

TOWN OF FORT MYERS BEACH



COP in EC Zoning District
Town Council Workshop
February 6, 2012

COP in EC Overview

- ▣ Based upon Town Council's rejection of the LPA Resolution, Staff initiated an ongoing dialogue with the LPA in January, 2011.
- ▣ From January through May, 2011, Staff conducted observations of COP in EC and commenced preliminary research.
- ▣ Staff initially identified 9 establishments with COP in EC.
- ▣ Based upon ongoing input from the LPA up to the June LPA Meeting, Staff embarked upon a comprehensive study of COP in EC.
- ▣ Staff presented the COP in EC Report to the LPA in October, 2011
- ▣ Staff presented a draft outline of an approach to regulating COP in EC in November, 2011
- ▣ Staff presented the Ordinance to LPA in January, 2012

COP in EC Report Overview

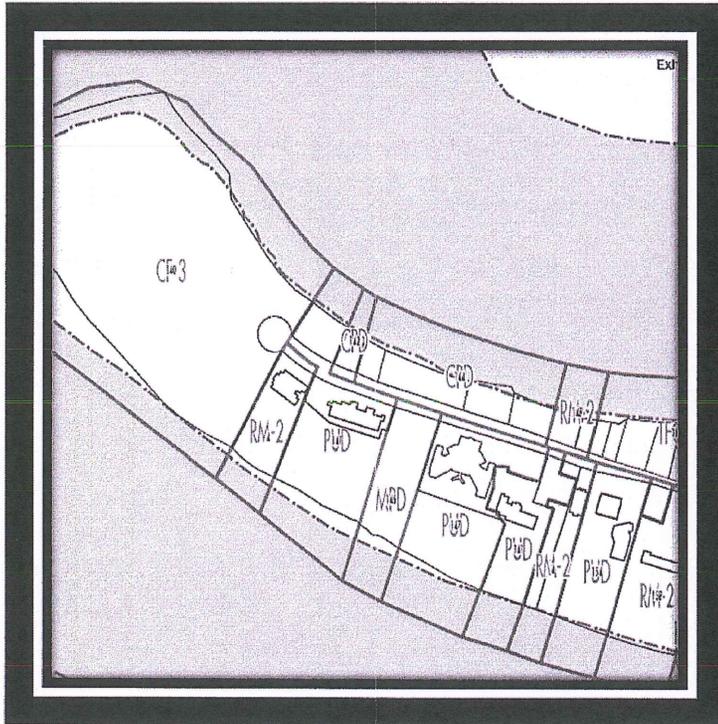
- ▣ The Town and County (prior to incorporation) had a history of approving COP in EC on a case by case basis, with no regulatory framework.
- ▣ No Special Exception for COP in EC has ever been denied by prior Town Councils.
- ▣ Special Exception has been the preferred method of approval, with 7 of 12 being approved by SE
- ▣ COP's are concentrated in the Downtown District
- ▣ Outside of Downtown District, 4 of 5 COP's are at Resorts
- ▣ 7 of 12 were approved for COP directly upon the sandy beach
- ▣ 6 have no restrictions on outdoor entertainment
- ▣ 6 are located at Resorts

Glossary of Terms

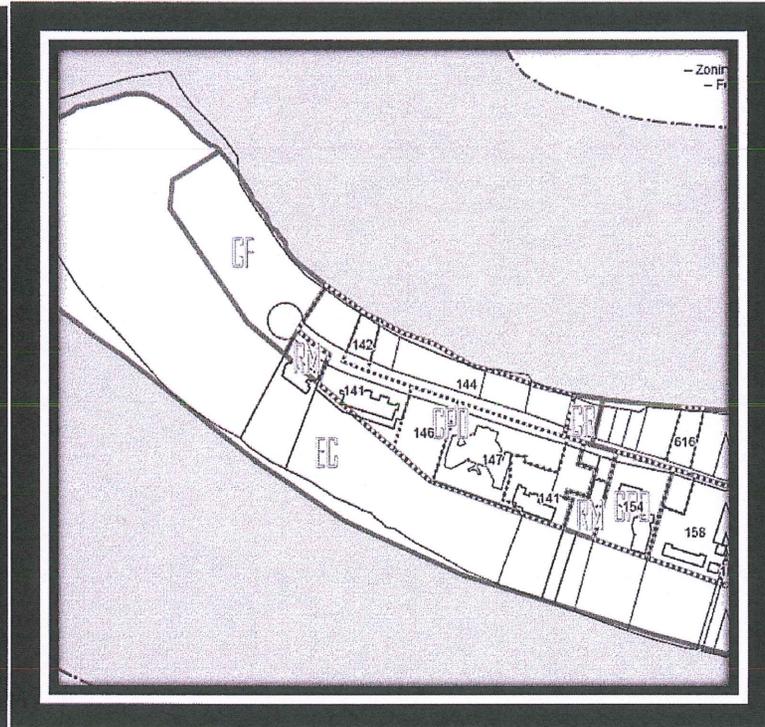
- ▣ COP= Consumption On Premises
- ▣ 1978 CCCL=1978 Coastal Construction Control Line
- ▣ REC=Recreation Future Land Use District
- ▣ EC=Environmentally Critical Zoning District
- ▣ Note: The 1978 CCCL, REC and EC lines are coterminous, they are in fact one in the same and the 1978 CCCL was the basis for the subsequent creation of the REC and EC

Date	Town or County Ordinance/ Resolution Chnages regarding COP	Site Specific COP Approvals	Nature of Ordinance, Resolution or Approval
Dec-95			Town of Fort Myers Beach is incorporated
Jan-99	Town Ord. 98-14		Adopted Comprehensive Plan for the Town & created Recreation Future Land Use Category
Oct-99		Resolution 99-39	Town Resolution allowing deck area & trellis over 1978 CCCL (EC Zoning District). Pierside Grill.
Mar-00		Resolution 00-12	Town Resolution allowing COP on pool deck forward of 1978 CCCL (EC Zoning District). Edison Beach House.
Jun-01		Town Reso. 01-15	Town Council approves Special Permit for COP at 2000 Estero (AKA: Diamondhead), a portion of this approved site extends into the EC Zoning District.
Mar-03	Town Ord.03-03		Town Ordinance creating Chapter 34 and COP provisions
May-04	Town Reso. 04-16		Created Official Town Zoning Map and created EC Zoning District that bifurcated zoning on properties that were previously one zoning district to Mean High Water Line
Feb-07		Town Reso. 07-13	Town recognized previously approved Special Permit for Nemos (Case 95-07-161.02S) from December 1995
Nov-09	LPA Reso. 2009-24		LPA Resolution recommending to Town Council that the Comprehensive Plan "does restrict further expansion of on-preises consumption of alcholic beverages on the Gulf Beaches within the Town of Fort Myers Beach."
Dec-09		LPA Reso. 2009-29	LPA Resolution recommending approval of Special Exception for 61 Avenue C (AKA: Wicked Wings) to allow COP in the Downtown and EC Zoning Districts.
Jan-10		Town Reso. 10-01	Town Council approves Special Exception for 61 Ave C (AKA: Wicked Wings)to allow COP in Downtown and EC Zoning Districts.
Jun-10		LPA Reso. 2010-06	LPA Resolution recommending approval of Special Exception for 1154 Estero (AKA: Nemos) to allow COP in the Downtown and EC Zoning District.
Jul-10		Town Reso. 10-15	Town Council approves Special Exception for 1154 Estero (AKA: Nemos) to allow COP in Downtown and EC Zoning Districts.

Pre and Post EC Zoning District



Town Zoning Map Before May 17, 2004



Town Zoning Map After May 17, 2004

NOTE: Prior to May 17, 2004, zoning on beachfront properties ran the entire length of the property, from Estero Boulevard to the Gulf of Mexico. Subsequent to the creation of the EC Zoning District (May 17, 2004), properties that previously were one consistent zoning district for the entire property became bifurcated by the EC Zoning District.

Comprehensive Plan Findings

- ▣ Staff reviewed all available Town Council and LPA Minutes from Incorporation of the Town through creation of the EC Zoning District and Chapter 34 in 2003.
- ▣ The number of historic approvals of COP in EC by prior Town Councils suggest that COP in REC was deemed a permissible use.
- ▣ The REC Future Land Use category appears to have been primarily intended as a means of effectively restricting densities along the beach by eliminating density seaward of the 1978 CCCL line.

COP in EC Summary

Staff identified 18 establishments with COP adjacent to EC

Approved for COP in EC=	12	In Downtown=	7	Approved on Beach=	7
Special Permits/Exceptions=	7	Outside Downtown=	5	Deck and Railing=	3
CPD=	2	Resorts=	6	Closing hour of 10:00 PM=	3
State Permit Only=	2	Restaurants/Bars=	4	No closing hour specified=	4
Administrative=	1	Restaurants=	1	No outdoor music restrictions=	6
		Bars=	1		
		Resorts outside Downtown=	4		

Business Name	Principal Use	Downtown	Method of Approval	Approved for COP in EC	Approved on Beach	Method of Dominion and Control
Pink Shell	Resort		PUD and CPD Zoning	Yes	Yes	None required
Best Western	Resort		Special Permit	No		Limited to roof deck area
Edison Beach House	Resort		Special Permit	Yes	Yes	No specific requirements established for consumption area.
Pierside Grill	Restaurant and bar	X	N/A	Yes		No conditions.
Top O' Mast	Bar	X	N/A	No		Deck and railing.
Nemo's	Restaurant and bar	X	Special Exception	Yes	Yes	No conditions.
The Cottage (AKA: Gulf Shore Grill)	Restaurant and bar	X	Administrative Approval	Yes		Deck and railing.
Lani Kai	Resort	X	N/A	Yes	Yes	None
Wicked Wings	Restaurant	X	Special Exception	Yes		Deck and railing.
Beach Pub	Bar	X	Special Permit	Yes	Yes	Rope and post.
DiamondHead	Resort	X	Special Exception	No		Deck and railing.
Estero Island Beach Club	Resort	X	Special Permit	Yes		Deck and railing.
Junkanoo	Restaurant and bar		Special permit	Yes	Yes	None
Outrigger	Resort		CPD Rezoning	Yes	Yes	None
Gullwing Resort	Resort		Special Permit	No		N/A
Holiday Inn	Resort		Special Permit	Yes		Outdoor seating area
Sand Bar Resort Motel	Hotel/Motel		Special Permit	No		Deck
Breakers Econo Lux Inn	Former Motel	X	Special Permit	No		N/A

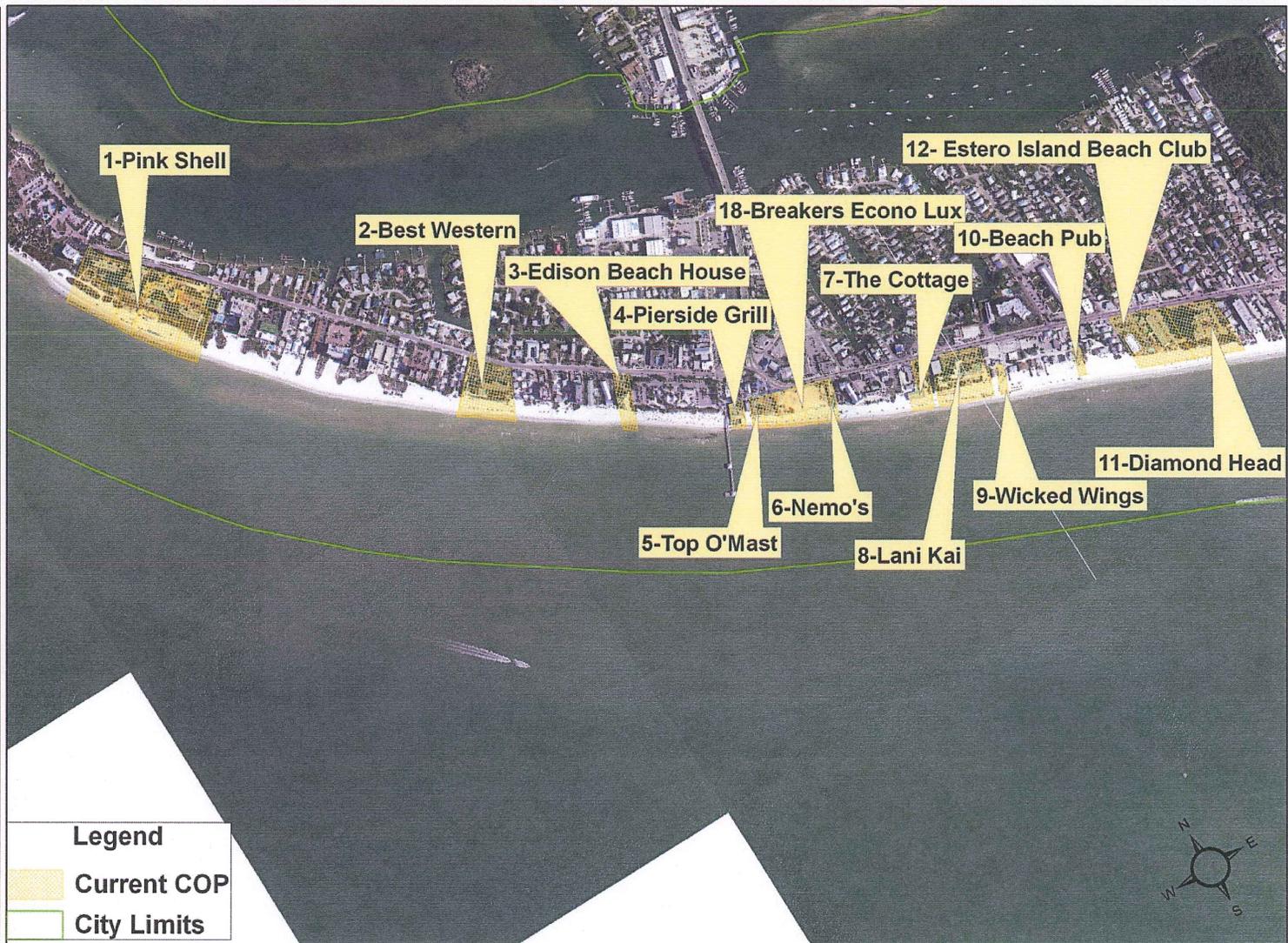
COP in EC

COP in EC Zoning District Inventory
Map 2



COP in EC

COP in EC Zoning District Inventory Map 1



Conclusions of Approved COPs

- ▣ Our analysis concludes that COP has been established as a permissible use in the EC.
- ▣ There has been a lack of consistency in terms of approval methods, i.e. Special Exceptions, CPD and Administrative Approvals.
- ▣ There has been an overall lack of consistency in conditions of approval, including dominion and control, hours of operation and entertainment restrictions.
- ▣ The lack of consistency in terms of conditions of approval reinforces our perception of the lack of an appropriate regulatory framework.
- ▣ There has been some historic consistency in limited regards, as it relates to the approval of COP in EC, i.e. Special Exceptions and the concentration in Downtown.

COP in EC Ordinance Overview

Procedure	Inside Downtown	Outside Downtown
Existing Establishments (the 12 identified in the October COP Report)	Administrative Amendment	Administrative Amendment
Establishment currently approved for COP adjacent to EC, but not approved for service and/or consumption in EC	Administrative Amendment	CPD Rezoning (Resorts Only)
New establishments	Special Exception	CPD Rezoning (Resorts Only)
Standard Conditions		
Area of expansion in EC is limited to 1/3 of the distance from the EC Zoning line or rear building/deck line (if the building extends over the EC Zoning line), seaward to the MWH or ECL (whichever is less)	X	X
The area of extension of premises in EC must be enclosed on three sides by rope and post extending from the rear of the building or deck to the seaward allowed distance.	X	X
One 6' wide pedestrian access opening is allowed per 100' of the rope and post along the side parallel to the waterline. Each pedestrian access point shall contain 2' by 1' signs that indicate no alcohol is allowed beyond that point and refuse containers shall be provided at each access point to the beach.	X	X
Parking requirement for area of expansion in EC surrounded by rope and post.	None	None

COP in EC Ordinance Overview

	Inside Downtown	
All beverages served within the area of extended premise in EC, must be served in plastic bio-degradable cups, with the establishments name on the cup.	X	X
Hours of service and consumption in EC are limited to between the hours of 11:00 AM and 30 minutes after Sunset.	X	X
The area of expansion in EC must be under the same ownership as the licensed premise and immediately adjacent to the upland licensed premise.	X	X
Patrons may not bring their own alcohol into the area of expansion in EC.	X	X
No entertainment shall be allowed in EC, except for by Special Exception or Special Event Permit, unless previously granted by Special Exception.	X	X
The area of expansion must be maintained free of litter and debris on a continuous basis.	X	X