

**RESOLUTION NUMBER 21-46**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING SPECIAL EXCEPTION 20210050 TO ALLOW CONSUMPTION ON PREMISES AS A 2COP (BEER AND WINE); WITHIN 500 FEET OF A PARK AT 185 OLD SAN CARLOS; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

**WHEREAS**, Article X of the Town Charter of the Town of Fort Myers Beach empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

**WHEREAS**, applicant Suzanne Bahan., requested a special exception to open an adult video arcade with retail and 2COP, and a deviation from LDC Sec. 34-1264(a)(2) of the Town of Fort Myers Beach Land Development Code which does not allow alcohol sales within 500 feet from park; and

**WHEREAS**, the STRAP number for the subject property is 24-46-23-W3-0050A.0130

**WHEREAS**, the Property is in the "Pedestrian Commercial" category of the Future Land Use Map of the Comprehensive Plan and the "Downtown" zoning district of the Official Zoning Map of the Town of Fort Myers Beach, Florida; and

**WHEREAS**, a public hearing on this matter was legally noticed and held before the Local Planning Agency (LPA) on August 10, 2021, and at said hearing the LPA gave full and complete consideration to the request of Applicant, recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Section 34-88 of the LDC. The LPA voted 5-0 to approve with conditions the Consumption on Premises (2COP, Beer and Wine Only), with no outdoor consumption.

**WHEREAS**, on October 4, 2021 the Town Council held a duly noticed public hearing to fully consider the request of the Applicant, the recommendations of Town staff and the LPA, the documents in the record, and testimony of all interested persons as required by Section 34-88 of the LDC; and

**WHEREAS**, the Town Council determined it is in the best interest of the Town to approve/deny the request.

**NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:**

Section 1. The above recitals are true, correct, incorporated herein by this reference, and adopted as the legislative and administrative findings of the Town Council.

Section 2. The Town Council determines the Applicant did meet its burden of proof that the requested Special Exception do meet the requirements of the Town Comprehensive Plan and LDC, and approving the Special Exception is in the best interest of the Town. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties and public, the Town Council APPROVES the Special Exception and 2COP and the deviation from Section 34-1264(a)(2) of the LDC to allow alcohol sales within 500 feet of Lynn Hall Memorial Park.

Section 3. In approving the Special Exception, the Town Council makes the following findings and conclusions in accordance with the requirements of Sections 34-84 and 34-88 of the LDC:

- A. There exist changed or changing conditions which make approval of the request appropriate
- B. The request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan
- C. The request meets or exceeds all performance and locational standards set forth for the proposed use.
- D. The request will protect, conserve, or preserve environmentally critical areas and natural resources.
- E. The request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- F. The requested consumption on premises (2COP) use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining set forth in Chapter 34 of the Land Development Code.

Section 4. If the Town Council approves the requested special exception, the following conditions of approval are imposed on the Applicant and the Property:

- A. The 2COP is only valid in conjunction with a retail sales operation within the same business.
- B. No amplified music or entertainment unless within an entirely enclosed building. All activities are subject to the Town's noise regulations.
- C. No consumption of alcohol beyond the footprint of the existing enclosed structure.

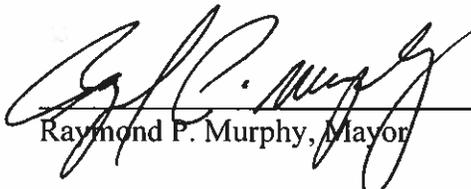
D. Any violation of the conditions of approval shall render the special exception null and void.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member Atterholt and seconded by Council Member Veach, and upon being put to a vote, the result was as follows:

Raymond P. Murphy, Mayor	Aye
Rexann Hosafros, Vice Mayor	Aye
Dan Allers	Aye
Bill Veach	Aye
Jim Atterholt	Aye

ADOPTED this 4<sup>th</sup> day of October 2021 by the Town Council of the Town of Fort Myers Beach, Florida.

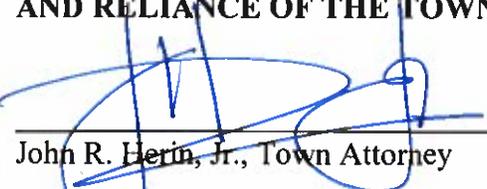
**FORT MYERS BEACH TOWN COUNCIL**

  
\_\_\_\_\_  
Raymond P. Murphy, Mayor

**ATTEST:**

  
\_\_\_\_\_  
Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE  
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

  
\_\_\_\_\_  
John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 18 day of October 2021.