

ORDINANCE NO. 24-13

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING DIVISION 3 “UNSAFE BUILDING ABATEMENT CODE” OF ARTICLE I “PROPERTY MAINTENANCE CODES” OF CHAPTER 6 “MAINTENANCE CODES, BUILDING CODES AND COASTAL REGULATIONS” OF THE CODE OF ORDINANCES OF FORT MYERS BEACH, FLORIDA, TO CLARIFY EXISTING PROVISIONS RELATED TO NOTICE AND EXCEPTIONS; TO AUTHORIZE NOTIFICATION BY CONSTRUCTIVE SERVICE; TO INCLUDE ATTORNEY’S FEES AND COSTS AND NOTICE EXPENSES TO THE DEMOLITION LIEN AGAINST THE PROPERTY ON WHICH THE UNSAFE BUILDING WAS LOCATED, AND TO AUTHORIZE USE OF THE UNIFORM METHOD OF COLLECTION FOR COLLECTION OF LIENS; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER 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, on September 28, 2022, residences and businesses in the Town of Fort Myers Beach were destroyed by Hurricane Ian, resulting in the loss of lives, the displacement of lives and catastrophic financial losses; and

WHEREAS, although the Town, residents and businesses have engaged in recovery efforts to repair and rebuild structures in existence prior to Hurricane Ian, the Building Official has identified structures that have sustained significant damage and remain in an unsafe condition; and

WHEREAS, the Town’s “Unsafe Building Abatement Code” incorporates the 1985 Standard Unsafe Building Abatement Code to provide a procedure for the Building Official to follow if a structure is determined to be unsafe and requires demolition, with exceptions; and

WHEREAS, the Town desires to clarify existing language and include additional notice provisions in the existing “Unsafe Building Abatement Code” in the event a structure is determined to be unsafe and requires demolition; and

WHEREAS, because the Town desires to avoid burdening other property owners in the Town with the costs associated with the demolition of unsafe properties, the Town deems it appropriate to assess reasonable attorney’s fees and costs associated with the enforcement of the Unsafe Building Abatement Code and place a lien to cover such attorney’s fees and costs against

the property on which the unsafe building was located, in addition to the costs of all demolition and notice expenses related to such action by the Town; and

WHEREAS, to avoid unnecessary collection costs, the Town desires to also include and specifically authorize the use of the Uniform Method of Collection for collection of any unpaid demolition costs and related attorney's fees and costs and notice expenses related to such action by the Town; and

WHEREAS, on the 6th day of May 2024, the Town Council held a first reading of the Ordinance and gave full and complete consideration to the request of the proposed ordinance to amend the Unsafe Building Abatement Code, the recommendation of staff, the documents in the record, and the testimony of all interested persons; and

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

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

WHEREAS, on the 3rd day of June 2024, the Town Council held a second reading of the Ordinance; and

WHEREAS, the Town Council determined that adoption of the Ordinance as provided herein 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 AS FOLLOWS:

Section 1. That 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. That Division 3 "Unsafe Building Abatement Code" of Article I "Property Maintenance Codes" of Chapter 6 "Maintenance Codes, Building Codes and Coastal Regulations" of the Code of Ordinances of Fort Myers Beach, Florida, is hereby amended to read as follows:

DIVISION 3. - UNSAFE BUILDING ABATEMENT CODE

Sec. 6-36. - Adoption; amendments.

The following chapters and sections of the 1985 Standard Unsafe Building Abatement Code, as published by Southern Building Code Congress International, Inc., 900 Montclair Road, Birmingham, Alabama 35213-1206, ~~are~~ is hereby adopted by reference and made part of this article, with the exceptions and revisions set forth as follows: in Section 6-37.

Sec. 6-37. – Exceptions and revisions.

a) Section 105 of Chapter I, Administration- is hereby amended as follows:

Section 105, relating to the board of adjustment and appeals, is deleted, and replaced by the procedures set forth for the delegation of authority to Lee County's Construction Board of Adjustment and Appeals found in division 2 of article II of this chapter. Any reference to the board of adjustment and appeal as may be in other Chapters shall be amended as provided herein by reference.

Chapter II, Definitions.

b) Sections 302.1.1(4) and 302.1.2-302.1.4 in Chapter III, Inspection and Notice of Noncompliance- are hereby amended as follows:

302.1.1(4) A statement advising that any person having any legal interest in the property may appeal the notice by the Building Official to the Lee County Board of Adjustment and Appeals; and that such appeal shall be in writing ~~in the form specified in 401~~ and shall be filed with the Building Official within 30 days from the date of the notice in accordance with Division 2 of Article II of Chapter 6 of the Fort Myers Beach Code of Ordinances and that failure to appeal in the time specified will constitute a waiver of all rights to an administrative hearing.

302.1.2 The notice and all attachments thereto shall be served upon the property owner of record as identified on the records of the Lee County Property Appraiser and posted on the property, ~~in a conspicuous location. A copy of the notice and all attachments thereto shall also be served on any person determined from official public records to have a legal interest in the property.~~ Failure of the building official to serve any person or entity herein required to be served other than the owner of record shall not invalidate any proceedings hereunder nor shall it relieve any other person or entity served from any obligation imposed on that person or entity ~~him~~.

302.1.3 The notice shall be served either personally by hand delivery by Town staff or a process server or by certified mail, postage prepaid, return receipt requested, to ~~each person at the address as it appears on the official public records. If addresses are not available on any person required to be served the notice, the notice~~ the owner of record at the address shown for the owner on the Lee County Property Appraiser's website. Notice shall also be addressed to such person shall be mailed to the address of the building or structure involved in the proceedings. The failure of any person or entity to receive notice, either actual or constructive, other than the owner of record, shall not invalidate any proceedings under this section. Service by certified or registered mail as herein described shall be effective on the date the notice was received as indicated on the return receipt.

302.1.4 Proof of service of the notice shall be by written affidavit ~~declaration~~ indicating the date, time and manner in which service was made, ~~and signed by the person served~~

~~on by the return receipt.~~ In the event service is not perfected by certified mailing or hand delivery, the property owner shall be subject to constructive service using the methods as provided in Chapter 49, Florida Statutes.

~~Chapter IV, Appeals.~~

~~Chapter V, Rules of Procedure for Hearing Appeals.~~

c) Chapter VI, Implementation: is hereby amended as follows:

601.2.2 Subsequent to posting the building, the building official may cause the building to be repaired to the extent required to render it safe or if the notice required demolition, to cause the building or structure to be demolished and all debris removed from the premise. The cost of repair or demolition, and all reasonable attorney's fees and costs, and costs of notices related thereto, and all collection costs and expenses and the administrative fee as provided hereinafter, shall constitute a lien on the property and shall be collected in a manner provided by law.

d) Chapter VII, Recovery of Cost of Repair or Demolition: is hereby amended as follows:

~~Exception:~~ If the building official proceeds to demolish the building or structure as set forth herein, the town council shall, by proper resolution, assess the entire cost of such demolition and removal, and all reasonable attorney's fees and costs, and costs of notices related thereto, and all collection costs and expenses plus an administrative fee in an amount as adopted by the town council by resolution, against the real property upon which such cost and fee was incurred, which assessment, when made, shall constitute a lien upon the property superior to all others except taxes. The lien shall be filed in the public land records of the county. The resolution of assessment and lien must indicate the nature of the assessment and lien, the lien amount, and an accurate description of the property affected. The lien becomes effective on the date of filing such notice of lien and shall bear interest from such date at the rate of ten percent per annum until paid. ~~If the resulting lien remains unpaid is not satisfied within two years after the date it is filed, then~~ the town may:

- (1) File suit to foreclose on the lien property as provided by law in suits to foreclose mortgages; or
- (2) Follow any other lawful process or procedure available for enforcement or collection of the lien, including but not limited to the Uniform Method of Collection in accordance with any general law of the state relating to the enforcement or collection of municipal liens.

Secs. ~~6-378~~—6-40. - Reserved.

Section 3. That the town council intends that the provisions of this ordinance be made a part of the Fort Myers Beach, Florida, 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, word, 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 Council Member King and seconded by Council Member Woodson, and upon being put on a roll call vote, the results were as follows:

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

ADOPTED this 3rd day of June 2024 by the town council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers
Dan Allers (Jun 5, 2024 16:14 EDT)
Dan Allers, Mayor

ATTEST:

Amy Baker
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 (Jun 5, 2024 16:22 EDT)
Vose Law Firm, Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this 5th day of June 2024.