

ORDINANCE 18-03

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, DECLARING A TEMPORARY MORATORIUM ON THE PROCESSING OF ANY DEVELOPMENT APPLICATIONS FOR DEVELOPMENT APPROVAL REQUIRING DENSITY CALCULATIONS BASED ON THE PROVISIONS ALLOWING TWO OR MORE DWELLING UNITS OR GUEST UNITS UNDER SECTIONS 34-637 (b) AND SECTION 34-632 (3), LAND DEVELOPMENT CODE, TO COMPUTE SQUARE FOOTAGE REQUIREMENTS FOR RESIDENTIAL DEVELOPMENT OF MORE THAN ONE DWELLING UNIT FOR EXISTING SUBDIVISIONS WHERE LOTS ARE SMALLER THAN 15,000 SQUARE FEET EACH FOR A PERIOD OF ONE HUNDRED AND EIGHTY (180) DAYS; PROVIDING FOR A REMEDY; PROVIDING FOR SEVERABILITY; PROVIDING FOR SCRIVENER'S ERRORS; AND PROVIDING AN EFFECTIVE DATE.

Whereas, pursuant to Article VII, Section 2 of the Florida Constitution and Ch. 166, Fla. Stat., the Town of Fort Myers Beach is authorized to protect the public health, safety, and welfare of its residents and has the power and the authority to enact ordinances and regulations for valid governmental purposes that are not inconsistent with general or special law; and

Whereas, on February 8, 2018, the Town of Fort Myers Beach Town Council directed staff to prepare a proposed ordinance instituting a temporary moratorium on the processing of applications for development approval for residential construction of more than one dwelling unit on properties which utilize the provisions of section 34-632 (3) and 34-637 (b) of the Land Development Code to compute density for purposes of constructing more than one dwelling unit on individual lots as well as development of two or more dwelling units or guest units for a single lot under Section 34-637 (b), to address the overbuilding found on Fort Myers Beach as noted in Objective 4-B and Policy 4-B-1 of the Comprehensive Plan; and

Whereas, while the Town staff is undergoing its analysis to prepare new land development regulations, and in order to prevent the approval of construction of more than one residence on a lot by application of Section 34-632 (3) and 34-637 (b) of the Land Development Code the Town Council has determined that placing a temporary moratorium on the processing of any development applications related thereto is necessary for properties seaward of Estero Boulevard; and

Whereas, the Town of Fort Myers Beach Town Council desires to establish an administrative remedy for any property owner who contends that the application of this Ordinance to his or her property constitutes a temporary regulatory taking or illegally interferes with a vested right.

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

RECITALS

SECTION ONE: The recitals set forth above are incorporated herein, and are hereby found true and correct.

PURPOSE

SECTION TWO: The purpose of this temporary moratorium is to provide a reasonable amount of time for Town Council to adopt amendments to Sections 34-632 (3) and 34-637 (b) of the Land Development Code.

TEMPORARY MORATORIUM DECLARED

SECTION THREE:

(a) A moratorium on the submittal and processing of applications for development approval is hereby established if such application(s) requests approval for more than one residential dwelling units or guest units on a single lot in existing subdivisions where lots are smaller than 15,000 square feet each by applying the density computations under Sections 34-632 (3) and as allowed under 34-637 (b) of the Land Development Code.

(b) The moratorium is for a period of one hundred and eighty (180) days beginning on the date of adoption.

(c) The Town Council may extend this moratorium by ordinance if it makes a legislative determination that it is in the best interests of the citizens of the Town of Fort Myers Beach to do so.

(d) No applications for development approvals (including those that may have been submitted prior to the Effective Date of this Ordinance) for properties subject to the temporary moratorium established herein may be processed by Town staff until the conclusion of this moratorium, unless Town Council provides direction, either through this ordinance, through approval of zoning or site plans, or staff determination it meets the direction of Town Council. Any such applications for development approval subject to the temporary moratorium established herein received by the Town on or before the Effective Date of this Ordinance will be held in abeyance until the conclusion of the moratorium, unless Town Council provides other direction.

(e) The properties subject to this temporary moratorium are those qualifying for density computation under Section 34-632 (3) and to two or more dwelling units or guest units allowed under Section 34-637 (b), Land Development Code, located within the Town of Fort Myers Beach, Florida.

(f) During the temporary moratorium period, Town Council shall permit Town staff to perform the following:

1. Provided notification of this temporary moratorium to all applicants for properties subject to the temporary moratorium established herein.

2. Review, research, and make recommendations to the Local Planning Agency and Town Council regarding consideration of additional land development regulations related to residential density.

3. Prepare land development regulations related to residential density including review and public hearings by the Local Planning Agency and Town Council.

4. Create and implement a strategy for over-development of properties seaward of Estero Boulevard.

REMEDY PROVISION

SECTION FOUR:

(a) Any property owner who contends that the application of this ordinance to his or her property constitutes a temporary regulatory taking or illegally interferes with a vested right, or creates an inordinate burden thereon, shall submit an application to the Town Manager, or his designee, for relief from this Ordinance. The application shall contain all evidence known to the property owner that supports the property owner's contention that the imposition of this Ordinance to his or her property constitutes a temporary regulatory taking, or illegally interferes with a vested right, or inordinately burdens an existing use.

(b) An application which contains an allegation of a temporary regulatory taking shall be evaluated pursuant to the criteria described in *Reahard v. Lee County*, 968 F.2d 1131 (11th Cir. 1992), which include:

1. Whether the property owner will be denied substantially all beneficial use of the property;
2. Consideration of economic impact of the temporary moratorium; and
3. The extent to which the temporary moratorium has interfered with the property owner's investment-backed expectations.

(c) The following is a non-exclusive list of the factors to be analyzed under these criteria:

1. The history of the property;
2. The history of the development including development orders;
3. The history of the property's Future Land Use Map classification;
4. The history of the property's zoning;
5. The change in development when ownership changed;
6. The present nature and extent of the property;
7. The reasonable expectations of the property owner and the neighboring property owners, and

8. Any diminution of the property owner's investment-backed expectations.

(d) The Town Manager, or his designee, shall make a recommendation within thirty (30) days of receipt of a complete application, and schedule within twenty (20) days for the next available Town Council meeting, for Town Council to determine whether to grant or deny such an application.

CONFLICTS

SECTION FIVE: 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 shall apply.

SEVERABILITY

SECTION SIX: If any part, section, subsection, or other portion of this Ordinance or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, such part, section, subsection, or other portion of the prescribed application thereof, shall be severable, and the remaining provisions of this Ordinance, and all application thereof not having been declared void, unconstitutional, or invalid, shall remain in full force and effect. The Town declares that no invalid or prescribed provision or application was an inducement to the enactment of this Ordinance, and that it would have enacted this Ordinance regardless of the invalid or prescribed provision application.

SCRIVENER'S ERRORS

SECTION SEVEN: Typographical errors which do not affect the intent may be corrected by the Town Manager, or his designee, without need or public hearing, by filing a corrected copy of this Ordinance with the Town Clerk.

EFFECTIVE DATE

SECTION EIGHT: The effective date of this Ordinance shall be the date of adoption by Town Council as noted below.

The foregoing Ordinance was not adopted by the Town Council upon a motion by Vice Mayor Shamp and seconded by Council Member Cereceda and upon being put to a roll call vote, the result was as follows:

Tracey Gore, Mayor	AYE	Joanne Shamp, Vice Mayor	AYE
Anita Cereceda, Council Member	AYE	Dennis Boback, Council Member	NAY
Bruce Butcher, Council Member	Excused		

ADOPTED this _____ day of _____, 2018 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

By: _____
Tracey Gore, Mayor

ATTEST:

Michelle D. Mayher, Town Clerk

APPROVED AS TO FORM:

Peterson Law Group, Town Attorney

