



# Memorandum

**To:** LPA

**From:** Walter Fluegel, Community Development Director

**Date:** April 4, 2011

**Re: Extension of COP in EC Zoning District-Working Draft**

---

As a Workshop item, I've attached our working draft of an approach to allowing and regulating extension of premises into the EC Zoning District. Based upon the previous direction received from Town Council, we are working on an approach to allowing extension of COP into EC through an Administrative Approval process for existing establishments with COP, while requiring future establishments to go through the Special Exception process.

The working draft is considering the approach of allowing expansion of COP into EC through an administrative approval process, subject to numerous conditions and requirements, including hours of service on the beach, signage requirements to restrict the movement of alcohol from one property to another, provisions for revocation, conditions to reduce litter and require bio-degradable cups. We are requesting your review and comments on this approach. Also, we are looking for your input on specific conditions or requirements that we should consider and other potential factors to consider.

We appreciate your taking the time and effort to provide us feedback on this work in progress.

## Exhibit A

### FORT MYERS BEACH LAND DEVELOPMENT CODE

#### CHAPTER 34 ZONING DISTRICTS, DESIGN STANDARDS, AND NONCONFORMITIES

#### ARTICLE IV. SUPPLEMENTAL REGULATIONS

#### DIVISION 5. ALCOHOLIC BEVERAGES

##### **Sec. 34-1261. Definitions.**

For purposes of this division and when referred to elsewhere in this chapter, certain terms or phrases shall have the following meaning:

*Alcoholic beverage*

*Beach* – means an area of sand along the Gulf of Mexico that extends landward from the mean low-water line to the place where there is a marked change in material or physiographic form, or to the line of permanent vegetation, usually the effective limit of storm waves.

*Beach or bay access* - means a right of way or easement that provides at least pedestrian access to beaches, bays, canals, or wetlands.

*Beer, wine, and liquor*

*EC (Environmentally Critical) Zoning District* – designates beaches and significant wetlands whose preservation is deemed critical to the Town of Fort Myers Beach through the Comprehensive Plan. The district includes beaches that have been designated in the “Recreation” category on the Future Land Use (FLU) map. When used in this division, EC Zoning District only refers to beaches within the Recreation category on the FLU map, excluding the area surrounding and including the Little Estero Critical Wildlife Area.

*Full course meals*

*Kitchen, commercial*

*Liquor license*

*Park,*

*Public beach* – means any beach which is below mean high-water lines; is owned by the town or county; has arisen upon it a right of customary use by the public; has arisen upon it a public easement, prescriptive or otherwise; or is the fore shore of tidal navigable waters, that is the land between the high-water mark and the low-water mark, and is owned by the state.

*Sale of*

## Exhibit A

### Sec. 34-1264. Sale or service for on-premises consumption

#### (g) *Expansion of area designated for permit.*

The area designated for an alcoholic beverage permit cannot be expanded without filing a new application for an alcoholic beverage permit in accordance with the requirements contained in this chapter. The new application must cover both the existing designated area as well as the proposed expanded area. All areas approved must be under the same alcoholic beverage permit and subject to uniform rules and regulations.

(1) Expansion into EC Zoning District. Only a lawfully existing permitted establishment with previously permitted alcoholic beverage consumption may expand their area designated for an alcoholic beverage permit into an adjacent EC Zoning District under the same ownership by Administrative Approval. In the instance of new permits, wherein there is no established permitted alcoholic beverage permit adjacent to the EC Zoning District, those new establishments and the request to expand into the EC Zoning District shall only be permitted by Special Exception. Approval to expand into the EC Zoning District, either by Administrative Approval or Special Exception, shall not encroach into public beach access and only permits service and consumption. Requests for expansion associated with outdoor patios, porches, decks, etc must submit a separate request for such items consistent with this and other chapters of the land development code.

- a. The area of expansion must be under the same ownership as the area currently designated for an alcoholic beverage permit. The existing establishment with the alcoholic beverage permit must be immediately adjacent to the EC zoning district.
- b. Patrons of these permitted establishments may not bring their own coolers within the expanded permit area in the EC Zoning District, nor may they consume alcohol, other than that sold to them by the permitted establishment. It is the responsibility of the property and business owner to control consumption within the expanded area. Violation of this provision may be grounds for revocation of the permit for the expanded area.
- c. Alcohol and food served in the EC Zoning District, may only be served in bio-degradable or compostable plastic cups containers, which meet or exceed ASTM D 6400-99. No glass, aluminum or other non-biodegradable material may be utilized for alcohol or food service. Violation of this provision may be grounds for revocation of the permit for the expanded area.
- d. The Permittee shall be responsible for maintaining the EC Zoning District, within the area of the expanded permit, ensuring that it is free of litter and debris. Violation of this provision may be grounds for revocation of the permit for the expanded area.
- e. The Permittee shall be responsible for installing signage that advises patrons, that alcohol may not leave the area of the EC Zoning District in which it was purchased. It is the responsibility of the property and business owner to control consumption within the expanded area. This condition will allow the applicant the right to place one sign at each property line abutting a property under different ownership. The sign must be removed and stored appropriately each night and is limited to 5 feet in height and 8 square feet of sign copy area per sign face, with only two sign faces per sign allowed. The signs content shall be limited to conveying the information that no alcohol may leave the property and no alcohol may enter the property. Signs meeting the language and size requirements can be ordered and obtained from the Town of Fort Myers Beach

## Exhibit A

- for a fee of \$XX.XX
- f. Hours of service for the expanded area in the EC Zoning District shall be limited to, between the hours of 11:00AM and sunset, except for those additional hours granted by a Special Events Permit or more restrictive hours as a condition of Special Exception approval. The property and business owner are responsible for ensuring patrons move from the EC Zoning District to the primary establishment after sunset should they wish to continue service of food or alcohol after sunset. Violation of this provision may be grounds for revocation of the permit for the expanded area.
  - g. All terms and conditions for the area currently designated for alcohol beverage permit, as established in a previously granted approval, shall remain in full force and effect, and in the instance of conflicts with conditions for the expanded area established herein, the more restrictive shall prevail within the expanded area.
  - h. In the instance of new permits, wherein there is no established permitted alcoholic beverage permit adjacent to the EC Zoning District, those new establishments shall only be permitted by Special Exception and the request to expand area into the EC Zoning District may only be accomplished by Special Exception.
  - i. Entertainment within the expanded area in the EC Zoning District may only be accomplished by Special Exception or Special Events Permit, unless granted by prior Special Exception. Violation of this provision may be grounds for revocation of the permit for the expanded area.
  - j. The area of expansion is limited to that area within the property lines, under same ownership, from the currently permitted area to no closer than 50 feet from the shoreline.
  - k. No additional parking shall be required for the area of expansion in the EC Zoning District. Requests for expansion that include land area outside of the EC Zoning District must meet the parking requirements of this chapter.
  - l. Separate permit(s) for beach furniture rental will be required.
  - m. Applicant shall annually renew their approval for expansion of service into EC through a Certificate of Use Permit.
  - n. Applicant shall provide a valid Certificate of Insurance covering the expanded area of for an alcoholic beverage permit in the EC Zoning District. The Certificate of Insurance shall be updated annually with the annual renewal.
  - o.
  - p. In the instance wherein the applicants desires to expand the designated permitted area in the EC Zoning District beyond the area under same ownership and onto adjacent property(s), in the EC Zoning District, under different ownership, this may only be accomplished by Special Exception granting the such right and by an annually renewed Temporary Use Permit. In the event the applicant obtains a Special Exception, but fails to annually renew the Temporary Use Permit, the right of use of the expanded area conveyed by the Special Exception shall cease. Further, the applicant must demonstrate a valid leasehold interest for the adjacent property.

**Exhibit A**

DRAFT

## Exhibit A

### FORT MYERS BEACH LAND DEVELOPMENT CODE

#### CHAPTER 34 ZONING DISTRICTS, DESIGN STANDARDS, AND NONCONFORMITIES

#### ARTICLE III. ZONING DISTRICT REGULATIONS

#### DIVISION 4. CONVENTIONAL ZONING DISTRICTS

#### **Section 34-652. EC (Environmentally Critical) zoning district**

***Need to include all sections/language in between that were not changed.***

*(d) Permitted uses. In the EC district, no land or water use shall be permitted by right except for those uses and developments permitted by the Fort Myers Beach Comprehensive Plan in wetlands, beaches, or critical wildlife habitats, as applicable, including:*

- (1) Boating, with no motors permitted except electric trolling motors.
- (2) Fishing
- (3) Removal of intrusive exotic species or diseased or dead trees, and pest control.
- (4) Hiking or nature study, including pedestrian boardwalks and dune crossovers.
- (5) Outdoor education, in keeping with the intent of the district.
- (6) Recreation activities, residential accessory uses, and resort accessory uses that are performed outdoors. These activities and uses include passive recreation and active recreation that requires no permanent structures or alteration of the natural landscape (except as may be permitted by special exception (see 6-366 and subsection (e) below). Any temporary structure used in conjunction with such uses must comply with all provisions of this code (for instance see Chapters 14 and 27). Artificial lighting may not be installed in the EC zoning district unless approved by a special exception or as a deviation in the planned development rezoning process (see 6-366 and 14-76)
- (7) Wildlife management, as wildlife preserves.
- (8) Expansion of area designated for the service of alcoholic beverages, as established and regulated in Section 34-1264(g)(1).

## Exhibit A

We need to include an amendment to the fee schedule:

1. Administrative Approval of COP in EC Zoning District= \$4,000
2. Annual Certificate of Use Approval for COP in EC Zoning=\$1,000
3. Special Exception for COP adjacent to EC= \$8,000

DRAFT