

FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 1 GENERAL PROVISIONS

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Sec. 1-1. Designation and citation of land development code.

The following chapters and sections shall constitute and be designated as the "Fort Myers Beach Land Development Code."

Sec. 1-2. Rules of construction and definitions.

(a) In the construction of this code, and of all ordinances, the rules and definitions set out in this section shall be observed, unless inconsistent with the manifest intent of the town council. The rules of construction and definitions in this section do not apply to any section of this code that contains any express provisions excluding their application, or

where the subject matter or context of such section may be repugnant thereto.

(b) *Generally.*

- (1) All general provisions, terms, phrases and expressions contained in this code will be liberally construed in order that the true intent and meaning of the town council may be fully carried out.
- (2) Terms used in this code, unless otherwise specifically provided, have the meanings prescribed by the statutes of the state for the same terms.
- (3) In the event of any difference in meaning or implication between the text of this code and any caption, illustration, summary table or illustrative table, the text shall control.
- (4) Any words used in the present tense shall include the future; and any words in the singular number shall include the plural, and vice versa, unless the context clearly indicates the contrary; and words of the masculine gender shall be construed to include the feminine gender and vice versa.
- (5) Unless the context clearly indicates the contrary, where a regulation involves two or more items, conditions, provisions or events connected by the conjunction "and," "or" or "either . . . or," the conjunction shall be interpreted as follows:
 - a. "And" indicates that all the connected terms, conditions, provisions or events shall apply.
 - b. "Or" indicates that the connected terms, conditions, provisions or events may apply singly but not in any combination.
 - c. "Either . . . or" indicates that the connected terms, items, conditions, provisions or events shall apply singly but not in combination.
- (6) The provisions of this code shall be liberally construed so as to effectively carry out its purpose in the interest of the public health, safety, and welfare.
- (7) This code constitutes the minimum requirements adopted for the promotion of the public health, safety, comfort, convenience, and general welfare. Where any provisions of this code conflict such that one provision causes greater restrictions to be

imposed than another provision, the provision imposing the greater restriction or regulation will control.

State law reference(s)--Construction of statutes, F.S. ch. 1.

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

Board of county commissioners means the board of county commissioners of Lee County, Florida.

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

Circuit court means the circuit court of the 20th Judicial Circuit in and for Lee County.

Clerk of the circuit court or **county clerk** means the clerk of the circuit court of the 20th Judicial Circuit in and for Lee County.

Computation of time. In computing any period of time prescribed or allowed by ordinance, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation unless otherwise specifically provided under another section of this code.

State law reference(s)--Similar provisions, Florida Rules of Civil Procedure, rule 1.090(a).

County means Lee County, Florida.

Delegation of authority. A provision requiring some county or town officer or employee to do some act or perform some duty is to be construed to authorize that officer to designate, delegate and authorize subordinates to perform the required act or perform the duty.

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

F.A.C. means the *Florida Administrative Code*.

F.S. means the latest edition or supplement of the *Florida Statutes*.

Fort Myers Beach Comprehensive Plan means the comprehensive plan adopted by the town council pursuant to F.S. § 163.3178.

Gender. A word importing the masculine gender only shall extend and be applied to females and to firms, partnerships, and corporations as well as to males.

Includes. The term "includes" does not limit a term to the specified example, but its meaning shall be extended to all other instances or circumstances of like kind or similar character.

Land development code. The term "land development code" or "this code" means the Fort Myers Beach Land Development Code, as designated in § 1-1.

May. The term "may" shall be construed as being permissive and will mean "has discretion to," "is permitted to," or "is allowed to." "May not" shall be construed as being mandatory and will mean "is disallowed from," or "is not permitted to."

Month means a calendar month.

Must shall be construed as being mandatory and will mean "is required to (be)."

Nontechnical and technical words. Words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.

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.

Number. Words used in the singular number include the plural. Words used in the plural number include the singular.

Oath. The term “oath” includes an affirmation in all cases in which, by law, an affirmation may be substituted for an oath; and in such cases the words “swear” and “sworn” shall be equivalent to the words “affirm” and “affirmed.”

Officer and official. Whenever reference is made to any officer or official, the reference shall be taken to be to such officer or official of the Town of Fort Myers Beach, unless indicated otherwise.

Owner. The term “owner,” as applied to a building or land, includes any part owner, joint owner, tenant in common, tenant in partnership, joint tenant, or tenant by the entirety, of the whole or a part of such building or land.

Person. The term “person” shall extend and be applied to any individual, child, firm, association, joint venture, partnership, estate, trust, business trust, syndicate, fiduciary, corporation, unincorporated association, and all other groups and legal entities or combinations thereof.

State law reference(s)--Similar provisions, F.S. § 1.01(3).

Property. The term “property” includes real and personal property.

Public health, safety, and welfare. The phrase “public health, safety, and welfare” shall include, but is not limited to, comfort, good order, appearance, convenience, law enforcement and fire protection, prevention of overcrowding of land, avoidance of undue concentration of population, facilitation of the adequate and efficient provision of transportation, water, sewerage, schools, parks, recreation facilities, housing, and other requirements and services; and conservation, utilization, and protection of natural resources.

Shall will be construed as being mandatory and will mean “has a duty to.” “Shall not” shall be construed as being mandatory and will mean “is

disallowed from,” or “is not permitted to.”

Sidewalk means any portion of a street between the curbline and the adjacent property line intended for the use of pedestrians.

State means the state of Florida.

Street and road includes any street, avenue, boulevard, road, alley, bridge, or other public or private highway.

Tables, illustrations, etc. In case of any difference of meaning or implication between the text of this code and any caption, illustration, summary table or illustrative table, the text shall control.

Tenant or occupant. The terms “tenant” and “occupant,” as applied to a building or land, include any person holding a written or oral lease of or who occupies the whole or part of such building or land, either alone or with others.

Town means the Town of Fort Myers Beach, Florida.

Town council means the town council of the Town of Fort Myers Beach, Florida.

Town manager means the town manager of the Town of Fort Myers Beach, Florida.

Used for. The term “used for” includes the term “arranged for,” “designed for,” “maintained for,” or “occupied for.”

Week means seven consecutive days.

Will shall be construed as being mandatory and will mean “has a duty to.” “Will not” shall be construed as being mandatory and will mean “is disallowed from,” or “is not permitted to.”

Written or in writing. The terms “written” and “in writing” include any representation of words, letters or figures, whether by printing or otherwise.

Year means a calendar year.

Sec. 1-3. Catchlines of sections; history notes, cross references and state law references; references to chapters, sections or articles.

(a) The catchlines of the several sections of this code printed in boldface type are intended as mere catchwords to indicate the contents of the section and are not titles of such sections, or of any part of the section, nor, unless expressly so provided, shall they be so deemed when any such section, including the catchline, is amended or reenacted.

(b) The history or source notes appearing in parentheses after any sections in this code are not intended to have any legal effect, but are merely intended to indicate the source of matter contained in the section. Cross references and state law references which appear after sections or subsections of this code or which otherwise appear in footnote form are provided for the convenience of the user of this code and have no legal effect.

(c) All references to chapters, articles, or sections are to chapters, articles, and sections of this code unless otherwise specified.

Sec. 1-4. Effect of repeal of ordinances.

(a) The repeal or amendment of an ordinance will not revive any ordinance or part thereof that was not in force before or at the time the ordinance repealed or amended took effect.

(b) The repeal or amendment of any ordinance shall not affect any punishment or penalty incurred before the repeal took effect, or any suit, prosecution, or proceeding pending at the time of the repeal, for an offense committed under the ordinance repealed or amended.

(c) Notwithstanding a more recent ordinance's express repeal of a pre-existing ordinance, the reenactment of any previously existing provisions, including any amendments, through the use of similar or identical provisions in the repealing ordinance will continue the reenacted provisions in full force and effect from their original effective date. Only those provisions of the previously existing ordinance that are not reenacted will be considered void and without further effect. Any new provisions of the repealing ordinance will operate as amendments to the reenacted, previously existing text and become effective as part of the repealing

ordinance.

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

(a) In this section, the phrase "violation of this code" means any of the following:

- (1) Doing an act that is prohibited or made or declared unlawful, an offense or a misdemeanor by ordinance or by rule or regulation authorized by ordinance.
- (2) Failure to perform an act that is required to be performed by ordinance or by rule or regulation authorized by ordinance.
- (3) Failure to perform an act if the failure is declared a misdemeanor or an offense or unlawful by ordinance or by rule or regulation authorized by ordinance.

(b) In this section, the phrase "violation of this code" does not include the failure of a town or county officer or town or county employee to perform an official duty unless it is provided that failure to perform the duty is to be punished as provided in this section.

(c) Except as otherwise provided, a person convicted of a violation of this code shall be punished by a fine not exceeding \$500.00 per offense, by imprisonment in the county jail for a term not exceeding 60 days, or by both such fine and imprisonment.

(d) In addition to the criminal penalties and enforcement procedures provided in this code, the violation of any provision of this code may be:

- (1) restricted by injunction, including a mandatory injunction;
- (2) enforced by action of the code enforcement special magistrate, in accordance with §§ 2-421–2-429;
- (3) enforced by citation, in accordance with §§ 2-430; and
- (4) otherwise abated in any manner provided by law, including other equitable or civil relief.

Any such suit or action may be instituted and maintained by the town council, by any citizen of the town, or by any person affected by the violation of this code.

(e) Upon notice from the director, activities contrary to the provisions of this code shall be immediately stopped. Such notice shall be in writing and shall be given to the owner of the property, his

agent, or the person doing the work, or shall be posted on the property, and shall state the conditions under which work may be resumed. Where an emergency exists or irreversible damage may be occurring, written notice shall not be required.

(f) Persons who may be charged with a violation of this code include:

- (1) Owners, agents, lessees, tenants, contractors, and any other person using the land or structure where the violation has been committed or currently exists.
- (2) Any person who knowingly commits or assists in such violation.
- (3) Rental agents who fail to take adequate steps to prevent such violations on property they manage.

(g) With respect to violations of this land development code that are continuous with respect to time, each day the violation continues constitutes a separate offense in the absence of provisions to the contrary.

(h) The imposition of a penalty does not prevent revocation or suspension of a license, permit, or franchise; the imposition of civil penalties; equitable relief; or other administrative actions.

(i) Any violation of this code that arose from provisions that are subsequently repealed and reenacted will continue to be a violation of this code and any penalties imposed for those violations will continue to exist unless the subsequent amendment or repeal of the violated provisions clearly intends to make previous violations legal and expressly voids any penalties imposed for those violations.

State law reference(s)--Penalty for ordinance violations, F.S. § 162.21 and 166.0415.

Sec. 1-6. Enforcement of land development code.

(a) Enforcement of the provisions of this code is the responsibility of the town manager unless otherwise provided by this code. Whenever the town council contracts with another governmental entity or entities and/or third party vendor(s) to provide services related to administration and enforcement of specific portions of this code, such other part(ies) shall administer and enforce such specific portion(s) on behalf of the Town of Fort Myers Beach.

(b) Except where otherwise provided by this code, the director will have the discretion to interpret and apply these provisions, using accepted rules of statutory construction.

Sec. 1-7. Severability of parts of land development code.

It is declared to be the intent of the town council that, if any section, subsection, sentence, clause, phrase, or portion of this code or any ordinance is for any reason held or declared to be unconstitutional, inoperative, or void, such holding or invalidity shall not affect the remaining portions of this code or any ordinance. It shall be construed to have been the legislative intent to pass this code or such ordinance without such unconstitutional, invalid, or inoperative part therein, and the remainder of this code or such ordinance after the exclusion of such part or parts shall be deemed and held to be valid as if such part or parts had not been included in this code or ordinance. If this code or any ordinance or any provision thereof is held inapplicable to any person, group of persons, property or kind of property, or circumstances or set of circumstances, such holding shall not affect the applicability of this code to any other person, property, or circumstance.

Sec. 1-8. Provisions considered continuation of existing ordinances.

The provisions of this code, insofar as they are substantially the same as legislation previously adopted relating to the same subject matter, shall be construed as restatements and continuations thereof and not as new enactments.

Sec. 1-9. Effect of land development code on prior offenses, penalties and rights.

(a) Nothing in this code or the ordinance adopting this code shall affect any offense or act committed or done, any penalty or forfeiture incurred, or any contract or right established or accruing before the effective date of this code.

(b) The adoption of this code shall not be interpreted as authorizing any use or the continuance of any use of a structure or premises in violation of any ordinance of the town in effect on the date of adoption of this code.

Sec. 1-10. Ordinances not affected by land development code.

(a) Nothing in this code or the ordinance adopting this code, unless otherwise provided in this code or such ordinance, shall affect any ordinance or portion of an ordinance:

- (1) Promising or guaranteeing the payment of money for the town, or authorizing the issuance of any bonds of the town or any evidence of the town's indebtedness, or any contract or obligation assumed by the town.
- (2) Granting any right or franchise or conveying any oil, gas, or mineral rights.
- (3) Dedicating, naming, establishing, locating, relocating, opening, paving, widening, vacating, etc., any street or public way.
- (4) Making any appropriation.
- (5) Levying or imposing taxes or fees not codified in this code.
- (6) Amending any local law, i.e., special act which has been converted to an ordinance.
- (7) Providing for local services or improvements and assessing taxes or other charges therefor.
- (8) Dedicating, accepting or vacating any plat or subdivision.
- (9) Rezoning specific property.
- (10) Which is temporary, although general in effect.
- (11) Which is special, although permanent in effect.
- (12) The purpose of which has been accomplished.
- (13) Which is included in the town's code of ordinances.

(b) The ordinances designated in subsection (a) of this section are recognized as continuing in full force and effect to the same extent as if set out at length in this code.

Sec. 1-11. Fort Myers Beach Comprehensive Plan.

(a) This section is enacted to carry out the purpose and intent of, and exercise the authority set out in, the Local Government Comprehensive Planning and Land Development Regulation Act, F.S. § 163.3161 through 163.3217 and Chapter 166, as amended.

(b) The town's comprehensive plan is entitled the "Fort Myers Beach Comprehensive Plan" and became effective January 1, 1999, pursuant to Ordinance No. 98-14 and later amendments.

(1) The Town of Fort Myers Beach shall publish a single-volume document that contains the adopted portions of the Fort Myers Beach Comprehensive Plan and much of the extensive research upon which this plan was based. This volume shall be organized into 15 chapters, as follows:

- Chapter 1, Introduction,*
- Chapter 2, "Envisioning Tomorrow's Fort Myers Beach"*
- Chapter 3, Community Design Element*
- Chapter 4, Future Land Use Element*
- Chapter 5, Coastal Management Element*
- Chapter 6, Conservation Element*
- Chapter 7, Transportation Element*
- Chapter 8, Utilities Element*
- Chapter 9, Stormwater Management Element*
- Chapter 10, Recreation Element*
- Chapter 11, Capital Improvements Element*
- Chapter 12, Housing Element*
- Chapter 13, Historic Preservation Element*
- Chapter 14, Intergovernmental Coordination Element*

(2) Only the following specific portions of this volume were adopted as the town's new comprehensive plan under F.S. § 163.3161 through 163.3217, as amended:

- a. *All of Chapters 1, 2, and 15.*
- b. *All goals, objectives, and policies found in Chapters 3 through 14.*
- c. *The "Future Land Use Map" (Figure 16 in the Future Land Use Element).*
- d. *The "Future Transportation Map" (Figure 18 in the Transportation Element).*
- e. *The five-year schedule of capital improvements (Table 11-7 in the Capital Improvements Element)*

(3) The published volume shall provide, in its opening chapter, this same description of which portions of the volume have been formally adopted by the town.

(4) The published volume, including future amendments, is incorporated by this reference as an integral part of this code and it shall be placed on file with the town clerk. It shall remain available for inspection by the

public at town hall, and a copy shall be placed at the reference desk of the Fort Myers Beach Public Library. Additional copies shall also be sold at town hall for a reasonable publication charge.

(c) The applicability and effect of the Fort Myers Beach Comprehensive plan shall be as provided by its specific terms, by the Local Government Comprehensive Planning and Land Development Regulation Act, F.S. § 163.3161 through 163.3217, and by this section.

- (1) No public or private development shall be permitted except in conformity with the Fort Myers Beach Comprehensive Plan, and all development orders and building permits shall be consistent with this plan.
- (2) Whenever the requirements or provisions of this comprehensive plan are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements will apply.

(d) The town council anticipates that this comprehensive plan will be revised in the future through amendments adopted pursuant to state law. Sections of this comprehensive plan may be renumbered or relettered and typographical and grammatical errors can be corrected where authorized by the town manager without requiring a public hearing, provided the changes do not affect the intent or application of this comprehensive plan. Any such changes will be reflected in the town’s next publication of this comprehensive plan or portion thereof.

Sec. 1-12. Editor’s notes.

References and editor’s notes following certain sections of this code are inserted as an aid and guide to the reader, and are not controlling or meant to have any legal effect.

Sec. 1-13. Amendments to land development code.

(a) All ordinances passed subsequent to this code which amend, repeal, or in any way affect this code may be numbered in accordance with the numbering system of this code and printed for inclusion in the code, or, in the case of repealed chapters, sections, and subsections or any part thereof repealed by subsequent ordinances, such repealed portions may

be excluded from this code by omission from reprinted pages affected thereby, and such subsequent ordinances, as numbered and printed, or omitted in the case of repeal, shall be prima facie evidence of such subsequent ordinances until such time that this code and subsequent ordinances numbered or omitted are readopted as a new land development code by the town council.

(b) Amendments to any of the provisions of this code may be made by amending such provisions by specific reference to the section or subsection number of this code in the following language: “That section _____ of the Fort Myer Beach Land Development Code, is hereby amended to read as follows” The new provisions shall then be set out in full as desired.

(c) If a new section or subsection not heretofore existing in the land development code is to be added, the following language may be used: “That the Fort Myer Beach Land Development Code, is hereby amended by adding a section to be numbered _____, which section or subsection shall read as follows:” The new section shall then be set out in full as desired.

(d) Repeal of any of the provisions of this code may be effected by repealing such provisions by specific reference to the section or subsection number of this code in the following language: “That section _____ of the Fort Myer Beach Land Development Code, is hereby repealed in its entirety.”

(e) Every ordinance introduced which proposes to amend or repeal any portion of this code shall show, by proper reference, the chapter, article, and section proposed to be amended; or, if it proposes to add to this code a new chapter, article, or section, it shall indicate, with reference to the arrangement of this code, the proper number of such chapter, article, or section.

Sec. 1-14. Supplementation of land development code.

(a) By contract or by town personnel, supplements to this code shall be prepared and printed whenever authorized or directed by the town. A supplement to this code shall include all substantive permanent and general parts of ordinances affecting land use passed by the town council during the period covered by the supplement and all changes made thereby in this code. The pages of a supplement shall be so numbered that they will fit properly into this code and will, where necessary, replace pages which have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, this code will be current through the date of the adoption of the latest ordinance included in the supplement.

(b) In preparing a supplement to this code, all portions of the code which have been repealed shall be excluded from this code by the omission thereof from reprinted pages.

(c) When preparing a supplement to this code, the codifier, meaning the person, agency, or organization authorized to prepare the supplement, may make formal, nonsubstantive changes in ordinances and parts of ordinances included in the supplement, insofar as it is necessary to do so to embody them into a unified code. For example, the codifier may:

- (1) Organize the ordinance material into appropriate subdivisions;
- (2) Provide appropriate catchlines, headings, and titles for sections and other subdivisions of this code printed in the supplement, and make changes in catchlines, headings, and titles;

- (3) Assign appropriate numbers to sections and other subdivisions to be inserted in this code and, where necessary to accommodate new material, change existing section or other subdivision numbers;
- (4) Change the words “this ordinance” or words of the same meaning to “this chapter,” “this article,” “this division,” etc., as the case may be, or to “sections _____ through _____.” The inserted section numbers will indicate the sections of this code which embody the substantive sections of the ordinance incorporated into this code; and
- (5) Make other nonsubstantive changes necessary to preserve the original meaning of ordinance sections inserted into this code, but in no case shall the codifier make any change in the meaning or effect of ordinance material included in the supplement or already embodied in this code.

Sec. 1-15. Variances and appeals.

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

Sec. 1-16. Misrepresentation of application.

The town may revoke a permit or approval issued under the provisions of this code if there has been any false statement or misrepresentation in the application or plans upon which the permit or approval was based.