

EMERGENCY ORDINANCE NO. 24-29

AN EMERGENCY ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING 1) DIVISION 3 “UNSAFE BUILDING ABATEMENT CODE” OF ARTICLE I “PROPERTY MAINTENANCE CODES”; AND 2) DIVISION 2 “LEE COUNTY’S BOARDS OF ADJUSTMENT AND APPEALS” OF ARTICLE II “BUILDING CODES” OF CHAPTER 6 “MAINTENANCE CODES, BUILDING CODES AND COASTAL REGULATIONS” OF THE LAND DEVELOPMENT CODE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, TO AMEND EXISTING PROVISIONS RELATED TO APPEALS OF THE BUILDING OFFICIAL’S DECISIONS; DIVESTING THE LEE COUNTY CONSTRUCTION BOARD OF ADJUSTMENT AND APPEALS OF THE RESPONSIBILITY FOR REVIEW OF APPEALS OF THE TOWN BUILDING OFFICIAL’S DECISIONS INCLUDING BUT NOT LIMITED TO DETERMINATION OF AN UNSAFE BUILDING; AUTHORIZING THE TOWN OF FORT MYERS BEACH SPECIAL MAGISTRATES TO HEAR APPEALS OF THE TOWN’S BUILDING OFFICIAL’S DECISIONS; PROVIDING FOR NON-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 166.041(3)(b), Florida Statutes, permits the governing body of a municipality, by a two-thirds vote, to enact an emergency ordinance without complying with the requirements of paragraph (a) of Section 166.041; and

WHEREAS, Section 6-37 “Exceptions and revisions” of the Town’s Land Development Code states that appeals of the Town’s Building Official’s decisions regarding unsafe conditions of structures shall go to the Lee County Board of Adjustment and Appeals; and

WHEREAS, division 2 “Lee County’s Boards of Adjustment and Appeals” of article II “Building Codes” of chapter 6 “Maintenance Codes, Building Codes and Coastal Regulations” of the Town’s Land Development Code establishes an appeals process for review of decisions by the Building Official to be heard by the Lee County Boards of Adjustment and Appeals; and

WHEREAS, subsequent to the Town’s incorporation, the Town and Lee County entered into an Interlocal Agreement which provided that the Lee County Board of Adjustment and Appeals would provide appellate review of the Town’s Building Official’s decisions; and

WHEREAS, the Town has recently become aware that the Interlocal Agreement between the Town and the Lee County related to the Board's appellate review of the Town Building Official's decisions expired in 2017 and there exists an immediate need for a reassignment of this responsibility; and

WHEREAS, in the absence of an opportunity for appellate review, the rights of property owners within the Town are endangered; and

WHEREAS, the Town desires to reassign the responsibility for appellate review of decisions by the Town Building Official from Lee County Board of Adjustment and Appeals to the Town of Fort Myers Beach Special Magistrates via this Emergency Ordinance; and

WHEREAS, adoption of this Emergency Ordinance is in the best interests of the health, safety, welfare, and morals of the Town's residents.

NOW THEREFORE, IT IS HEREBY ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

Section 1. That the above recitals are true and correct, and incorporated herein by this reference.

Section 2. This Emergency Ordinance is adopted to address a situation in the Town of Fort Myers Beach in the interests of the public health, safety, welfare, and morals, and for the following purposes:

- a. To address the fact that currently the interlocal agreement between the Town and Lee County is expired, which eliminates the opportunity for an affected property owner to appeal an adverse decision by the Town's Building Official; and
- b. To ensure that a property owner's rights are not violated, immediate action is needed by the Town to reestablish its appellate review process; and
- c. To provide the Town with time to formally amend section 6-37 of division 3 of article I, and division 2 of article II, of chapter 6 of the Town's Land Development Code with a reassignment of appellate review of the Town's Building Official's decisions from the Lee County Board of Adjustment to the Town of Fort Myers Beach Special Magistrates.

As a result, immediate revisions to section 6-37 "Exceptions and revisions" of Division 3 "Unsafe Building Abatement Code" of Article I "Property Maintenance Codes," and Division 2 "Lee County's Boards of Adjustment and Appeals" of Article II "Building Codes," of Chapter 6 "Maintenance Codes, Building Codes and Coastal Regulations" of the Town's Land Development Code, are needed as set forth herein. These immediate revisions are enacted to avoid any infringement upon property owners' due process rights.

Section 3. That Section 6-37 “Exceptions and revisions” of Division 3 “Unsafe Building Abatement Code” of Article I “Property Maintenance Codes,” is hereby amended as follows:

DIVISION 3. - UNSAFE BUILDING ABATEMENT CODE

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 the Town of Fort Myers Beach Special Magistrates ~~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.

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 Town of Fort Myers Beach Special Magistrates ~~Lee County Board of Adjustment and Appeals~~; and that such appeal shall be in writing 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 as identified on the records of the Lee County Property Appraiser and posted on the property. Failure of the building official to serve any person or entity 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.

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 the owner of record at the address shown for the owner on the Lee County Property Appraiser's website. Notice shall also 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 indicating the date, time and manner in which service was made. 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.

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:

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 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.

Section 4. That Division 2 “Lee County’s Boards of Adjustment and Appeals” of Article II “Building Codes,” of Chapter 6 “Maintenance Codes, Building Codes and Coastal Regulations,” of the Land Development Code of the Town of Fort Myers Beach, Florida, are hereby amended to read as follows:

DIVISION 2. - ~~LEE COUNTY'S BOARDS OF ADJUSTMENT AND APPEALS~~
APPEAL OF DECISIONS BY THE TOWN'S BUILDING OFFICIAL

Sec. 6-71. - Applicability of division.

This division shall include, but not be limited to, any contractor, owner, agent, manufacturer or supplier providing construction services or materials regulated by standard codes enforced by the Town of Fort Myers Beach.

Sec. 6-72. - Intent of division.

The town has adopted various standard codes relating to building, plumbing, mechanical, gas, electrical, unsafe buildings, housing and fire. This division is intended to be construed in conjunction with these codes and identify a process for appeal of a decision by the Town's Building Official.

~~Sec. 6-73. — Boards established; jurisdiction.~~

~~Lee County has established a construction board of adjustment and appeals known as the Lee County Board of Adjustment and Appeals. The purpose of that board is to hear and decide appeals from the decision of the county's building official and fire official or their designees on any of the various standard codes regulated and enforced by the county except the plumbing code and mechanical code. Lee County has also established separate boards of adjustment and appeals to arbitrate matters involving the plumbing code and mechanical code.~~

~~Sec. 6-74. — Delegation of authority to Lee County's Boards of Adjustment and Appeals.~~

~~(a) The Town of Fort Myers Beach hereby delegates to each of the three Lee County Boards of Adjustment and Appeals the authority to make decisions on appeals that may be filed in accordance with § 6-80 of this division.~~

~~(b) The town attorney will provide legal advice to each of the three Lee County Boards of Adjustment and Appeals when warranted.~~

~~Secs. 6-75 — 6-79. — Reserved.~~

Secs. 6-73—6-79. - Reserved.

Sec. 6-80. - Right of appeal; notice of appeal.

(a) Whenever the building official or fire official or their designees shall reject or refuse to approve the mode or manner of construction to be followed or materials to be used, or when it is claimed that the provisions of a code do not apply, or that an equally good or more desirable form of construction can be employed in any specific case, or when it is claimed that the true intent and meaning of a code or any of the regulations thereunder have been misconstrued or wrongly interpreted, the owner of such building or structure, or his duly authorized agent, may appeal from the decision of the building official or fire official or their designees to the Town of Fort Myers Beach Special Magistrates Lee County's appropriate Board of Adjustment and Appeals. Notice of appeal shall be in writing and filed within 30 days after the decision is rendered by the building official or fire official or their designees. All requests for appeal shall be on forms provided by the building official with payment of the appropriate fee.

(b) In the case of a building or structure which in the opinion of the building official is unsafe or dangerous, the building official may, in his order, limit the time for such appeal to a shorter period.

Sec. 6-81. - Variations and modifications.

(a) ~~Lee County's Boards of Adjustment and Appeals~~ A Town of Fort Myers Beach Special Magistrate, pursuant to an appeal from a decision of the building official or fire official or their designees, may vary the application of a code to any particular case when, in its opinion and based upon sufficient evidence, the enforcement thereof would do manifest injustice and would be contrary to the spirit and purpose of a code or public interest, or when, in its opinion and based upon sufficient evidence to the contrary, the interpretation of the building official or fire official or their designees should be modified or reversed.

(b) Any decision of ~~Lee County Boards of Adjustment and Appeals~~ the Town of Fort Myers Beach Special Magistrate to vary the application of any provision of a code or to modify an order of the building official or fire official or their designees shall specify the variation or modification made, the conditions upon which it is made, and the reasons therefor.

(c) Variances to the floodplain regulations must meet the additional criteria in article IV of this chapter.

Sec. 6-82. - Decisions.

(a) Every decision of ~~Lee County's Boards of Adjustment and Appeals~~ the Town of Fort Myers Beach Special Magistrate shall be final; subject, however, to any remedy an aggrieved party might have at law or in equity. Every decision shall be in writing, ~~and shall indicate the vote upon the decision.~~ ~~Every decision of Lee County's Boards of Adjustment and Appeals shall be signed and attested to by the chairman of the board.~~

(b) ~~Lee County's Boards of Adjustment and Appeals~~ The Town of Fort Myers Beach Special Magistrate shall, in every case, reach a decision without unreasonable or unnecessary delay.

(c) If a decision of any of the Town of Fort Myers Beach Special Magistrates ~~Lee County's Boards of Adjustment and Appeals~~ reverses or modifies a refusal, order or disallowance of the building official or fire official or their designees, or varies the application of any provision of a code, the appropriate official shall immediately take action in accordance with such decision.

(d) Any aggrieved person may obtain judicial review of the decision of ~~Lee County's Boards of Adjustment and Appeals~~ the Town of Fort Myers Beach Special Magistrate by filing a petition for writ of certiorari in the circuit court. Such petition must be filed within 30 calendar days after the ~~board of adjustment and appeals'~~ Special Magistrate's decision, but not thereafter, pursuant to the Florida Rules of Civil Procedure. The original petition for writ of certiorari must be filed with the clerk of the circuit court. Copies of the petition shall be filed with the building official for forwarding to the town attorney.

Secs. 6-83—6-110. - Reserved.

Section 5. The provisions of this Ordinance shall not be codified as it is temporary in nature.

Section 6. 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 7. 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 8. This Ordinance shall take effect immediately upon its final adoption and shall remain effective until such time as actions by the Town have enacted a revision to Section 6-37 “Exceptions and revisions” of Division 3 “Unsafe Building Abatement Code,” and Division 2 “Lee County’s Boards of Adjustment and Appeals” of Article II “Building Codes” of Chapter 6 “Maintenance Codes, Building Codes and Coastal Regulations” of the Town’s Land Development Code, as otherwise provided under Florida law. This Emergency Ordinance shall apply to any notices mailed by the Town to property owners advising of the unsafe condition of their structure, as of July 19, 2024.

The foregoing emergency Ordinance was adopted by the Town Council upon a motion by Council Member King and seconded by council Member Safford, 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 9th day of September 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH


Dan Allers (Sep 15, 2024 06:54 EDT)

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:**


N. Stupar (Sep 13, 2024 18:13 EDT)

Vose Law Firm, Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this 13th day of September 2024.