and decided in the same manner as for variances under ch. 34 of this code following public hearings before the local planning agency and town council.

(g) In passing upon variance applications, the town council shall consider all technical evaluations, all relevant factors including local and federal policies on flood protection, all standards specified in this article, and:

- (1) The danger that materials may be swept onto other lands to the injury of others;
- (2) The danger to life and property due to flooding or erosion damage;
- (3) The susceptibility of the proposed facility and its contents to flood damage, and the effect of such damage on the individual owner;

- (4) The importance of the services provided by the proposed facility to the community;
- (5) The necessity to the facility of a waterfront location, in the case of a functionally dependent facility;
- (6) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- (7) The compatibility of the proposed use with existing and anticipated development;
- (8) The relationship of the proposed use to the comprehensive plan;
- (9) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (10) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters, and the effects of wave action, if applicable, expected at the site; and
- (11) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

(h) Upon consideration of the factors listed in subsection (g) of this section and purposes of this article, the town council may attach such conditions to the granting of variances as it deems necessary to further the purposes of this article.

Secs. 6-447--6-470. Reserved.

DIVISION 3. STANDARDS

Sec. 6-471. General standards.

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

- (1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure;
- (2) Manufactured homes shall be securely anchored to an adequately anchored foundation system to prevent flotation, collapse, or lateral movement. Methods of anchoring may include but are not limited to use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state requirements for resisting wind forces;
- (3) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;
- (4) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;
- (5) Electrical, heating, ventilation, plumbing and air conditioning equipment, and other service facilities shall be designed and located so as to prevent water from entering or accumulating within the components during conditions of flooding. Utility equipment shall be exempt from this requirement as long as the utility company which owns the equipment accepts the sole responsibility for any flood damage to the equipment by filing written acceptance of such responsibility with the local building director prior to claiming the exemption;
- (6) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;
- (7) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters; and
- (8) Any alteration, repair, reconstruction, or improvement to a structure which is in compliance with the provisions of this article

shall meet the requirements of new construction as contained in this article.

Sec. 6-472. Specific standards.

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

- (1) ***Conventional residential construction.*** New construction or substantial improvement of any residential structure shall have the lowest floor elevated to or above the base flood elevation. Space below the base flood elevation in A zones is regulated in accordance with standards of subsection (5) of this section. (See subsection (7) for additional restrictions in V zones.)
 - a. When an improvement to an existing residential structure involves reconstruction or includes an addition, and the improvement's cost exceeds the 50 percent threshold in this article's definition of "substantial improvement," then the reconstruction or addition shall be elevated the same as new construction, with its lowest floor elevated to or above the base flood elevation.
 - b. When such an improvement does not exceed the 50 percent threshold, any additional enclosed floor space must be elevated to or above the structure's existing lowest floor.
- (2) ***Manufactured homes.*** New or expanded parks or subdivisions for manufactured homes are not allowed in the Town of Fort Myers Beach. Where zoning allows existing manufactured homes to be replaced or substantially improved:
 - a. on individual subdivision lots, replacement or substantially improved manufactured homes must be elevated so that the lowest floor of the manufactured home is at or above the base flood elevation and in compliance with the anchoring requirements of § 6-471(2), or
 - b. on an existing site in a mobile home park, the manufactured home chassis must be supported by reinforced piers, or other foundation elements of at least equivalent strength, that are no less than 36 inches in height above highest adjacent grade, and the manufactured

home shall comply with the anchoring requirements of § 6-471(2). However, this 36-inch alternative may not be used if a manufactured home on that specific site has incurred “substantial damage” from flooding, as defined in this article; if “substantial damage” has occurred, the manufactured home or a replacement manufactured home on that site must be elevated so that the lowest floor is at or above the base flood elevation and in compliance with the anchoring requirements of § 6-471(2).

- (3) **Recreational vehicles.** New parks or subdivisions for recreational vehicles are not allowed in the Town of Fort Myers Beach. Where zoning allows recreational vehicles to be placed or substantially improved on a site located in an existing recreational vehicle park, they must be either:
- a. placed on the site for fewer than 180 consecutive days and fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanently attached additions); or
 - b. elevated so that the lowest floor of the recreational vehicle is at or above the base flood elevation and in compliance with the anchoring requirements of § 6-471(2).
- (4) **Nonresidential construction.** New construction or substantial improvement of any commercial or other nonresidential structure shall either:
- a. have the lowest floor elevated to or above the base flood elevation, or,
 - b. together with attendant utility and sanitary facilities, be dry-floodproofed so that below the base flood level the structure is watertight, with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

1. Dry-floodproofing up to the base flood elevation is the preferred alternative for providing sidewalk-level commercial space in the Future Land Use Map’s Pedestrian Commercial category, except in V zones where dry-floodproofing is not permitted (see § 6-472(7)).
2. A registered professional engineer or architect shall develop and/or review the structural design, specifications, and plans and shall certify that they meet the dry-floodproofing standards of this subsection and the accepted standards of practice for meeting the applicable provisions of 44 CFR 60.3(c)(3)ii. Such certification shall be provided to the coordinator, who will maintain a public record at town hall of all such certifications.
3. An operation and maintenance plan must be submitted in accordance with § 6-444(a)(4). Failure to conduct the annual test installation or submit the annual report required by this plan shall subject the owner to the code enforcement mechanisms provided in this code (for example, § 1-5, or article V of ch. 2) after 30 days’ prior written notice sent via certified mail, return receipt requested.
- c. No person may undertake a series of improvements, additions, and/or demolitions that connects two or more existing structures in a manner that evades the requirement to either elevate or dry-floodproof new construction or substantial improvements to nonresidential structures.

(5) ***Space below elevated buildings (A zones).***

New construction or substantial improvements of elevated buildings, both residential and non-residential, may contain enclosed or unenclosed space below the base flood elevation provided it is usable solely for parking, building access, or storage (additional restrictions for coastal high-hazard areas are provided in subsection (7) below).

- a. Enclosed space below the base flood elevation can include up to 100 percent of the space below an elevated building but cannot extend beyond the perimeter of the elevated structure.
- b. Partially or fully enclosed space below the base flood elevation, including garages, must be wet-floodproofed, designed to preclude finished living space below the base flood elevation, and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls below the base flood elevation.
- c. The following requirements apply to all new construction and substantial improvements below elevated buildings in A zones:
 1. Designs for complying with these requirements must meet the following minimum criteria or be certified by a registered professional engineer or architect as providing equivalent automatic equalization of hydrostatic flood forces:
 - a- A minimum of two openings shall be provided for any enclosed space having a total net area of not less than one square inch for every square foot of enclosed space subject to flooding;
 - b- The bottom of all openings shall be no higher than one foot above highest adjacent grade; and
 - c- Openings may be equipped with screens, louvers, valves, or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.

Technical guidance in meeting these requirements may be found in FEMA's *Technical Bulletin 1-93*.

2. Electrical, plumbing, and other utility connections below the base flood elevation must be designed and constructed so that floodwaters cannot infiltrate or accumulate within the component or group of components. Technical guidance in meeting these requirements may be found in *Protecting Building Utilities From Flood Damage*, FEMA Publication 348.
3. Access to the enclosed space below elevated buildings shall be the minimum necessary to allow for:
 - a- Parking of vehicles (garage or other overhead doors), and
 - b- External entries including access for storage (no more than one standard exterior door with no more than a single door opening of up to 36 inches in each of the four exterior walls, or windowless double exterior doors with no more than 72 inches of opening in each exterior wall), and
 - c- Internal entry doors to the living space (access to stairway or elevator from parking and/or storage space).
4. The interior portion of any enclosed space below elevated buildings may not be temperature-controlled and must be constructed and finished only with wall, floor, and ceiling materials that comply with all provisions of § 6-472(5). Interior partitions are limited to separating parking spaces from building access or storage spaces.
5. All structural and non-structural components must be constructed of materials that are durable, resistant to flood forces, and resistant to deterioration caused by repeated inundation by flood water. Technical guidance in meeting this requirement may be found in FEMA's *Technical Bulletin 2-93*. Technical guidance in meeting this requirement for elevators may be found in FEMA's *Technical Bulletin 4-93*.

6. These provisions apply to space below the base flood elevation to be used for parking, building access, or storage. Other uses proposed for wet-floodproofed space may be approved by variance as provided in § 6-446(e). Examples could include functionally dependent facilities, historic buildings, and utility structures.
7. Any application for a garage or other fully enclosed space formed by exterior walls below the base flood elevation must be accompanied by a signed and notarized acknowledgment of the limitations on allowable uses of the enclosed space that applied when building permits were obtained, using a form provided by the coordinator. This agreement shall be recorded in the official record books in the office of the clerk of the circuit court to provide additional notice of these limitations to future purchasers.
- d. All electrical, air conditioning, or heating equipment is elevated above the base flood elevation or floodproofed in accordance with § 6-472(5)c.2); and
- e. Openings to equalize hydrostatic pressure during a flood are provided in conformance with § 6-472(5)b.1; and
- f. All structural and non-structural components below base flood elevation are constructed of materials that are durable, resistant to flood forces, and resistant to deterioration caused by repeated inundation by flood water. Technical guidance in meeting this requirement may be found in FEMA's *Technical Bulletin 2-93*.
- g. For accessory structures located in coastal high-hazard zones (V zones), the following additional requirements also apply:
 1. Only breakaway walls may be used below the base flood elevation.
 2. The structure must be constructed with a piling or column foundation system that is adequately embedded to resist scour and lateral deflection.
 3. Floor slabs may not be structurally attached to pilings or columns and must be located at existing grade.
 4. The lowest horizontal structural member of roof systems, including plates and beams connecting the pilings or columns, must be placed at or above the base flood elevation.

(6) **Accessory structures.** Accessory structures may be exempted from meeting the elevation requirements only if:

- a. The structure is securely anchored to resist flotation or lateral movement and offers the minimum resistance to the flow of floodwaters; and
- b. The total cost of the structure does not exceed 10% of the market value of the principal building, or the following amounts, whichever is greater:
 1. \$16,000 for a single-family dwelling unit or other single unit.
 2. \$32,000 for a two-family dwelling unit.
 3. \$50,000 for a multiple-family building, hotel/motel, or commercial establishment.

These dollar amounts may be increased each year beginning January 1, 2008 by the percentage increase of the Consumer Price Index—All Urban Consumers (CUP-U), All Items, U.S. City Average (maintained by the Bureau of Labor Statistics); and

- c. The structure is used exclusively for nonhabitable recreational, security, or storage purposes and not used as offices, kitchens, or living space; and

(7) **Coastal high-hazard areas (V zones).**

Certain areas of the town are designated as coastal high-hazard areas (V zones) because they have special flood hazards associated with wave wash. In V zones, the following additional provisions shall apply to all construction including both residential and commercial buildings:

- a. All new construction shall be located landward of the reach of the mean high tide line and landward of the 1978 coastal construction control line except as provided in § 6-366.
- b. All new construction and substantial improvements shall be elevated so that the lowest supporting horizontal member, excluding pilings or columns, is located at or above the base flood elevation level, with all space below the lowest supporting member open so as not to impede the flow of water. Breakaway walls may be permitted and must be designed to wash away in the event of abnormal wave action in accordance with the remainder of this subsection.
- c. Improvements that do not exceed the 50 percent threshold for being classified as a substantial improvement must have any additional enclosed floor space elevated to or above the structure's existing lowest floor.
- d. All new construction and substantial improvements shall be securely anchored on pilings or columns.
- e. All pilings and columns and the attached structures shall be anchored to resist flotation, collapse, and lateral movement due to the effect of wind and water loads acting simultaneously on all building components. The anchoring and support system shall be designed with wind and water loading values as required by the Florida Building Code and the base flood event respectively.
- f. Compliance with the provisions contained in subsections (7)b, d, and e of this section shall be certified by a registered professional engineer or architect.
- g. The use of fill as structural support is prohibited.
- h. Man-made alterations to sand dunes and mangrove stands that would increase potential flood damage are prohibited.
- i. Nonsupporting breakaway walls, latticework or decorative screening shall be allowed below the base flood elevation provided it is not part of the structural support of the building and is designed so as to break away, under abnormally high tides or wave action, without damage to the structural integrity of the building on which it is to be used, and provided the following design specifications are met:
 1. Design safe loading resistance of each wall shall be not less than ten and not more than 20 pounds per square foot; or
 2. If more than 20 pounds per square foot, a registered professional engineer or architect shall certify that the design wall collapse would result from a water load less than that which would occur during the base flood event, and the elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and nonstructural). Water loading values shall be those associated with the base flood. Wind loading values shall be those required by the Florida Building Code.
- j. If breakaway walls are utilized, such enclosed space must not be used for human habitation and must be designed to be used only for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Space enclosed by latticework and breakaway walls in a V zone is subject to the same limitations as to size, usage, and formal acknowledgments that apply below base flood elevation in an A zone, as provided in subsection (5) above.
- k. Prior to construction, plans for any structure that will have breakaway walls must be submitted to the coordinator for approval.
 1. Any alteration, repair, reconstruction, or improvement to a structure shall not enclose the space below the lowest floor

except with breakaway walls, and except as provided for in the remainder of this subsection.

- m. The placement of manufactured homes is prohibited. A replacement recreational vehicle may be placed in an existing recreational vehicle park, provided the mobility standards of § 6-472(3)a. are met.
- n. Electrical, plumbing, and other utility connections are prohibited below the base flood elevation except where components must be extended below the base flood elevation for service connections or code compliance (such components must be designed and constructed so that floodwaters cannot infiltrate or accumulate within the components). Technical guidance in meeting these requirements may be found in *Protecting Building Utilities From Flood Damage*, FEMA Publication 348.

Sec. 6-473. Reserved.

Sec. 6-474. Standards for subdivision proposals.

(a) All subdivision proposals shall be consistent with the need to minimize flood damage.

(b) All subdivision proposals shall have public utilities and facilities such as sewers, electrical and water systems located and constructed to minimize flood damage.

(c) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards.

(d) Base flood elevation data shall be provided for all subdivision and development proposals.

CHAPTERS 7--9 RESERVED

FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 10 DEVELOPMENT ORDERS AND ENGINEERING STANDARDS

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

ARTICLE II. DEVELOPMENT ORDERS AND PLATS

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

Division 2. Development Orders

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

Subdivision II. Procedures

- Sec. 10-101. Applicability of requirements.*
Sec. 10-102. Employment of engineers and design consultants.
Sec. 10-103. Prior zoning approvals for development order submittals.
Sec. 10-104. Deviations and variances.
Sec. 10-105. Preapplication meeting.
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Sec. 10-107. Initiation of application; designation of representative.
Sec. 10-108. Application procedure.
Sec. 10-108.1 Payment of taxes.
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- Sec. 10-110. Resubmittal of application following denial.*
Sec. 10-111. Issuance of order; approval letter and stamping of drawings.
Sec. 10-112. Appeals.
Sec. 10-113. Recording of notice of development order.
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- Sec. 10-171. Generally.*
Sec. 10-172. Legal effect of approval
Sec. 10-173. General requirements for limited review process.
Sec. 10-174. Types of development entitled to limited review.
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- Sec. 10-181. Inspection of improvements generally.*
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Division 5. Plats and Vacations

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

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- Sec. 10-218. Purpose and intent.
- Sec. 10-219. Applications.
- Sec. 10-220. Procedure.
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- Sec. 10-252. General design standards.
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- Sec. 10-419. Alternate landscape betterment plans.
- Sec. 10-420. Plant material standards.
- Sec. 10-421. Plant installation and maintenance standards.
- Sec. 10-422. Landscape certificate of compliance.

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

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

DIVISION 5. PLATS AND VACATIONS

Subdivision I. Plats

Sec. 10-211. Required.

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

Sec. 10-212. Preparation and submission.

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

Sec. 10-213. Technical requirements.

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

Sec. 10-214. Contents.

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

Sec. 10-215. Waiver of requirements.

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

Sec. 10-216. Monuments.

(a) *Permanent reference monuments.*

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

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

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

Sec. 10-217. Lot recombinations.

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

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

the form provided by the director and must include:

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

Subdivision II. Vacation of Town Interest in Real Property

Sec. 10-218. Purpose and intent.

It is the purpose and intent of this subdivision to establish procedures for the town to follow in considering the vacating of public interests in real property. The procedures established by this subdivision are intended to ensure that the vacation of town-owned public interests in real property are legally effective, according to the law of Florida,

and that the property rights of private landowners and public entities are protected.

Sec. 10-219. Applications.

All applications must comply with the requirements below.

(a) An application to vacate town-owned public interests in real property must be submitted to the town department of community development with a duplicate copy submitted to the department of public works, on forms provided by the town.

(b) The application must be notarized and must include the following:

- (1) Title certificate or attorney’s title opinion acceptable to the town indicating that the applicant owns fee simple title to the tract or parcel of real property to which the vacation of the town-owned public interest in real property will inure as well as indicating what liens or assessments currently exist on the property; and
- (2) A copy of the most recent tax bill applicable to the property in question as well as proof of payment in full of all current and former tax bills; and
- (3) A legal description of the area to be vacated and an accompanying survey indicating the location of all existing improvements including, but not limited to, drainage, utilities, surface water management facilities, streets, buildings, and other physical features within 100 feet of the real property that is the subject of the application request. This drawing must also show the relationship of the subject property to other real property in the surrounding area and the most direct route to the nearest arterial street and must be signed and sealed; and
- (4) A copy of the plat indicating the area thereof subject to the request, if applicable; and
- (5) A printed list containing the names, addresses, and signatures of all real property owners holding legal interest in the real property subject to or affected by the requested vacation; and
- (6) The original signatures of all persons holding any private legal interest; and
- (7) A printed list of all current property owners, STRAP numbers, and mailing addresses within a 500-foot radius of the subject

- property, including 2 sets of mailing labels for the real property owners on this list; and
- (8) An affidavit of intent stating facts that establish that the vacation or other disposition of the town-owned public interest in real property:
 - a. Is not for the purpose of unlawfully obtaining public property for private purposes;
 - b. Will not adversely affect the ownership rights or convenient access of persons owning other real property; and
 - c. Will not adversely affect future infrastructure and is not in conflict with town, county, state, federal, or other governmental entities' plans regarding transportation, surface water management, utility, drainage, or other public purposes.
 - (9) Signed letters of approval or no objection from:
 - a. The town department of public works
 - b. Florida Power and Light
 - c. The local cable television company serving the town
 - d. The local telephone company serving the town
 - e. The local liquid propane gas company serving the town
 - f. Lee County or other provider of sanitary sewer services
 - g. Lee County Sheriff's Office
 - h. Fort Myers Beach Fire Control District
 - i. Any other provider of private or public utilities whose facilities or infrastructure may be affected by the action requested, as determined by the director following review of an otherwise complete application.

If the required reviewing entity determines that the vacation may not serve the best interest of the public, the applicant may offer an alternative or replacement easement. However, the reviewing entity is under no obligation to accept the offered alternative. If an application to vacate is premised on the grant of an alternative or replacement easement, town council will not take action on the application until the instrument necessary to grant the alternative or replacement easement has been accepted in form and content by the town, properly executed by the granting or conveying entity,

and delivered to the town to be held in trust pending the town council's consideration of the requested vacation.

- (10) Payment of the applicable application fee in accordance with the schedule of fees adopted by resolution of the town council. In the absence of a resolution by the town council, the director will charge fees that are comparable to the fees charged by the board of county commissioners for similar applications.
- (11) Subordination agreements with all holders of liens against the real property subject to the request.
- (12) Disclosure of county requirement of vacation or statement by the Lee County director of community development or designee that no county vacation is required.

Sec. 10-220. Procedure.

(a) After receipt of a complete application for vacation of town-owned public interests in real property, the director of community development will prepare a report stating both the current and potential town uses, both short-term and long-term, of the town-owned public interests in real property subject to the vacation request. This report will make specific reference to the adopted capital improvements program (CIP) and to the goals, objectives, and policies of the Town of Fort Myers Beach Comprehensive Plan, and will evaluate how both retention and disposition of the subject town-owned public interest in real property does or does not further the adopted goals, objectives, and policies of the comprehensive plan and the adopted CIP.

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

(c) The packet, with staff comments, will be referred to the local planning agency for public hearing and recommendations. The town will publish the notice of public hearing on the application to vacate in a newspaper of general circulation at least once a week for each of 2 weeks prior to the public hearing. The first legal notice

must appear at least 15 days prior to the date of the public hearing. An affidavit of publication confirming legal notice of the public hearing must be presented to the local planning agency at the time of the public hearing.

Following the public hearing before the local planning agency, the complete report and staff recommendations and the local planning agency minutes and resolution with recommendations will be reviewed by the town council in a public meeting. If, after reviewing the report and the local planning agency minutes and recommendations, the town council decides to pursue possible vacation of the town-owned public interest in real property, the town council will direct the town manager to schedule a properly noticed public hearing on the possible vacation. The town will publish the notice of public hearing on the application to vacate in a newspaper of general circulation at least once a week for 2 weeks prior to the public hearing. The first legal notice must appear at least 15 days prior to the date of the public hearing. An affidavit of public hearing confirming legal notice of the public hearing must be presented to the town council at the time of public hearing. At this hearing, the town council will determine:

- (1) Whether the vacation of the subject real property for other use will adversely affect the future land use map category, as set forth in the comprehensive plan, or adversely affect the zoning district, as set forth in this code, and whether it is otherwise consistent with the requirements of state and federal law; and
- (2) The original intended use of the real property at the time of its acquisition by the town; and
- (3) Whether the conditions and circumstances of the use of the real property have undergone change with respect to intended town use of the real property; and
- (4) What constitutes surplus property, in terms of the original intent, and whether the real property is surplus property; and
- (5) The basis of the vacation of town-owned public interest in real property; and
- (6) Findings of fact and conclusions of law in support of the action to be taken; and
- (7) Whether and how the public would benefit from the proposed vacation.

(d) If, following the public hearing held as set forth above, the town council decides to pursue

vacation of the town-owned public interest in real property, town council will direct the preparation of a resolution declaring the subject real property interest as surplus to the town's needs, containing the details of the proposed disposition, and setting a date for an adoption hearing for the resolution no less than 30 days form the date of the decision and direction to prepare the resolution. The applicant is responsible for all recording costs.

(e) Notwithstanding the foregoing process, after review and consideration of the report referenced in subsection (a) of this section, town council, in its discretion, may determine that to proceed, subsections (c) and/or (d) are not required if:

- (1) The conveyance is back to the original grantor(s), its successors and assigns, who are currently the abutting owner(s); or
- (2) It is part of another process, such as:
 - a. Straightening of a real property boundary line in connection with a boundary dispute;
 - b. Settling an action to quiet title; or
 - c. Other like proceeding, as determined in the discretion of the town council upon the consideration of the director's recommendation; or
- (3) It is a vacation that is *de minimis* in area, cost, and overall impact.

Upon finding any of the items enumerated in this subsection (e), the town council may exempt the transaction in question from continuing with the procedures set forth in paragraphs (c) and/or (d) and continue with the determination concerning the vacation of the subject real property interest. The town council, however, may apply any of the considerations contained therein that it deems relevant and helpful in rendering its decision.

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

FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 14 ENVIRONMENT AND NATURAL RESOURCES ¹

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

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**ARTICLE I. BEACH AND
DUNE MANAGEMENT ²**

Sec. 14-1. Definitions.

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

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

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

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

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

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

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

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

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

Mechanical beach raking means the cleaning of the sandy beach seaward of the dune and vegetation line of trash and other debris on or near the surface by use of a rake or other similar porous device which penetrates no more than 2 inches below existing ambient grade and results in no removal of in situ sand.

Seaward line of vegetation means the location closest to the mean high water line containing, or suitable for, dune vegetation. If there is no such vegetation upon a parcel or portion of a parcel, it

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

shall encompass a line alongshore projected from the closest areas on each side where such vegetation does exist.

Wet sand means the area on the beach where the sand is saturated by sea water from wave action. This area is identified by a visible darkening or staining of the beach sand from the water driven onshore by wave action.

Wrack means the natural organic marine material cast on the shore, including seaweed and other vegetative and animal debris, but excluding manmade material.

Sec. 14-2. Purpose and intent.

- (a) The purpose of this article is:
 - (1) To encourage a steward-like attitude toward the town’s most valuable asset, the beach.
 - (2) To preserve and improve the condition of that asset as a place for recreation, solitude, and preservation of beach vegetation and marine wildlife.

(b) This article provides minimum standards to safeguard the beach.

Sec. 14-3. Destruction or diminishment of dune or beach system.

(a) It is unlawful and prohibited for any person to do, conduct, or permit any of the following on a beach, upon a dune, or in the water adjacent to a beach:

- (1) harass, molest, or disturb wildlife;
- (2) plant vegetation other than dune vegetation;
- (3) destroy or harm a dune or remove dune vegetation;
- (4) maintain a dump of, or discard or leave litter, garbage, trash or refuse, vegetative clippings, or debris (see § 14-4);
- (5) deposit and leave human or animal waste (see § 14-4);
- (6) destroy or grossly interfere with the natural wrack line as by grooming or non-selective raking except as authorized in § 14-6;
- (7) operate any air-powered or any engine-powered non-watercraft vehicle, machine, or implement, including any battery or electrical powered vehicle, machine, or implement, except for a wheelchair or approved conveyance for a person with a disability

- which is actually being used by the person with a disability or as authorized in § 14-7;
- (8) excavate, mine, and remove, or haul sand or soil from the beach or dune except in emergency situations as declared by the Town Council;
- (9) detonate any explosive devices, including fireworks;
- (10) discharge any firearms;
- (11) light or maintain any open fire on Mulholland Point (Little Estero Island);
- (12) temporarily reside, camp, or sleep overnight;
- (13) deposit/install rocks, concrete, or other shoreline stabilization materials without a permit from DEP and the town;
- (14) deposit/add sand to the beach and dune system without a permit from DEP. All fill material shall be sand that is similar to the existing beach sand in both coloration and grain size and be free of debris, rocks, clay, or other foreign matter; or
- (15) conduct any commercial activities not explicitly authorized by this code or by other town ordinances.

(b) Permits may be issued by the town manager for activities otherwise prohibited by this section, which are found to be necessary for reasonable accommodation of persons with disabilities; adjunct to a lawfully existing activity; for the conduct of a civic or educational activity; for the conduct of scientific research; or for any purpose otherwise necessary to protect or to promote the public welfare, for such periods of time as appropriate for the circumstances. To the extent that a permit is allowed under this code for any of the above activities, the standards and procedures for issuance shall be governed by this code.

Sec. 14-4. Trash and litter on the beach.

(a) Pursuant to Ordinance 99-5, dogs on a leash are allowed on the beaches within the town, but owners must properly dispose of any type of dog waste off the beach. However, no pets shall be allowed within the confines of the Critical Wildlife Area (CWA)/Mulholland Point (Little Estero Island) whose territory is defined as follows: This area includes the island itself and the wetlands and lagoons that have formed behind the island; the northern boundary is the Holiday Inn’s southern riparian line, and the easterly line is the mean high water line of the old developed shoreline.

(b) Pursuant to Ordinance 99-7, trash and litter must be deposited within trash receptacles and not left on the beach.

(c) Any person wishing to light an open fire on the beach, except on Mulholland Point (Little Estero Island) as prohibited by § 14-3 (a)(11) and during sea turtle nesting season as prohibited by § 14-78(a), is limited to a 12 inch by 12 inch cooking fire that must be applied for as a permit through Town Hall. The permit will require a \$30.00 deposit for cleanup.

Sec. 14-5. Beach furniture and equipment.

(a) From May 1 through October 31, all beach furniture and equipment must be removed from the beach as follows:

- (1) All beach furniture and equipment must be removed from the beach between the hours of 9:00 P.M. until 7:00 A.M.
- (2) The beach furniture and equipment must be moved daily either behind the permanent dune line; or where no dune line is present and the beach is wide, then 200 feet from the mean high water line; or where the beach is narrow to the adjacent permanent structure and landward of any seawall. Where compliance with the foregoing provisions would cause an undue hardship, the town manager may, after determining the minimum variance from the requirements of this ordinance, designate the storage location.
- (3) Beach furniture and equipment that is removed from the beach as specified in § 14-5(a)(2) shall then be safely stacked in areas no larger than 10 feet by 10 feet and each stack must be at least 50 feet removed or apart from the next stack. All stacked items will be secured either by cable or chain to prevent the removal and scattering of items by unauthorized individuals at night. The cable and/or chain must be kept off the ground as these items pose a serious entanglement hazard.

(b) Trash containers are not included in the definition of beach furniture and equipment and may be left in place on the beach between the hours of 9:00 P.M. and 7:00 A.M.

(c) No later than the first day of June, beach properties that have more than 5 cabanas or offer beach equipment for use shall file a hurricane action plan with the town each year prior to the beginning

of hurricane season and provide a contact person with current phone number.

(d) All beach furniture and equipment (such as chairs, umbrellas, cabanas, and rental podium, but excluding water-dependent equipment) shall be set landward of the mean high water line and at least 10 feet from a sea turtle nest or dune vegetation.

(e) Vendors wishing to use a vehicle to transport furniture and equipment to and from the beach must obtain a permit from the town through the permit process described in § 14-6(c) and must abide by the same restrictions. If a beach raking permit is also applied for, the permits will be incorporated into one permit. The following additional restrictions apply to all transport permits:

- (1) Equipment shall not be set out in the morning before 8:00 A.M. or before completion of daily monitoring for turtle nesting activity by an FWC-authorized marine turtle permit holder to examine the beach in the area of the authorized activity to ensure any new sea turtle nests are identified and marked, whichever occurs first.
- (2) Transporting vehicles shall not travel within 10 feet of a sea turtle nest or dune vegetation.
- (3) The vehicle and equipment cannot exceed a maximum ground-to-tire pressure of 10 PSI (pounds per square inch) using the formula in § 14-6(c)(4)d.1.

Sec. 14-6. Beach raking and wrack line policy.

(a) The use of boxblades on the beach or dune is prohibited. In an emergency and/or storm event resulting in a build-up of sand against seawalls, the use of a boxblade may be allowed with the approval of DEP, where required, and upon filing that approval with the town manager and meeting any other requirements set by the town.

(b) Under normal circumstances, the raking of the wrack line is prohibited. The town manager may approve the raking of the wrack line conditioned upon prior approval by the DEP if it is determined that excessive accumulation of natural or other debris caused by extreme events, including, but not limited to, red tide, red algae bloom, or storm carried debris, are present. Should such excessive accumulation be determined, the town manager may approve raking consistent with the authorization given by DEP. Any such raking which will result in the unreimbursed expenditure of town funds in excess of currently

budgeted funds shall first be approved by the town council. If this occurs during sea turtle season (May 1 through October 31), the raking must be in compliance with the specific conditions in § 14-6(c)(4).

(c) Any mechanical beach raking other than town-initiated raking pursuant to subsection (b) above requires a permit from the town:

- (1) Application for a permit to mechanically rake an unvegetated portion of the beach shall be submitted to the director, in writing, on a form provided by the director. As part of this application, a site plan will be submitted depicting the property corners, the dimensions of the area to be raked, and the location of existing vegetation and structures.
- (2) Prior to the granting or denying of the application, the director will conduct an on-site inspection to determine if the proposed raking conforms to the requirements of this article and if any native vegetation exists to be protected.
- (3) Based upon the information contained in the application and the site inspection, the director shall approve or deny the application.
- (4) The director shall attach site specific conditions to the permit relating to identifying, designating, and protecting that existing vegetation and other natural features which are not to be removed in accordance with this ordinance. These conditions are in addition to the following standard permit conditions for all mechanical beach raking permits:
 - a. During the sea turtle nesting season (May 1 through October 31), mechanical beach raking activities shall be confined to daylight hours and shall not begin before 9:00 A.M. or before completion of daily monitoring for turtle nesting activity by a FWC-authorized marine turtle permit holder, whichever occurs first (see requirements in § 14-78(b)).
 - b. During sea turtle nesting season (May 1 through October 31), the permittee is responsible for ensuring that a daily sea turtle nest survey, protection, and monitoring program is conducted throughout the permitted beach raking area. Such surveys and associated conservation measures shall be completed after sunrise and prior to the commencement of any mechanical beach

raking. The sea turtle survey, protection, and monitoring program shall be conducted only by individuals possessing appropriate expertise in the protocol being followed and a valid *F.A.C.* Rule 68-E Permit issued by the FWC. To identify those individuals available to conduct marine turtle nesting surveys within the permitted area, please contact the FWC, Bureau of Imperiled Species Management, at (850) 922-4330.

- c. All turtle nests will be marked with wooden stakes, flagging tape, and an FWC sea turtle nest sign. No mechanical raking equipment is allowed inside of the staked area. All equipment operators shall be briefed on the types of marking utilized and should be able to easily contact the individual responsible for the nest survey to verify any questionable areas.
- d. Mechanical beach raking equipment shall meet the following standards:
 1. The vehicle and equipment cannot exceed a maximum ground-to-tire pressure of 10 PSI (pounds per square inch) using the following formula:
 - a- $PSI = \frac{\text{vehicle weight in pounds (includes person and equipment)}}{\text{footprint in square inches}}$
 - b- EXAMPLE: $404 \text{ lbs. (ATV weight)} + 200 \text{ (person + equipment)} \div 198 \text{ square inches (ATV with 6" x 8.25" footprint x 4 tires)} = 3.1 \text{ PSI}$
 2. Raking shall be accomplished with a pronged rake that limits penetration into the surface of the beach to a maximum of two inches. Box blades, front- or rear-mounted blades, or other sand sifting/filtering vehicles are not allowed. A piece of chain link fence or pressure treated lumber not to exceed two pieces 4" by 4" by 10' in size may be pulled behind the rake.
 3. The beach raking vehicle and equipment must be removed from the beach when not in use.
 4. Beach raking equipment shall be inspected periodically by the town to insure compliance with these standards.
 5. Operators of mechanical beach raking equipment shall avoid all native salt-

- tolerant dune vegetation and staked sea turtle nests by a minimum of 10 feet.
- 6. Mechanical beach raking equipment must travel seaward of the mean high water line with the rake disengaged when driving on the beach from one raking area to another, and shall not disturb any dune or dune vegetation.
- e. Burial or storage of any debris (biotic or abiotic) collected is prohibited seaward of any frontal dune, vegetation line, or armoring structure. Removal of all accumulated material from the beach must occur immediately after raking has been performed in an area. Prior to removing the debris and to the greatest extent possible, beach compatible sand should be separated from the debris and kept on site.
- f. A violation of the special or standard conditions shall automatically invalidate the permit. Periodic compliance inspections will be conducted to insure compliance with the permit conditions and this ordinance.

Sec. 14-7. Vehicular traffic on the beach.

It is unlawful and prohibited to operate any engine-powered vehicle, machine, or implement, including any electrical powered vehicle, machine, or implement, on the beach, dune, or on sea turtle nesting habitat as defined in § 14-72, except for the following:

- (1) **Research or patrol vehicles**, only for authorized permittees of the FWC, DEP officials, law or code enforcement officers, EMS and firefighters, scientific monitoring, and town-approved service vehicles.
- (2) **Mechanical beach raking**. Vehicles operating under permits issued pursuant to § 14-6(c).
- (3) **Beach furniture and equipment transport**. Vehicles operating under permits issued pursuant to § 14-5(e).
- (4) **Jet-ski transport and storage**. Jet-ski transport and storage, when in accordance with § 27-49(1) and (9) even for jet-skis that are not available for rental in accordance with ch. 27.
- (5) **Wheelchairs**. A wheelchair, or other conveyance with prior approval from the town, for a person with a disability, which is actually being used by the person with a disability). Handicap access to the beach is

encouraged through use of wheelchairs equipped with special beach friendly tires that are available for rent or purchase.

- (6) **Maximum tire pressure**. Any vehicle authorized to drive on the beach cannot exceed a ground-to-tire pressure of 10 PSI as computed in accordance with § 14-4(c)(4)d.1, except for wheelchairs permitted in accordance with subsection (5) above.
- (7) **Sea turtle nesting season**. See § 14-78(b) for additional restrictions during the sea turtle nesting season.

Sec. 14-8. Dune systems.

Consistent with the town comprehensive plan objective 5-D for beaches and dunes, “Conserve and enhance the shoreline of Estero Island by increasing the amount of dunes, renourishing beaches to counter natural erosion, and reducing negative man-made impacts on beaches and dunes,” the town adopts the following:

- (1) In areas where the beach has experienced erosion, on public land or with the consent of the owner, the town will establish a dune system consisting of sea oat plantings, a minimum of 10 feet wide, to be planted adjacent to the existing upland vegetation line, and to be planted at existing elevations.
- (2) In areas that have not experienced erosion, the town will encourage the establishment of a dune system but will not require same.

Sec. 14-9. Enforcement.

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

(b) When imposing a sentence or penalty, the court, special magistrate, or any other appropriate body may, in mitigation, consider the successful replacement of dune vegetation illegally removed, and the restoration of the subject area when deemed by the court, the special magistrate or any other appropriate body that the action taken by the violator has eliminated or significantly decreased the ability of the dune system to recover or perform those functions for which it is being protected.

Sec. 14-10. Restoration standards for dune vegetation alteration violations.

(a) Upon agreement of the director and the violator, or if they cannot agree, then, upon action by the court or special magistrate, a restoration plan shall be ordered using the standards in this section. Such a restoration plan shall set forth replacement of the same species or any species approved by consent of the before-mentioned parties, or, if appropriate, in accordance with the direction of the court or special magistrate.

(b) The restoration plan shall include the following minimum standards:

- (1) Restoration plantings for vegetation other than trees must be nursery grown, containerized, and planted at a minimum density of no less than one and one half feet on center. The number of replacement plantings will be computed by the square footage of the area destroyed. The replacement stock shall be one and two inch size container. Higher density plantings may be required at the discretion of the director based upon density and size of the vegetation on the site prior to the violation. If the density or species of the vegetation cannot be determined where the violation occurred, then an assumption shall be made that the density and the species were the same as on similar properties. It shall be within the discretion of the director to allow a deviation from the above specified ratio. When such deviation is sought, the total size shall equal or exceed that specified in the above standards.
- (2) Dune vegetation alteration violations due to raking, excavation, and/or clearing shall be restored to natural ground elevation and soil conditions prior to commencement of replanting.
- (3) Replacement plantings shall have a guaranteed minimum of 80 percent survivability for a period of no less than five years; however, success will be evaluated on an annual basis.
- (4) Only temporary above ground irrigation may be installed and must be removed no later than one year from the date of planting.
- (5) The plan shall specify that within 90 days of completion of the restoration, a written report shall be submitted to the town. This report shall include the date of completion, copies of the nursery receipts, a drawing showing the locations of the plantings, and color photographs of the planting areas from fixed reference points.

(6) The restoration plan shall include a maintenance provision of no less than five years for the control of invasive exotic vegetation, with annual monitoring and maintenance of the restored area to include the following:

- a. Removal of all exotic and nuisance vegetation in the area without disturbing the existing dune vegetation.
- b. Replacement of dead vegetation that was planted in order to assure at least 90 percent coverage at the end of the five-year period. Replacement vegetation shall be nursery grown and of the same species and at least the same size as those originally planted.
- c. Submittal of an annual monitoring report to the director for five years following the completion of the restoration describing the conditions of the restored site. The monitoring report shall include mortality estimates, causes for mortality (if known), growth, invasive exotic vegetation control measures taken, and any other factors which would indicate the functional health of the restored area.
- d. The monitoring report shall be submitted on or before each anniversary date of the effective date of the restoration plan. Failure to submit the report in a timely manner shall constitute a violation of this ordinance.
- e. To verify the success of the mitigation efforts and the accuracy of the monitoring reports, the director shall periodically inspect the restoration.

Sec. 14-11. Special events on the beach.

(a) Special events on the beach are any social, commercial, or fraternal gathering for the purpose of being entertained, instructed, viewing a competition, or any other reason that would bring them together in one location that normally would not include such a concentration of people on or near the beach.

(b) Special events on the beach are temporary, short-term activities, which may include the construction of temporary structures; temporary excavation, operation, transportation, or storage of equipment or materials; and/or nighttime lighting that is visible seaward of the coastal construction control line (CCCL). Generally, activities within this category include but are not limited to: sporting

events (e.g. volleyball, personal watercraft races, offshore powerboat races), festivals, competitions, organized parties (e.g. weddings), promotional activities, concerts, film events, balloon releases, and gatherings under tents.

(c) Due to the potential for adverse impacts, certain special event activities may not be compatible with sea turtle nesting areas. In some cases this is due to the type of activity where permit conditions alone cannot provide adequate protection. In other cases the density of sea turtle nesting prevents certain activities from being conducted safely.

(d) Special events which occur on or near the beach or dune, or where lighting from the special events directly or indirectly illuminates sea turtle nesting habitat, may contain special conditions for the protection of the beach, dune, and sea turtles. These conditions are in addition to the basic requirements of Ordinance No. 98-1, as amended, which must still be met in full.

- (1) Along with the regular application for an event permit as required by Ordinance No. 98-1 as amended, a site plan must be submitted depicting the property corners and the dimensions of the area where the event is proposed to occur, the location of existing vegetation, structures, and any existing sea turtle nests, and a summary of the activities proposed. A lighting plan that includes the location, number, type, wattage, orientation, and shielding for all proposed artificial light sources that will be used must also be submitted. All lighting must be in compliance with § 14-75.
- (2) Prior to the granting or denying of the application, an on-site inspection will be conducted to determine if the proposed event conforms to the requirements of this section and if any native vegetation or sea turtle nests exist to be protected.
- (3) Based upon the information contained in the application and the site inspection, the application shall be approved or denied. approve or deny the application.
- (4) Site-specific conditions may be attached to the permit relating to identifying, designating, and protecting any existing vegetation and sea turtle nests in accordance with this code. These conditions are in addition to the following standard permit conditions for all special events on the beach:

- a. During the sea turtle season (May 1 through October 31), special event activities including construction shall be confined to daylight hours and shall not begin before 8:00 A.M. or before completion of daily monitoring for turtle nesting activity by a FWC-authorized marine turtle permit holder, whichever occurs first. However, no activity shall take place until after a daily sea turtle nest survey is conducted as indicated below.
 - b. During sea turtle nesting season (May 1 through October 31), the permittee is responsible for ensuring that a daily sea turtle nest survey, protection, and monitoring program is conducted throughout the permitted special events area. Such surveys and associated conservation measures shall be completed after sunrise and prior to the commencement of any activity. The sea turtle survey, protection, and monitoring program shall be conducted only by individuals possessing appropriate expertise in the protocol being followed and a valid *F.A.C.* Rule 68-E permit issued by the FWC. To identify those individuals available to conduct marine turtle nesting surveys within the permitted area, please contact the FWC, Bureau of Imperiled Species Management, at (850) 922-4330.
 - c. All turtle nests will be marked with wooden stakes, flagging tape, and an FWC sea turtle nest sign. No activities (including the placement of equipment or the storage of materials) are allowed within 30 feet of the marked nest. The permittee shall ensure that all personnel are briefed on the types of marking utilized and be able to easily contact the individual responsible for the nest survey to verify any questionable areas.
- (5) A violation of the special or standard conditions shall automatically invalidate the permit. Periodic compliance inspections will be conducted to insure compliance with the permit conditions and this ordinance.
 - (6) The release of balloons is prohibited in accordance with 372.995, *F.S.*, except as permitted by that statute.

Secs. 14-12--14-70. Reserved.

**ARTICLE II.
SEA TURTLE CONSERVATION**

Sec. 14-71. Purpose and applicability.

The purpose of this article is to protect endangered and threatened sea turtles along the Gulf of Mexico beaches in the Town of Fort Myers Beach. This article protects nesting sea turtles and sea turtle hatchlings from the adverse effects of artificial lighting, provides overall improvement in nesting habitat degraded by light, and increases successful nesting activity and production of hatchlings on the beaches, as defined in this article.

Sec. 14-72. Definitions.

When used in this article, the following words, terms and phrases shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Artificial lighting means light emanating from a manmade point source (see *Point source of light*, below).

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

Bug light means any yellow colored incandescent light bulb that is specifically treated in such a way so as to reduce the attraction of bugs to the light, but does not include bug killing devices.

Construction means the carrying out of any building, clearing, filling, excavating or substantial improvement in the size or use of any structure or the appearance of any land. When appropriate to the context, the term “construction” refers to the act of constructing or the result of construction, and includes reconstruction or remodeling of existing buildings or structures.

Decorative lighting means lighting used for aesthetic reasons, primarily landscaping.

DEP means Florida Department of Environmental Protection or successor agency.

Directly illuminated means illuminated by one or more point sources of light directly visible to an observer on the beach, dune, or other sea turtle nesting habitat.

Development has the same meaning stated in §34-2.

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

Existing development means completed development having received official approval in the form of a certificate of compliance, final building permit inspection, or other final governmental approval as of January 31, 1998, or development that was completed prior to the adoption of those requirements.

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

Ground-level barrier means any vegetation, natural feature or artificial structure rising from the ground intended to prevent beachfront lighting from shining directly or indirectly onto the beach, dune, or other sea turtle nesting habitat.

Hatchling means any individual of a species of sea turtle, within or outside of a nest, that has recently hatched from an egg.

Indirectly illuminated means illuminated by one or more point sources of light not directly visible to an observer on the beach, dune, or other sea turtle nesting habitat.

Low-profile lighting means a light fixture which places the low wattage source of light no higher than 48 inches above grade and is designed so that a point source of light does not directly or indirectly illuminate sea turtle nesting habitat.

Mechanical beach raking means the cleaning of the sandy beach seaward of the dune and vegetation line of trash and other debris on or near the surface by use of a rake or other similar porous device which penetrates no more than 2 inches below existing

ambient grade and results in no removal of in situ sand.

Nest means an area where sea turtle eggs have been naturally deposited or subsequently relocated by an FWC-authorized marine turtle permit holder.

Nesting season means from 9:00 P.M. until 7:00 A.M. during the period May 1 through October 31 of each year.

New development means construction of new buildings or structures as well as renovation or remodeling of existing development, and includes the alteration of exterior lighting occurring after January 31, 1998.

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

Sea turtle means any marine-dwelling reptile of the families Cheloniidae or Dermochelyidae found in Florida waters or using the beach as nesting habitat, including *Caretta caretta* (loggerhead), *Chelonia mydas* (green), *Dermochelys coriacea* (leatherback), *Eretmochelys imbricata* (hawksbill), and *Lepidochelys kempfi* (Kemp's ridley). For purposes of this article, sea turtle is synonymous with marine turtle.

Sea turtle nesting habitat means the beach and any adjacent dunes or areas landward of the beach used by sea turtles to deposit sea turtle eggs.

Tinted glass means any glass treated to achieve an industry-approved, inside-to-outside light transmittance value of 45% or less.

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

Sec. 14-73. Enforcement.

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

(b) A rebuttable presumption that there is a violation of this article exists when:

- (1) a shadow is created or cast by artificial lighting directly or indirectly illuminating an opaque object in sea turtle nesting habitat during the nesting season; or
- (2) the disorientation or mortality of a nesting sea turtle or sea turtle hatchling is caused by artificial lighting directly or indirectly illuminating sea turtle nesting habitat during the nesting season.

Sec. 14-74. Exemptions.

The town manager may authorize, in writing, any activity or use of lighting otherwise prohibited by this article for a specified location and period of time. The authorization must be for the minimum duration and amount of lighting from a point source(s) of light.

Sec. 14-75. Existing development.

Existing development must ensure that sea turtle nesting habitat is not directly or indirectly illuminated by lighting originating from the existing development during the nesting season. Artificial lighting from existing development must not directly or indirectly illuminate sea turtle nesting habitat during the nesting season.

Sec. 14-76. New development.

New development must comply with the following requirements:

- (a) Artificial lighting must conform to the requirement of § 14-75.
- (b) A lighting plan must be submitted for review prior to the earlier of building permit or development order issuance for all new development, as follows:
 - (1) for new development seaward of the coastal construction control line, as defined in § 6-333 (CCCL), a copy of a DEP-approved lighting plan is required;
 - (2) for new development landward of the CCCL, a lighting plan is required for all commercial and industrial development, and for all multi-story developments in multi-family zoning districts.

The location, number, wattage, elevation, orientation, and all types of proposed exterior artificial light sources must be included on the lighting plan. An approved lighting plan is required

before final inspections for a certificate of occupancy or certificate of compliance will be performed by the town.

(c) Prior to the issuance of a certificate of occupancy (CO), the exterior lighting of new development must be inspected after dark by the town, with all exterior lighting turned on, to determine compliance with an approved lighting plan and this article.

Sec. 14-77. Publicly owned lighting.

Streetlights and lighting at parks and other publicly owned beach access areas are subject to the following requirements:

- (1) The beach must not be directly or indirectly illuminated by newly installed or replaced point sources of light.
- (2) Artificial lighting at parks or other public beach access points must conform to the provisions of § 14-75.

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

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

(b) **Driving on the beach.** Driving on sea turtle nesting habitat, specifically including the beach, is prohibited during the nesting season, except as follows:

- (1) **Research or patrol vehicles.** Only authorized permittees of the FWC, DEP officials, and law or code enforcement officers conducting bona fide research or investigative patrols, may operate a motor vehicle on the beach or in sea turtle nesting habitat during the nesting season. No lights may be used on these vehicle during the nesting season unless they are covered by appropriate red-colored filters.

- (2) **Mechanical beach raking.** All mechanical beach raking requires a town permit in accordance with § 14-6(c). During the nesting season, mechanical beach raking:
 - a. must not occur before 9:00 A.M. or before completion of daily monitoring for turtle nesting activity by a FWC-authorized marine turtle permit holder, whichever occurs first, and

- b. must not disturb any sea turtle or sea turtle nest and must avoid all staked sea turtle nests by a minimum of 10 feet.

(3) **Beach furniture and equipment transport.** The transport of beach furniture and equipment requires a town permit in accordance with § 14-5(e). During the nesting season:

- a. Equipment shall not be set out in the morning until after sea turtle monitoring has inspected the beach in the area of the authorized activity to ensure any new sea turtle nests are identified and marked.
- b. Transporting vehicles shall not travel within 10 feet of a sea turtle nest or dune vegetation.

(4) **Jet-ski transport.** During the nesting season, jet-ski transport and storage:

- a. must be in compliance with § 27-49(1) and (9) of this code even for jet-skis that are not available for rental in accordance with ch. 27, and
- b. may require a DEP permit authorizing jet-ski transport within the riparian line of the licensed property to the water, and
- c. must not occur before 8:00 A.M. or before completion of daily monitoring for turtle nesting activity by a FWC-authorized marine turtle permit holder, whichever occurs first, and
- d. must not disturb any sea turtle or sea turtle nest and must avoid all staked sea turtle nest by a minimum of 10 feet.

(5) See §§ 14-5-7 and 27-49 for other restrictions on vehicular traffic on the beach that apply before and after the nesting season.

(c) **Parking.** Vehicle headlights in parking lots or areas on or adjacent to the beach must be screened utilizing ground-level barriers to eliminate artificial lighting directly or indirectly illuminating sea turtle nesting habitat.

Sec. 14-79. Guidelines for mitigation and abatement of prohibited artificial lighting.

- (a) Appropriate techniques to achieve lighting compliance include, but are not limited to:
 - (1) fitting lights with hoods or shields,
 - (2) utilizing recessed fixtures with low-wattage bulbs,
 - (3) screening light with vegetation or other ground-level barriers,

- (4) directing light away from sea turtle nesting habitat,
- (5) utilizing low-profile lighting,
- (6) turning off artificial light during the nesting season,
- (7) motion detectors set on the minimum duration, and
- (8) lowering the light intensity of the lamps, preferably to 25 watts, but no more than 40-watt yellow bug lights.

Although plastic sleeves for fluorescent bulbs may help to reduce the amount of artificial light to an acceptable level if the bulbs are of sufficiently low wattage, in most instances additional shielding is needed as sea turtles are more sensitive to the wavelengths of fluorescent light.

(b) Opaque shields for lights covering an arc of at least 180 degrees and extending an appropriate distance below the bottom edge of the fixture on its seaward side may be installed so that the light source or any reflective surface of the light fixture is not visible from sea turtle nesting habitat.

(c) Floodlights, uplights, spotlights, and decorative lighting directly or indirectly visible from sea turtle nesting habitat should not be used during the nesting season. The ideal alternatives within direct line-of-sight of the beach are completely shielded downlight-only fixtures or recessed fixtures, with any visible interior surfaces or baffles covered with a matt black non-reflective finish.

(d) Appropriate techniques to eliminate interior lighting directly or indirectly illuminating the beach, include but are not limited to: applying window tint film to windows, using tinted glass, moving light fixtures away from windows, closing blinds or curtains, and turning off unnecessary lights.

Secs. 14-80--14-110. Reserved.

ARTICLE III. SOUTHERN BALD EAGLE ³

Sec. 14-111. Purpose.

In order to protect and preserve the southern bald eagle, it is necessary and appropriate to protect, enhance, and preserve the nest of the eagle and its immediate environs. With reasonable land compensation incentives and proper habitat management, the southern bald eagle population can be maintained and increased. This article is intended to protect the critical nesting habitat of the southern bald eagle and promote national, state, and county pride and esteem by providing special compensation incentives to private property owners for loss of property committed to critical southern bald eagle nesting habitat. This article also provides information and assistance to property owners to enable them to avoid violations of state and federal law.

Sec. 14-112. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandoned nest means a nest which has not been occupied by the southern bald eagle for the hatching and nurturing of eagle young for a period of four consecutive years or has been determined to be abandoned by the eagle technical advisory committee.

Buffer area means that area designated in accordance with § 14-119 that must remain predominantly in its natural state to protect eagles, nest trees, or other critical eagle nesting habitat. Buffer areas may range in any distance up to 750 feet or more from a nest and may be irregularly shaped areas.

Conservation easement means a right or interest in real property which is appropriate to retaining land or water areas predominantly in their natural, scenic, open, or wooded condition; retaining such areas as

³ *Cross reference(s)--Protection of habitat, § 10-471 et seq.*

suitable habitat for fish, plants, or wildlife; or maintaining existing land uses and which prohibits or limits any or all of the activities described in F.S. § 704.06, as such provisions now exist or may from time to time be amended.

Critical eagle nesting habitat means habitat which, if lost, would result in the elimination of nesting eagles from the area in question. Critical eagle nesting habitat typically provides functions for the southern bald eagle during the nesting portion of that species' life cycle. This area includes eagle nest trees and their immediate environs and may include other areas or features such as perch trees, flyways, and secondary nests.

Developer means any person undertaking development.

Development means any improvement or change of the land induced by human activities.

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

Land means the earth, water and air above, below or on the surface.

Nest means a structural mass of sticks, twigs, leaves, mosses or other materials which is being occupied or has been occupied by the southern bald eagle for the hatching and nurturing of eagle young.

Parcel, for purposes of this article only, means one or more contiguous lots under unified control.

Property owner means any person having recorded legal title to real property.

Southern bald eagle (*Haliaeetus leucocephalus*) means a mature eagle with white plumage on its head and tail feathers, or an immature eagle with dark plumage, which resides throughout the state around estuarine areas and along the lakes and river drainage basins within the interior of the state and county.

Unified control means the unrestricted right of any owner or agent to enforce whatever conditions are placed on the use and development of a parcel of land through the provisions of this article, by binding his heirs, assigns, or other successors in title with covenants or restrictions on the development and subsequent use of property.

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

Sec. 14-113. Violation; penalty.

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

(b) Any violator of this article may be required to restore the critical eagle nesting habitat to its original undisturbed condition. If restoration is not undertaken within a reasonable time after notice, the town may take necessary corrective action, the cost of which will be placed as a lien upon the property.

Sec. 14-114. Provisions supplemental.

(a) This article does not replace the Federal Endangered Species Act, the Federal Migratory Bird Act, the Federal Bald Eagle Act or the Florida Endangered Species Act, but is intended to supplement those laws to ensure protection of critical eagle nesting habitat.

(b) The town urges all landowners conducting development activities to adhere to the "Habitat Management Guidelines for the Bald Eagle in the Southern Region," prepared by the U.S. Fish and Wildlife Service, which recommends a primary protection zone with a radius of 750 to 1500 feet around active nests within which no development should occur.

Sec. 14-115. Applicability.

This article applies to all real property within 750 feet of a nest until such time as the nest has been determined to be abandoned. Abandonment will be determined by the eagle technical advisory committee based on competent evidence but in no event will be more than four years.

Sec. 14-116. Eagle technical advisory committee.

(a) Lee County has established an eagle technical advisory committee (ETAC) for the purpose of advising the board of county commissioners on matters relating to the protection of the southern bald eagle. The Town of Fort Myers Beach shall consult this committee for advice and recommendations in the event a southern bald eagle begins to nest within its incorporated area.

Sec. 14-117. Public acquisition of rights and interest in critical eagle nesting habitat lands.

(a) The town may acquire rights and interests in real property designated as a critical eagle nesting habitat. When a developer or property owner cannot accommodate critical eagle nesting habitat through reasonable site planning or proper access, the town may acquire an interest through:

- (1) Receiving donations of critical eagle nesting habitat lands;
- (2) Purchase or conveyance by dedication of a perpetual conservation easement;
- (3) Outright purchase or lease of critical eagle nesting habitat;
- (4) Acquisition through eminent domain proceedings pursuant to article II, § 9, and article X, § 6, of the state constitution and applicable provisions of the Florida Statutes; or
- (5) Implementation by the town council or the board of county commissioners of any combination of these or other actions to acquire rights and interests that balance the public and private interests.

(b) Monies needed for the purchase of critical eagle nesting habitat, or the purchase of conservation easements to protect these habitats, may be funded by public and private donations. Funding may also be solicited in a general community appeal on license tag renewals and ad valorem tax envelopes issued by the county tax collector, and by monies appropriated from the general fund by the town council or the board of county commissioners from time to time.

Sec. 14-118. Notification procedure.

The town will notify the FWC and the U.S. Fish and Wildlife Service upon receipt of any application for a planned development rezoning, a development order, a notice of clearing, or a building permit for any property located within 750 feet of a bald eagle nest. The notice must include any available information gathered by the eagle technical advisory committee regarding the behavior of the eagles who are occupying the nest.

Sec. 14-119. Mechanisms for the protection of critical eagle nesting habitat.

(a) *Single- or two-family dwelling unit (including accessory structures.)* Appropriate conditions

limiting or prohibiting development during the nesting season may be attached to building permit approvals for property to which this article is applicable where such conditions are deemed necessary by the director to prevent a “take” of the eagle, as that term is defined in FAC rule 39-1.004(77).

(b) ***All other development.***

- (1) All persons contemplating the development of property to which this article is applicable are encouraged to consult with the county’s eagle technical advisory committee and its supporting staff as early in the planning and design process as possible.
- (2) With assistance from the eagle technical advisory committee, all such persons are encouraged to prepare a management plan that protects critical eagle nesting habitat. All such management plans will be reviewed by the eagle technical advisory committee prior to approval by resolution of the town council.
- (3) All development within critical eagle nesting habitat and buffer areas must be consistent with the approved management plan.
- (4) Management plans must address, at a minimum, the following items:
 - a. Description of the land around the critical eagle nesting habitat, including locations of nest tree(s) and perch tree(s), vegetation types, and a description of the type and density of understory and canopy vegetation;
 - b. History and behavior patterns of the eagle pair;
 - c. A one inch equals 200 feet aerial map and a map at the scale of the development which shows the location of the eagle’s nest and other critical eagle nesting habitat features as well as the proposed development;
 - d. The size and shape of the buffer area;
 - e. Measures to reduce potential adverse impacts of the development on the nesting bald eagles;
 - f. A critical eagle nesting habitat management plan which shall include techniques to maintain viable nesting habitat. These techniques may include controlled burning, planting, or removal of vegetation, invasive exotic species control, maintaining hydrologic regimes, and monitoring;

- g. Deed restrictions, protective covenants, easements, or other legal mechanisms running with the land that provide reasonable assurances that the approved management plan will be implemented and followed by all subsequent owners of the property in question;
 - h. A commitment to educate future owners, tenants, or other users of the development about the specific requirements of the approved eagle management plan and the state and federal eagle protection laws.
- (5) The legal effect of management plans will be limited geographically to property owned or controlled by the proponent of the plan.
 - (6) An approved management plan will remain effective notwithstanding the abandonment of a nest unless the abandonment occurs prior to the use of any incentives (see § 14-120 below) and the property owner relinquishes the incentives by amending the development order or taking other appropriate action.

Sec. 14-120. Compensation incentives for protection of critical eagle nesting habitat.

(a) Incentives for the preservation of critical eagle nesting habitat pursuant to approved management plans will be granted in accordance with the standards in § 10-474(e)

(b) In addition to the incentives already provided herein, if the town council elects not to acquire a critical eagle nesting habitat, then the town council may permit all or some of the following special compensation benefits as incentives to the developer or property owner for the purpose of protecting critical eagle nesting habitat:

- (1) For a buffer area of 350 feet in radius or an approximate equivalent acreage, minimum, the following benefits shall be granted:
 - a. The property owner shall be allowed to transfer density from within the buffer area to designated upland areas within the subject property at the same density permitted for that portion of the subject property as determined through the residential planned development process; and
 - b. The property owner shall be allowed priority review and processing of zoning and development applications for the

- subject property, and, if applicable, one other parcel under unified control.
- (2) For a buffer area of 550 feet in radius or an approximate equivalent acreage, the following benefits, in addition to those set forth in subsection (1) of this section, may be granted:
 - a. The town may waive the zoning application fee on the subject property, and, if applicable, one other parcel under unified control;
 - b. The town may waive building permit application fees on the subject property, and, if applicable, one other parcel under unified control; and
 - c. The town may waive development review related fees on the subject property, and, if applicable, one other parcel under unified control.
 - (3) For a buffer area of 750 feet in radius, or an approximate equivalent acreage, the following benefits, in addition to those set forth in subsections (1) and (2) of this section, may be granted: The town may provide a credit against regional park impact fees on the subject property, and, if applicable, one other parcel under unified control located within the town. In no event shall the credit towards the regional park impact fee exceed the appraised value of the dedicated land.
 - (4) In order to receive the benefits mentioned in this section, the buffer areas shall be designated as critical eagle nesting habitat and shall be conveyed to the town by either warranty deed or by dedication of a perpetual conservation easement.
 - (5) The increase in buffer area beyond the minimum radius is directly proportional to additional incentive benefits which may be requested and may be received by the developer or property owner pursuant to the terms of this article.
 - (6) In no event shall the amount of fees waived or credited set forth in subsections (2) and (3) of this section exceed the appraised value of the buffer area conveyed to the town. The appraised value shall be based on two current documented appraisals of the fair market value or sales price of the land. Appraisals must be prepared by qualified appraisers and are subject to approval by the town manager.

Secs. 14-121--14-290. Reserved.

ARTICLE IV. WETLANDS PROTECTION

Sec. 14-291. Applicability.

(a) The provisions of this article apply to all wetlands within the incorporated area of the town. A close approximation of wetland boundaries is shown on the future land use map (Figure 16 of the Fort Myers Beach comprehensive plan). However, even where not shown on that map, this article applies to all wetlands as defined in F.S. § 373.019 as interpreted through the use of the unified delineation methodology ratified by F.S. § 373.4211.

(b) If the delineation of wetlands on the future land use map is incorrect due to a clear factual error, a process is contained in ch. 15 of the comprehensive plan to establish the precise boundary of any wetland within the town.

Sec. 14-292. Purpose.

(a) Wetlands provide valuable habitat, buffering from storms, shoreline stabilization, and production of food for estuarine and coastal waters. The town's objectives are to preserve all remaining wetlands, protect them from further degradation, and improve their condition and natural functions.

Sec. 14-293. Definitions.

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

ERP means an Environmental Resource Permit.

SFWMD means the South Florida Water Management District.

Wetlands means those areas inundated or saturated by surface water or groundwater at a frequency and a duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils. Examples of wetlands at Fort Myers Beach include mangroves forests, tidal marshes, and salt flats. See full definition in F.S. § 373.019.

Sec. 14-294. Prohibited activities.

Activities that destroy wetlands or impair the functioning of wetlands such as the following are prohibited:

- (1) Construction fill that encroaches along the edges of, or into, wetlands, canals, or other tidal waters;
- (2) Dredging of new or expanded boat basins or channels;
- (3) Placement of seawalls or riprap revetments except as specifically authorized by ch. 26;
- (4) Ditching or filling of wetlands for mosquito control purposes; and
- (5) Any filling or removal of mangrove systems.

Sec. 14-295. Permitted activities.

The following types of activities may be desirable in wetlands and may be permitted by the director when compatible with wetland functions and approved in accordance with other provisions of this code:

- (1) Activities necessary to prevent or eliminate a public hazard, such as elimination of a dangerous curve in a road, dredging in order to clean up a spill of hazardous waste, or removal of underwater obstructions to boat traffic.
- (2) Activities that provide a direct benefit to the public at large that would exceed any public loss as a result of the activity, such as removal of exotic species, restoration of natural hydroperiods, impacts associated with the maintenance of existing drainage works, or providing water access to the general public.
- (3) Resource-oriented activities such as passive recreation, outdoor education, or other uses where protection of wetland functions and values is the primary attraction.
- (4) Structures or facilities that will improve the functional value of wetlands or provide "no-impact" use for observation, education, research, or passage (walking or non-motorized boats); these could include such structures as public boardwalks, observation decks, or launching areas for non-motorized watercraft.

Sec. 14-296. Permits required.

(a) Prior to any activity that will affect wetlands, an ERP or exemption shall be required from either DEP or SFWMD in accordance with F.S. ch. 373 and F.A.C. ch. 62. The town will not undertake an independent review of the impacts to wetlands resulting from activity in wetlands that is specifically authorized by an ERP or exemption, provided that the proposed activity is consistent with the Fort Myers Beach comprehensive plan and this code.

(b) No development approval shall be issued by the town for any project that affects wetlands until all requisite permits from other agencies have been obtained and provided to the town. Relevant conditions placed on ERPs shall be incorporated into subsequent approvals issued by the town.

Sec. 14-297. Compliance enforcement.

(a) The town will enforce the provisions of any state authorization relating to wetlands, including ERPs, that are incorporated into a development order under ch. 10 or a building permit under ch. 6.

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

Cross reference--See also article VI of this chapter concerning mangrove enforcement.

Secs. 14-298--14-370. Reserved.

**ARTICLE V.
TREE PROTECTION ⁴**

Sec. 14-371. Reserved.

Sec. 14-372. Findings of fact.

The town council hereby finds and determines that trees promote the health and general welfare of the citizens of the town, specifically:

- (1) Trees transpire considerable amounts of water each day and assist in purifying the air;
- (2) Trees precipitate dust and other particulate airborne pollutants from the air;
- (3) Trees, through their root systems, stabilize soil and play an important and effective part in soil conservation, erosion control, and flood control;
- (4) Trees are an invaluable amenity, providing shade and cooling the air and land, and reducing noise levels and glare;
- (5) The protection of trees is not only desirable, but essential to the health, safety, and welfare of all the citizens, present and future, of the town;
- (6) Some trees are more beneficial than others as necessary contributions to the town's environment, and it is not necessary to protect each and every tree in order to attain the publicly beneficial results of tree protection; and
- (7) Invasive exotic trees crowd out native trees and other vegetation and do not warrant protection under this article.

Sec. 14-373. Intent and purpose.

(a) The intent of this article is to protect trees through the preservation and planting of protected trees in order to:

- (1) aid in the stabilization of soil by the prevention of erosion and sedimentation;
- (2) reduce stormwater runoff and costs associated therewith and maintain permeable land areas for surface water filtration;
- (3) aid in the removal of carbon dioxide and generation of oxygen in the atmosphere;

⁴ *Cross reference(s)--Open space, buffering and landscaping, § 10-411 et seq.*

- (4) provide a buffer and screen against noise pollution;
- (5) promote energy conservation through the creation of shade, reducing heat gain in or on buildings or paved areas, and reducing the temperature of the microclimate through evapotranspiration;
- (6) provide protection against severe weather;
- (7) aid in the control of drainage and restoration of denuded soil subsequent to construction or grading;
- (8) provide a haven for birds which in turn assist in the control of insects;
- (9) protect and increase property values;
- (10) conserve and enhance the town's physical and aesthetic environment; and
- (11) generally protect and enhance the quality of life and the general welfare of the town.

(b) The purpose of this article is to protect trees from abuse and/or mutilation, and to regulate the removal and planting of protected trees in order to enhance and protect the environmental quality of the town.

Sec. 14-374. Definitions.

(a) The following words, terms and phrases, and their derivations, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. When not inconsistent with the context, words in the present tense include the future and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

Diameter at breast height (dbh) means the diameter, in inches, of a tree measured 54 inches above natural grade.

Director means the person to whom the town manager has delegated the authority to administer this chapter, or that person's designee.

Dripline means an imaginary vertical line running from the outermost branches or portion of the tree crown to the ground.

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

Invasive exotic tree means any of the following tree species: *Melaleuca* (*Melaleuca quinquenervia*), Brazilian pepper (*Schinus terebinthifolius*), and Australian pine (*Casuarina spp.*).

Person means any public or private individual, group, company, partnership, association, society or other combination of human beings whether legal or natural.

Protected tree means any tree listed in the protected tree list in § 14-380(c).

Protective barrier means a physical structure not less than three feet in height composed of lumber no less than one inch by one inch in size for shielding protected trees from the movement of equipment or the storage of equipment, material, debris or fill. Equivalent materials may be used to provide a protective barrier if first approved by the director.

Removal means the deliberate removal of a tree or causing the effective removal of a tree through damaging, poisoning or other direct or indirect actions resulting in the death of the tree.

Tree means a living, woody, self-supporting plant, ten feet or more in height, having one or more well-defined main stems or trunks, and any one stem or trunk four inches in diameter at breast height. Trees protected by this article are listed in § 14-380(c). For the purpose of this article, those palms listed in § 14-380(c) are declared to be a tree and are protected by the provisions of this article.

Tree location map means a drawing or aerial photograph which provides the following information: location of all trees protected under the provisions of this article, plotted by ground truthing or any other accurate scientific techniques; common or scientific name of all trees; and diameter at breast height. Groups of trees in close proximity (five feet spacing or closer) may be designated as a clump of trees, with the predominant species, estimated number and average size listed.

Upland means land other than wetlands.

(b) Unless specifically defined in this article, the words or phrases used in this article and not defined in subsection (a) of this section shall be interpreted so as to give them the meaning they have in common

usage and to give this article its most reasonable application.

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

Sec. 14-375. Penalty for violation.

(a) The director is authorized to pursue any one or combination of the enforcement mechanisms provided in this code (for example, § 1-5, or article V of ch. 2) for any violation of this article. See also the restoration standards in § 14-384.

(b) In any prosecution under this article for the removal of a protected tree without a permit, each tree so removed will constitute a separate offense.

Sec. 14-376. Exemptions.

- (a) This article shall not apply to the following:
 - (1) **Trees in rights-of-way.** The removal of trees on public rights-of-way conducted by or on behalf of a governmental agency in pursuance of its lawful activities or functions in the construction or improvement of public rights-of-way or in the performance of its official duties.
 - (2) **Damaged trees.** The removal of a protected tree that is dead or which has been destroyed or damaged by natural causes beyond saving or which is a hazard as the result of an act of God and constitutes an immediate peril to life and property.
 - (3) **Utility lines.** The removal of trees by duly constituted communication, water, sewer or electrical utility companies in or adjacent to a public easement or right-of-way, provided such removal is limited to those areas necessary for maintenance of existing lines or facilities or for construction of new lines or facilities in furtherance of providing utility service to its customers, and provided further that such removal is conducted so as to avoid any unnecessary damage or removal of trees.
 - (4) **Surveying activities.** The removal of trees protected by this article by a state-licensed land surveyor in the performance of his duties. The removal of trees protected by this article in a manner which requires clearing a swath of greater than three feet in width shall require approval of the director prior to such a removal and clearance.

(5) **Subdivided lots.** The removal of up to three protected trees during any one-year period on a lot that is being used lawfully as a single-family residence or mobile home. However, all other lots that are vacant or have a building that is being replaced are subject to the provisions of § 14-382(c).

(b) However, exemptions (1), (3), (4), and (5) in the previous subsection shall not apply to any tree cited in the Florida champion tree register (*Big Trees: The Florida Register*, published by the Florida Native Plant Society, or successor publication),

Sec. 14-377. Indigenous vegetation.

(a) Indigenous vegetation shall not be cleared in areas that serve as listed species occupied habitat as defined in ch. 10, article III, division 8. The following shall apply:

- (1) The director shall determine the location of protected species to be preserved based on the criteria set forth in ch. 10, article III, division 8. This review shall not be substituted for surveys required under ch. 10, article III, division 8.
- (2) The director, or the property owner with the director's approval, shall develop a management plan based on the criteria set forth in § 10-474. Preparation and review criteria for the plan may be subject to the provisions of an appropriate administrative code. Up to ten percent of the upland acreage shall be preserved in areas where listed species are present. No more than two separate areas shall be set aside on any given parcel. Any state-mandated upland listed species preserves shall be included within the referenced ten percent preservation area. Bald eagles (*Haliaeetus leucocephalus*) shall be protected pursuant to article III of this chapter.

(b) Indigenous vegetation shall not be cleared within 25 feet of the mean high-water line of any natural waterway. Indigenous vegetation may be cleared selectively to allow the placement of docks, pipes, pumps and other similar structures pursuant to this code.

Sec. 14-378. Suspension of article during emergency conditions.

Upon the declaration of a state of emergency pursuant to F.S. ch. 252, the director may suspend the enforcement of the requirements of this article for a period of 30 days in order to expedite the removal of damaged and destroyed trees in the interest of public safety, health, and general welfare.

Sec. 14-379. Nonliability of town.

Nothing in this article shall be deemed to impose any liability upon the town or upon any of its officers or employees, nor to relieve the owner and/or occupant of any duty to keep trees and shrubs upon private property or under his control in a safe condition.

Sec. 14-380. List of protected trees.

(a) Any tree delineated in § 14-380(c) shall henceforth be a protected tree and shall thereby come under the provisions of this article, except where those trees are exempted from protection pursuant to § 14-376.

(b) All other species of trees not named in § 14-380(c) may be removed without a permit, but only in such a manner so as not to disturb or destroy surrounding protected trees or to disturb indigenous vegetation protected by § 14-377.

(c) *Protected tree list.*

FAMILY NAME	
<i>Scientific Name</i>	<i>Common Name</i>
ACERACEAE (MAPLE FAMILY)	
Acer rubrum	Red Maple
ANACARDIACEAE (CASHEW FAMILY)	
Rhus copallina	Southern Sumac
ANNONACEAE (CUSTARD-APPLE FAMILY)	
Annona glabra	Pond Apple
AQUIFOLOIACEAE (HOLLY FAMILY)	
Ilex cassine	Dahoon Holly

AREACACEAE (PALM FAMILY)	
Coccothrinax argentata	Silver Palm
Cocos nucifera	Coconut Palm
Roystonea elata	Florida Royal Palm
Sabal palmetto	Cabbage Palm

AVICENNIACEAE (BLACK MANGROVE FAMILY)	
Avicennia germinans	Black Mangrove

BETULACEAE (BIRCH FAMILY)	
Carpinus caroliniana	Iron Wood

BORAGINACEAE (BORAGE FAMILY)	
Cordia sebestena	Geiger Tree

BURSERACEAE (TORCHWOOD FAMILY)	
Bursera simaruba	Gumbo Limbo

CAPPARACEAE (CAPER FAMILY)	
Capparis cynophallophora	Jamaica Caper

COMBRETACEAE (WHITE MANGROVE FAMILY)	
Bucida buceras	Black Olive
Conocarpus erecta	Buttonwood
Laguncularia racemosa	White Mangrove

CORNACEAE (DOGWOOD FAMILY)	
Cornus foemina	Swamp Dogwood

CUPRESSACEAE (CYPRESS FAMILY)	
Juniperus silicicola	Southern Red Cedar

EBENACEAE (EBONY FAMILY)	
Diospyros virginiana	Persimmon

FABACEAE (PEA FAMILY)	
Acacia farnesiana	Sweet Acacia
Lysiloma bahamensis	Wild Tamarind
Piscidia piscipula	Jamaica Dogwood
Pithecellobium unguis-cati	Cat Claw

FAGACEAE (OAK FAMILY)	
Quercus chapmani	Chapman Oak
Quercus incana	Bluejack Oak
Quercus laevis	Turkey Oak
Quercus laurifolia	Laurel Oak
Quercus myrtifolia	Myrtle Oak
Quercus nigra	Water Oak
Quercus virginiana	Live Oak
Quercus virginiana geminata	Sand Live Oak

HAMAMELIDACEAE	
(WITCH-HAZEL FAMILY)	
Liquidambar styraciflua	Sweet Gum

JUGLANDACEAE	
(WALNUT AND HICKORY FAMILY)	
Carya aquatica	Water Hickory
Carya glabra	Pignut Hickory

LAURACEAE (LAUREL FAMILY)	
Persea borbonia	Red Bay
Persea palustris	Swamp Bay

MAGNOLIACEAE (MAGNOLIA FAMILY)	
Magnolia grandiflora	Southern Magnolia
Magnolia virginiana	Sweetbay

MELIACEAE FAMILY	
(MAHOGANY FAMILY)	
Swietenia mahogoni	West Indian Mahogany

MORACEAE (MULBERRY FAMILY)	
Ficus aurea	Strangler Fig
Ficus citrifolia	Short-leaf Fig
Morus rubra	Red Mulberry

MYRTACEAE (MYRTLE FAMILY)	
Eugenia axillaris	White Snapper
Eugenia confusa	Ironwood
Eugenia rhombea	Red Stopper
Eugenia myrtoides	Spanish Stopper
Myrcianthes fragans	Simpson Stopper

NYSSACEAE (SOUR GUM FAMILY)	
Nyssa sylvatica	Black Gum/ Black Tupelo

OLACACEAE (XIMENIA FAMILY)	
Ximenia americana	Tallowood

OLEACEAE (OLIVE FAMILY)	
Forestiera segregata	Florida Privet
Fraxinus caroliniana	Pop Ash

PINACEAE (PINE FAMILY)	
Pinus elliottii var. densa	South Florida Slash Pine
Pinus palustris	Long-leaf Pine

PLATANACEAE (SYCAMORE FAMILY)	
Platanus occidentalis	Sycamore

POLYGONACEAE (BUCKWHEAT FAMILY)	
Coccoloba diversifolia	Pigeon Plum
Coccoloba uvifera	Sea Grape

RHIZOPHORACEAE	
(RED MANGROVE FAMILY)	
Rhizophora mangle	Red Mangrove

ROSACEAE (ROSE FAMILY)	
Prunus caroliniana	Cherry Laurel

RUTACEAE (RUE FAMILY)	
Zanthoxylum clavaherculis	Hercules Club

SALICACEAE (WILLOW FAMILY)	
Salix caroliniana	Coastal-Plain Willow

SAPOTACEAE (SAPODILLA FAMILY)	
Bumelia celastrina	Buckthorn/ Saffron Plum
Bumelia tenax	Buckthorn/ Tough Bumelia
Chrysophyllum oliviforme	Satinleaf
Mastichodendron foetidissimum	Mastic

SIMAROUBACEAE (QUASSIA FAMILY)	
Simarouba glauca	Paradise Tree

TAXODIACEAE (BALD CYPRESS FAMILY)	
Taxodium ascendens	Pond Cypress
Taxodium distichum	Bald Cypress

THEACEAE (CAMELIA FAMILY)	
Gordonia lasianthus	Loblolly Bay

THEOPHRASTACEAE (JOEWOOD FAMILY)	
Jacquinia keyensis	Joewood

ULMACEAE (ELM FAMILY)	
Celtis laevigata	Hackberry
Ulmus americana	American Elm

Sec. 14-381. Unlawful injury of trees.

It shall be a violation of this article for any person to remove, injure, disfigure, or destroy a protected tree in preparation for, in connection with, or in anticipation of development of land, except in accordance with the provisions of this article.

Sec. 14-382. Removal of protected trees.

(a) *Permit required.* Any protected tree, as defined and protected by this article, may be lawfully removed only after a permit therefor has been secured from the director. Failure to comply with the requirements of a tree removal permit shall be a violation of this article.

(b) *Relocation to public property.* Where a protected tree is to be removed under the provisions of this article, the town may, with the owner's permission, relocate the tree (not being relocated within the property) at the town's expense to publicly owned property for replanting, either for permanent utilization at a new location or for future use at another location. If the town does not elect to relocate any such tree, it may give the county or any city within the county the ability to acquire such tree at its expense for relocation. The relocation shall be accomplished within 15 working days of the issuance of a permit, unless it is necessary to root prune the tree to ensure its survival, in which case the relocation shall be accomplished within 30 working days of the issuance of a permit or on another suitable schedule as agreed to by all parties.

(c) *Subdivided lots.* For individual lots that are vacant or have a building that is being replaced, tree permits will be incorporated into the building permit for the site. For clearing prior to building permit issuance, a separate tree removal permit application must be submitted. Review of the proposed removal will follow the criteria listed in § 14-412(d), and will also assess the existing understory or subcanopy plants and protected species for retention or relocation within the site. However, no permit is required for the removal of up to three protected trees during any one-year period on a lot that is being used lawfully as a single-family residence or mobile home.

Sec. 14-383. Tree protection during development of land.

(a) Prior to the land clearing stage of development, the owner or developer shall clearly mark all protected trees for which a tree removal permit has not been issued and shall erect protective barriers for the protection of the trees according to the following:

- (1) Around an area at or greater than a six-foot radius of all species of mangroves and protected cabbage palms;

- (2) Around an area at or greater than the full dripline of all protected native pines; and
- (3) Around an area at or greater than two-thirds of the dripline of all other protected species.

(b) No person shall attach any sign, notice or other object to any protected tree or fasten any wires, cables, nails, or screws to any protected tree in any manner that could prove harmful to the protected tree, except as necessary in conjunction with activities in the public interest.

(c) During the construction stage of development, the owner or developer shall not cause or permit the cleaning of equipment or material within the outside perimeter of the crown (dripline) or on the nearby ground of any protected tree or group of trees which is to be preserved. Within the outside perimeter of the crown (dripline) of any protected tree or on nearby ground, the owner or developer shall not cause or permit storage of building material and/or equipment, or disposal of waste material such as paints, oil, solvents, asphalt, concrete, mortar, or any other material harmful to the life of the tree.

(d) No person shall permit any unnecessary fire or burning within 30 feet of the dripline of a protected tree.

(e) Any landscaping activities within the protective barrier area shall be accomplished with hand labor.

(f) Prior to the director issuing a certificate of occupancy or compliance for any development, building, or structure, all protected trees designated to be preserved that were destroyed during construction shall be replaced by trees of equivalent diameter at breast height tree caliper and of the same species as specified by the director, before occupancy or use, unless approval for their removal has been granted under permit.

(g) The director may conduct periodic inspections of the site during land clearance and construction.

(h) If, in the opinion of the director, development activities will so severely stress slash pines or any other protected tree such that they are made susceptible to insect attack, preventative spraying of these trees may be required.

Sec. 14-384. Restoration standards.

(a) If a violation of this article has occurred and upon agreement of the director and the violator, or, if they cannot agree, then upon conviction by the court or order of the hearing examiner, a restoration plan shall be ordered in accordance with the following standards:

- (1) The restoration plan shall include the following minimum planting standards:
 - a. The plan shall include a planting plan for all protected trees. Replacement stock shall be computed on a three for one basis according to the total number of unlawfully removed trees. The phrase “three for one” in this section refers to the requirement of replacing an illegally removed tree with three live trees according to the provisions of this article. Replacement trees shall be nursery grown, containerized, and no less than six feet in height. It shall be within the discretion of the director to allow a deviation from the ratio specified in this subsection. When such deviation is sought, the total of heights and calipers shall equal or exceed that specified in the standards set out in this subsection. An example of this might be one in which trees four feet in height might be planted in a ratio of five replacement trees to one illegally removed tree. Justification for such a deviation shall be provided to the director.
 - b. The plan shall include a planting plan for understory vegetation. Understory vegetation shall be restored to the area from which protected trees were unlawfully removed or mutilated. The plant selection shall be based on that characteristic of the Florida Land Use, Cover and Classification System (FLUCCS) Code. Shrubs, ground cover and grasses shall be restored as delineated in the Florida Land Use, Cover and Classification System Code. Up to seven species shall be utilized with relative proportions characteristic of those in the Florida Land Use, Cover and Classification System Code. The exact number and type of species required shall also be based upon the existing indigenous vegetation on adjacent

property. Replacement stock shall be no less than one-gallon-sized nursery-grown containerized stock planted at no less than three feet on center in the area from which protected trees were unlawfully removed or mutilated. This area shall be defined by the dripline of the trees. The number of shrubs shall not exceed, but may be less than, 25 shrubs per tree unlawfully removed or mutilated. The understory of the restored site shall be protected for a period of no less than ten years, unless its removal is a provision of a development order which has been approved after the restoration of the site.

- c. If the unlawful removal or mutilation of trees has caused any change in hydrology or surface water flows, then the hydrology or surface water flows shall be restored to pre-violation condition.
- (2) Massing of replacement stock shall be subject to agreement of the parties or, if appropriate, then by approval of the court or the hearing examiner, as long as the minimum number of trees and/or seedlings are provided. Replacement stock, with the exception of palms, shall be Florida No. 1 or better grade. Replacement stock shall have a guaranteed 80 percent survivability for a period of no less than five years. A maintenance provision of no less than five years must be provided in the restoration plan to control invasion of exotic vegetation. Replacement stock shall not be located on any property line, or in any utility easement that prohibits such plantings. The director may at his/her discretion allow the replacement stock to be planted off-site where approved development displaces areas to be restored. In these situations, off-site plantings shall be on lands under the control of a public agency. The off-site location is subject to the approval of the director.
- (3) In the event of impending development on property wherein protected trees were unlawfully removed, the restoration plan shall indicate the location of the replacement stock consistent with any approved plans for subsequent development. For the purposes of this article, impending development shall mean that a developer has made application

for a development order or applied for a building permit.

- (4) If identification of the species of trees is impossible for any reason on property wherein protected trees were unlawfully removed, then a presumption is raised that the trees illegally removed were of a similar species and mix as those found on adjacent properties.
- (5) A monitoring report shall be submitted to the director on an annual basis for five years describing the conditions of the restored site. The monitoring report shall be submitted on or before each anniversary date of the effective date of the restoration plan. Mortality estimates per species planted, estimated causes for mortality, growth of the vegetation, and other factors which would indicate the functional health of the restored systems shall be included in the monitoring report. Failure to submit the report in a timely manner shall constitute a violation of this article. When mitigation is required pursuant to this article, monitoring reports are necessary to ensure that the mitigation efforts have been successful. In order to verify the success of the mitigation efforts and the accuracy of the monitoring reports, periodic inspections are necessary. In order that the town be compensated by the violator for the costs of these periodic inspections of the restored site, a schedule of inspection fees may be established by the town; if no such schedule exists, inspection fees shall be those charged for similar services by Lee County.

(b) If a violation of § 14-384 occurs, then the restoration provisions contained within § 14-384 shall govern and supersede any other restoration provisions contained within this article.

Secs. 14-385--14-410. Reserved.

Sec. 14-411. Permit required.

No person, organization, society, association, corporation, or any agent or representative thereof, shall deliberately cut down, destroy, remove, relocate, defoliate through the use of chemicals or other methods, or otherwise damage any tree that is protected under this article without first obtaining a permit as provided in this article.

Sec. 14-412. Issuance of permit.

(a) **Submission of application.** Application for a permit to remove any protected tree defined in this article shall be submitted to the director, in writing, on a form provided by the director, accompanied by a written statement indicating the reasons for removal.

(b) **Authority of director.** The director shall have the authority to issue the permit and to inspect all work performed under any permit issued under this article.

(c) **Required information.** All applications to remove any protected tree defined in this article shall be on forms provided by the director. Where an application has been submitted to the director for the removal of more than five protected trees, no tree removal permit shall be issued by the director until a site plan for the lot or parcel has been reviewed and approved by the director, which shall include the following minimum information:

- (1) The shape and dimensions of the lot or parcel, together with the existing and proposed locations of the structures and improvements, if any.
- (2) A tree location map for the lot or parcel, in a form acceptable to the director. For the removal of three protected trees or less, an on-site examination by the director's designee shall be made in lieu of the tree location map requirement.
- (3) Any proposed grade changes that might adversely affect or endanger any protected trees on the lot or parcel, together with specifications reflecting how the trees can be safely maintained.
- (4) Any proposed tree replacement plan.

(d) **Criteria for granting.** The director shall approve a permit for issuance for the removal of any protected tree if the director finds one or more of the following conditions is present:

- (1) Trees which pose a safety hazard to pedestrian or vehicular traffic or threaten to cause disruption to public utility services.
- (2) Trees which pose a safety hazard to existing buildings or structures.
- (3) Trees which, if not removed, would preclude vehicular access to a lot or parcel.

- (4) Diseased trees which are a hazard to people, buildings or other improvements on a lot or parcel or to other trees.
- (5) Trees so weakened by age, storm, fire, or other injury as to, in the opinion of the director, jeopardize the life and limb of persons or cause a hazard to property.
- (6) Trees which, if not removed, would allow a landowner no beneficial use of a lot or parcel or would place an inordinate burden on the landowner.

The director may require that a tree protected by this article be relocated on the same lot or parcel in lieu of removal. Permitting decisions of the director may be appealed through the procedure set forth in § 34-86.

(e) **Submission of site plan when building permit not required.** Where a building permit issuance is not required because no structures are ready to be constructed and no other development of the lot is about to occur, any person seeking to remove a tree protected under this article shall first file a site plan with the director meeting the requirements of subsection (c) of this section prior to receiving a tree removal permit from the director.

(f) **Inspection of site.** The director may conduct an on-site inspection to determine if any proposed tree removal conforms to the requirements of this article and what effect, if any, removal of the protected trees will have upon the natural resources of the affected area prior to the granting or denying of the application. A permit fee will be required for the removal or relocation of any tree protected under the provisions of this article and shall be paid at the time of issuance of the permit. The fees established must be paid to the director. Such fees are hereby declared to be necessary for the purpose of processing the application and making the necessary inspection for the administration and enforcement of this article.

(g) **Approval or denial.** Based upon the information contained in the application and after investigation of the application, the director shall approve or deny the application, and, if approved, the director is the party so designated by the town to issue the permit for a period not to exceed one year and to collect the permit fee.

(h) **Conditions.** The director may attach conditions to the permit relating to the method of identifying, designating, and protecting those trees which are not

to be removed in accordance with subsection (g) of this section. A violation of these conditions shall automatically invalidate the permit. Special conditions which may be attached to the permit may include a requirement for successful replacement of trees permitted to be removed with trees of the same size, compatible species and same number.

Secs. 14-413--14-450. Reserved.

**ARTICLE VI.
MANGROVE ENFORCEMENT ⁵**

Sec. 14-451. Purpose and intent.

The purpose of this article is to establish enforcement procedures and restoration standards for violations of the state department of environmental protection mangrove protection rules, to supplement and enhance department of environmental protection enforcement mechanisms. The intent of this article is to discourage the illegal alteration of mangrove trees by improving enforcement of department of environmental protection mangrove protection regulations and to ensure that adequate restoration is provided. It is not the intent of this article to diminish any mangrove protection requirements set forth in ch. 26, article II and articles IV and V of this chapter.

Sec. 14-452. Definitions.

(a) The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Development means any improvement to land including but not limited to building construction; road and driveway construction or widening; utility installation; dock and shoreline activities; and the installation of swimming pools, irrigation systems, fences, or other accessory structures.

⁵ *Cross reference(s)--Marine facilities and structures, ch. 26.*

Director means the person to whom the town manager has delegated the authority to administer this chapter, or that person's designee.

Invasive exotic vegetation means Australian pine (*Casuarina* spp.), Brazilian pepper (*Schinus terebinthifolius*), and paper or punk tree (*Melaleuca quinquenervia*).

Mangrove shall have the same meaning as provided by the *Florida Administrative Code*.

Mangrove alteration shall have the same meaning as provided by the *Florida Administrative Code*.

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

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

Sec. 14-453. Enforcement.

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

(b) When imposing a sentence or penalty, the court, hearing examiner, or any other appropriate body may, in mitigation, consider the successful replacement of mangroves illegally removed, and the restoration of the subject area when deemed by the court, the hearing examiner, or any other appropriate body that the action taken by the violator has eliminated or significantly decreased the ability of the mangrove system to recover or perform those functions for which it is being protected.

(c) In any enforcement action under this article, each mangrove, so altered, will constitute a separate violation.

Sec. 14-454. Restoration standards.

(a) Upon agreement of the director and the violator, or if they cannot agree, then, upon conviction by the court or order of the hearing examiner, a restoration plan shall be ordered pursuant to the standards contained in subsection (b) of this section. Such a restoration plan shall set forth

replacement of the same species or any species approved by consent of the before-mentioned parties, or, if appropriate, in accordance with the direction of the court or hearing examiner.

(b) The restoration plan shall include the following minimum planting standards:

- (1) For each mangrove altered in violation of this article, three replacement mangroves shall be planted. If the number of altered mangroves cannot be determined, then the required number of replacement stock shall be computed according to the total area wherein all mangroves were unlawfully altered. The replacement stock shall be container grown mangroves no less than one year old and 24 inches in height. Replacement mangroves shall be planted at a minimum density of three feet on center. Higher density plantings may be required at the discretion of the director based upon density and diameter of the mangroves on the site prior to the violation. If the density of mangroves cannot be determined where the violation occurred, then an assumption shall be made that the density was the same as on adjacent properties. It shall be within the discretion of the director to allow a deviation from the above specified ratio. When such deviation is sought, the total of heights and diameter shall equal or exceed that specified in the above standards.
- (2) Mangrove alteration violations due to filling, excavation, drainage, and/or clearing shall be restored to natural ground elevation and soil conditions prior to commencement of replanting.
- (3) Replacement stock shall not be located on any property line, or in any utility easement that prohibits such plantings.
- (4) In the event that the species of mangrove cannot be identified on property wherein mangroves were altered in violation of this article, then a presumption shall be made that the mangroves illegally altered were of a similar species and distribution as those found on adjacent properties.
- (5) Replacement plantings shall have a minimum of 80 percent survival at the end of five years, however, success will be evaluated on an annual basis.
- (6) The restoration plan shall include a maintenance provision of no less than five

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- years for the control of invasive exotic vegetation.
- (7) Within 90 days of completion of the restoration, a written report shall be submitted to the county. This report shall include the date of completion, copies of the nursery receipts, a drawing showing the locations of the plantings, and color photographs of the planting areas from fixed reference points.
- (c) Annual monitoring and maintenance of the restored area shall include the following:
- (1) Removal of all exotic and nuisance vegetation in the area without disturbing the existing wetland vegetation.
 - (2) Replacement of dead mangroves that were planted in order to assure at least 90 percent coverage at the end of the five-year period. Replacement mangroves shall be nursery grown and of the same species and at least the same height as those originally planted.
 - (3) Submittal of a monitoring report to the director on an annual basis for five years following the completion of the restoration describing the conditions of the mitigated site. The monitoring report shall include mortality estimates, causes for mortality (if known), growth, invasive, exotic vegetation control measures taken, and any other factors which would indicate the functional health of the planted mangroves. Failure to submit the report in a timely manner shall constitute a violation of this article.

Sec. 14-455. Permit required.

No person, or any agent or representative thereof, directly or indirectly, shall alter any mangrove tree located in the incorporated area, without first obtaining a permit, where applicable, from the state department of environmental protection in accordance with the requirements of ch. 17-321, Florida Administrative Code.

Sec. 14-456. Conflicting provisions.

Whenever the requirements or provisions of this article are in conflict with the requirements or provisions of any other lawfully adopted ordinance, the most restrictive requirements shall apply.

FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 27 PERSONAL WATERCRAFT¹ AND PARASAILING²

ARTICLE I. DEFINITIONS AND ENFORCEMENT

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¹ Originally adopted as Chapter 27 by the Fort Myers Beach Personal Watercraft Ordinance, Ordinance 96-27.

² Originally adopted as Chapter 28 by the Fort Myers Beach Parasailing Ordinance, Ordinance 97-02, and later amended by Ordinance 99-04.

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Sec. 27-57. Penalty.
Sec. 27-58. Standardized rules.

ARTICLE I. DEFINITIONS AND ENFORCEMENT

Secs. 27-1--27-44. Reserved.

Sec. 27-45. Definitions.

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

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

Business shall mean any personal watercraft rental or parasailing activity business, including any commercial activity engaged in the rental, leasing, or bailment for consideration of personal watercraft or parasailing.

Eco-tour shall mean an educational tour led by a guide knowledgeable in environmental and ecological preservation, where the guide can communicate with the tour members and offer commentary about the ecological, environmental, and archaeological significance of Estero Bay.

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

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

Littoral waters mean that part of the ocean or sea which abuts the shoreline and includes the shore to the ordinary high watermark. For purposes of this chapter, the littoral right to use such waters shall be limited to the waters within the boundaries of the land-based site as those boundaries extend into the water at right angles from the shoreline.

Operate means to navigate or otherwise use any vessel in, on, or under the water.

PAL shall mean Parasailing Activity License.

Parasailing or **parasailing activity** shall mean the act of towing a person or object over the water, suspended beneath a parachute, kite, or other similar contrivance.

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

Personal watercraft means a vessel less than 16 feet in length which uses an inboard motor powering a water jet pump as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

PWVL shall mean Personal Watercraft Vendor's License.

Town manager shall include the designee(s) of the town manager of the Town of Fort Myers Beach.

Site means the plot or parcel of land or combination of contiguous lots or parcels of land.

Slow speed means no speed greater than that which is reasonable and prudent to avoid either intentionally or negligently disturbing, colliding with, or injuring manatees and which comports with the duty of all persons to use due care under the circumstances. A vessel in a slow speed zone that:

- (1) is operating on a plane is not proceeding at slow speed;
- (2) that is in the process of coming off plane and settling into the water, which action creates more than no or minimum wake, is not

proceeding at slow speed;

- (3) that produces no wake or minimum wake is proceeding at slow speed;
- (4) that is completely off plane and which has settled into the water and is proceeding without wake or with minimum wake is proceeding at slow speed.

“Slow speed” means any through-the-water speed slow enough that the boat is neither planing nor moving with an elevated bow. A vessel that is operating at slow speed shall not be emitting a wake.

Steerage way means the minimum rate of motion required for the helm of the vessel to have effect.

Vessel means a motor propelled or artificially propelled vehicle and every other description of boat, watercraft, barge, and air boat other than a seaplane on the water, used or capable of being used as a means of transportation on water including personal watercraft. This term shall not include rafts, floats, or floatation devices, whether of canvas, vinyl, rubber, Styrofoam, or other substance, intended or capable of assisting in the floatation of a person on or in the water.

Wet sand means the area on the beach where the sand is saturated by sea water from wave action. This area is identified by a visible darkening or staining of the beach sand from the water driven onshore by wave action.

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

Sec. 27-46. Area of enforcement.

The area of enforcement of the provisions of this chapter shall be all public navigable waters, creeks, bayous, canals and channels, whether natural or man-made, located within the Town of Fort Myers Beach, including all public waters within the jurisdiction of the town in which the tide ebbs and flows. This chapter does not apply to the county-maintained or county-marked channels.

Sec. 27-47. Means of enforcement.

The provisions of this chapter shall be enforced by members of all duly authorized law enforcement agencies within the town and through enforcement mechanisms established by this code.

ARTICLE II. PERSONAL WATERCRAFT

Sec. 27-48. Regulations for operation of personal watercraft.

In addition to other regulations in this code, all personal watercraft shall also be operated in the following manner:

- (1) A person may not operate a personal watercraft unless each person riding on or being towed behind such vessel is wearing a type I, type II, type III, or type V personal flotation device, other than an inflatable device, approved by the United States Coast Guard.
- (2) A person operating a personal watercraft equipped by the manufacturer with a lanyard-type engine cutoff switch must attach such lanyard to his person, clothing, or personal flotation device as is appropriate for the specific vessel.
- (3) A person shall not operate a personal watercraft at any time between one-half hour before sunset and one-half hour after sunrise. However, agents or employees of law enforcement agencies or fire/emergency rescue services are exempt from this subsection while performing their official duties.
- (4) A personal watercraft must at all times be operated in a reasonable and prudent manner. Maneuvers which unreasonably or unnecessarily endanger life, limb, or property, including, but not limited to, weaving through congested vessel traffic, jumping the wake of another vessel unreasonably or unnecessarily close to such other vessel or when visibility around such other vessel is obstructed, and swerving at the last possible moment to avoid collision shall constitute reckless operation of a vessel. Failure to operate a personal watercraft in such a careful and prudent manner shall constitute careless boating in violation of this chapter.

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

Any business engaged in the rental, leasing, bailment for consideration, or otherwise providing transportation for remuneration, of personal watercraft for use by the public on any waters of the Town of Fort Myers Beach, must meet the following requirements:

- (1) A business is required to obtain a Lee County occupational license which shall be issued to the personal watercraft operations office.
 - a. The operations office shall be located at a land-based site; and,
 - b. The land-based site shall have direct access to the beach. Direct access shall not include public rights-of-way, county-owned or town-owned beach accesses, or any residentially zoned land that must be traversed to gain beach access. That direct access will be used for all necessary business-related beach access that is customary in the course and operation of the personal watercraft business at the particular licensed land-based site; and,
 - c. All business transactions such as the exchange of consideration or remuneration for the rental, leasing, bailment, or any other type of transaction between the commercial rental operator and customer shall occur on the land-based site for which the occupational license is issued; and,
 - d. The personal watercraft shall only be rented or operated on the littoral waters offshore of the land-based site for which the occupational license is issued until the personal watercraft travels beyond the 500 feet offshore slow speed limit.
- (2) A business must have and maintain a telephone and an operable marine radio at its land-based operations office.
- (3) A business may not knowingly lease, hire, or rent a personal watercraft to any person who is under 18 years of age (see also F.S. § 327.54)). No person under the age of 14 may operate any personal watercraft.
- (4) During the sea turtle nesting season (May 1 through October 31), personal watercraft may not be moved across the beach unless:
 - a. any state permits that may be required

- for this activity have been issued;
 - b. such movement begins only after 9:00 AM, or after completion of daily monitoring for turtle nesting activity by a FWCC-authorized marine turtle permit holder, whichever occurs first; and
 - c. the movement does not disturb any sea turtle or sea turtle nest (see also § 14-74(c)).
- (5) Businesses may not allow their personal watercraft to be used above slow speed within 500 feet of swimmers, waders, or people floating in/on the water.
 - (6) Personal watercraft rental businesses shall have a motorized chase vessel with an operational marine radio in good running condition that meets all United States Coast Guard safety requirements kept at the personal watercraft launching site during all hours of the business operation. The chase vessel may be a personal watercraft reserved for this purpose.
 - (7) Each personal watercraft must be registered in the name of the business and have a Florida vessel registration number affixed thereon.
 - (8) Identification markings shall be placed on each personal flotation device worn by operators of the personal watercraft which distinguishes the business from other businesses engaged in the rental of personal watercraft. Said marking shall also be located where the personal watercraft are launched. The identification marking, which will be assigned to the business by the town upon issuance of the PWVL, shall be not less than 9" by 5" in size and of a contrasting color to the personal flotation device.
 - (9) Personal watercraft may be moored in the water during the operating hours of the business, or on the beach during operating hours in accordance with the following: Personal watercraft must be set back 12 feet landward from the edge of wet sand. Between the hours of 9:00 PM and 7:00 AM from May 1 until October 31, all personal watercraft and associated equipment, including but not limited to mooring lines, must be removed from the beach and placed behind the dune line.
 - a. If there is no dune line and the beach is wide, personal watercraft and associated equipment must be moved to a point that

- is at least 200 feet from the water line at all times.
 - b. If there is no dune line and the beach is less than 200 feet wide, personal watercraft and associated equipment must be moved to the adjacent permanent structure and landward of any seawall.
- Where compliance with the foregoing provision would cause an undue hardship, the town manager may designate a different storage location after determining the minimum changes from the requirements of this subsection.
- (10) In order to adequately monitor the operation of the personal watercraft, one employee per five personal watercraft actually rented must be located so as to observe the operation of the vessel by the party renting the personal watercraft.
 - (11) Fuel tanks may not be stored on the beach but may be stored at the business location provided all applicable federal, state, and local fire, safety, and environmental regulations are met.
 - (12) Fueling of personal watercraft on the beach or in the water shall require a spillproof nozzle or other acceptable device designed for prevention of fuel overflow. Any spillage of fuel onto the beach or into the water is a violation of this code.
 - (13) Except in locations which have permanent 500-foot markers, the personal watercraft vendor shall place temporary markers in the water not less than 500 feet seaward from the beach to which the personal watercraft are to be launched during each day of personal watercraft operations. All such markers shall be removed each day by the personal watercraft vendor no later than a half hour after sunset. The personal watercraft vendor must instruct each personal watercraft operator:
 - a. To travel at slow speed until past said markers;
 - b. To maintain a distance of not less than 500 feet from the shoreline while operating the personal watercraft;
 - c. To travel at slow speed when returning to the shore; and
 - d. To not travel within environmentally sensitive areas (within the 1000-foot territorial limits of the town) except with an eco-tour operator or guide associated

types of temporary signs: business announcement signs, construction signs, development signs, political and non-commercial signs, special event signs including banners, and special occasions signs. See § 30-151.

Vehicle sign. Any sign permanently or temporarily attached to or placed on a vehicle, including a motor vehicle, boat, trailer, or bicycle or human powered vehicle. See §§ 30-5 and 30-7.

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

Welcome sign. A monument sign erected by or on behalf of a governmental organization welcoming visitors to the Town of Fort Myers Beach (see § 30-6(b)).

Window sign. Any sign viewable through and/or affixed in any manner to a window or exterior glass door such that it is viewable from the exterior, including signs located inside a building but visible primarily from the outside of the building. See § 30-5, 30-6(a), and 30-153.

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

Sec. 30-3. Reserved.

Sec. 30-4. Applicability of chapter.

(a) **Generally.** Except as otherwise provided in this chapter, it shall be unlawful for any person to erect, construct, enlarge, move, or convert any sign in the Town of Fort Myers Beach, or cause such work to be done, without first obtaining a sign permit for each such sign as required by this chapter.

(b) **Exceptions.**

- (1) This chapter shall not apply to any sign erected by the federal, state, or Town of Fort Myers Beach government or to the placement of temporary signs up to 8 square feet within a right-of-way for purposes of business identification or access location, when necessitated by road construction and when authorized by the county or town.
- (2) The following operations shall not be considered as creating a sign insofar as requiring the issuance of a sign permit, but such signs which are subject to the following operations must be in conformance with all other building, sign, structural, and electrical codes and regulations of the Town of Fort Myers Beach:
 - a. *Change of copy.* Changing of the advertising copy of a message on existing signs which are specifically designed for the use of replaceable copy, e.g., reader boards with changeable letters.
 - b. *Maintenance.* Painting, repainting, cleaning, or other normal maintenance and repair of a sign not involving change of copy, structural, or electrical changes.
 - c. *Window displays.* Changes in the content of show window displays, provided all such displays are within the building.

Sec. 30-5. Prohibited signs.

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

- (1) **Any signs which are not designed, located, constructed, or maintained in accordance with the provisions of this chapter**, or which do not meet the requirements of all applicable Town of Fort Myers Beach, state, and federal codes.
- (2) **Lights and signs that resemble any traffic control device**, official traffic control signs or emergency vehicle markings.
- (3) **Signs and other advertising matter as regulated by this chapter at the intersection of any street right-of-way** in such a manner as to obstruct free and clear vision, or at any location where, by reason of the position, shape, or color, the sign may interfere with or obstruct the view of any authorized traffic sign, signal, or device; or which make use of the word "stop," "look," "drive-in," "danger," or any other word, phrase, symbol, or character in such a manner as to interfere with, mislead, or confuse vehicular traffic.
- (4) **Abandoned signs**.
- (5) **Animated signs** except those displaying only cycling time or temperature.
- (6) **Back-lit awnings**. However, any business with an existing back-lit awning as of December 31, 2004, may continue to use that awning and may place or replace signage on that awning provided it otherwise conforms to this code. This right shall end if the business is discontinued or moved to a different location, or if the building is rebuilt or substantially improved (see § 34-992).
- (7) **Balloons or balloon signs**.
- (8) **Banners, pennants, or other flying paraphernalia**, except:
 - a. an official federal state, county, or Town of Fort Myers Beach flag,
 - b. one symbolic flag not to exceed 15 square feet in area for each institution or business,
 - c. holiday decorations (see § 30-6(a)),
 - d. banners of special events (see § 30-151).
- (9) **Billboards**.
- (10) **Canopy signs**.
- (11) **Emitting signs**.
- (12) **Figure-structured signs** as defined in this chapter.
- (13) **Motion picture signs**.
- (14) **Vehicle signs**. The parking of advertising vehicles is prohibited as more fully described in § 30-7. This prohibition is not intended to apply to standard advertising or identification practices where such signs or advertising devices are painted on or permanently attached to a business or commercial vehicle.
- (15) **Off-premises signs** (except as allowed in § 30-151 for "open house" signs).
- (16) **Pole signs**.
- (17) **Portable signs** (except as allowed in § 30-6(a)).
- (18) **Roof signs**.
- (19) **Signs with any lighting or control mechanism** which causes radio or television or other communication interference.
- (20) **Signs erected, constructed, or maintained so as to obstruct or be attached to any fire-fighting equipment** or any window, door, or opening used as a means of ingress or egress or for fire-fighting purposes, or placed so as to interfere with any opening required for proper light and ventilation.
- (21) **Signs, except "posted property" signs, which are erected or maintained upon trees** or painted or drawn upon other natural features.
- (22) **Signs which are placed on any curb, sidewalk, post, pole, hydrant, bridge, tree, or other surface located on public property or over or across any street or public street** except as may otherwise expressly be authorized by this chapter.
- (23) **Snipe signs**.
- (24) **Unshielded illuminated devices** that produce glare or are a hazard or a nuisance to motorists or occupants of adjacent properties.
- (25) **Window signs** which identify or advertise activities, services, goods, or products available within the building, and which collectively cover more than 30 per-cent of the window glass surface area.
- (26) **No commercial signage is allowed on inland waterways** except for directional signs (see § 30-6(a)).

Sec. 30-93. Location.

(a) **Visibility triangle.** No sign shall be erected which would impair visibility at a street intersection or driveway entrance as described in § 34-3131 of this code.

(b) **Street setbacks.** No sign or portion of a sign shall be erected closer than 3 feet to any sidewalk or bike path or to any street right-of-way unless at least 8 feet of vertical clearance is maintained (except that “open house” signs may be erected in the right-of-way in accordance with § 30-151).

(c) **Signs near the beach.** Other portions of this code may affect the location or lighting of signs. For example:

- (1) Signs are permitted in the EC zoning district only if approved through the special exception process or as a deviation in the planned development zoning process (see § 6-366(b)), or where explicitly permitted by §§ 14-5 or 27-51.
- (2) A sea turtle lighting plan is required for all new lighted signs that are visible from the beach, including signs that are within buildings. Guidelines for ensuring that sea turtle nesting habitat will not be directly or indirectly illuminated are found in § 14-79.

(d) **Clearance from power lines.** Signs shall be located in such a way that they maintain a clearance of ten feet to all overhead electrical conductors and a three foot clearance on all secondary voltage service drops.

Sec. 30-94. Construction standards.

(a) **Generally.** All signs shall comply with the appropriate detailed provisions of the Florida Building Code relating to design, structural members, illumination, and connections. All electrical work shall be Underwriters’ Laboratories approved or be certified by an electrician licensed in accordance with article II of ch. 6 of this code. Signs shall also comply with the additional standards set forth in this section.

(b) **Structural design.**

- (1) The town manager may request wind load calculations for signs prior to issuance of a permit.

(2) A wall must be designed for and have sufficient strength to support any sign which is attached thereto.

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

- (1) All monument signs shall be self-supporting structures erected on and permanently attached to the ground.
- (2) All wood permitted to be used, whether for new permanent signs, for replacement of existing permanent signs, or for any part thereof, shall be rot and termite resistant through open-cell preservation methods as specified by the American Wood Preservation Association, or by any other open-cell preservation treatment approved by the Florida Building Code.

(d) **Electric signs.**

- (1) All electric signs shall be certified by a licensed electrical contractor that the sign meets the standards established by the Florida Building Code. All electric signs shall be erected and installed by a licensed sign contractor. The electrical connection to a power source shall be performed by a licensed electrical contractor.
- (2) Artificial light used to illuminate any sign from outside the boundaries of the sign shall be screened in a manner which prevents the light source from being visible from any abutting right-of-way or adjacent property. See ch. 14 of this code for sea turtle lighting restrictions.
- (3) All externally illuminated signs must also comply with the technical standards for lighting found in § 34-1833.

(e) **Supports and braces.** Metal supports or braces shall be adequate for wind loading. All metal wire cable supports and braces and all bolts used to attach signs to brackets or brackets and signs to the supporting building or structure shall be of galvanized steel or of an equivalent corrosive resistant material. All such sign supports shall be an integral part of the sign.

(f) **Anchoring.** No sign shall be suspended by chains or other devices that will allow the sign to swing due to wind action. Signs shall be anchored to prevent any lateral movement that would cause wear on supporting members or connections.

(g) **Maximum angle for double faced signs.**

Double faced signs with opposing faces having an interior angle greater than 30 degrees shall not be permitted.

Sec. 30-95. Sign identification and marking.

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

Sec. 30-96. Maintenance.

(a) All signs, including their supports, braces, guys, and anchors, shall be maintained so as to present a neat, clean appearance. Painted areas and sign surfaces shall be kept in good condition, and illumination, if provided, shall be maintained in safe and good working order.

(b) Weeds and grass shall be kept cut in front of, behind, underneath, and around the base of monument signs for a distance of ten feet, and no rubbish or debris that would constitute a fire or health hazard shall be permitted under or near such signs.

Secs. 30-97–30-150. Reserved.

Sec. 30-151. Temporary signs.

The following temporary signs are permitted in all zoning districts subject to the following regulations. It shall be unlawful to erect, cause to be erected, maintain, or cause to be maintained any temporary sign which fails to comply with the following regulations.

(a) **Business announcement signs.**

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

(b) **Construction signs.**

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

(c) **Development signs.**

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

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

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

(e) **Special event signs.** Except as provided in § 30-6(a), no signs shall be posted for special events until a special events permit has been obtained from the town and a bond or other security deposit acceptable to the Town of Fort Myers Beach is posted to insure the proper maintenance or removal of the sign in accordance with § 30-55(b)(3), and the following regulations.

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

(f) **Real estate signs.** Real estate signs shall be permitted on properties where the owner is actively attempting to sell, rent, or lease such property, either personally or through an agent, as follows:

- (1) All properties for sale will be allowed one non-illuminated sign, perpendicular to the roadway, that is 24 inches in height and 24 inches in width. Lots may have one sign for each street frontage. Waterfront (canal, bay, lagoon, or beach) properties may have more than one additional monument sign which is 12 inches in height and 24 inches in width on water frontage visible from the water.
- (2) The sign face will have the name of the licensed real estate professional, the real estate company or other licensed entity, any required professional indicia, and a phone number and/or address. The sign face may additionally state, "For Rent" or "For Lease"

- or both, but such statements must be included on the 24-inch by 24-inch sign face.
- (3) No riders (such as name of agent, "sold," "sale pending," "pool," "price reduced," etc.) shall be attached.
 - (4) If a property is both for sale and for rent, only one sign is allowed.
 - (5) No signs may be fastened to trees.
 - (6) No "goal post" supports are allowed.
 - (7) "Open house" signs. "Open house" signs are allowed as follows:
 - a. One "open house" sign per property per street and waterbody frontage.
 - b. The area of any "open house" sign must not exceed 4 square feet, and the sign(s) may be placed only upon the property to be sold or leased, other than as provided in subsection d. below.
 - c. The sign(s) shall be displayed only when the premises are actually available for inspection by a prospective buyer or tenant.
 - d. For property that does not front on Estero Boulevard, one additional directional "open house" sign may be placed in the right-of-way at each intersection on the most direct route between Estero Boulevard and the subject property, with said sign not exceeding 2 feet by 2 feet in dimension.
 - (8) "Model" signs. New developments may place the words "Model Open" within the 16 square foot temporary construction sign permitted for the project under § 30-151, "Construction Signs."

(g) **Special occasion signs.** In addition to signs permitted in § 30-6(a), temporary outdoor on-site signs shall be allowed to address grand openings, sale events, parking lot sales, annual and semi-annual promotions, or similar events, provided that:

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

- (6) Signs shall be constructed and secured in accordance with all applicable standards.

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

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

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

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

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

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

(2) **Limitations.**

- a. The subdivision shall have a homeowners' association or similar entity which will be responsible for maintenance of the sign.
- b. The face of each permitted main entrance identification sign shall not exceed 24 square feet. Monument signs are limited in height and exposure of sign supports as provided in § 30-153.
- c. The sign may be illuminated with a steady light so shielded as to not allow the light to interfere with vehicular traffic. See ch. 14 of this code for sea turtle lighting restrictions.
- d. The sign should be incorporated into accessory entrance structural features such as a project wall or landscaping.

(c) **Schools, churches, day care centers, parks, recreational facilities, and libraries.** A school, church, day care center, park, recreational facility, library, or any other similar use shall be permitted one monument or wall-mounted identification sign and one directory sign within the property line, with maximum sign area of 24 square feet per sign face. Monument signs are limited in height and exposure of sign supports as provided in § 30-153.

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

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

- (1) **Size.** Identification signage is limited to 16 square feet per establishment, or 32 square feet for buildings containing only a single establishment. Motion picture theaters are permitted one identification sign of 64 square feet.
 - a. Multiple-occupancy complexes, as defined in this chapter, are permitted additional signage up to 32 square feet to identify the complex and/or its occupants.
 - b. Sign area and height are measured in accordance with §§ 30-90–91.
- (2) **Type of signs.** Identification signs may use any combination of the following types of signs:
 - a. Wall signs, including nameplates and window signs, see subsection (b).
 - b. Projecting signs, including awning signs, see subsection (c).
 - c. Monument signs, see subsection (d).
- (3) **Lighting.** Preferred methods for lighting identification signs are individual letters and symbols that are internally lit or signs that are lit by a steady external light. External lighting must use fully shielded fixtures and must comply with § 30-94(d). If visible from the beach, external lighting must also comply with § 14-76(5).
 - a. Buildings that are required to meet the commercial design standards in § 34-991–1010 cannot install internally lit box signs (see Figure 30-1).



Figure 30-1

- b. When internally lit signs are permitted for buildings that are not required to meet the commercial design standards, the sign face must be designed so that illumination occurs only on individual letters or symbols; opaque background panel must be used so that internal light only passes through the letters or symbols. This requirement also applies to all signs with changeable copy. See Figure 30-2 for an example of illuminated letters on an internally lit sign face.
 - c. Signs and sign lighting may not be animated.
 - d. See §§ 30-93(c) and 30-94(d) and ch. 14 of this code for sea turtle lighting restrictions.
- (4) **Location.** Identification signs must be located within the property line and set back at least 3 feet from any public right-of-way or easement, except that wall signs and projecting signs may extend over public sidewalks provided they maintain a minimum clear height above sidewalks of 8 feet and do not extend closer than 2 feet to an existing or planned curb.
 - (5) **Advertising.** Identification signs may not contain any advertising message concerning any products or services which are not sold, provided, or located on the same premises.
 - (6) **Building numbers.** Each building or multiple-occupancy complex must be clearly posted with the building’s street number (see § 30-6(a)).



Figure 30-2

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

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

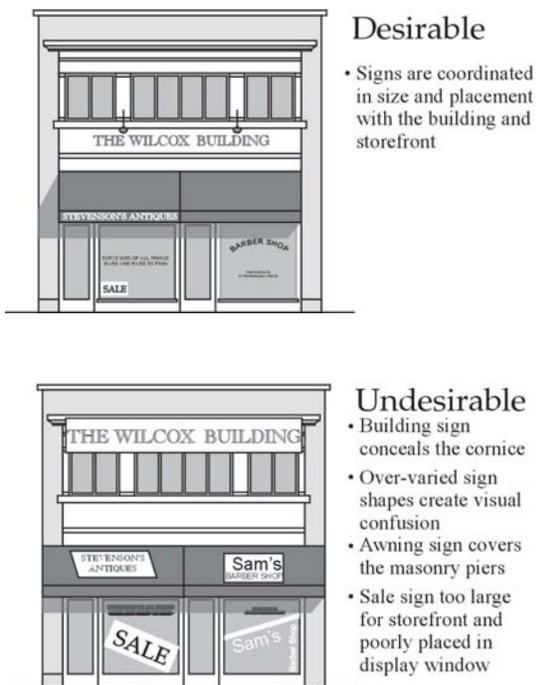


Figure 30-3

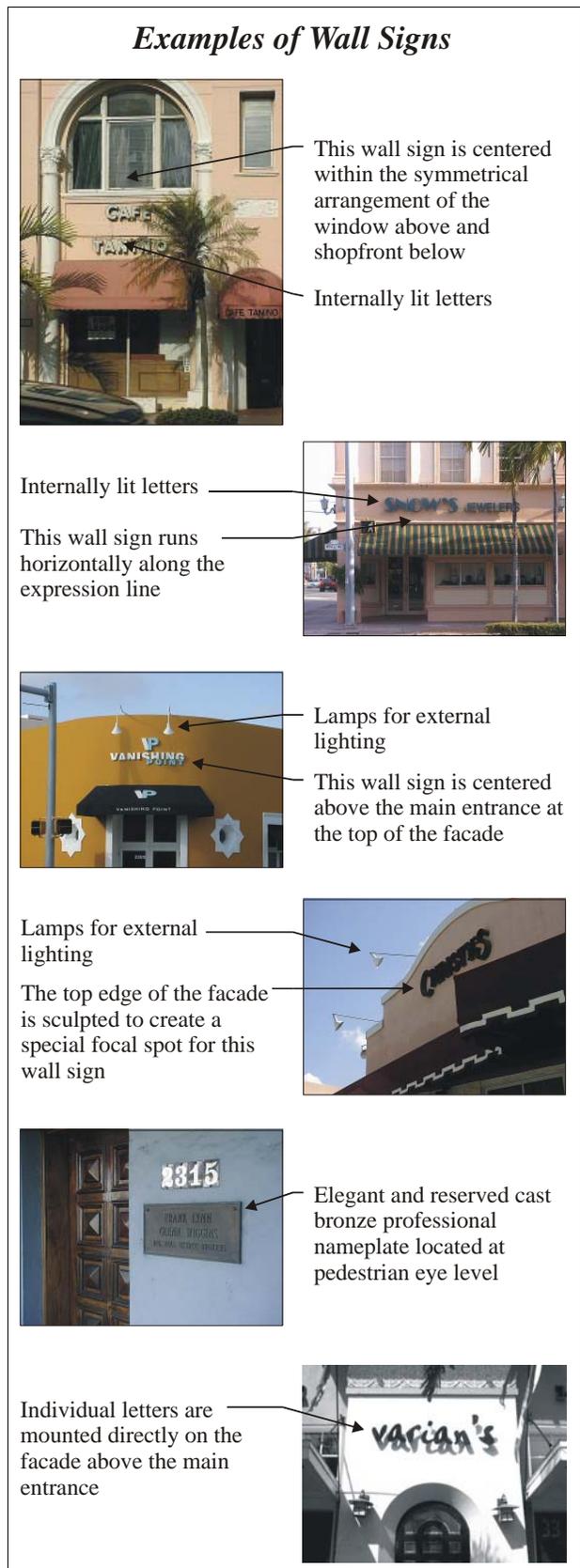


Figure 30-4

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

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

Examples of Projecting Signs

Discreetly located external lighting

Sign painted on the face of a canvas awning over entry

Small projecting signs can be combined with flat wall signs

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

Vertical projecting signs are visible down the street

A projecting sign extending from the corner of a building is highly visible along two streets

A second lower sign catches the eye of pedestrians passing in front of the entrance

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

Figure 30-5

(d) **Monument signs.** Monument signs are free-standing with internal structural supports, where the height from the ground to the highest point on the sign is less than the sign's greatest horizontal dimension.

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

Examples of Monument Signs



Background can use attractive natural materials



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



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



Monument signs can incorporate landscaping and decoration that match the business

Monument signs are also suitable for lodging establishments

Figure 30-6

Division 18. Home Occupations; Live/Work and Work/Live Dwellings

- Sec. 34-1771. Intent of division.
- Sec. 34-1772. Home occupations.
- Sec. 34-1773. Live/work dwelling units.
- Sec. 34-1774. Work/live dwelling units.
- Secs. 34-1775--34-1800. Reserved.

Division 19. Hotels, Motels, and Bed-and-Breakfast Inns

- Sec. 34-1801. Definitions and general requirements.
- Sec. 34-1802. Size of guest units.
- Sec. 34-1803. Allowable intensity.
- Sec. 34-1804. Parking.
- Sec. 34-1805. Additional regulations for bed-and-breakfast inns.
- Sec. 34-1806. Replacing a nonconforming hotel/motel.
- Sec. 34-1807. Conversions of existing buildings.
- Secs. 34-1808--34-1830. Reserved.

Division 20. Lighting Standards

- Sec. 34-1831. Purpose and applicability of division.
- Sec. 34-1832. Definitions.
- Sec. 34-1833. Technical standards for lighting.
- Sec. 34-1834. Permits for lighting.
- Secs. 34-1835--34-1860. Reserved.

Division 21. Marine Facilities and Live-Aboard Vessels

- Sec. 34-1861. Boats, floating structures, floating equipment and live-aboards.
- Sec. 34-1862. Reserved.
- Sec. 34-1863. Construction and maintenance of docks, seawalls and other structures designed for use on or adjacent to waterways.
- Secs. 34-1864--34-1890. Reserved.

Division 22. Reserved

- Secs. 34-1891--34-1920. Reserved.

Division 23. Mobile Homes

- Sec. 34-1921. Mobile home subdivisions.
- Sec. 34-1922. Mobile home parks.
- Sec. 34-1923. Move-on permit.
- Secs. 34-1924--34-1950. Reserved.

Division 24. Moving of Buildings

- Sec. 34-1951. Building relocation permits.
- Secs. 34-1952--34-1980. Reserved.

Division 25. Off-Street Loading Areas

- Sec. 34-1981. Applicability of division.
- Sec. 34-1982. Access.
- Sec. 34-1983. Lighting, maintenance, and drainage.
- Sec. 34-1984. Other use of loading areas.
- Sec. 34-1985. Screening.
- Sec. 34-1986. Loading area required; loading plan; location of loading area.
- Sec. 34-1987. Number of spaces.
- Secs. 34-1988--34-2010. Reserved.

Division 26. Parking

- Sec. 34-2011. Types of parking facilities.
- Sec. 34-2012. Definitions.
- Sec. 34-2013. Access.
- Sec. 34-2014. Parking plan.
- Sec. 34-2015. Location and design.
- Sec. 34-2016. Dimensional requirements; delineation of parking spaces.
- Sec. 34-2017. Parking lot surfaces.
- Sec. 34-2018. Joint use of parking lots.
- Sec. 34-2019. Other use of parking lots.
- Sec. 34-2020. Required parking spaces.
- Sec. 34-2021. Reserved.
- Sec. 34-2022. Seasonal parking lots.
- Secs. 34-2023--34-2030. Reserved.

Division 26-A. Performance Standards

- Sec. 34-2031. Performance standards, environmental quality.
- Sec. 34-2032. Performance standards, creation of nuisance.
- Secs. 34-2033--34-2050. Reserved.

Division 27. Places of Worship and Religious Facilities

- Sec. 34-2051. Property development regulations.
- Sec. 34-2052. Parking.
- Sec. 34-2053. Expansion of existing place of worship.
- Sec. 34-2054. Living quarters.
- Secs. 34-2055--34-2080. Reserved.

Division 28. Reserved

- Secs. 34-2081--34-2110. Reserved.

Division 29. Private Clubs and Membership Organizations

- Sec. 34-2111. Applicability of regulations to membership organizations.
- Secs. 34-2112--34-2140. Reserved.

Division 30. Recreation Facilities

- Sec. 34-2141. Applicability.
- Sec. 34-2142. Minimum lot area and setbacks.
- Sec. 34-2143. Accessory uses.
- Sec. 34-2144. Lighting.
- Sec. 34-2145. Sound systems.
- Secs. 34-2146--34-2350. Reserved.

Division 31. Recreational Vehicles

- Sec. 34-2351. Recreational vehicle subdivisions.
- Sec. 34-2352. Recreational vehicle parks.
- Secs. 34-2353--34-2380. Reserved.

Division 32. Schools

- Sec. 34-2381. All schools.
- Sec. 34-2382. Noncommercial schools.
- Sec. 34-2383. Schools operated as businesses.
- Secs. 34-2384--34-2390. Reserved.

Division 32-A. Short-Term Rentals

- Sec. 34-2391. Restrictions on weekly rentals in certain zoning districts.
- Sec. 34-2392. Registry of certain pre-existing weekly rentals.
- Sec. 34-2393. Code of conduct for short-term rentals.
- Sec. 34-2394. Enforcement and penalties.
- Sec. 34-2395--34-2410. Reserved.

Division 33. Signs

- Sec. 34-2411. Location and construction.
- Secs. 34-2412--34-2440. Reserved.

Division 34. Special Events

- Sec. 34-2441. Special events defined.
- Sec. 34-2442. Permits for special events.
- Secs. 34-2443--34-2470. Reserved.

Division 35. Reserved

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

Division 36. Storage Facilities and Outdoor Display of Merchandise

- Sec. 34-3001. Applicability of division.
- Sec. 34-3002. Mobile vendors and transient merchants.
- Sec. 34-3003. Reserved.
- Sec. 34-3004. Outdoor display of merchandise for sale or rent.
- Sec. 34-3005. Storage facilities.
- Secs. 34-3006--34-3020. Reserved.

Division 37. Subordinate and Temporary Uses

Subdivision I. In General

- Sec. 34-3021. Subordinate uses.
- Secs. 34-3022--34-3040. Reserved.

Subdivision II. Temporary Uses

- Sec. 34-3041. Generally.
 - Sec. 34-3042. Carnivals, fairs, circuses and amusement devices.
 - Sec. 34-3043. Christmas tree sales.
 - Sec. 34-3044. Temporary contractor's office and equipment storage shed.
 - Sec. 34-3045. Alcoholic beverages.
 - Sec. 34-3046. Temporary use of mobile home.
 - Sec. 34-3047. Temporary telephone distribution equipment.
 - Sec. 34-3048. Ancillary temporary uses in parking lots.
 - Sec. 34-3049. Seasonal parking lots.
 - Sec. 34-3050. Temporary use permits.
 - Sec. 34-3051. Temporary welcome stations.
 - Secs. 34-3052--34-3054. Reserved.
- Subdivision III. Special Events.**
- Sec. 34-3055. Special events.
 - Secs. 34-3056--34-3060. Reserved.

Division 38. Tall Structures

- Sec. 34-3061. Permit for tall structures.
- Secs. 34-3062--34-3065. Reserved.

Division 38-A. Tattoo Studios and Body-Piercing Salons

- Sec. 34-3066. Purpose of division.
- Sec. 34-3067. Definitions.
- Sec. 34-3068. Minimum spacing required for new or relocated establishments.
- Sec. 34-3069. Destruction by natural disaster.
- Secs. 34-3070--34-3100. Reserved.

Division 39. Use, Occupancy, Construction, and Moving Regulations

- Sec. 34-3101. Compliance with applicable regulations.
- Sec. 34-3102. Reserved.
- Sec. 34-3103. Permit for moving building.
- Secs. 34-3104--34-3130. Reserved.

Division 40. Vehicle Visibility

- Sec. 34-3131. Vehicle visibility at intersections.
- Secs. 34-3132--34-3150. Reserved.

Division 41. Water-Oriented Rentals

- Sec. 34-3151. Water-oriented rental establishments.
- Secs. 34-3152--34-3200. Reserved.

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

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

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

Drug paraphernalia. See § 34-1551.

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

Dwelling unit, types.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Floor area ratio. See § 34-633.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Lot, corner means:

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

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

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

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

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

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

Lot measurement, depth.

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

Lot measurement, width.

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

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

Manufactured housing. See *Building, conventional*.

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

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

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

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

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

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

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

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

Mobile home. See *Dwelling unit, types*.

Moor means to secure a vessel with lines.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Principal building. See *Building, principal*.

Principal use. See *Use, principal*.

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

Property line. See *Lot line*.

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

Recreation facilities.

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

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

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

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

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

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

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

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

Residence. See *Dwelling unit and Living unit*

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

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

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

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

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

(3) **Decisions and authority.**

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

(4) **Denials.**

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

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

Sec. 34-85. Rezoning.

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

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

Sec. 34-86. Appeals from administrative action.

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

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

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

In exercising its authority, the town council may reverse, affirm, or modify any decision or action of any administrative

official charged with the administration or enforcement of this chapter.

Sec. 34-87. Variances.

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

(4) **Authority.**

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

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

Sec. 34-88. Special exceptions.

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

pertaining to the use set forth in this chapter.

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

Sec. 34-89. Developments of regional impact.

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

Sec. 34-90. Land development code interpretations.

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

Sec. 34-91. Comprehensive plan interpretations.

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

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

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

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

Sec. 34-92. Comprehensive plan amendments.

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

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

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

Sec. 34-93. Rehearing of decisions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DIVISION 3. LOCAL PLANNING AGENCY

Sec. 34-111. Agency established.

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

Sec. 34-112. Purpose and scope.

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

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

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

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

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

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

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

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

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

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

Sec. 34-115. Forfeiture of office.

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

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

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

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

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

Sec. 34-117. Clerk.

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

Sec. 34-118. Rules and procedures.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**DIVISION 4.
APPLICATIONS AND PROCEDURES**

Subdivision I. General Procedures

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

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

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

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

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

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

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

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

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

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

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

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

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

Master concept plans are subject to the following:

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

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

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

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

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

**DIVISION 5.
PUBLIC HEARINGS AND REVIEW**

Sec. 34-231. Definitions.

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

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

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

Sec. 34-232. Required hearings.

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

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

Mapping of Zoning Districts

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 34-623–34-630. Reserved.

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

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

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

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

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

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

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

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

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

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

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

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

Property Development Regulations For All Zoning Districts

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

Sec. 34-631. Building heights.

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

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

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

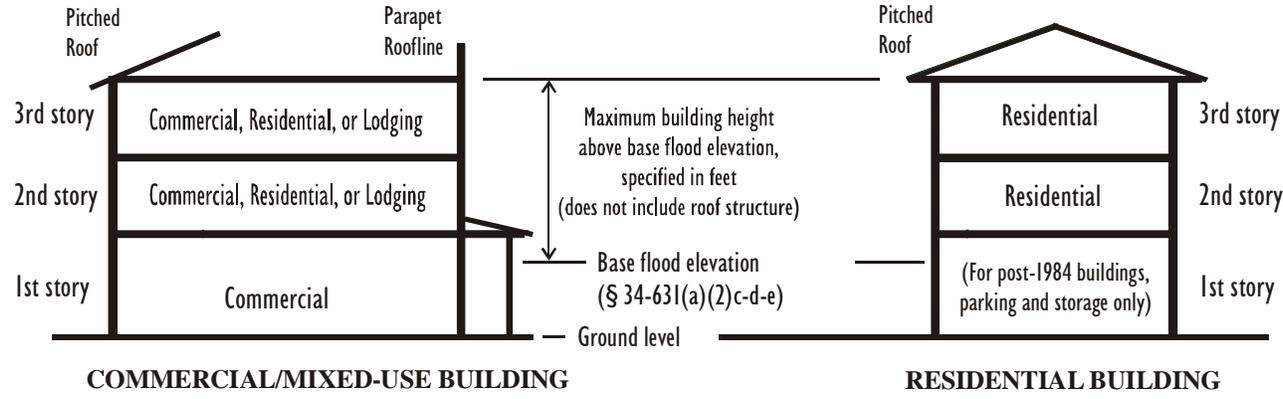


Figure 34-1-a

Property Development Regulations For All Zoning Districts

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

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



Roofed towers, Figure 34-1-b

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

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

Property Development Regulations For All Zoning Districts

Sec. 34-632. Density.

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

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

Property Development Regulations For All Zoning Districts

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

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

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

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

Sec. 34-634. Intensity and building coverage.

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

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

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

Sec. 34-635. Commercial design standards.

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

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

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

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

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

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

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

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

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

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

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

Property Development Regulations For All Zoning Districts

Sec. 34-637. Minimum lot sizes.

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

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

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

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

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

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

Sec. 34-638. Minimum setbacks.

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

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

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

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

Property Development Regulations For All Zoning Districts

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

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

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

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

(1) ***Exceptions to all setbacks.***

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

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

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

(2) ***Exceptions to street setbacks.***

Certain structures are exempt from the street setback requirements as follows. See also § 34-1174.

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

Property Development Regulations For All Zoning Districts

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

Property Development Regulations For All Zoning Districts

shall be permitted up to but not closer than:

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

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

4. *Roofed structures.*

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

(4) *Exceptions for certain nonconforming lots.*

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

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

Property Development Regulations For All Zoning Districts

Conventional Zoning Districts

DIVISION 4. CONVENTIONAL ZONING DISTRICTS

Sec. 34-641. General purpose.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 34-648. SANTOS zoning district.

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

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

Sec. 34-1552. Determination of paraphernalia.

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

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

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

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

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

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

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

**DIVISION 13.
ENVIRONMENTALLY SENSITIVE AREAS**

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

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

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

logging, drainage, and exotic infestation.

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

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

Sec. 34-1572. Applicability of division.

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

Sec. 34-1573. Environmental assessment report.

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

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

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

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

Sec. 34-1575. Coastal zones.

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

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

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

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

Sec. 34-1576. Reserved.

Sec. 34-1577. Wetlands.

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

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

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

Hotels and Motels

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

Sec. 34-1801. Definitions and general requirements.

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

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

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

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

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

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

Sec. 34-1802. Size of guest units.

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

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

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

Hotels and Motels

Sec. 34-1803. Allowable intensity.

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

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

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

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

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

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

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

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

Sec. 34-1804. Parking.

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

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

Hotels and Motels

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

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

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

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

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

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

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

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

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

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

Sec. 34-1807. Conversions of existing buildings.

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

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

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

DIVISION 20. LIGHTING STANDARDS

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

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

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

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

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

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

Sec. 34-1832. Definitions.

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

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

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

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

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

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

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

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

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

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

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

Sec. 34-1833. Technical standards for lighting.

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

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

(b) **Specific standards.**

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

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

NOTES:

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

Short-Term Rentals

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

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

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

Sec. 34-2394. Enforcement and penalties.

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

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

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

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

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

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

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

Secs. 34-2395–34-2410. Reserved.

DIVISION 33. SIGNS

Sec. 34-2411. Location and construction.

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

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

DIVISION 34. SPECIAL EVENTS

Sec. 34-2441. Special events defined.

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

Sec. 34-2442. Permits for special events.

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

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

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

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

DIVISION 35. RESERVED

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

DIVISION 36. STORAGE FACILITIES AND OUTDOOR DISPLAY OF MERCHANDISE

Sec. 34-3001. Applicability of division.

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

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

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

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

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

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

Sec. 34-3003. Reserved.

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

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