

**RESOLUTION NUMBER 22-12**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING WITH CONDITIONS SPECIAL EXCEPTION SEZ 20210129 TO ALLOW THE SALE AND CONSUMPTION OF ALCOHOL ON PREMISE IN AN 830 SQUARE FEET OUTDOOR SEATING AREA AT THE PROPERTY LOCATED AT 6241 ESTERO BLVD; 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 Colorado Southern, Inc. is requesting a Special Exception to allow a Consumption on Premise use in an 830 square feet outdoor seating area within 500 feet of multiple residential dwelling units under different ownership; and

**WHEREAS**, the STRAP number for the subject property is 34-46-24-W4-00018.0000 (“Property”); and

**WHEREAS**, the Property is located in the “Boulevard” category of the Future Land Use Map of the Comprehensive Plan and the “Commercial Boulevard” 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 February 8, 2022 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 Town Land Development Code (“LDC”). The LPA voted unanimously to recommend approval with conditions.

**WHEREAS**, on March 21, 2022 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 with conditions 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 its burden of proof that the requested Special Exception does 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 WITH CONDITIONS the Special Exception for Consumption on Premise of alcohol in an 830 square feet outdoor seating area within 500 feet of multiple residential dwelling units under separate ownership.

Section 3. In approving with conditions 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 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 of alcohol use (2COP) will be in compliance with applicable general zoning provisions and supplemental regulations set forth in Chapter 34 of the LDC.

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

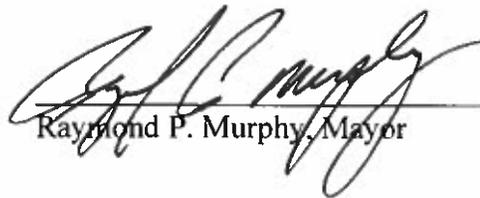
- A. No amplified music or entertainment outside of the enclosed restaurant. No amplified music or entertainment inside the existing restaurant after 10 PM.
- B. No outdoor seating after 10 PM Sunday-Thursday, and 11 PM Friday and Saturday
- C. Any violation of the conditions of approval shall render the special exception null and void.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member Veach and seconded by Vice Mayor Hosafros, 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               | absent |

ADOPTED this 21<sup>st</sup> day of March 2022 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 7 day of April, 2022.