

**ORDINANCE NO. 25-18**

**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 SPECIAL EXCEPTIONS THAT ONLY REPLACE “LIKE FOR LIKE” STRUCTURES THAT WERE EXISTING PRIOR TO A NATURAL DISASTER EVENT, IF THE DECISION BY ELIGIBLE MEMBERS OF THE LPA IS UNANIMOUS AND THE TOWN CLERK DOES NOT RECEIVE A REQUEST FOR AN ADDITIONAL PUBLIC HEARING BEFORE THE TOWN COUNCIL FROM ANYONE, INCLUDING TOWN STAFF, WITHIN 10 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 special exception applications, one before the local planning agency (“LPA”) and one before the town council; and

**WHEREAS**, in the recent past a number of special exceptions for the replacement of structures in the Environmentally Critical (EC) zoning district that are part of an upland property that is continuing the same use to pre-Hurricane Ian use, 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 unless such a hearing is needed is in conflict with the Town’s efforts to rebuild the community; and

**WHEREAS**, notwithstanding the need to expedite the rebuilding of the Town, there may be situations where issues arise during the LPA meeting, which may require further evaluation by the Town Council; and

**WHEREAS**, a public hearing of this Ordinance was held before the LPA on the 9<sup>th</sup> day of September 2025, at which time 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 made a finding of consistency with the Fort Myers Beach Comprehensive Plan and Land Development Code and thereafter voted 6 to 0, to recommend approval of this Ordinance amending the referenced section of the Land Development Code to the town council; and

**WHEREAS**, on the 6<sup>th</sup> day of October 2025, 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 LPA, 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 15<sup>th</sup> day of October 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 20<sup>th</sup> day of October which is no less than 10 days prior to the second reading of the proposed Ordinance as required by Section 166.041, Florida Statutes; and

**WHEREAS**, on the 3<sup>rd</sup> day of November 2025, the Town Council held a second reading of the Ordinance; and

**WHEREAS**, the Town Council determined by a vote of 5 to 0 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, certain special exceptions and developments of regional impact require one public hearing before the local planning agency and one public hearing before the town council. Owner-initiated requests for variances and special exceptions to replace a lawful and permitted structure(s) in the Environmentally Critical (EC) zoning district that was in effect prior to a natural disaster, which is unanimously approved by the local planning agency and there is no request for an additional public hearing before the town council made by anyone that is received by the town clerk within 10 calendar days after the date of the local planning agency decision, excluding holidays, only requires one public hearing before the local planning agency, and the local planning agency decision is final agency action.

(c) *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 Council Member King and seconded by Council Member Safford, 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
Scott Safford, Council Member	Aye
Karen Woodson, Council Member	Aye

**ADOPTED** this 3<sup>rd</sup> day of November 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

**TOWN OF FORT MYERS BEACH**

  
Dan Allers (Nov 3, 2025 13:44:33 EST)  
\_\_\_\_\_  
Dan Allers, Mayor

**ATTEST:**

  
Amy Baker (Nov 3, 2025 16:05:01 EST)  
\_\_\_\_\_  
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 (Nov 3, 2025 13:18:45 EST)  
\_\_\_\_\_  
Vose Law Firm, Town Attorney

This Ordinance was filed in the Office of the Town Clerk on Nov 3, 2025.



# 25-18, Expedited Special Exceptions Final for signatures

Final Audit Report

2025-11-03

Created:	2025-11-03
By:	Amy Baker (AMY@FMBGOV.COM)
Status:	Signed
Transaction ID:	CBJCHBCAABAAGwKiu5-yZuILHDfIQEfCOGSwz3kE9z3e

## "25-18, Expedited Special Exceptions Final for signatures" History

-  Document created by Amy Baker (AMY@FMBGOV.COM)  
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-  Document emailed to Dan Allers (allersd@fmbgov.com) for signature  
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-  Document emailed to Nancy Stuparich (nstuparich@voselaw.com) for signature  
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-  Email viewed by Nancy Stuparich (nstuparich@voselaw.com)  
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