

ORDINANCE 22-12

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, REPLACING TOWN OF FORT MYERS BEACH RESOLUTION NO. 09-24, AND AMENDING THE SCHEDULE OF USES FOR THE COMMERCIAL PLANNED DEVELOPMENT ZONING FOR THE PROPERTY LOCATED AT 4650 ESTERO BLVD., FORT MYERS BEACH; PROVIDING FOR REVISIONS TO CONDITIONS OF APPROVAL, AND OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICT OF LAW, SCRIVENER'S ERRORS 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, the Town of Fort Myers Beach, owner of 4650 Estero Blvd. known as Newton Park and identified as Strap number 29-46-24-W3-0080H.0010, filed an application to amend the Property's Commercial Planned Development ("CPD) to allow on-premises consumption of alcoholic beverages subject to compliance with all applicable provisions of state law; and

WHEREAS, the property is in the Recreation Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach, and is under common control of the applicant, as listed in the public records of Lee County Property Appraiser; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on August 9, 2022, at which the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the record, and the testimony of all interested persons, and the LPA voted 5-0 to recommend approval of the requested CPD amendment, and

WHEREAS, on September 8, 2022, the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the request of the proposed edits to the Land Development Code, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons; and

WHEREAS, the Town Council set a second reading of the proposed Ordinance and a public hearing on this matter to be legally advertised and held before the Town Council on September 22, 2022; at which time the Town Council gave full and complete consideration to the request, the recommendation of the LPA, the recommendation of staff, consistency with the Comprehensive Plan and Land Development Code, the documents in the record, and the testimony

of all interested persons; and

WHEREAS, the Town Council finds the proposed CPD amendment with conditions of approval are **consistent** with the Town of Fort Myers beach Comprehensive Plan and LDC and voted to **approve** the application.

NOW, THEREFORE, BE IT ORDAINED 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 zoning amendment **does** meet the requirements of the Town Comprehensive Plan and LDC and approving the request to allow the use of on-site brewing and consumption of malt liquor with conditions 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, the Town Council **APPROVES** the requested amendment to the CPD zoning of the Property.

Section 3. Town Resolution 09-24 is repealed and replaced by this Ordinance and the schedule of uses and conditions of approval for the Property's CPD set forth in Exhibit "A," attached hereto and incorporated herein by this reference is approved.

Section 4. Whenever the requirements or provisions of this Ordinance conflict with the requirements or provisions of any other lawfully adopted LDC or Town Code provision, ordinance, or statute, the most restrictive shall apply.

Section 5. Any typographical errors that do not affect the intent of this Ordinance may be corrected with notice to and authorization of the Town Manager without further process.

Section 6. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason, declared by a court of competent jurisdiction 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.

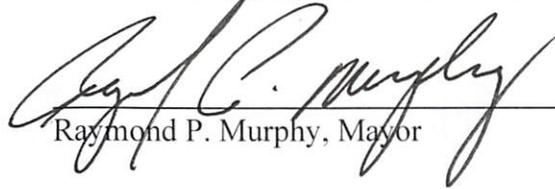
Section 7. This Ordinance shall become effective upon adoption by the Town Council.

The foregoing Ordinance was adopted by the Town Council upon a motion by Council Member Veach and seconded by Mayor Murphy, and upon being put to a roll call vote, the result was as follows:

Raymond P. Murphy, Mayor	aye
Rexann Hosafros, Vice Mayor	aye
Dan Allers, Council Member	aye
Jim Atterholt, Council Member	aye
Bill Veach, Council Member	aye

ADOPTED this 22nd day of September 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:**



Victor Sanabria, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 23 day of September 2022.

EXHIBIT A

A. Conditions

1. Development must be consistent with the one-page Master Concept Plan stamped “Received April 7, 2009” for case FMBDCI2009-0001, attached as **Exhibit “B”**. The Master Concept Plan must be updated to reflect the final decision of Town Council prior to execution of the resolution approving this rezoning. If changes to the Master Concept Plan are subsequently pursued, appropriate approvals will be necessary.

2. The following limits apply to the project and uses:

a. Schedule of Uses

Principal:

Beach Access

Park, neighborhood

Recreation facility, public

Cultural facility

Membership organization

Recreation facility, commercial

Accessory:

Essential services

Essential services equipment

Hidden path

Day care center, adult (see condition #5 below)

Day care center, child (see condition #5 below)

Dwelling unit, caretaker

Place of worship (see condition #6 below)

School (see condition #6 below)

Theatre (see condition #6 below)

Temporary uses

On-premises consumption of alcoholic beverages (see condition #7 below)

Retail store, small

Administrative office

b. Site Development Regulations

Minimum Lot Width: **195± feet**

Minimum Lot Depth: **180± feet**

Minimum Lot Area: **34,667± square feet**

Maximum Building Height: **2 stories, including space below base flood elevation as a story**

25 feet

Maximum Floor Area Ratio: **0.8**

Setbacks:

Estero Boulevard:	15 feet
Strandview Avenue:	10 feet
Northeasterly lot line:	9.4 feet (existing building only) 10 feet (all other structures)
Gulf of Mexico:	50 feet from Mean High Water Line

3. Approval of this rezoning does not authorize any activity that would violate any deed restriction or any contractual obligation regarding the subject property.

4. Land lying seaward of the Coastal Construction Setback Line recorded in Plat Book 31, Pages 1 through 21, Public Records of Lee County, Florida, is not rezoned by this resolution and remains zoned EC (Environmentally Critical).

5. The uses *day care center, adult and day care center, child* are included as accessory uses to clarify that groups of adults and/or groups of children may spend periods of time during day and evening hours, not extending to overnight stays, on the park grounds or in the buildings, whether gratis or for a fee.

6. The uses *place of worship, school, and theater* are included as accessory uses to clarify that the park grounds and buildings may occasionally host religious, educational, and/or cultural activities, regardless of whether the property is made available to an outside organization or entity gratis or for a fee, or the activities are organized by the Town gratis or for a fee.

7. ~~On premises consumption of alcoholic beverages is limited to temporary permits issued in accordance with LDC Section 34-1264(d), or to a membership organization/ club in accordance with LDC Section 34-1264(a)(1)e.~~ Any on-premises consumption of alcoholic beverages must comply with all applicable provisions of state law and agency rules.

Nothing in this rezoning, including any of the attached conditions, constitute a variance or deviation from the provisions of Chapter 6, Article IV "Floodplain Regulations" of the LDC. Approval of this rezoning does not exempt the subject property from any provisions of the LDC with the exception of any approved deviation contained herein.