

**ORDINANCE NO. 25-08**

**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING LAND DEVELOPMENT CODE SECTION 34-236, NOTICES FOR REZONINGS, DEVELOPMENT AGREEMENTS, DEVELOPMENTS OF REGIONAL IMPACT, SPECIAL EXCEPTIONS, ADMINISTRATIVE APPEALS, AND VARIANCES, INCLUSIVE OF VARIANCES OF SINGLE-FAMILY OR TWO FAMILY HOME VARIANCES TO REQUIRE THE APPLICANT TO PROVIDE PROOF OF MAILED AND POSTED PUBLIC NOTICING PRIOR TO LPA LOCAL PLANNING AGENCY AND TOWN COUNCIL HEARINGS; AMENDING THE MANNER OF OBTAINING INFORMATION BY CONTACTING TOWN STAFF AND THE USE OF LAYMAN'S LANGUAGE IN REQUIRED NOTICES; PROVIDING FOR SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS; CONFLICTS OF LAW; AND PROVIDING 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 redevelopment of the Town, following hurricane Ian requires evaluation and updates to the Land Development Code; and

**WHEREAS**, the Town Council desires updates to the Fort Myers Beach Land Development Code to clarify, improve and create consistency among sections; and

**WHEREAS**, the proposed changes to the Land Development Code are not more restrictive or burdensome to development; and

**WHEREAS**, a public hearing was held before the Local Planning Agency (LPA) on February 11th, 2025, 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 7 to 0, to recommend approval of this Ordinance; and

**WHEREAS**, on June 2<sup>nd</sup>, 2025, 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 adopt Ordinance 25-08 as provided herein and approved scheduling an adoption public hearing with amendments; and

**WHEREAS**, in view of amendments made to the title of the proposed Ordinance, a second

first reading of the Ordinance was held on June 16, 2025 at which time the Town Council 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 adopt Ordinance 25-08 as provided herein and approved scheduling an adoption public hearing; and

**WHEREAS**, a Business Impact Estimate was prepared and posted on the City’s website on the 17th day of July, 2025 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 17th day of July, 2025, which is 10 days prior to the second reading of the proposed Ordinance as required by Section 166.041; and

**WHEREAS**, on the 4th day of August, 2025, 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 adopt the proposed changes.

**NOW THEREFORE IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH, FLORIDA:**

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. LDC Sec. 34-236 is hereby amended to read as provided in Exhibit A.

Section 3. The Town Council intends that the provisions of this ordinance be made a part of the Fort Myers Beach 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, 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, or any part thereof, other than the part so declared.

Section 6. This ordinance shall become effective on September 1, 2025 following 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 Safford 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 4<sup>th</sup> day of August 2025, by the Town Council of the Town of Fort Myers Beach, Florida.

**TOWN OF FORT MYERS BEACH**

*Dan Allers*  
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:**

*Nancy Stuparich*  
Vose Law Firm, Town Attorney

The foregoing Ordinance was filed in the Office of the Town Clerk on: Oct 8, 2025.

Attached Exhibits  
Exhibit A – Proposed Noticing Requirements

## Exhibit A

### Sec. 34-236. Notices.

(a) Minimum required information. A notice of public hearing under this chapter shall contain the following minimum required information:

(1) Action proposed.

a. Rezoning, development agreements and developments of regional impact. All required notices shall indicate the existing zoning of the property, the proposed zoning, and the general location of the property by reference to common street names and addresses, with sufficient clarity so as to advise the public, but need not describe the proposed plans or details thereof, or the specific legal description of the property.

b. Special exceptions and variances. All required notices shall indicate the existing zoning of the property; the proposed use by special exception, or the requirement from which the variance is being requested and the actual degree of variance being requested; and the location of the property by reference to common street names and addresses, with sufficient clarity so as to advise the public, but need not describe the proposed plans or details thereof or the specific legal description of the property.

c. Administrative Appeals. The notice shall summarize the decision or action upon which the appeal is based with sufficient clarity so as to advise the public of the subject matter.

(2) Time and place of hearing. The notice shall specify the date, time and place that the public hearing will be held by the local planning agency or the town council.

(3) Public availability of information. The notice shall indicate that copies of the application may be obtained or reviewed by contacting Town staff.

(4) Location of record of notice. A copy of such notice shall be kept available for public inspection during the regular business hours at Town Hall.

(b) Method of providing notice. Notices of hearings before the local planning agency and the town council shall be provided by the applicant or their agent in accordance with applicable statutes and subsection (a) of this section. All noticed requests shall utilize layman's language, i.e., "apartment building" rather than "multi-family dwelling," "restaurant" rather than "business zoning."

(c) Mailed notices.

a. Applications for Commercial, Institutional and Multi-family development. The property owners\_list and map of surrounding property owners required by §§ 34-202(a)(6) and (a)(7) of this chapter is for the purpose of mailing notice to property owners within 500 feet of the property described. The applicant or their agent must provide proof of mailed notices 7 calendar days prior to the scheduled public hearing date. Proof must be provided via map of 500 ft radius, list of mailing addresses and photographs of mailed notices with paid postage stamp. Accordingly, the failure to mail or to timely mail such notice, will constitute a defect in notice and deny the public hearing from being heard as scheduled.

b. Single-Family or Two-Family Home variances. These applications are exempt from 34-202(a)(6) and (a)(7) The applicant or their agent must provide photographic proof of mailed notices at least 7 calendar days prior to the scheduled public hearing date. The applicant shall mail written courtesy notices to the abutting property owners and property owners parallel to the subject property line across any right-of-way or canal, of the planning and zoning board meeting date, time and location.

(d) Posted notices. The applicant or their agent is responsible for posting a notice of a public hearing on site at least 7 calendar days prior to a scheduled meeting. A professionally lettered sign must be posted at each property boundary that fronts a public right-of-way. Photographic proof must be received by the Town Clerk 7 days in advance of the scheduled hearing with the LPA or Town Council. Failure to post the notice or to provide staff with receipt of proof of the posted notice will constitute a defect in notice and require rescheduling of the hearing.

(1)The posted notice, 18 inches by 24 inches, must be placed in a prominent place on the property by the applicant/agent at their own expense denoting the following: application request, date and time of hearing, hearing body (i.e. LPA or Town Council), location of hearing and phone number of Town Hall directing interested parties to contact for information.