

ORDINANCE 23-15

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTION 6-325, "OWNER-BUILDER EXEMPTION", OF DIVISION 5, "CONTRACTOR LICENSING", OF ARTICLE II, "BUILDING CODES", OF CHAPTER 6, "MAINTENANCE CODES, BUILDING CODES AND COASTAL REGULATIONS", OF THE CODE OF THE TOWN OF FORT MYERS BEACH, TO CLARIFY WHO IS ELIGIBLE FOR AN OWNER-BUILDER PERMIT, PROVIDING FOR CONFLICTS OF LAW; SCRIVENER'S ERRORS; SEVERABILITY; 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 clarification is necessary as to the identity of persons who are permitted to qualify for an owner-builder building permit; and

WHEREAS, the Town finds that it is in the best interests of the health, safety, and welfare of the Town to make revisions to Section 6-325, "Owner-Builder Exemption". Additions to existing text are shown by underlining, and deletions are shown as ~~strikethroughs~~.

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 and correct, and incorporated herein by this reference and are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. Section 6-325, "Owner-Builder Exemption", of Division 5, "Contractor Licensing", of Article II, "Building Codes", of Chapter 6, "Maintenance Codes, Building Codes and Coastal Regulations", of the Code of the Town of Fort Myers Beach is hereby revised to read as follows:

Sec. 6-235. - Owner-builder exemption.

- (a) Owners of property may act as their own contractor and provide direct on-site supervision themselves of all work not performed by licensed contractors when building or improving:
 - (1) One-family or two-family residences on the owner's property for the occupancy or use of the owners and not offered for sale or lease; and
 - (2) Commercial buildings on the owner's property at a cost not to exceed \$25,000.00 for the occupancy or use of the owners and not offered for sale or lease.

- (b) If, within one year of completion, an owner-builder sells, leases, or offers for sale or lease any building constructed or improved under an owner-builder exemption, the town can presume the construction or improvement was undertaken for the purposes of sale or lease.
- (c) This section does not exempt any person the owner-builder employs, or has a contract with, to act in the capacity of a contractor. The owner cannot delegate the owner's responsibility to directly supervise all work to any other person unless that person is duly licensed in accordance with this code and the work performed is within the scope of that contractor's license.
- (d) To qualify for exemption under this section, an owner cannot be a corporation, company or partnership or trust and must personally appear and sign the building permit application. Similarly to a person through a trust who is allowed to qualify for homestead tax exemption under Sec. 196.041 (2) Fla. Stat., a person who has a possessory right in the person's residence through a trust, which interest is an "equitable title to real estate," as that term is employed in s. 6, Art. VII of the Florida Constitution, may also qualify for an owner-builder permit as to that person's residence. Otherwise, a trust would not be permitted to qualify for an owner-builder permit. The owner must also execute a disclosure statement prepared by the building official acknowledging compliance with all applicable regulations.

Section 3. Whenever the requirements or provisions of this Ordinance conflict with the requirements or provisions of any other lawfully adopted Town Code provision, ordinance, or statute, this Ordinance shall apply.

Section 4. 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 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 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 Vice Mayor Atterholt and seconded by Council Member Veach, 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 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 13:43 EDT)

Dan Allers, Mayor

ATTEST:

Amy Baker

AMY BAKER (Dec 8, 2023 12:48 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:**

Becky Vose

Becky Vose (Dec 8, 2023 09:55 EST)

Gretchen R. H. "Becky" Vose, Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this 24th day of October 2023.