

ORDINANCE NO. 23-18

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE V, DIVISION 2, SECTION 34-3238 POST-DISASTER BUILDBACK; 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, changes and updates to the Land Development Code; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on the 14th day of November, 2023, at which time the LPA gave full and complete consideration of the proposed ordinance, recommendations by staff, the documents in the record, and the testimony of all interested persons, and the LPA made a finding of consistency with the Ft. Myers Beach Comprehensive Plan and Land Development Code and thereafter voted 7-0, to recommend approval of the proposed ordinance amending Chapter 34, Article V, Division 2, Section 34-3238 Post-Disaster Buildback of the Land Development Code to the Town Council; and

WHEREAS, on the 4th day of December, 2023, the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the proposed ordinance, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons; and

WHEREAS, on the 7th day of December 2023, an advertisement of the public hearing for adoption of the proposed ordinance was published 10 days prior to the second reading of the proposed Ordinance, as required by Section 166.041, Florida Statutes; and

WHEREAS, a Business Impact Estimate was prepared and posted on the City's website on the 30th day of November, 2023, as required by Section 166.041(4), Florida Statutes; and

WHEREAS, on the 18th day of December 2023, the Town Council held a public hearing and second reading of the proposed Ordinance; and

WHEREAS, the Town Council determined by a vote of 5-0 that adoption of the Ordinance is in the best interest of the health, safety and welfare of the public.

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

Section 1. The above WHEREAS 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 V, Division 2, Section 34-3238 Post-Disaster Buildback is hereby amended to read as found in attached Exhibit A – Amended Sec. 34-3238.

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 Vice Mayor Atterholt and seconded by Mayor Allers and upon being put to a roll call vote, the result was as follows:

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

ADOPTED this 18th day of December 2023, by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers

Dan Allers (Dec 20, 2023 12:15 EST)

Dan Allers, Mayor

ATTEST:

Amy Baker

AMY BAKER (Dec 28, 2023 13:26 EST)

Amy Baker, Town Clerk

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

Nancy Stuparich

Nancy Stuparich (Dec 27, 2023 13:58 EST)

Vose Law Firm, LLP, Town Attorney

EXHIBITS

Exhibit A – Amended Sec. 34-3238

This Ordinance was filed in the Office of the Town Clerk on this 18th day of December 2023.

Sec. 34-3238. - Post-disaster buildback.

Owners of buildings or groups of buildings that exceed the density, intensity, or height limits for new buildings and that are damaged or destroyed by a ~~natural~~ disaster, including fire, tropical storms, floods, and hurricanes, shall be permitted to replace those buildings at up to their pre-disaster ~~existing~~ lawful density, intensity, and/or height in accordance with Policy 4-D-1 of the Fort Myers Beach Comprehensive Plan.

- (1) *Less than 50 percent damage.* If the cost to repair the damaged building is less than 50 percent of the building's value and the repair is thus not a "substantial improvement" as that term is defined in § 6-405 of this LDC, then the following rules shall apply:
 - a. The repairs may be made without bringing the building into full compliance with the requirements of this code for building size, dimension, location on the lot, number of dwelling units or guest units, building type, or compliance with floodplain regulations.
 - b. The repairs may not physically enlarge the building either laterally or vertically, with the following potential exception:
 1. During the repair process, owners may wish to elevate lawfully existing dwelling units or guest units that do not comply with the floodplain regulations in ch. 6 of this code.
 2. To encourage this elevation, the director may administratively modify setbacks, open space, buffer, or height requirements to the minimum extent that would accommodate rebuilding the units in conformance with ch. 6 of this LDC up to their existing interior square footage, as computed in accordance with subsections (2)d.1. or e.1 of this section.
 3. However, if the combined cost to repair the damage and elevate the units exceeds 50 percent of the building's value, then all provisions of subsection (2) of this section will apply.
 - c. All repairs must comply with all current building, life safety, and accessibility codes.
- (2) *More than 50 percent damage.* If the cost to repair or rebuild the damaged building is more than 50 percent of the building's value and is thus a "substantial improvement" as that term is defined in § 6-405 of this LDC, then the following rules shall apply:
 - a. The building must meet the floodplain regulations for new buildings, as provided in article IV of ch. 6 of this LDC.
 - b. The building must meet the coastal construction requirements that apply to new structures and portions thereof, as provided in article III of ch. 6 of this LDC and in state regulations. Due to these requirements, habitable major structures and most minor structures that are damaged by more than 50 percent must be rebuilt landward of the 1978 coastal construction control line.
 - c. The building must comply with all current building, life safety, and accessibility codes.
 - d. A property owner wishing to exceed the square footage limitations contained within the post-disaster buildback regulations, may be eligible to request additional square footage through a Commercial Planned Development or a Residential Planned Development.
 - d. *Residential buildings.* A rebuilt residential building may exceed the density limits for new buildings on vacant land but cannot exceed the legally documented number of dwelling units in the building immediately before the natural disaster.
 1. ~~All dwelling units legally existing prior to the natural disaster may be rebuilt, provided the total interior square footage of the rebuilt dwelling units does not exceed the interior square footage of the previous dwelling units. For purposes of this subsection, interior square footage excludes hallways, stair towers, elevators, open balconies, underbuilding parking, and similar common or non-air conditioned.~~

1. The total interior square footage above base flood elevation of the reconstructed building may not exceed the square footage of the total under roof square footage of the previous structure. The square footage under roof means the area within the perimeter of the roof, multiplied by the number of stories that existed prior to the disaster, including stories below flood elevation (See Fig. 34-35)

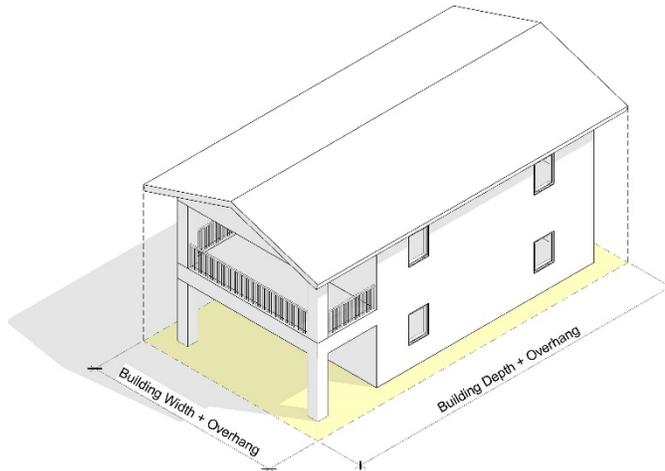


Fig. 34-35 Illustrates the area that is counted toward the total under roof square footage, as referenced in 34-3238.d.1. above.

2. At the owner's option, this same square footage can be used for fewer but larger dwelling units.
 3. Also at the owner's option, the number of dwelling units and the square footage of the new building may be determined by this code's current regulations for new buildings on the same site instead of using either the pre-disaster or post-disaster buildback regulations.
 4. The number of bedrooms may not exceed the legally documented number of bedrooms in the dwelling unit immediately before the natural disaster. The number of full bathrooms may only be increased to equal the number of bedrooms in the structure.
 - (a) A property owner may request an increase in the number of bedrooms and bathrooms, through the special exception process.
 5. Once additional square footage is added to the structure for post-disaster buildback, no additional below flood elevation square footage may be added for future disaster rebuilds.
- e. *Hotels/motels.* A rebuilt hotel/motel may exceed the ~~intensity-equivalency factor multiplier~~ limits for new hotel/motel buildings ~~on vacant land~~, but cannot exceed the documented ~~number of lawful guest units~~ square footage within the building footprint immediately before the natural disaster.
- ~~1. All guest units lawfully existing prior to the natural disaster may be rebuilt, provided the total interior square footage of the rebuilt guest units does not exceed the interior square footage of the previous guest units. However, interior square footage in the new building may be increased by 30 square feet for each bathroom to reflect current code requirements for larger bathrooms, and any lawfully existing guest units that are smaller than the minimum sizes required by this code may be enlarged to meet the minimum size requirements. For purposes of this subsection, interior square footage excludes hallways, stair towers, elevators, open balconies, underbuilding parking, and similar common or non-air conditioned space.~~
 - ~~2. At the owner's option, this same square footage can be used for fewer but larger guest units.~~

- ~~3. Also at the owner's option, the number of guest units and the square footage of the new building may be determined by this code's current regulations for new hotel/motel buildings on the same site instead of using either the pre-disaster or post-disaster buildback regulations.~~
 1. The total interior square footage above base flood elevation of the reconstructed building may not exceed the square footage of the total under roof square footage of the previous structure. The square footage under roof means the area within the perimeter of the roof, multiplied by the number of stories that existed prior to the disaster, including stories below flood elevation.
 - (a) A property owner may request up to 30 square feet of additional space per room, through the special exception process.
 2. If the additional square footage gained does not provide adequate space to meet building or ADA codes, additional space may be allocated for that purpose, with designs illustrating the square footage needed.
 3. The owner may choose to reduce the number of rooms. The owner may request an increase in the number of guest units through a special exception but may not create more guest unit space than defined in Sec.34-3238(2) e.1.
 4. This section may not be used to increase the number of guest units in a hotel that previously had 49 rooms or less to more than 49 rooms.
- f. *All buildings.* The new building must comply with all other zoning and development regulations except where compliance with such regulations would preclude reconstruction otherwise intended by Policy 4-D-1 of the comprehensive plan. Specifically:
1. If the lowest floor of the rebuilt building must be elevated higher than the damaged or destroyed building to comply with current floodplain or coastal regulations, then the total height of the rebuilt building can be increased by the same amount.
 2. If a rebuilt building must be set back further from any property lines due to current requirements of this code, then the volume of the building so reduced can be rebuilt elsewhere on the site, including one or more extra stories on the building if in the opinion of the director there is no other suitable location to replace the volume.
 3. If current open space, parking, landscaping or buffer regulations cannot be met, those requirements may be ~~waived~~ reduced through a written determination ~~administratively~~ by the director.