

ORDINANCE NO. 23-13

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE III., DIVISION 4, SECTION 34-652 ENVIRONMENTALLY CRITICAL (EC) ZONING DISTRICT AND CHAPTER 6, ARTICLE III., DIVISION 2, SECTION 6-366 LOCATION OF CONSTRUCTION NEAR BEACHES; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND 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 recognizes that redevelopment of the Town, following hurricane Ian requires evaluation and updates to the Land Development Code; and

WHEREAS, the Town Council desires updates to the Fort Myers Beach Land Development Code to clarify, improve and create consistency among sections; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on September 12, 2023, 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 7-0, to recommend approval of the requested amendment to Chapter 34., Section 34-652, and Chapter 6, Section 6-366; and

WHEREAS, on October 2, 2023, the Town Council held a first reading of this proposed Ordinance; and

WHEREAS, on October 16, 2023, the Town Council held a second reading of this proposed Ordinance.

NOW THEREFORE IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH, FLORIDA:

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

Section 2. Chapter 34, Article III., Division 4, Section 34-652 Environmentally Critical (EC) Zoning District and Chapter 6, Article III., Division 2, Section 6-366 Location of

Construction Near Beaches is hereby amended to read as found in **attached Exhibit A** – Sec. 34-652. Environmentally Critical (EC) Zoning District and **attached Exhibit B** – Sec. 6-366. Location of Construction Near Beaches:

Section 3. The Town Council intends that the provisions of this ordinance be made a part of the Fort Myers Beach Code of Ordinances, and that sections herein may be renumbered or re-lettered and the words or phrases herein may be changed to accomplish codification; regardless, typographical errors that do not affect intent may be corrected with notice to and authorization of the Town Manager without further process.

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

Section 5. 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, or any part thereof, other than the part so declared.

Section 6. This ordinance shall become effective upon adoption by the Town Council.

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

Dan Allers, Mayor	Yes
Jim Atterholt, Vice Mayor	Yes
John R. King, Council Member	Yes
Bill Veach, Council Member	Yes
Karen Woodson, Council Member	Yes

ADOPTED this 16th day of October 2023, by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers

Dan Allers (Oct 24, 2023 11:19 EDT)

Dan Allers, Mayor

ATTEST:



AMY BAKER (Oct 24, 2023 13:04 EDT)

Amy Baker, Town Clerk

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



Becky Vose (Oct 24, 2023 11:29 EDT)

Gretchen R. H. ("Becky") Vose, Esq., Town Attorney

EXHIBITS

Exhibit A – Amended Sec. 34-652.

Exhibit B – Amended Sec. 6-366.

Sec. 34-652. - Environmentally Critical (EC) zoning district.

(a) *Purpose.* The purpose of the EC zoning district is to designate beaches and significant wetlands whose preservation is deemed critical to the Town of Fort Myers Beach through its comprehensive plan, including:

- (1) Beaches that have been designated in the "Recreation" category on the future land use map; and
- (2) Wetlands that have been correctly designated in the "Wetlands" category on the future land use map.

(b) *Intent.* The application of the EC district is intended to prevent a public harm by precluding the use of land for purposes for which it is unsuited in its natural state and which injures the rights of others or otherwise adversely affects a defined public interest.

(c) *Accretion.* Accretions of beaches or wetlands, whether by natural causes or through beach renourishment or approved filling, may be permitted in the EC zoning district, with appropriate easements as may be required by regulatory agencies.

(d) *Permitted uses and structures.* In the EC district, no land or water use shall be permitted by right except for those uses and developments described below and consistent with the Fort Myers Beach Comprehensive Plan for uses in wetlands and beaches, as applicable, including:

- (1) Boating, with no motors permitted except electric trolling motors.
- (2) Fishing.
- (3) Removal of intrusive, exotic species or diseased or dead trees, and pest control.
- (4) Outdoor education, in keeping with the intent of the district.
- (5) Passive recreation activities on public property. These activities and uses include passive recreation that may requires temporary structures but no alteration of the natural landscape. Any temporary

structure used in conjunction with such uses must comply with all provisions of this land development code (for instance, see chapters 14 and 27).

(6) Outdoor accessory uses, including the rental of beach furniture, when accessory to a multifamily residential or resort building located adjacent to the Gulf of Mexico containing more than 50 dwelling units.

(7) Wildlife management, as wildlife preserves.

(8) Expansion of area designated for the consumption and service of alcoholic beverages, subject to the regulations in § 34-1264(g)(1).

(9) Temporary, movable structures on private property that do not alter the natural environment, landscape or obstruct pedestrian traffic. Artificial lighting and signs are prohibited unless the lighting or signage complies with §§ 14-5 or 27-51 of this LDC.

(10) Temporary, movable structures that are part of a permitted special event in accordance with § 14-1 I of this LDC.

(11) Licensed beach vendor rental equipment or a temporary movable structure permitted in accordance with § 14-5, ch. 27, and § 34-3151 of this LDC.

a. During the sea turtle nesting season (May 1 through October 31) temporary, movable structures may not be moved across the beach unless:

1. The movement is after 9:00 a.m., or after completion of daily monitoring for turtle nesting activity by a FWCC-authorized marine turtle permit holder, whichever occurs first; and

2. The movement does not disturb any sea turtle or sea turtle nest.

(12) On-grade, pathways through a dune, not to exceed 40 inches in width, subject in compliance with all applicable state and local environmental regulations. No more than one (1) pathway per property.

(e) *Special exception uses and structures.* Upon a finding that the proposed use or structure is consistent with the standards set forth in § 34-88 of this LDC, as well as all other applicable town regulations, the town council may approve with or without conditions as a special exception, the following structures or uses:

(1) Accessory structures, which are accessory to a use permitted by special exception in the EC district.

(2) Nature study center, noncommercial, and its customary accessory uses.

(3) Redevelopment, Reconstruction or renewal of any part of an existing building for the purpose of its maintenance or to correct damage to ~~of existing primary structures single-family residences,~~ which encroach into the EC district and their customary accessory uses. In accordance with § 6-366 (b) of this code of ordinances.

(4) Minor structures, which shall be located as close to the landward edge of the EC zoning district line as possible and must minimize adverse effects on the beach and dune system.

(5) Artificial lighting, in compliance with sea turtle lighting regulations.

(6) Perpendicular dune walkovers on property. when required to protect indigenous plant communities and when elevation change exists, in accordance with § 10-415(b) and subsection (f), below.

(7) Signs, as approved by a planned development.

(f) *Additional regulations:*

(1) Article I in Ch. 14 pertaining to beach and dune management; and

(2) Any dune walkover must be state approved and constructed consistent with the following requirements:

a. Walkovers must be placed perpendicular to the dune or no more than 30 degrees from

perpendicular. New walkovers cannot be placed closer than 150 feet to the nearest walkover.

b Walkovers must be supported on posts embedded to a sufficient depth to provide structural stability. These posts may not be encased in concrete.

c. Walkovers cannot exceed four feet in width when serving single-family homes or six feet in width otherwise. Alternate widths require a variance.

d. Walkovers must be elevated at least two feet, and no more than 3 feet, above the highest point of the dune and dune vegetation and must extend to the seaward toe of any existing dun and dune vegetation.

e. Walkovers must be constructed in a manner that minimizes short-term disturbance of the dune system. Any dune vegetation destroyed during

construction must be replaced with similar native vegetation that is suitable for beach and dune stabilization and increases either plant density or area of plantings.

f. Walkovers may not be constructed during the sea turtle nesting season (May 1 through October 31).

g. Walkovers may not be attached to any other structures.

(3) Article IV of Ch. 14 pertaining to wetlands protection; and

(4) Coastal zone regulations in§ 34-1575 of this LDC.

Sec. 6-366. - Location of construction near beaches.

(a) All construction must be located a sufficient distance landward of the beach to permit natural shoreline fluctuations and to preserve dune stability. In addition to complying with all other provisions of this code, major structures must be built landward of the 1978 coastal construction control line except where a major structure may be specifically allowed by this code to extend across this line. The 1978 coastal construction control line is depicted on the Future Land Use Map as the seaward edge of land-use categories allowing urban development and as the landward edge of the recreation land-use category. This line is also the landward edge of the EC (Environmentally Critical) zoning district. A copy of the 1978 Coastal Construction Control Line is recorded at Plat Book 48, Page 15, and available at the Ft. Myers Beach Town Hall.

(b) When existing major structures that were built partially or fully seaward of the 1978 coastal construction control line are reconstructed, they shall be rebuilt landward of this line. Exceptions to this rule may be permitted through the planned development zoning process only where it can be scientifically demonstrated that the 1978 coastal construction control line is irrelevant because of more recent changes to the natural shoreline. The town shall seek the opinion of the Florida Department of Environmental Protection in evaluating any requests for exceptions. Exceptions must also comply all state laws and regulations regarding coastal construction.

(1) Repairs to existing primary structures, in the EC zoning district, are permitted without a Special Exception only if the repairs do not exceed 25% of the value of the structure. Expansion of existing primary structures, in the EC zoning district, are not permitted without a Special Exception.

(2) Repairs to accessory structures in the EC zoning district are not permitted without a Special exception.

(3) Additional regulations and considerations for Special Exception approval of repairs in the EC zoning district:

a. Any repairs must comply with all relevant local and state floodplain regulations.

b. Repairs may not damage existing dunes or dune vegetation.

c. Repairs, other than those limited to emergency repairs to enclose a damaged structure, may not be completed during sea turtle nesting season.

d. A new special exception must be applied for each time the structure is repaired.

(c) For newly created lots and parcels, a 50-foot separation between structures and dunes is required by § 10-415(b) of this LDC.