

**ORDINANCE NO. 24-06**

**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING SECTION 34-232 “REQUIRED HEARINGS” OF DIVISION 5 “PUBLIC HEARINGS AND REVIEW” OF ARTICLE II “ZONING PROCEDURES” OF CHAPTER 34 “ZONING DISTRICTS, DESIGN STANDARDS AND NONCONFORMITIES” TO REQUIRE ONLY ONE PUBLIC HEARING BEFORE THE LOCAL PLANNING AGENCY (“LPA”) FOR VARIANCES, EXTENSIONS, AND SATISFACTION OF CONDITIONS FOR PREVIOUSLY APPROVED LAND USE APPROVALS IF THE DECISION BY THE LPA IS UNANIMOUS AND THE TOWN CLERK DOES NOT RECEIVE A REQUEST BY ANYONE FOR AN ADDITIONAL HEARING BEFORE THE TOWN COUNCIL WITHIN 10 BUSINESS DAYS AFTER THE LPA DECISION; A PUBLIC HEARING BEFORE THE TOWN COUNCIL IS REQUIRED FOR VARIANCES, EXTENSIONS, OR SATISFACTION OF CONDITIONS IF THE DECISION BY THE LPA IS NOT UNANIMOUS OR IF ANYONE REQUESTS SUCH HEARING WITHIN 10 BUSINESS DAYS AFTER THE LPA DECISION; 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**, Section 34-232 of the Town’s Land Development Code currently requires 2 public hearings for variance applications, one before the local planning agency (“LPA”) and one before the town council; and

**WHEREAS**, approved land use resolutions may also contain extension requirements and other conditions of approval; and

**WHEREAS**, in the recent past a number of owner-initiated variances and other land use requests for extensions or satisfaction of previously required conditions of approval have been unanimously approved by the LPA for consistency with the Town of Fort Myers Beach Comprehensive Plan and Land Development Code with no opposition from the public or adjacent property owners; and

**WHEREAS**, the time and expense of requiring a second public hearing before the town council for owner initiated variances and other requests for extension of approvals or removal of

satisfied conditions is in conflict with the town’s efforts to rebuild the community as expeditiously as possible; and

**WHEREAS**, notwithstanding the need to expedite the rebuilding of the town, there may be situations where issues arise unexpectedly during the LPA meeting related to variance, extension or satisfaction requests, which may require further evaluation by the town council; and

**WHEREAS**, a public hearing of this Ordinance was held before the LPA on the 9th day of April, 2024, at which time the LPA gave full and complete consideration of the proposed ordinance change, recommendations by staff, the documents in the record, and the testimony of all interested persons, and made a finding of consistency with the Fort Myers Beach Comprehensive Plan and Land Development Code; and

**WHEREAS**, the LPA thereafter voted 6 to 0, with one member absent, to recommend approval of this Ordinance amending the referenced section of the Land Development Code to the town council; and

**WHEREAS**, on the 15th day of April, 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 Section 34-232 of the Land Development Code, the recommendation of the local planning agency, 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 on the 18<sup>th</sup> 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 18<sup>th</sup> day of April 2024, which is 10 days prior to the second reading of the proposed Ordinance as required by Section 166.041, Florida Statutes; and

**WHEREAS**, on the 6<sup>th</sup> day of May 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 Section 34-232 “Required Hearings” of Division 5 “Public Hearings and Review” of Article II “Zoning Procedures” of Chapter 34 “Zoning Districts, Design Standards and Nonconformities is hereby amended as follows:

**Section 34-232 – Required hearings.**

(a) *Amendment or adoption of land use ordinances.*

(1) Any proposed amendment to this chapter or to any land use ordinance, or adoption of any new land use ordinance, shall be enacted pursuant to the requirements set forth in F.S. § 166.041.

(2) Prior to a final required hearing by the town council, the local planning agency shall review the amendment at a public hearing.

(b) *Owner-initiated requests.* Owner-initiated requests for ~~rezonings, variances~~, special exceptions, and developments of regional impact require one public hearing before the local planning agency and one public hearing before the town council.

(c) Owner-initiated requests. Owner-initiated requests for rezonings and development agreements require one public hearing before the local planning agency and two public hearings before the town council.

(d) Owner-initiated requests for variances, or required reviews to extend or to provide evidence of satisfaction of conditions contained in prior land use approvals, that are:

1) approved by a unanimous vote of the local planning agency members who are eligible to vote, and

2) not subject to a request for an additional public hearing before the town council made by ~~anyone~~ any member of the public that is received by the town clerk within 10 business days after the date of the local planning agency decision, excluding holidays.

only require one public hearing before the local planning agency, and the local planning agency decision is final agency action.

If the decision by the local planning agency is not unanimous or if there is a timely request made for an additional public hearing before the town council by a member of the public, the owner-initiated request for variances or required reviews to extend or to provide evidence of satisfaction of conditions contained in prior land use approvals, shall require an additional public hearing before the town council.

~~(e)~~(e) *Town-initiated requests.* Town-initiated requests for rezonings, variances, special exceptions, and developments of regional impact require one public hearing before the local planning agency and:

(1) Applications covering less than ten abutting acres of land will require a single public hearing before the town council.

(2) Applications covering more than ten abutting acres of land will require two public hearings before the town council in accordance with F.S. § 166.041.

**Section 3.** That the town council intends that the provisions of this ordinance be made a part of the Fort Myers Beach Land Development Code, 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 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 forgoing Ordinance was adopted by the town council upon a motion by Vice Mayor Atterholt and seconded by Council Member King, and upon being put on a roll call vote, the results was 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 6<sup>th</sup> day of May 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

**TOWN OF FORT MYERS BEACH**

*Dan Allers*  
Dan Allers (May 10, 2024 14:35 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 (May 10, 2024 17:02 EDT)  
Vose Law Firm, Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this 10<sup>th</sup> day of May 2024.