



# Town of Fort Myers Beach

## LOCAL PLANNING AGENCY

Town Hall  
2525 Estero Boulevard  
Fort Myers Beach, Florida  
33931

**March 14, 2017**

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### AGENDA

9:00 AM

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- I. Call to Order
- II. Pledge of Allegiance
- III. Invocation
- IV. Minutes
  - A. Minutes of February 14, 2017
  
- V. Discussion: Construction of Habitable Areas Below Elevated Homes
- VI. Historic Preservation Board meeting:
  - Adjourn as LPA and reconvene as Historic Preservation Board
  
  - A. HAC membership – review letters of interest
  
  - Adjourn as Historic Preservation Board and reconvene as LPA
  
- VII. LDC Amendment to Add Permitting Survey Requirements in Chapter 34
- VIII. LDC Amendment 50% Floodplain Regulations in Chapter 6
- IX. LPA Member Items and Reports
- X. LPA Attorney Items
- XI. Community Development Items
- XII. Items for next month's Agenda
- XIII. Public Comment
- XIV. Adjournment

*Next Meeting: April 11, 2017*



**For special accommodations, please notify the Town Clerk's Office at least 72 hours in advance. (239) 765-0202**



**Help for the hearing impaired is available through the Assistive Listening System. Receivers can be obtained from the Town Clerk's Office.**

*In accordance with the Americans with Disabilities Act (ADA), persons needing a special accommodation to participate in the Board's proceedings should contact the Town Clerk's Office not later than three days prior to the proceedings.*



**FORT MYERS BEACH  
LOCAL PLANNING AGENCY (LPA)  
MINUTES  
Town Hall  
2525 Estero Boulevard  
Fort Myers Beach, Florida 33931  
Tuesday, February 14, 2017**

**I. CALL TO ORDER**

Meeting was called to order at 9:00 a.m. by Chair Zuba. Members present: Bruce Butcher, Dan Hendrickson, Megan Heil, Suzanne Katt, Jane Plummer, Scott Safford and Hank Zuba.  
Town Attorney: Dawn Lehnert

**II. PLEDGE OF ALLEGIANCE**

**III. INVOCATION**

**IV. MINUTES - January 10, 2017**

**MOTION:** Mr. Butcher moved to approve the minutes, second by Ms. Katt.

**VOTE:** Motion approved; 7-0.

*(Clerk's note: Chair Zuba indicated that the word "solely" was spelled incorrectly in this sentence on Page 2: John Gucciardo stated that the five-year requirement was originally based solely on obtaining points for insurance purposes. "Solely" is correct.)*

**V. RESOLUTION-SURPLUS PARKING LDC AMENDMENT-CHAPTER 34, DIVISION 26**

Ms. Plummer clarified delineating parking places under other uses of parking lots.

**MOTION:** Ms. Katt moved to pass Exhibit A with regard to supplemental parking regulations;  
second by Mr. Butcher.

**VOTE:** Motion approved; 7-0.

## **VI. DISCUSSION: CONSTRUCTION OF HABITABLE AREAS BELOW ELEVATED HOMES**

Chair Zuba reported there were approximately 1,500 homes that may have created non-conforming or illegal spaces.

Ms. Plummer indicated that it was a safety issue and one rental agency brought their 97 units up to code. The fire department stated that a hard wire smoke detector system, emergency lighting and fire extinguishers had to be installed in every unit. She noted that the rental agency's biggest expense was installing hand rails.

Molly Jacobs, Code Enforcement Officer, noted she received many phone calls and it was difficult to obtain access to units.

Ms. Plummer discussed selling homes built prior to 1989.

Ms. Heil suggested updating the website to provide information to people buying property.

Chair Zuba stated that the issue came to light due to a fire in an illegal unit. Ms. Heil questioned enforcing the law.

Ms. Plummer discussed posting occupant loads in rentals and no enforcement of penalties.

Ms. Katt questioned requiring that certain information be disclosed at the time of sale. Town Attorney Lehnert replied that a third party transaction was impossible to enforce, but they could post information on the website.

Ms. Katt discussed updating the affordable housing summary under the Comprehensive Plan.

Mr. Hendrickson questioned why access was a problem in Florida, while Michigan required code compliance inspections for rental properties every four years. Town Attorney Lehnert was not familiar with Michigan law.

Ms. Katt noted that Sanibel received money from Lee County to help subsidize rental units for employees. Chair Zuba indicated that they gave land in order to develop the housing.

## **VII. HISTORIC PRESERVATION BOARD MEETING**

**MOTION:** Mr. Hendrickson moved to adjourn as LPA and reconvene as Historic Preservation Board; second by Ms. Heil.

**VOTE:** Motion approved; 7-0.

### **REORGANIZATION-COMMITTEE MEMBERS**

**MOTION:** Ms. Plummer moved to approve Meagan Heil as the third member of the LPA for the Historic Advisory Committee; second by Mr. Safford.

**VOTE:** Motion approved; 7-0.

Chair Katt requested a meeting at the end of the month. Mr. Noble will contact members.

**MOTION:** Ms. Plummer moved to appoint A.J. Bassett, Fran Santini and Linda Meeder to the Historic Advisory Committee; second by Mr. Hendrickson.

**VOTE:** Motion approved; 7-0.

**MOTION:** Ms. Plummer moved to adjourn as Historic Preservation Board and reconvene as the LPA

**VOTE:** Motion approved; 7-0.

### **VIII. LPA MEMBER ITEMS AND REPORTS**

Ms. Heil commented on creating a bike-friendly community. Chair Zuba questioned whether Ms. Heil would jot her ideas down and present them at the next meeting. Mr. Hendrickson remarked that the bike-pedestrian master plan public meeting would take place the following day.

Mr. Hendrickson suggested having a member of the LPA attend every Council meeting. Chair Zuba agreed.

Ms. Katt thanked Mr. Noble for delivering their packets early. She thanked Town Attorney Lehnert for all her help and thanked Ms. Heil for her volunteering spirit.

Mr. Safford questioned whether the LPA should discuss the bathroom issue at the Palm beach access. Mr. Safford will research the issue and report back.

Ms. Plummer commented on the bathroom issue and the danger of riding bikes and walking on Estero Blvd.

### **IX. LPA ATTORNEY ITEMS - no items**

### **X. COMMUNITY DEVELOPMENT ITEMS**

Mr. Noble indicated that two LPA items were upcoming at Town Council. Mr. Hendrickson will attend on behalf of the LPA.

### **XI. ITEMS FOR NEXT MONTH'S AGENDA**

### **XII. PUBLIC COMMENT**

Leon Moyer commented that habitable areas below elevated homes needed to be done by the state legislature. He described how the LPA could take a leading edge on the issue instead of duplicating efforts statewide.

### **XIII. ADJOURNMENT**

**MOTION:** Ms. Plummer moved to adjourn the meeting; second by Mr. Butcher.

**VOTE:** Motion approved; 7-0.

Meeting adjourned at 9:57 a.m.

Adopted \_\_\_\_\_ With/Without changes. Motion by \_\_\_\_\_

Vote: \_\_\_\_\_

• End of document

## GRADE LEVEL HOUSING

JAN 6, 2017

THIS INQUIRY ATTEMPTS TO DEFINE AND ANALYZE A HOUSING PROBLEM ON FORT MYERS BEACH. THE ISSUE BEING STUDIED IS THE CONSTRUCTION OF HABITABLE AREAS BELOW ELEVATED HOMES.

TO TRY TO EXAMINE THE SCOPE OF THE PROBLEM, I MET WITH KARA STEWART, MEGAN WILL, MOLLY JACOBS, AND DEPUTY FIRE CHIEF RON MARTIN OF THE FIRE DEPARTMENT.

### BACKGROUND

WE HAVE APPROXIMATELY 6500 HOUSING UNITS ON THE ISLAND. ABOUT HALF OF THESE ARE CONDOMINIUM UNITS. IT IS ESTIMATED THAT ABOUT 1500 UNITS ARE BUILT ON GRADE AND 1500 ARE ELEVATED. I CANNOT CONFIRM THESE NUMBERS COMPLETELY BUT BASED ON CENSUS DATA AND STAFF DISCUSSIONS, THEY APPEAR CREDIBLE.

THERE ARE ELEVATED SINGLE AND DUPLEX HOMES THAT HAVE NON-CONFORMING UNITS AT GRADE BUT HAVE BEEN GRANDFATHERED AND ARE CONSIDERED LEGAL NONCONFORMING IN OUR LAND DEVELOPMENT CODE. WE DO NOT HAVE AN EXACT NUMBER FOR THESE UNITS.

### CURRENT REGULATION

IN 2013 THE TOWN PASSED AN ORDINANCE REQUIRING NEW CONSTRUCTION DEVELOPERS TO "ACKNOWLEDGE " OUR FLOOD PLAIN REGULATIONS. A COPY IS APPENDED. THAT ACKNOWLEDGEMENT IS REQUIRED BY OUR BUILDING DEPT FOR PERMIT AND OCCUPANCY. OUR BUILDING DEPARTMENT DOES INSPECT NEW CONSTRUCTION TO VERIFY COMPLIANCE. THE REGULATION EXPLICITLY STATES " THAT FULLY ENCLOSED SPACE BELOW BASE FLOOD ELEVATION MAY BE USED ONLY FOR PARKING, BUILDING ACCESS AND STORAGE". IT FURTHER DECLARES THAT THE INTERIOR OF ANY ENCLOSED SPACE "SHALL NOT BE PORTIONED OR FINISHED INTO HABITABLE ROOMS."

WHILE THIS REGULATION DOES ALLOW MANDATED INSPECTION OF NEW CONSTRUCTION, EXISTING HOUSING CAN BE INSPECTED ONLY AFTER A COMPLAINT IS MADE AND THE OWNER ALLOWS THE INSPECTION. IN OTHER WORDS, INSPECTION IS VOLUNTARY. IT IS THEREFORE DIFFICULT FOR OUR CODE ENFORCEMENT STAFF TO IDENTIFY ILLEGAL CONSTRUCTION AND TAKE ACTION TO CORRECT CODE VIOLATIONS.

THE FIRE DEPARTMENT ADOPTED AN ORDINANCE MARCH 1 2016 WHICH MANDATES INSPECTION AND COMPLIANCE IN RENTAL UNITS. THIS ORDINANCE IS APPENDED. THESE "PERIODIC" INSPECTIONS FOLLOW A REQUIRED REGISTRATION OF ALL RENTAL UNITS.

"WITHIN 120 DAYS FROM THE EFFECTIVE DATE OF THIS ORDINANCE, ALL TRANSIENT, VACATION, SHORT TERM, TIMESHARE RENTALS AND NON-OWNER OCCUPIED TWO FAMILY HOMES SHALL BE REGISTERED WITH THE DISTRICT, TO ENSURE FIRE INSPECTIONS."

THERE ARE EXCLUSIONS FOR PROPERTIES WHICH ARE NOT ADVERTISED OR ARE OWNER OCCUPIED SINGLE FAMILY HOMES.

SINCE THIS ORDINANCE IS RELATIVELY NEW, WE DO NOT HAVE DATA ON HOW MANY UNITS HAVE BEEN INSPECTED OR THE RESULTS.

#### ANALYSIS

THE SCOPE OF THE PROBLEM IS NOT HUGE. WHILE ILLEGAL CONSTRUCTION CAN BE UNSAFE AND CAN BE PRONE TO FLOODING, ADDRESSING THE PROBLEM MIGHT BE COST PROHIBITIVE AND INEFFECTIVE. AN ILLEGAL UNIT CAN BE DISCOVERED AND THE PROBLEM MAY BE ABATED, FOLLOW UP MAY BE NECESSARY AND COMPLIANCE HARDER TO VERIFY OVER TIME.

ACCORDING TO MEGAN, OUR FEMA EXPERT ON STAFF, THE RELATIVELY SMALL NUMBER OF SUCH UNITS MAY NOT INFLUENCE OUR RATINGS.

THE ISSUE DOES HOWEVER IMPACT STAFF TIME AND WORK. THEY (MEGAN AND MATT) INDICATED THAT THEY SPEND 25% OF THEIR TIME RESPONDING TO PROSPECTIVE BUYERS OR NEW BUYERS ASKING ABOUT THE COMPLIANCE OF THEIR GROUND FLOOR UNITS. THEY EITHER HAD BEEN MISINFORMED OR MISUNDERSTOOD TO THINK THEY COULD RENT AND RENOVATE THE ILLEGAL GROUND FLOOR UNIT. THEY ARGUE THAT THEY WERE TOLD THE NUMBER OF BEDROOMS OR BATHS OR BOTH WERE OK AND PERMITTED.

INTERESTINGLY, THE DEPUTY CHIEF WHO CAME FROM INDIANA INDICATED TO ME THAT IN HIS JURISDICTION, A REALTOR IS NOT ABLE TO LIST OR SELL A HOME WITH A NUMBER OF BEDROOMS OR BATHS REPRESENTED UNLESS THAT NUMBER WAS VERIFIED BY A BUILDING PERMIT. IN OTHER WORDS IF A HOMEOWNER ADDED ELEMENTS OVER TIME WHICH WERE NOT INSPECTED AND APPROVED BY PERMIT, THEY COULD NOT INCLUDE THOSE ELEMENTS IN SALE OFFERINGS AND PRICE CALCULATION.

WHAT MIGHT BE OUR POSSIBLE OPTIONS?

FIRST, REGISTRATION WILL BE HELPFUL TO UNDERSTAND THE SCOPE OF THE PROBLEM.

SECOND, AS HAS BEEN ACKNOWLEDGED BY BOTH TOWN STAFF AND THE FIRE DEPT, INTERAGENCY COOPERATION SHOULD BE ENCOURAGED. TOWARDS THAT END WE SHOULD ASK BOTH OUR CODE STAFF AND THE FIRE DEPT TO DISCUSS THEIR EFFORTS IN MORE DETAIL. BOTH ARE VERY WILLING TO COME BEFORE THE LPA AND/OR COUNCIL AND PRESENT IDEAS.

HANK ZUBA

**ORDINANCE NO: 2016-**

**A FIRE SAFETY ORDINANCE OF THE BOARD OF FIRE COMMISSIONERS FOR THE FORT MYERS BEACH FIRE CONTROL DISTRICT, LEE COUNTY, FLORIDA, FOR THE PURPOSES OF PROTECTING THE LIFE AND PROPERTY OF THOSE PARTIES THAT OCCUPY, OWN, AND RESIDE IN TRANSIENT, VACATION, SHORT TERM, TIMESHARE RENTALS; ALONG WITH, NON-OWNER OCCUPIED TWO FAMILY HOMES, AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Fort Myers Beach Fire Control District referred to as the “District” finds it necessary that Transient, Vacation, Short-Term, and Timeshare rentals; along with, Non-owner occupied Two Family Homes register with, and receive periodic Fire Inspections from the District, for the purpose of saving lives and preserving property.

**WHEREAS**, this Ordinance is in compliance with the Florida Fire Prevention and Control Act Florida Statute Chapter 633, Florida Administrative Code 69A, Florida Statute 509.215, Florida Statute 553.75(13), and the Florida Fire Prevention Code.

**WHEREAS**, The District has the authority to enact Ordinances related to the Prevention of Fires and Preservation of Property (CH 2000-422).

**NOW THEREFORE**, be it ordained by the Board of Fire Commissioners for the Fort Myers Beach Fire Control District that:

**SECTION ONE: PURPOSE OF THIS FIRE SAFETY ORDINANCE**

It is the intention of the District that all Transient, Vacation, Short-Term, Timeshare rentals, and Non-Owner Occupied Two Family Homes register with the District, to ensure periodic Fire Inspections.

**SECTION TWO: REGISTRATION**

Within (120) days from the effective date of this Ordinance, all Transient, Vacation, Short-Term, Timeshare Rentals, and Non-Owner Occupied Two Family Homes shall be registered with the District and provide the following:

- Full legal name and contact information for the Property Owner/Local Responsible Party to include, Telephone Number, Mailing Address, E-Mail contact.
- Property Owner/Responsible Party will be reasonably available via phone, e-mail, or in person within (72) hours of a District request.
- It shall be unlawful for any owner, agent, or realtor to rent any occupancy as defined herein that is not registered with the Fire District

**SECTION THREE: DEFINITIONS**

Verbiage contained herein shall have the following meanings:

- **Transient Rentals:** Single family or Two-family homes which are rented to guests more than *(3) times a calendar year for less than (30) days or (1) calendar month.*
- **Vacation Rentals:** Single family or Two-family homes that meet the definition of a Transient Rental advertised as a Vacation Resort, Rental, or Home.
- **Timeshare Rentals:** Single-family or Two-family homes that are licensed per *FS Chapter 721*, which are advertised as Transient Rental.

**SECTION FOUR: POSTING AND INSPECTION REQUIREMENTS**

Properties, as defined, shall comply with the following posting and inspection requirements:

- Occupant Load Signage
- Properties shall be made available for Fire Inspection, upon (30) day notice from the District
- Fire Code Violations that are imminent hazards shall be abated within (72) hours.
- All other violations shall be abated within (45) days; this abatement period may be extended at the request of the owner if a mitigation plan is submitted and accepted by the District.

**SECTION FIVE: FEES**

Fees shall include but not limited to the following:

- Registration Fee of (\$25.00)
- Inspection and re-inspection fees as defined by the District's Schedule of Fees

**SECTION SIX: SCHEDULE A: PENALTY FOR NON-COMPLIANCE**

Parties in violation of this Ordinance shall face penalties as outlined in this section.

FIRST OFFENSE: WRITTEN WARNING TO ADDRESS ON RECORD VIA  
CERTIFIED MAIL

SECOND OFFENSE: \$250.00 FINE IMPOSED UPON PROPERTY OWNER  
WITH A LETTER OF NON-COMPLIANCE

THIRD OFFENSE: \$500.00 FINE IMPOSED UPON PROPERTY OWNER

FOURTH OFFENSE: NOTIFICATION TO THE DIVISION OF BUSINESS AND  
PROFESSIONAL REGULATION

**SECTION SIX: EXCLUSIONS**

The Following properties are excluded from this Ordinance

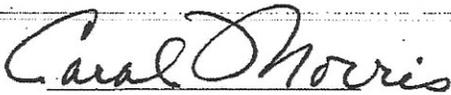
- All Homes, not advertised to the public as a Transient, Vacation, Short-Term, or Timeshare rental.
- Two Family Homes where the Owner occupies one unit for a minimum of (6) Months per year.
- Those properties that receive routine fire inspection in compliance with the Florida Fire Prevention Code i.e. *Hotels/Motels, Condominiums, Apartment Complexes (3 units or more)*.
- Single Family Homes that are Owner occupied.

**SECTION SEVEN: SEVERABILITY**

If any portion of this Ordinance is declared invalid by a court of competent jurisdiction, the valid remainder hereof shall remain in full force and effect.

**SECTION EIGHT: EFFECTIVE DATE**

The effective date of this Ordinance shall be March 1, 2016.



\_\_\_\_\_  
Carol Morris-Chair

December 15, 2015

Date First Reading

January 10, 2016

Published

February 2, 2016

Second Reading/Public Hearing Date

Russell Carter  
251 Pearl Street  
Ft Myers Beach, FL 33931

March 1, 2017

Matt Nobel  
Local Planning Authority  
Town of Ft Myers Beach

Dear Matt,

Please let this letter serve as an expression of interest to serve on the Historic Advisory Committee.

My contact information is the above address, [wechoose@yahoo.com](mailto:wechoose@yahoo.com) or 239-233-3571.

Thank you,

  
Russell Carter

March 2, 2017

Mr. Matthew A. Noble, AICP  
Principal Planner  
Town of Fort Myers Beach  
2525 Estero Boulevard  
Fort Myers Beach, FL 33931

Dear Matt:

RE: Historic Advisory Committee

Please consider this as my request to serve on the Historic Advisory Committee. I was a visitor to the Beach on an annual basis beginning in 1954 and made it my permanent home in 1966 where I raised my three children in our local schools. I've been a Realtor on our island since 1968, starting with Jim Newton for many years, followed by opening my own real estate office, Betty Davis Associates and currently serve as the Broker for Summa Group selling timeshare at the Lahaina Inn Resort.

I had the distinct pleasure of serving on our first LPA Committee for almost 10 years. I am currently serving on both BORCAB (Chairman) and on CELCAB. I've been a charter member of the Historic Society since inception and my love for Fort Myers Beach is obvious.

Thank you for your consideration.

Betty D. Simpson  
Email: [bdsimpson2@comcast.net](mailto:bdsimpson2@comcast.net)  
Phone: 239-463-2772/239-851-4407  
180 Curlew Street  
Fort Myers Beach, FL 33931

**RESOLUTION OF THE LOCAL PLANNING AGENCY OF  
THE TOWN OF FORT MYERS BEACH FLORIDA  
RESOLUTION NUMBER 2017-002  
AMENDMENT TO ADD PERMITTING SURVEY  
REQUIREMENTS IN CHAPTER 34 OF THE  
LAND DEVELOPMENT CODE**

**WHEREAS**, the existence of the Local Planning Agency (LPA) is mandated by Florida Statutes Section 163.3174; and

**WHEREAS**, the Local Planning Agency (LPA) is statutorily responsible under Chapter 163, Florida Statutes, and the Town of Fort Myers Land Development Code (LDC) Section 34-120 for the review of proposed land development regulations, land development codes, or amendments thereto, and for making recommendations to the Town Council with regard thereto and performing such other reviews as are requested by the Town Council; and

**WHEREAS**, following proper notice and as required under the LDC, the LPA conducted a public hearing on March 14, 2017 to consider a proposed Town Ordinance amending certain sections of the LDC, which is attached hereto as *Exhibit A* and is hereby incorporated by reference; and

**WHEREAS**, the aforesaid Ordinance, if passed, would amend regulations relating to required documentation submitted for building permits, as is more fully set forth in the proposed Ordinance; and

**NOW THEREFORE BE IT RESOLVED BY THE LOCAL PLANNING AGENCY**, that the LPA recommends that Town Council **APPROVE** and adopt the proposed Town Ordinance amending Chapter 34 of the Town of Fort Myers Beach Land Development Code, "Zoning Districts, Design Standards and Nonconformities;" adding Section 34- 639, "Permitting survey requirements" by adding requirements for a boundary survey at the time of building permit application and an as-built survey prior to issuance of a certificate of occupancy, and recommends the following findings of fact and conclusions with regard thereto:

**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

1. The proposed ordinance is in the best interest of the health, safety and welfare of the citizens, residents, visitors, and business owners of the Town of Fort Myers Beach and the LPA hereby recommends that the Town Council adopt the proposed ordinance with changes as noted below.
2. The LPA hereby recommends that the LDC be amended as contained in Exhibit A.
3. The Proposed ordinance is not inconsistent with the Town of Fort Myers Beach Comprehensive Plan.

The foregoing Resolution was adopted by the LPA upon a motion by LPA Member \_\_\_\_\_ and seconded by LPA Member \_\_\_\_\_ and upon being put to a vote, the result was as follows:

Hank Zuba, Chair  
Scott Safford  
Jane Plummer  
Dan Hendrickson

Bruce Butcher, Vice  
Suzanne Katt  
Megan Heil

DULY PASSED AND ADOPTED THIS \_\_\_\_\_ day of March 2017.

Local Planning Agency of the Town of Fort Myers Beach

Hank Zuba, Chair

Approved as to legal sufficiency:

By: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Town Clerk

Exhibit A  
ORDINANCE 17-XX

AN ORDINANCE AMENDING CHAPTER 34, ARTICLE III, DIVISION 3, IN THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE, "EXPLANATION OF PROPERTY DEVELOPMENT REGULATIONS FOR ALL ZONING DISTRICTS;" ADDING SECTION 34-639, "PERMITTING SURVEY REQUIREMENTS;" BY PROVIDING REQUIREMENTS FOR A BOUNDARY SURVEY AT THE TIME OF BUILDING PERMIT APPLICATION AND AN AS-BUILT SURVEY PRIOR TO ISSUANCE OF A CERTIFICATE OF OCCUPANCY; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

Section 1. This Ordinance is enacted pursuant to the provisions of Chapter 95-494, Laws of Florida, Chapters 163 and 166, Florida Statutes and other applicable provisions of law.

Section 2. Adoption of Amendments to Chapter 34 of the Town of Fort Myers Beach Land Development Code. Chapter 34 of the Town of Fort Myers Beach Land Development Code, entitled "Zoning Districts, Design Standards and Nonconformities," is hereby amended as set forth in Exhibit "A," attached hereto and incorporated herein by reference. Entirely new language is indicated with underlining. Language being repealed from existing code is indicated with strikethroughs. Existing language being retained is shown without underlining or strikethroughs.

Section 3. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 4. Effective Date. This ordinance shall take effect immediately upon adoption by the Town Council.

The foregoing Ordinance was adopted by the Town Council upon a motion by \_\_\_\_\_ and seconded by and upon being put to a vote, the result was as follows:

Dennis Boback, Mayor  
Anita Cereceda  
Tracey Gore

Rexann Hosafros, Vice Mayor  
Joanne Shamp

DULY PASSED AND ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2017, BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH.

By: \_\_\_\_\_

Dennis Boback, Mayor

Approved as to form and legal sufficiency:

By: \_\_\_\_\_

Town Attorney

ATTEST:

By: \_\_\_\_\_

Michelle D. Mayher, Town Clerk

**"EXHIBIT A"**

**Sec. 34-639. Permitting survey requirements.**

- (a) Survey Required. In order to demonstrate compliance with applicable regulations of this Division, the applicant or contractor must provide:
  - (1) A boundary survey at the time of building permit application; and
  - (2) A foundation survey
  - (3) An as-built survey prior to issuance of a certificate of occupancy or a certificate of completion.
  - (4) Survey of height, when building permit plans call for construction within five (5) feet of the height limitation in the applicable zoning district.
  - (5) Survey must depict 1978 Coastal Construction Control Line, where applicable.
- (b) Types of permits requiring survey submission:
  - (1) New construction
  - (2) Room addition
  - (3) Swimming pools & spas
  - (4) Accessory buildings and structures
  - (5) Fences
- (c) Waiver of survey requirements. The Director has discretion to review waiver requests under certain situations:
  - (1) When proposed construction does not change the building envelope or height
  - (2) If the value of the permitted construction is less than \$10,000.00.

<u>Type</u>	<u>Boundary survey</u>	<u>Foundation survey</u>	<u>As-built survey</u>	<u>Height/elevation</u>
<u>New construction</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>
<u>Room addition</u>	<u>X</u>			
<u>Swimming Pool/spa</u>	<u>X</u>			
<u>Accessory buildings &amp; structures</u>	<u>X</u>	<u>X</u>		
<u>Fences</u>	<u>X</u>			

ORDINANCE 17-XX

AN ORDINANCE AMENDING CHAPTER 34, ARTICLE III, DIVISION 3, IN THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE, "EXPLANATION OF PROPERTY DEVELOPMENT REGULATIONS FOR ALL ZONING DISTRICTS;" ADDING SECTION 34-639, "PERMITTING SURVEY REQUIREMENTS;" BY PROVIDING REQUIREMENTS FOR A BOUNDARY SURVEY AT THE TIME OF BUILDING PERMIT APPLICATION AND AN AS-BUILT SURVEY PRIOR TO ISSUANCE OF A CERTIFICATE OF OCCUPANCY; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

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Section 1. This Ordinance is enacted pursuant to the provisions of Chapter 95-494, Laws of Florida, Chapters 163 and 166, Florida Statutes and other applicable provisions of law.

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Section 3. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 4. Effective Date. This ordinance shall take effect immediately upon adoption by the Town Council.

The foregoing Ordinance was adopted by the Town Council upon a motion by \_\_\_\_\_ and seconded by \_\_\_\_\_ and upon being put to a vote, the result was as follows:

Dennis Boback, Mayor  
Anita Cereceda  
Tracey Gore

Rexann Hosafros, Vice Mayor  
Joanne Champ

DULY PASSED AND ADOPTED THIS \_\_\_\_\_ DAY of \_\_\_\_\_ 2017, BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH

ATTEST:

By: \_\_\_\_\_  
Dennis Boback, Mayor

By: \_\_\_\_\_  
Michelle D. Mayher, Town Clerk

Approved as to form and legal sufficiency:

By: \_\_\_\_\_  
Town Attorney

**"EXHIBIT A"**

**Sec. 34-639. Permitting survey requirements.**

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  - (1) A boundary survey at the time of building permit application; and
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  - (5) Survey must depict 1978 Coastal Construction Control Line, where applicable.
- (b) Types of permits requiring survey submission:
  - (1) New construction
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- (c) Waiver of survey requirements. The Director has discretion to review waiver requests under certain situations:
  - (1) When proposed construction does not change the building envelope or height
  - (2) If the value of the permitted construction is less than \$10,000.00.

<u>Type</u>	<u>Boundary survey</u>	<u>Foundation survey</u>	<u>As-built survey</u>	<u>Height/elevation</u>
<u>New construction</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>
<u>Room addition</u>	<u>X</u>			
<u>Swimming Pool/spa</u>	<u>X</u>			
<u>Accessory buildings &amp; structures</u>	<u>X</u>	<u>X</u>		
<u>Fences</u>	<u>X</u>			

**RESOLUTION OF THE LOCAL PLANNING AGENCY OF  
THE TOWN OF FORT MYERS BEACH FLORIDA  
RESOLUTION NUMBER 2017-003  
AMENDMENT TO FLOODPLAIN REGULATIONS IN  
CHAPTER 6 OF THE LAND DEVELOPMENT CODE**

**WHEREAS**, the existence of the Local Planning Agency (LPA) is mandated by Florida Statutes Section 163.3174; and

**WHEREAS**, the Local Planning Agency (LPA) is statutorily responsible under Chapter 163, Florida Statutes, and the Town of Fort Myers Land Development Code (LDC) Section 34-120 for the review of proposed land development regulations, land development codes, or amendments thereto, and for making recommendations to the Town Council with regard thereto and performing such other reviews as are requested by the Town Council; and

**WHEREAS**, following proper notice and as required under the LDC, the LPA conducted a public hearing on March 14, 2017 to consider a proposed Town Ordinance amending certain sections of the LDC, which is attached hereto as *Exhibit A* and is hereby incorporated by reference; and

**WHEREAS**, the aforesaid Ordinance, if passed, would amend the Town's floodplain regulations, as is more fully set forth in the proposed Ordinance; and

**NOW THEREFORE BE IT RESOLVED BY THE LOCAL PLANNING AGENCY**, that the LPA recommends that Town Council **APPROVE** and adopt the proposed Town Ordinance amending Chapter 6 of the Town of Fort Myers Beach Land Development Code floodplain regulations and recommends the following findings of fact and conclusions with regard thereto:

**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

1. The proposed ordinance is in the best interest of the health, safety and welfare of the citizens, residents, visitors, and business owners of the Town of Fort Myers Beach and the LPA hereby recommends that the Town Council adopt the proposed ordinance with changes as noted below.
2. The LPA hereby recommends that the LDC be amended as contained in Exhibit A.
3. The Proposed ordinance is not inconsistent with the Town of Fort Myers Beach Comprehensive Plan.

The foregoing Resolution was adopted by the LPA upon a motion by LPA Member \_\_\_\_\_ and seconded by LPA Member \_\_\_\_\_ and upon being put to a vote, the result was as follows:

Hank Zuba, Chair  
Scott Safford  
Jane Plummer  
Dan Hendrickson

Bruce Butcher, Vice  
Suzanne Katt  
Megan Heil

DULY PASSED AND ADOPTED THIS \_\_\_\_\_ day of March 2017.

Local Planning Agency of the Town of Fort Myers Beach

Hank Zuba, Chair

Approved as to legal sufficiency:

ATTEST:

By: \_\_\_\_\_

By: \_\_\_\_\_

Town Clerk

**Exhibit A  
ORDINANCE NO. 17-XX**

**AN ORDINANCE AMENDING AND RESTATING TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE CHAPTER 6, ARTICLE IV, PERTAINING TO FLOODPLAIN REGULATIONS; ADOPTING THE REVISED FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAPS; PROVIDING FOR AMENDMENTS REQUIRED TO CONTINUE PARTICIPATION IN THE NATIONAL FLOOD INSURANCE PROGRAM; PROVIDING FOR APPLICABILITY; CODIFICATION; CONFLICTS; SEVERABILITY; AND AN EFFECTIVE DATE.**

**WHEREAS**, the Legislature of the State of Florida has, in Chapter 166 – Municipalities, Florida Statutes, conferred upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

**WHEREAS**, the Federal Emergency Management Agency (FEMA) has identified special flood hazard areas within the boundaries of the Town of Fort Myers Beach and such areas may be subject to periodic inundation that may result in loss of life and property, 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; and

**WHEREAS**, the Town of Fort Myers Beach was accepted for participation in the National Flood Insurance Program on September 19, 1984 and the Town Council desires to continue to meet the requirements of Title 44 Code of Federal Regulations, Sections 59 and 60, necessary for such participation; and

**WHEREAS**, Chapter 553, Florida Statutes, was adopted by the Florida Legislature to provide a mechanism for the uniform adoption, updating, amendment, interpretation and enforcement of a state building code, called the Florida Building Code; and

**WHEREAS**, this ordinance was considered by the Local Planning Agency on March 14, 2017 and found to be consistent with the Town of Fort Myers Beach Comprehensive Plan; and

**WHEREAS**, the Town Council held two public hearings and received public comments regarding the provisions of this ordinance on ##, 2017 and ##, 2017; and

**WHEREAS**, the Town Council, based on review of local conditions and as demonstrated by evidence has determined that there is a local need to limit new installations of manufactured homes in certain high risk flood hazard areas; and

**WHEREAS**, the Town of Fort Myers Beach Town Council has determined it is in the public interest to adopt the proposed floodplain management regulations that are coordinated with the Florida Building Code.

**NOW, THEREFORE, BE IT ORDAINED** by the Town Council of Fort Myers Beach that the following floodplain management regulations are hereby adopted.

## **SECTION 1. RECITALS.**

The foregoing whereas clauses are incorporated herein by reference and made a part hereof.

## **SECTION 2. AMENDMENT OF TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE CHAPTER 6.**

The Town of Fort Myers Beach Land Development Code Chapter 6, Article IV, pertaining to Floodplain Regulation, is hereby amended and restated in its entirety with underlining representing new text and strikethrough identifying deleted text.

### **ARTICLE IV. FLOODPLAIN REGULATIONS**

#### **DIVISION 1. GENERAL**

#### **Sec. 6-424. Substantial improvement and substantial damage determinations.**

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

- (1) Estimate the market value by adding 20% to the just value provided by the Lee County Property appraiser, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure will be the market value before the damage occurred and before any repairs are made; any appraisal used for the purposes of substantial improvement/substantial damage determinations must be current within one year of work commencing;
- (2) Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;
- (3) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; the determination requires evaluation of previous permits issued for improvements and repairs as specified in the definition of "substantial improvement;" and for proposed work to repair damage caused by flooding, the determination requires evaluation of previous permits issued to repair flood-related damage as specified in the definition of "substantial damage;" and
- (4) Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood-resistant construction requirements of the *Florida Building Code* and this article is required.

## DIVISION 9. DEFINITIONS

### Sec. 6-494. Definitions.

*Market value.* The price at which a property will change hands between a willing buyer and a willing seller, neither party being under compulsion to buy or sell and both having reasonable knowledge of relevant facts. As used in this article, the term refers to the market value of buildings and structures, excluding the land and other improvements on the parcel. Market value may be established by a qualified independent appraiser, Actual Cash Value (replacement cost depreciated for age and quality of construction), or tax assessment value adjusted to approximate market value of a factor provided by the Property Appraiser by 20%.

Any proposed value submitted via a private appraisal that exceeds the property appraiser's valuation by more than 35 percent may be subject to peer review by a qualified local appraiser or submittal of a new independent appraisal, with the full cost of the review or new appraisal paid by the applicant.

*Substantial improvement.* Any combination of repair, reconstruction, rehabilitation, addition, or other improvement of a building or structure taking place during a one five year period, the cumulative cost of which equals or exceeds 50 percent of the market value of the building or structure before the improvement or repair is started. For each building or structure, the onefive-year period begins on the date of the first permit issued for improvement or repair of that building or structure subsequent to February 4, 2002. If the structure has incurred "substantial damage," any repairs are considered substantial improvement regardless of the actual repair work performed. The term does not, however, include either: [Also defined in FBC, B, Section 202.]

- (1) Any project for improvement of a building required to correct existing health, sanitary, or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions.
- (2) Any alteration of a historic structure provided the alteration will not preclude the structure's continued designation as a historic structure.
- (3) {NO CHANGES TO THE REST OF THE SECTION}

## **DIVISION 10. FLOOD RESISTANT DEVELOPMENT**

### *Subdivision VII. Other Development*

#### **Sec. 6-526. Concrete slabs used as parking pads, enclosure floors, landings, decks, walkways, patios and similar nonstructural uses in coastal high hazard areas (Zone V).**

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

- (1) Structurally independent of the foundation system of the building or structure;
- (2) Frangible and not reinforced, so as to minimize debris during flooding that is capable of causing significant damage to any structure; and

- (3) Have a maximum slab thickness of not more than four inches and be cut into 5' x 5' sections.

### **SECTION 3. APPLICABILITY.**

This ordinance applies within the jurisdiction of the Town of Fort Myers Beach. This ordinance applies to all applications for development, including building permit applications and subdivision proposals, submitted on or after the effective date of this ordinance.

### **SECTION 4. INCLUSION INTO THE CODE OF ORDINANCES.**

The Town Council intends that the provisions of this ordinance will be made a part of the Fort Myers Beach Code of Ordinances, and that sections of this ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section," "article," "regulation," or such other appropriate word or phrase in order to accomplish codification; and, regardless of whether this ordinance is ever codified, the ordinance can be renumbered or relettered and typographical errors that do not affect the intent can be corrected with the authorization of the Town manager or designee without the need for a public hearing.

### **SECTION 5. SEVERABILITY.**

If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, declared by the courts to be unconstitutional or invalid, such decision will not affect the validity of the ordinance as a whole, or any part thereof, other than the part so declared.

### **SECTION 6. CONFLICTS.**

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

### **SECTION 7. EFFECTIVE DATE.**

This ordinance becomes effective immediately upon adoption.

The foregoing ordinance was enacted by the Town Council upon a motion by Councilmember \_\_\_\_\_ and seconded by Councilmember \_\_\_\_\_, and upon being put to a vote, the results was as follows:

Dennis Boback  
Joanne Shamp  
Tracey Gore  
Rexann Hosafros  
Anita Cereceda

**ATTEST:**

**TOWN OF FORT MYERS BEACH**

By: \_\_\_\_\_  
Michelle Mayher, Town Clerk

By: \_\_\_\_\_  
Dennis Boback, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Town Attorney

**ORDINANCE NO. 17-XX**

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- (3) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; the determination requires evaluation of previous permits issued for improvements and repairs as specified in the definition of "substantial improvement;" and for proposed work to repair damage caused by flooding, the determination requires evaluation of previous permits issued to repair flood-related damage as specified in the definition of "substantial damage;" and
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Dennis Boback  
Joanne Shamp  
Tracey Gore  
Rexann Hosafros  
Anita Cereceda

**ATTEST:**

**TOWN OF FORT MYERS BEACH**

By: \_\_\_\_\_  
Michelle Mayher, Town Clerk

By: \_\_\_\_\_  
Dennis Boback, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Town Attorney