

ORDINANCE 24-04

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND RESTATING ORDINANCE 23-05 TO PERMIT TEMPORARY USES IN CERTAIN ZONING DISTRICTS IN RESPONSE TO, AND AS A PART OF THE TOWN'S RECOVERY EFFORTS FOLLOWING A NATURAL DISASTER OR OTHER EMERGENCY SITUATION: 1) BY A GOVERNMENTAL ENTITY FOR THE BENEFIT OF THE PUBLIC; 2) FOR RESIDENTIAL MANUFACTURED HOMES, MOBILE HOMES, MOTOR HOMES, RECREATIONAL VEHICLES OR OTHER TEMPORARY DWELLINGS FOR RESIDENTIAL PURPOSES; AND 3) FOR MOVEABLE COMMERCIAL STRUCTURES FOR THE DELIVERY AND SALE OF NEEDED GOODS AND SERVICES TO THE PUBLIC; PROVIDING FOR CONFLICT OF LAW, SCRIVENER'S ERRORS, SEVERABILITY, 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 recognizes that recovery and redevelopment of the Town, following a natural disaster, such as Hurricane Ian creates a need for temporary uses in areas that were not damaged in order to provide goods and services to the public

WHEREAS, the Town adopted Ordinance 23-05 following Hurricane Ian and desires to revise the Ordinance in order to clarify its intent at the time of adoption, facilitate continued recovery and have more detailed regulations in place in the event of a future natural disaster or emergency; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on April 9, 2024, at time 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 6 to 0, to recommend approval of this Ordinance; and

WHEREAS, on April 15, 2024, the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons to amend and restate Ordinance 23-05 as provided herein; and

WHEREAS, a Business Impact Estimate was prepared and posted on the Town' website on the 18th day of April 2024, as required by Section 166.041(4), Florida Statutes; and

WHEREAS, an advertisement of the public hearing for adoption of the Ordinance was published in The News-Press on the 18th day of April 2024, which is 10 days prior to the second reading of the proposed Ordinance as required by Section 166.041; and

WHEREAS, on the 6th day of May 2024, the Town Council held a second reading of the Ordinance; at which time the Town Council gave full and complete consideration to the recommendations of staff and the LPA, and the testimony of all interested persons; and

WHEREAS, the Town finds that it is in the best interests of the health, safety, and welfare of the Town's business owners, residents, and visitors to allow for the temporary use of property in certain zoning districts for residential, commercial and governmental purposes.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS: ¹

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. The Town Council determines that adoption of the following regulations is in the best interests of the health, safety, and welfare of the Town's business owners, residents, and visitors, which regulations shall be amended and restated as follows:

~~**Temporary Placement of Emergency Uses, Manufactured Homes, Mobile Homes, Motor Homes, Recreational Vehicles
Other Temporary Residential Dwelling or Temporary Moveable Commercial Units**~~

- ~~(1) — An emergency governmental use, manufactured home, mobile home, motor home, recreational vehicle, or other temporary unit, may be permitted on a limited basis by the issuance of a temporary placement permit (TPP) by the Town.~~

- ~~(2) — Unless otherwise provided in this Ordinance, an emergency governmental use, manufactured home, mobile home, motor home, recreational vehicle, or other temporary unit shall be removed from the site within thirty (30) days after issuance of a certificate of occupancy or certificate of use associated with the approved permit, or at the time of the expiration of the TPP, whichever is earlier. TPP shall not be used for the purpose of placing and operating a Short Term Rental.~~

^{1/} Additions to existing text are shown by underline, changes to existing text on second reading are shown by double underline, and deletions are shown as strikethrough.

~~A. A TPP may be granted as indicated below:~~

- ~~(i) Within any Commercial or Institutional Zoning District, a TPP may be issued for the purpose of providing an emergency governmental use to provide an essential governmental service adversely impacted due to adverse weather or other acts of God.~~

- ~~(ii) Within any Commercial, Institutional or Residential Zoning District, a TPP may be issued for the purposes of placing a manufactured home, mobile home, motor home, recreational vehicle, or other temporary unit for displaced owner-occupants or tenants if their existing living unit(s) has/have become uninhabitable due to adverse weather damage or other acts of God. Habitability of the existing residential unit(s) shall be determined by an inspection by the City building official, Florida certified building inspector, architect, or engineer, and subject to the following requirements and restrictions:~~
 - ~~(a) No more than one (1) manufactured home, mobile home, motor home, recreational vehicle, or other temporary unit shall be allowed per living unit, for single family and two-family homes. Additional units may only be allowed with approval of a waiver by the Town Council.~~
 - ~~(b) The TPP shall only be allowed while the damaged living unit is uninhabitable and in the process of repair or a replacement living unit is in the process of being constructed.~~
 - ~~(c) Placement of a manufactured home, mobile home, motor home, recreational vehicle, or other temporary unit on a site must meet all State requirements for tie-downs. Mobile homes shall be installed by a licensed mobile home contractor and~~

~~in accordance with requirements of Florida Statutes and the Florida Building Code.~~

~~(d) Only verified residents of Fort Myers Beach may be granted a TPP.~~

~~(iii) The TPP shall be issued in increments of six (6) months by review of the Town and shall not be issued for a period exceeding eighteen (18) months from the date of this ordinance adoption. The Town may, however, grant extensions to a TPP permit exceeding eighteen (18) months if a TPP permit holder demonstrates that a significant hardship exists. The Town Manager or designee shall decide if a hardship exists based upon evidence provided by the permit holder that they have exercised all due diligence in obtaining permits either for repair or replacement of the affected structure. The Town Manager may consider whether the applicant has had difficulties in completing insurance claims, obtaining an architect or engineer, obtaining construction materials, or obtaining a contractor, and if relevant, whether they have had difficulty in obtaining grants or loans to assist in repair or replacement of the affected structure.~~

~~(iv) The holder of the TPP shall apply for a building permit for the damaged or destroyed dwelling unit no later than six (6) months after the date of this ordinance adoption. The Town Manager or designee may, however, grant extensions to this deadline requirement based upon evidence provided by the property owner that they have exercised all due diligence in obtaining permits either for repair or replacement of the affected structure. The Town Manager may consider whether the applicant has had difficulties in completing insurance claims, obtaining an architect or engineer, obtaining construction materials, or obtaining a contractor, and if relevant, whether they have had difficulty in~~

~~obtaining grants or loans to assist in repair or replacement of the affected structure.~~

~~(v) Noncompliance may result in revocation of the TPP.~~

~~(vi) The occupants of the manufactured home, mobile home, motor home, recreational vehicle, or other temporary residential unit must comply with all mandatory hurricane evacuation requirements. Failure to do so may result in the revocation of the TPP.~~

~~3. Submission Requirements:~~

~~A. A completed TPP application; and~~

~~B. Map or other documentation indicating the proposed location of the manufactured home, mobile home, motor home, recreational vehicle, or other temporary residential unit; and~~

~~C. State Department of Health, State Department of Environmental Protection, and Town permit(s) authorizing the connection of the manufactured home, mobile home, motor home, recreational vehicle, or other temporary residential unit to an on-site or existing community wastewater treatment system.~~

~~4. An appeal of any decision made under this Ordinance may be made pursuant to the provisions found in Section 34-86 of the Town's Land Development Code.~~

Temporary Governmental, Residential (Manufactured Homes, Mobile Homes, Motor Homes, Recreational Vehicles Other Temporary Residential Dwelling) or Moveable Commercial Uses following Natural Disasters or Other Emergencies

(1) Governmental, residential (manufactured home, mobile home, motor home, recreational vehicle, or other temporary unit), or moveable commercial uses may be permitted on a limited basis upon adoption of a Resolution by the Town Council announcing the availability of

emergency temporary placement permits (ETPP's) following a natural disaster or other emergency and submission of an application.

- (2) Unless otherwise provided in this Ordinance or in a Resolution that is adopted hereafter by the town council, any governmental, residential (manufactured home, mobile home, motor home, recreational vehicle, or other temporary residential dwelling) or moveable commercial use shall be removed from the site 1) no later than thirty (30) days after issuance of a certificate of occupancy or certificate of use associated with an approved permit; 2) at the time of the expiration of the ETPP as provided herein or as provided in a resolution; or 3) at the time of expiration of any local or state declaration of emergency or law, whichever is earlier. The ETPP shall not be used for the purpose of short-term commercial or residential rental for new businesses or tenants, who did not otherwise have a business or residence in the town prior to the natural disaster or emergency.

A. An ETPP may be granted as indicated below:

- (vii) **Governmental Use.** Within any Commercial or Institutional Zoning District, an ETPP may be issued for the purpose of providing an emergency governmental use to provide an essential governmental services or aid to the public impacted due to a natural disaster, or emergency, or other acts of God.
- (viii) **Residential Use.** Within any Commercial, Institutional or Residential Zoning District, an ETPP may be issued for the purposes of placing a manufactured home, mobile home, motor home, recreational vehicle, or other temporary unit for displaced owner-occupants or tenants if their existing living unit(s) has/have become uninhabitable due to adverse weather damage or other acts of God. Habitability of the existing residential unit(s) shall be determined by an inspection by the City building official, Florida certified building inspector, architect, or engineer, and subject to the following requirements and restrictions:

- (e) No more than one (1) manufactured home, mobile home, motor home, recreational vehicle, or other temporary unit shall be allowed per living unit, for single family and two-family homes. Additional units may only be allowed with approval of a waiver by the Town Council.
- (f) The ETPP shall only be allowed while the damaged living unit is uninhabitable and in the process of repair or a replacement living unit is in the process of being constructed.
- (g) Placement of a manufactured home, mobile home, motor home, recreational vehicle, or other temporary unit on a site must meet all State requirements for tie-downs. Mobile homes shall be installed by a licensed mobile home contractor and in accordance with requirements of Florida Statutes and the Florida Building Code.
- (h) Only verified residents of Fort Myers Beach may be granted an ETPP.
- (ix) **Commercial Uses.** Within Commercial zoning districts, a ETPP may be issued to an owner or lessee of the property to operate a business that was existing on the property prior to the natural disaster or emergency or a similar new business. A new business or change in use dissimilar to the use that was in existence prior to the natural disaster or emergency, by an owner or lessee of the property, is not eligible for an ETPP.
 - 1. A permit applicant for a commercial use must have a Lee County Tax-ID.
 - 2. Vehicles and structures placed on commercial lots must be setback by no less

than the width of the vehicle/structure (i.e. track width) and may not protrude into the right-of-way.

3. Food Service Kitchens are permitted on their brick-and-mortar commercial site that is zoned for that type of activity.

4. Structures which are not on wheels must be tied-down on a stabilized surface or secured with appropriate helical piles, or other method to resist hydro-dynamic forces.

5. Vehicles must be on wheels and be able to quickly disconnect utility connections and be towed by a light utility vehicle.

6. No more than one commercial use may occur on the property unless more than one use existed on the property prior to the natural disaster or emergency.

- (x) **Review Period/Extension.** All approved ETPPs shall be issued in increments of six (6) months subject to review by the Town and shall not be issued for a period exceeding eighteen (18) months from the date of this ordinance adoption. The Town may, however, grant extensions to a ETPP permit exceeding eighteen (18) months if a ETPP permit holder demonstrates that a significant hardship exists. The Town Manager or designee shall decide if a hardship exists based upon evidence provided by the permit holder that they have exercised all due diligence in obtaining permits either for repair or replacement of the affected structure. The Town Manager may consider whether the applicant has had difficulties in completing insurance claims, obtaining an architect or engineer, obtaining construction materials, or obtaining a contractor, and if relevant, whether they have had difficulty in obtaining grants or loans to assist in repair or replacement of the affected structure, other

identified extenuating circumstances, or state of emergency extension or state law.

(xi)

Noncompliance. Noncompliance with regulations contained herein, or any other applicable federal law/regulations, state law or town code may result in revocation of the ETPP, including but not limited to noise, debris removal, fire safety, lighting, parking in the right-of-way etc. Any requested deviation of a requirement contained in the existing town code shall require approval by the town council occupants of any manufactured home, mobile home, motor home, recreational vehicle, or other temporary residential unit and owners and lessees of commercial properties must comply with all mandatory federal, state and local hurricane evacuation requirements. Failure to do so may result in the revocation of the ETPP or code enforcement action.

3. Submission Requirements:

- A. A completed ETPP application providing details of the specific desired temporary use and specifications; and
- B. Map or other documentation indicating the proposed location of the manufactured home, mobile home, motor home, recreational vehicle, or other temporary residential unit or commercial use; and
- C. State Department of Health, State Department of Environmental Protection, and Town permit(s) authorizing the connection of the manufactured home, mobile home, motor home, recreational vehicle, or other temporary residential unit or commercial structure to an on-site or existing community wastewater treatment system and power source. Commercial structures must obtain a Trade permit from the Building Department

4. An ETPP may include additional conditions of approval unique to the request. An appeal of any administrative

decision made under this Ordinance may be made pursuant to the provisions found in Section 34-86 of the Town's Land Development Code.

5. This ordinance shall apply to ETPPs issued subsequent to the date of its adoption.

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.

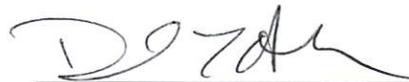
Section 6. This Ordinance shall become effective upon adoption by the Town Council.

The foregoing Ordinance was adopted by the Town Council upon a motion by Mayor Allers and seconded Council Member Woodson, 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
Scott Safford, Council Member	Aye
Karen Woodson, Council Member	Aye

ADOPTED this 6th day of May 2024, by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH



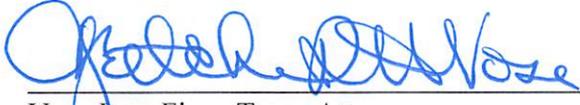
Dan Allers, Mayor

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:**


Vose Law Firm, Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this 3 day of June 2024.