

Town of Fort Myers Beach  
Agenda Item Summary

Blue Sheet Number: **2012-032**

1. **Requested Motion:** Motion to adopt the ordinance 12-03, amendment to LDC Section 34-1264.

**Meeting Date:** 4/16/2012

**Why the action is necessary:** State law requires that prior to adoption of an ordinance, a public hearing must be held subsequent to Introduction.

**What the action accomplishes:** Holds the Final Public Hearing for the ordinance.

2. **Agenda:**

Consent  
 Public Hearing

3. **Requirement/Purpose:**

Resolution  
 Ordinance  
 Other

4. **Submitter of Information:**

Council  
 Town Staff  
 Town Attorney

5. **Background:** Based upon Town Council direction at the April 2, 2012 Town Council Introduction and 1<sup>st</sup> Public Hearing on COP in EC, Staff has placed Ordinance 12-03 on the April 16<sup>th</sup> Town Council Agenda for the Second Public Hearing.

Attachments:

- Ordinance 12-03
- LPA Minutes
- LPA Resolution

6. **Alternative Action:** Deny the ordinance, Approve the ordinance with amendments or recommend further amendment(s).

7. **Management Recommendations:** Adopt the ordinance.

8. **Recommended Approval:**

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Parks & Recreation Director	Town Clerk
						

9. **Council Action:**

Approved    Denied    Deferred    Other

Town of Fort Myers Beach  
ORDINANCE NO. 12-03

AN ORDINANCE AMENDING CHAPTER 34, ARTICLE III, DIVISION 4 IN THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE, "CONVENTIONAL ZONING DISTRICTS" AMENDING SECTION 34-652, "EC (ENVIRONMENTALLY CRITICAL) ZONING DISTRICT" BY ADDING "EXPANSION OF AREA DESIGNATED FOR SERVICE OF ALCOHOLIC BEVERAGES" AS A PERMITTED USE; AMENDING CHAPTER 34, ARTICLE IV, DIVISION 5 IN THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE, "ALCOHOLIC BEVERAGES," AMENDING SECTION 34-1261, DEFINITIONS; AMENDING SECTION 34-1264, "SALE OR SERVICE FOR ON-PREMISES CONSUMPTION" BY ADDING REGULATIONS GOVERNING THE EXPANSION OF ON-PREMISES CONSUMPTION INTO THE EC ZONING DISTRICT; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

Section 1. This Ordinance is enacted pursuant to the provisions of Chapter 95-494, Laws of Florida, Chapters 163 and 166, Florida Statutes and other applicable provisions of law.

Section 2. Adoption of Amendments to Chapter 34 of the Town of Fort Myers Beach Land Development Code. Chapter 34 of the Town of Fort Myers Beach Land Development Code, entitled "Zoning Districts, Design Standards and Nonconformities," is hereby amended as set forth in Exhibit "A," attached hereto and incorporated herein by reference. Entirely new language is indicated with underlining. Language being repealed from the existing code is indicated with strikethroughs. Existing language being retained is shown without underlining or strikethrough.

Section 3. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance, or application hereof, is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion or application shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion or application hereof.

Section 4. Effective Date. this Ordinance shall be effective immediately upon adoption.

The foregoing ordinance was enacted by the Town Council upon a motion by Council Member \_\_\_\_\_ and seconded by Council Member \_\_\_\_\_ and, upon being put to a vote, the result was as follows:

Larry Kiker, Mayor  
Bob Raymond, Vice Mayor  
Joe Kosinski

Alan Mandel  
Jo List

DULY PASSED AND ENACTED by the Council of the Town of Fort Myers Beach,  
Florida, this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

ATTEST:

TOWN OF FORT MYERS BEACH

BY: \_\_\_\_\_  
Michelle D. Mayher, Town Clerk

BY: \_\_\_\_\_  
Larry Kiker, Mayor

Approved as to legal sufficiency by:

\_\_\_\_\_  
Fowler White Boggs, Town Attorney

## EXHIBIT "A"

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

- (a) *Purpose.* The purpose of the EC zoning district is to designate beaches and significant wetlands whose preservation is deemed critical to the Town of Fort Myers Beach through its comprehensive plan, including:
- (1) Beaches that have been designated in the "Recreation" category on the future land use map; and
  - (2) Wetlands that have been correctly designated in the "Wetlands" category on the future land use map.
- (b) *Intent.* The application of the EC district is intended to prevent a public harm by precluding the use of land for purposes for which it is unsuited in its natural state and which injures the rights of others or otherwise adversely affects a defined public interest.
- (c) *Accretion.* Accretions of beaches or wetlands, whether by natural causes or through beach renourishment or artificial filling, will automatically be assigned to the EC zoning district.
- (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 consumption and service of alcoholic beverages, subject to the regulations in § 34-1264(g)(1).
- (e) *Special exception uses and structures.* Upon a finding that the proposed use or structure is consistent with the standards set forth in § 34-88, as well as all other

applicable town regulations, the town council may permit any specific use or structure from the following list as a special exception, subject to conditions set forth in this chapter and in the resolution of approval:

(1) Accessory structures, to include any building, structure, or impervious surface area which is accessory to a use permitted by right or by special exception in the EC district (see § 6-366).

(2) Nature study center, noncommercial, and its customary accessory uses.

(3) Single-family residence and its customary accessory uses at a maximum density of one dwelling unit per twenty acres.

(f) *Additional regulations.* See additional requirements in:

(1) Article I in ch. 14 pertaining to beach and dune management

(2) Article IV of ch. 14 pertaining to wetlands protection; and

(3) Coastal zone regulations in § 34-1575.

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#### **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* – means distilled spirits and all beverages, other than medicine, intended for human consumption and containing one-half of one percent or more alcohol by volume.

*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.

*Beer, wine and liquor* – have the same meanings as provided in F.S. chs. 563, 564, and 565, respectively.

*EC (Environmentally Critical) Zoning District* –When used in this division, EC Zoning District only refers to beach areas located in the Recreation category on the FLU map.

*Erosion Control Line* – means the line established by the Board of Trustees of the Internal Improvement Trust Fund prior to the commencement of a beach erosion control project in accordance with the provisions of F.S. § 161.141-161.211. Pursuant to F.S. §161.191, title to all lands seaward of the erosion control line shall be deemed to be vested in the state by right of its sovereignty, and title to all lands landward of the erosion control line shall be vested in the riparian upland owners whose lands either

abut the erosion control line or would have abutted the line if it had been located directly on the line of mean high water on the date the board of trustees' survey was recorded.

*Full course meals* – means items on a menu at a restaurant which include soups and salads, main dishes with side orders, and desserts.

*Kitchen, commercial* – means a facility used for the preparation of food which is sold to the public and that is subject to state and local health department inspections.

*Licensed premise* – means the geographic area approved by either administrative approval, special exception, or other approval, for the retail sale, service and consumption on-site of alcoholic beverages.

*Liquor license* – means a license issued by the state for the retail sale, service, and consumption of liquor.

*Mean High Water Line* – means the intersection of the tidal plane of mean high water with the shore. Mean high water is the average height of high waters over a 19-year period. [See F.S. § 177.27(14-15)].

*Park* – only when used in this division, means a park facility which is owned, leased, or operated by a governmental agency. It does not include beach access strips.

*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* – only when used in this division, includes the term “or service.”

*Sunset* – means the daily disappearance of the sun below the horizon to the West, due to the Earth's rotation.

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

(a) *Approval required.* The sale or service of alcoholic beverages for consumption on premises shall not be permitted until such location has been approved by the town as follows:

(1) *Administrative Approval.* The director may administratively approve the sale or service of alcoholic beverages for consumption on the premises when in conjunction with the following uses if the proposes use satisfies the requirements set forth in this division. When circumstances so warrant, the

director may determine that administrative approval is not the appropriate action and that the applicant must instead apply for approval as a special exception. Such circumstances may include the previous denial of a similar use at that location, the record of public opposition to a similar use at that location, and similar circumstances. When the director has approved a request for consumption on the premises at a location where the actual building has not been constructed, the director shall not approve another request for consumption on the premises which could potentially violate the distance requirements. If the first building is completed within less than one year, and it can be shown the second use would not violate the prescribed distance requirements, the director may approve the second location subject to all other requirements contained in this division.

- a. *Bars or cocktail lounges* located in commercial zoning districts which permit bars or cocktail lounges, provided the standards set forth in subsections (b)(1) and (3) of this section are met;
- b. *Charter, party fishing boat, or cruise ship*, provided the standards of section (b)(3) are met. The COP approval is specific to the charter, party fishing boat, or cruise ship operating from a specific location, and does not run with the land nor is it transferable.
- c. *Clubs and membership organizations* located in commercial zoning districts, where permitted, provided the standards set forth in subsections (b)(2)d and (b)(3) of this section are met;
- d. *Cocktail lounges in golf course clubs*, provided the standards set forth in subsections (b)(2)c and (b)(3) of this section are met;
- e. *Hotels/motels*, provided the standards set forth in subsections (b)(2)b and (b)(3) of this section are met; and
- f. *Restaurants*, provided the standards set forth in subsections (b)(2)a and (b)(3) of this section are met.

(2) *Special exception.*

- a. A special exception for consumption on the premises shall be required for:
  1. Any establishment not covered by subsection (a)(1) of this section; or
  2. Any establishment which provides outdoor seating areas for its patrons consuming alcoholic beverages, except that a restaurant may have outdoor seating approved administratively provided the outdoor seating area is not within 500 feet of a place of worship, religious facility, school (noncommercial), day care center (child), park, or dwelling unit under separate ownership.
- b. The burden of proof that the grant of the special exception will not have an adverse effect on surrounding properties lies with the applicant.
- c. A single special exception for consumption on the premises for a multiple-occupancy complex in a conventional zoning district shall be sufficient to permit consumption on the premises in every restaurant which exists or may be established within the multiple-occupancy complex.

(3) *Planned Developments.*

- a. No administrative approval is necessary where an individual establishment or other facility proposing consumption on the premises is explicitly

designated on the master concept plan and is included on the approved schedule of uses.

- b. If consumption on the premises is shown as a permitted use on the approved schedule of uses for a multiple-occupancy complex, no administrative approval for consumption on the premises shall be required for restaurants within the multiple-occupancy complex.
- c. Consumption on the premises for other uses within planned developments require administrative approval or a special exception.

(b) *Location; parking.*

(1) *Prohibited locations.*

- a. Except as may be exempted in subsections (a)(1) or (b)(2) of this section, no establishment for the sale or service of alcoholic beverages for consumption on the premises shall be located within 500 feet of:
  - 1. A place of worship, religious facility, school (noncommercial), day care center (child), or park;
  - 2. A dwelling unit under separate ownership, except when approved as part of a planned development; or
  - 3. Another establishment primarily engaged in the sale of alcoholic beverages for consumption on the premises, excluding those uses listed under subsection (b)(2) of this section.

Distance shall be measured from any public entrance or exit of the establishment in a straight line to the nearest property line of the place of worship, religious facility, school (noncommercial), day care center (child), dwelling unit, or park, or to the closest public entrance or exit of any other establishment primarily engaged in the sale of alcoholic beverages.

- b. Where an establishment for the sale of alcoholic beverages is located in conformity with the provisions of this subsection, and a place of worship, religious facility, school (noncommercial), day care center (child) park, or dwelling unit is subsequently established in the proximity of such existing establishment, then the separation requirements shall not apply.

(2) *Exceptions to location standards.* Exceptions to location standards are as follows:

a. *Restaurants, provided:*

- 1. The restaurant is in full compliance with state requirements;
- 2. The restaurant serves cooked, full-course meals, prepared daily on the premises; and
- 3. Only a service bar is used and the sale or service of alcoholic beverages is only to patrons ordering meals, or, if the restaurant contains a cocktail lounge for patrons waiting to be seated at dining tables, the lounge shall be located so that there is no indication from the outside of the structure that the cocktail lounge is within the building.
- 4. The other requirements of § 34-1264(k) shall be met.

b. *Hotels/motels:*

- 1. The hotel/motel contains at least 100 guest rooms under the same roof and that bars or cocktail lounges are located within the hotel or motel

- and under the same roof; and
- 2. The exterior of the building must not have storefronts or give the appearance of commercial or mercantile activity visible from the street. If the use contains windows visible from the street, the windows shall be of fixed, obscure glass. Access to the cocktail lounge or bar must be through the lobby. Additional entrances are not permitted unless the additional entrance or door opens into an enclosed courtyard or patio. The additional entrance may not be visible from the street. A fire door or exit shall be permitted, provided that the door or exit is equipped with panic type hardware and is maintained in a locked position except in an emergency.
- c. *Golf course clubhouses*, provided that:
  - 1. The golf course consists of at least nine holes, a clubhouse, locker rooms, and attendant golf facilities, and comprises in all at least 35 acres of land.
  - 2. Failure of such club to maintain the golf course, clubhouse, and golf facilities shall automatically terminate the privilege of the cocktail lounge and sale of beer from the refreshment stands.
- d. *Membership organizations*, provided that:
  - 1. such club or organization conforms to all the requirements of F.S. ch. 561 and other applicable state laws, and
  - 2. there are no signs or other indications visible from the exterior of the clubhouse, building, or structure that alcoholic beverages are served.
- (3) *Parking*. Restaurants providing alcoholic beverages for consumption on the premises must comply with the parking requirements set forth in § 34-2020(d)(2). Any bar or cocktail lounge must provide parking in accordance with § 34-2020(d)(2). All other uses must meet the parking requirements of the principal use.
- (c) *Procedure for approval*
  - (1) *Administrative approval*
    - a. *Application*. An applicant for a consumption on the premises permit shall submit the following information on a form provided by the town:
      - 1. The name, address, and telephone number of the applicant.
      - 2. The name, address, and telephone number of the owner of the premises, if not the applicant.
      - 3. A notarized authorization from the property owner to apply for the permit.
      - 4. Location by STRAP and street address.
      - 5. Type of state liquor license being requested.
      - 6. A site plan, drawn to scale, showing:
        - i. The property in question, including all buildings on the property and adjacent property;
        - ii. Entrances to and exits from the building to be used by the public;
        - iii. A parking plan, including entrances and exits;
        - iv. The floor area of the building and proposed seating capacity. If a restaurant is proposing a bar or lounge for patrons waiting to be seated in the restaurant, the floor area and seating area of the

lounge shall be shown in addition to the restaurant seating area.

7. A town map marked to indicate all of the property within 500 feet of the building to be used for consumption on the premises.
  8. An notarized affidavit executed by the applicant indicating that no place of worship, religious facilities, day care centers (child), noncommercial schools, dwelling units or parks are located within 500 feet of the building to be used.
- b. *Findings by director.* Prior to permit approval, the director shall conclude that all applicable standards have been met. In addition, the director shall make the following findings of fact:
1. There will be no apparent deleterious effect upon surrounding properties and the immediate neighborhood as represented by property owners within 500 feet of the premises.
  2. The premises are suitable in regard to their location, site characteristics, and intended purpose. Lighting must be shuttered and shielded from surrounding properties.
- (2) *Special exception.*
- a. Applications for special exceptions shall be submitted on forms supplied by the town and shall contain the same information as required for administrative approval.
  - b. Advertisements and public hearings shall be conducted in accordance with the requirements set forth in article II of this chapter.
- (d) *Temporary one-day permit.*
- (1) *Intent; applicability.* It is the intent of this subsection to require that nonprofit and for-profit organizations and establishments in the town obtain a one-day temporary alcoholic beverage permit for the sale of alcoholic beverages at the specific location where an event is held. This subsection will pertain to but not necessarily be limited to the following uses:
    - a. Grand openings or open houses at residential or commercial developments;
    - b. Special outdoor holiday or celebration events at bars and restaurants;
    - c. Weddings and other special occasions at clubhouses;
    - d. Political rallies or events;
    - e. Block parties; and
    - f. Carnivals.
  - (2) Only twelve temporary alcoholic beverage permits may be issued per year to a specific location. If more than twelve permits are sought per year for a specific location, then the location must obtain a permanent alcoholic beverage special exception. If the event for which the temporary alcoholic beverage permit is sought continues for more than one day, the applicant may petition the director for an extended permit. A temporary alcoholic beverage permit may not be issued for more than three days.
  - (3) *Procedure for approval.*
    - a. Any owner, lessee, or tenant asking for consumption on the premises for a temporary alcoholic beverage permit, must submit a written request to the director. The written request must include:

1. The name and address of the applicant;
  2. A general description of the exact site where alcoholic beverages are to be sold and consumed;
  3. The type of alcoholic beverages to be sold and consumed; and
  4. A fee in accordance with the adopted fee schedule.
- b. The director will make a final decision within ten working days. The decision will be in the form of approval, approval with conditions, or denial. The director may forward the request to other appropriate agencies for comment.
  - c. The town council will review all requests for temporary alcoholic beverage permits where an event will run longer than three days. Under no circumstances will a temporary alcoholic beverage permit be issued for more than ten days.
- (e) *Expiration of approval.* After the following time periods, the administrative or special exception approval of a location for the sale and consumption of alcoholic beverages on the premises granted in accordance with this section shall expire, and become null and void:
- (1) In the case of an existing structure, the approval shall expire six months from the date of approval unless, within that period of time, operation of the alcoholic beverage establishment has commenced. For purposes of this subsection, the term "operation" shall be defined as the sale of alcoholic beverages in the normal course of business.
  - (2) In the case of a new structure, the approval shall expire one year from the date of approval unless, within that period of time, operation of the alcoholic beverage establishment has commenced. The director may grant one extension of up to six months if construction is substantially complete.
- (f) *Transfer of permit.* Alcoholic beverage permits, as noted in subsection 34-1264(i), issued by virtue of this section are a privilege running with the land. Sale of the real property shall automatically vest the purchaser with all rights and obligations originally granted to or imposed on the applicant. Such privilege may not be separated from the fee simple interest in the realty.
- (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) *Regulations Applicable to Expansion into EC Zoning District.* A lawfully permitted establishment may expand the area where service of alcoholic beverages is permitted into an adjacent EC zoning district, subject to the following conditions and subject to the procedures established in § 34-1264(g)(2):
- a. *Area of expansion.* The beach ecosystem is dynamic in nature and the physical characteristics of the EC zoning district are subject to change. Since the public has a right of access to the public beach area, pedestrian

access to the shoreline must be a paramount consideration when determining the area where COP is permitted, understanding that the shoreline's location can vary greatly during extreme weather and tidal events, as well as due to erosion of the beach. The Town Manager shall therefore have the authority to temporarily enforce reductions in the area of expansion for the licensed premise into the EC zoning district when necessary to protect natural systems from the encroachment permitted by this section.

b. *Defined area.* The area of expansion of a COP licensed premises extending seaward into the EC zoning district, shall be limited to no more than 33% of the land area between the landward EC zoning district boundary and the Mean High Water Line (Up to a maximum of 100 feet), provided, however, that the Erosion Control Line shall be used in place of the Mean High Water Line in those areas where the beach has been renourished. In instances where an existing licensed establishment has an existing deck and/or building seaward of the EC Zoning line, the measurement of the allowable area of expansion, shall commence from the most seaward point of the rear deck or building. Dominion and control of the area of the licensed premise that extends into the EC zoning district shall be established by rope and post. The rope and post shall extend from the rear of the upland licensed premise in the adjacent zoning district and shall define the area in the EC zoning district where COP is permitted. Specific requirements for the rope and post method of dominion and control are established in subsection 34-1264(g)(1)b.iv below.

i. *Standard conditions of approval.* The following requirements shall be applicable to all premises that are approved for COP in the EC Zoning District. Violation of any of the following provisions may be grounds for revocation in accordance with § 34-1264(i):

1. The area of expansion of licensed premises in the EC zoning district must be under the same ownership as the principal upland licensed premise (as licensed by the State of Florida Division of Alcoholic Beverages and Tobacco) and the upland licensed premise must be located immediately adjacent to and contiguous with the EC zoning district.
2. Patrons of the permitted establishments may not bring any alcoholic beverages or coolers into the licensed premise in the EC zoning district, nor may they consume any alcohol that has not been purchased from the permitted establishment.
3. Alcohol served in the EC zoning district may only be dispensed in plastic cups. No glass, aluminum or other non-biodegradable material may be utilized for service of any beverages in the EC Zoning District. Further, the cup shall bear the name of the establishment.
4. The permit holder shall be responsible for ensuring that the licensed premises in the EC Zoning District is free of litter

- and debris. Refuse containers that meet the requirements of § 34-1264(g)(1)b.iv.4. must be provided.
5. Hours of service and consumption for the area of the licensed premises that is located in the EC zoning district shall be limited to between the hours of 11:00AM and 1 hour after Sunset, except for any additional hours that may have been granted by a special events permit. Hours granted by a previously granted Special Exception shall prevail.
  6. Entertainment within the area of the licensed premises that is located in the EC zoning district may only be accomplished by special exception or special events permit, unless previously granted by special exception.
  7. Applicant shall maintain a valid Certificate of Insurance that covers the area of the licensed premises that is located in the EC zoning district.
- ii. All conditions applicable to the upland area, as previously approved, shall likewise apply within the expanded area. In the event of any conflict with conditions for the expanded area of licensed premises in the EC zoning district established herein, the provisions herein shall prevail within the expanded area.
  - iii. No additional parking shall be required for the area of expansion in the EC zoning district.
  - iv. Rope and post requirements:
    1. The permit holder shall establish dominion and control of the area of expansion in the EC zoning district with rope and post.
    2. Rope and post shall extend along each property line, as well as the seaward extension of the area of expansion. Dune vegetation may be planted on the outboard side of the rope and post.
    3. A maximum of one six-foot wide pedestrian access opening is allowed per one hundred feet of the rope and post along the side parallel to the waterline.
    4. The permit holder must provide refuse containers at each pedestrian access point onto the beach to ensure that no outside alcoholic beverage containers are brought onto the licensed premise, and that no alcoholic beverage cups are taken off of the licensed premise onto the beach.
    5. Each access point in the rope and post to the beach shall contain a sign stating, "NO ALCOHOL ALLOWED BEYOND THIS POINT." The sign shall have a maximum size of two(2) feet by one(1) foot.

(2) Procedure for Approval of COP in the EC Zoning District. The following procedures are applicable to premises seeking expansion of COP into the EC

zoning district:

- a. Administrative approval: An existing, establishment that has been approved for COP in the Downtown zoning district may expand the area where COP is permitted into an adjacent EC zoning district by administrative approval, subject to all conditions contained in § 34-1264(g)(1). Existing establishments with prior approval for COP in the EC zoning district must come into compliance with the conditions set forth in § 34-1264(g)(1) through the administrative approval process prior to (Insert date) or such use will become a non-conforming and any future expansion will require special exception approval.
- b. Special exception: Any establishment in the Downtown zoning district that has not been approved for COP prior to (Insert date) may seek approval for expansion of COP into the EC zoning district, provided it is requested at the time the COP in the Downtown zoning district is sought and provided further that all conditions identified in § 34-1264 (g)(1) are met.
- c. Commercial Planned Development:
  1. A new or existing resort that is located outside of the Downtown zoning district may only expand the area permitted for COP into the adjacent EC zoning district through Commercial Planned Development Zoning, subject to all conditions contained in § 34-1264(g)(1).
  2. Existing establishments located outside the Downtown Zoning District with COP permitted in EC through either CPD Zoning or a Special Permit previously approved by Lee County will be considered nonconforming and may not expand the area for COP but may bring their property into compliance with current regulations by incorporating the conditions of § 34-1264(g)(1) through the administrative approval process.

(h) *Nonconforming establishments.*

- (1) *Expansion.* A legally existing establishment engaged in the sale or service of alcoholic beverages which is made nonconforming by reason of new regulations contained in this chapter shall not be expanded without a special exception. The term “expansion,” as used in this subsection, shall include the enlargement of space for such use and uses incidental thereto, the expansion of a beer and wine bar to include intoxicating liquor, as that term is defined by the Florida Statutes, and the expansion of a bar use to a nightclub use. Nothing in this subsection may be construed as an attempt to modify any prohibition or diminish any requirement of the state.
- (2) *Abandonment.* An establishment engaged in the sale or service of alcoholic beverages may thereafter become a nonconforming use due to a change in regulations, as provided in division 3 of article V of this chapter. Nonconforming uses may continue until there is an abandonment of the permitted location for a continuous nine-month period. For purposes of this subsection, the term “abandonment” shall mean failure to use the location for consumption on premises purposes as authorized by the special exception, administrative approval, or other approval. Once a nonconforming use is abandoned, it cannot be reestablished unless it conforms to the requirements

of this chapter and new permits are issued.

(i) *Revocation of permit or approval.*

(1) The town council has the authority to revoke an alcoholic beverage special exception, administrative approval, or other approval upon any of the following grounds:

- a. A determination that an application for special exception or administrative approval contains knowingly false or misleading information.
- b. Violation by the permit holder of any provision of this chapter, or violation of any state statute which results in the revocation of the permit holder's state alcoholic beverage license by the state alcoholic beverage license board or any successor regulatory authority.
- c. Repeated violation of any town ordinance at the location within the 12-month period preceding the revocation period.
- d. Failure to renew a state liquor license, or written declaration of abandonment by the tenant and owner of the premises if under lease, or by the owner himself if not under lease.
- e. Abandonment of the premises. An establishment which continually maintains (renews) its state liquor license, even though it has suspended active business with the public, shall not be deemed to have been abandoned for purposes of this subsection.
- f. Violation by the permit holder of any condition imposed upon the issuance of the special exception or administrative approval.
- g. Violation of any of the minimum standards of the special exception.

(2) Prior to revoking an administrative approval, special exception, or other approval for alcoholic beverages, the town council shall conduct a public hearing at which the permit holder may appear and present evidence and testimony concerning the proposed revocation. At the hearing, the town council may revoke the permit if a violation described in this subsection is established by a preponderance of the evidence. The permit holder shall be notified of the grounds upon which revocation is sought prior to any hearing, and shall be given notice of the time and place of the hearing in the same manner as set forth in article II of this chapter.

(3) When an alcoholic beverage permit is revoked in accordance with the terms of this subsection, the town may not consider a petition requesting an alcoholic beverage permit on the property for a period of 12 months from the date of final action on the revocation.

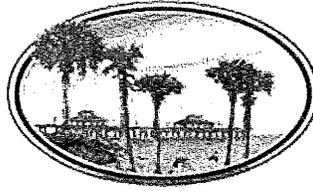
(4) Upon written demand of the town council, any owner or operator of an establishment with a COP license, must make, under oath, a statement itemizing the percentage of gross receipts that are from the sale of alcoholic beverages. Failure to comply with such demand within 60 days of the date of demand shall be grounds for revocation of the special exception, administrative approval, or other approval.

(j) *Appeals.* All appeals of decisions by the director shall be in accordance with procedures set forth in § 34-86 for appeals of administrative decisions.

(k) *Alcoholic beverages in restaurants.* The sale of alcoholic beverages for on-premises consumption in restaurants (see § 34-1264(b)(2)) must conform to the

following regulations:

- (1) The sale of alcoholic beverages must be incidental to the sale of food, and restaurants permitted to serve alcohol shall provide that food service facilities will remain open serving appropriate food items on the menu at all times coincident with the sale of alcoholic beverages.
- (2) The sale of alcoholic beverages shall be permitted only when it accounts for no more than 49% of the combined gross sales attributable to the sale of food and all beverages during any continuous twelve-month period.
- (3) Restaurants selling alcoholic beverages shall keep separate books and records reflecting the gross sales of food and nonalcoholic beverages and the gross sales of alcoholic beverages for each month. The failure to keep the books and records required herein shall be a violation of this code.
- (4) The town manager or designee may, during normal working hours, request to inspect and audit the books and records of the business from which alcoholic beverages sales are wholly for the purpose of verifying that the gross sales of alcoholic beverages are no more than 49% of the gross sales of food and all beverages during any continuous twelve-month period. Refusal of an owner or operator of such business to allow said inspection shall be a violation of this code. Should the audit reveal that this requirement is not being met, the town manager shall initiate enforcement proceedings for a violation of this code.
- (5) For any restaurant which has been selling alcoholic beverages for less than twelve months, the provisions of this section shall be interpreted and applied with respect to said lesser period of time.
- (6) These regulations may be enforced through the normal code enforcement procedures of this code (for example, § 1-5, or article V of ch. 2). In addition to these procedures, violations of these regulations may be restricted by an injunction initiated by the Town of Fort Myers Beach, by any citizen thereof, or by any person affected by the violation of such regulations.



## MINUTES

**FORT MYERS BEACH  
LOCAL PLANNING AGENCY  
TOWN HALL – COUNCIL CHAMBERS  
2523 ESTERO BOULEVARD  
FORT MYERS BEACH, FLORIDA 33931**

**January 10, 2012**

### **I. CALL TO ORDER**

Meeting was called to order at 9:01 a.m. by Joanne Shamp; other members present:

Alan Smith  
John Kakatsch  
Bill Van Duzer  
Hank Zuba  
Al Durrett  
Jane Plummer

LPA Attorney, Marilyn Miller  
Staff Present: Walter Fluegel, Community Development Director  
Leslee Chapman, Zoning Coordinator  
Josh Overmyer, Planning Coordinator

### **II. PLEDGE OF ALLEGIANCE**

### **III. INVOCATION – Hank Zuba**

### **IV. MINUTES**

#### **A. Minutes of December 13, 2011**

**MOTION:** Mr. Kakatsch moved to approve the December 13, 2011 minutes; second by Ms. Plummer.

**VOTE:** Motion passed 6-0.

## V. PUBLIC HEARINGS

### A. LPA Resolution 2012-001 Honoring Carleton Ryffel

WHEREAS, the Local Planning Agency (LPA) is mandated by Florida Statutes Section 163.3174; and WHEREAS, the LPA was established in accordance with the requirements of the Town of Fort Myers Beach Land Development Code section 34-111 et seq.; and

WHEREAS, Section 34-113 sets forth the requirements for membership on the LPA; and

WHEREAS, Carleton Ryffel was a member of the LPA from June 2009 to June 2011; and

WHEREAS, during his membership on the LPA, Carleton Ryffel provided exemplary service to the Town of Fort Myers Beach:

IT IS HEREBY RESOLVED BY THE LPA OF THE TOWN OF FORT MYERS BEACH, FLORIDA as follows:

CARLETON RYFFEL IS RECOGNIZED FOR HIS HARD WORK AND DEDICATED SERVICE TO THE TOWN OF FORT MYERS BEACH. HE CONTRIBUTED HIS EXPERTISE IN LAND PLANNING TO BENEFIT THE LOCAL PLANNING AGENCY OF THE TOWN, PROVIDING INSIGHT AND RECOMMENDATIONS TO ADDRESS ISSUES OF CONCERN TO THE WELFARE OF THE RESIDENTS AND VISITORS, AND TO SUPPORT THE LOCAL COMMERCIAL INTERESTS, AS VICE-CHAIRMAN OF THE LPA, HE CREATED A POSITIVE ENVIRONMENT FOR THE LOCAL PLANNING AGENCY WHILE MAINTAINING AN ATTITUDE OF COURTESY TOWARD COLLEAGUES, CITIZENS AND STAFF DURING DISCUSSIONS AND DELIBERATIONS. HE DISCHARGED HIS DUTIES WITHOUT FAVOR OR PREJUDICE WHILE RESPECTING ALL LAWS, RULES AND REGULATION. HIS CONTRIBUTIONS WORKED TO INSURE THAT THE UNIQUE AND NATURAL CHARACTERISTICS OF THE TOWN OF FORT MYERS BEACH WILL BE PRESERVED.

**MOTION:** The foregoing Resolution was adopted upon a motion by LPA Member Kakatsch and seconded by LPA Member Zuba.

Ms. Shamp recognized the work and dedicated service of Vice Chair Ryffel to the LPA and the Town of Fort Myers Beach.

**VOTE:** Motion passed, 6-0.

### B. FMBSEZ2011-0003 Paradise Tropical Wines

Ms. Shamp opened the hearing at 9:10 a.m.

Zoning Coordinator Chapman entered the Affidavit of Publication into the record.

Ms. Shamp asked the LPA Attorney to swear in the witnesses; and LPA Attorney Miller swore in the witnesses.

Town of Fort Myers Beach

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Ms. Shamp asked if any LPA Member had any ex-parte communication regarding this item. Mr. Smith – none; Mr. Zuba – none; Mr. Durrett – none; Ms. Shamp – none; Mr. Kakatsch – none; and Ms. Plummer – none.

Zoning Coordinator Champman presented comments for FMBSEZ2011-0003, Paradise Tropical Wines, on behalf of the Town of Fort Myers Beach. She displayed a map of the subject property located at 159 Old San Carlos Boulevard. She reported the applicant was requesting the Special Exception in a location that currently had a land use of Pedestrian-Commercial and was in the Downtown zoning district in order to allow a 2-COP alcoholic beverage license in conjunction with consumption on premises and package sales of specialty fruit wines for a retail specialty wine shop in an existing retail location. She added that the only component of the special exception was the request for consumption on premises with wine tastings that involved consumption of one-half to one ounce portions and the package sale of wine in sealed containers of the proposed use. She displayed the applicant's proposed floor plan in a unit known as Tropical Sunset, and noted the applicant was not requesting any outdoor consumption and the hours would be 10:00 a.m. to midnight. She explained the special exception request was required because the subject site was located within 500 feet of another site that had consumption on premises. She briefly reviewed the supporting regulations for special exceptions which the Town Council would hear and decide:

1. *Whether there exist changed or changing conditions [that] make approval of the request appropriate* – no request for a change to the existing property and the request remains consistent with the intended use of the area.
2. *Whether the request is consistent with goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan* – the subject property is located in the Downtown Core and the Comprehensive Plan envisions the area as a vibrant area with a mix of uses.
3. *Whether the request meets or exceeds all performance and locational standards set forth for the proposed use* – the special exception request was due to a locational standards and was consistent for request.
4. *Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources* – proposed use should have no negative effects on the environmentally critical areas or natural resources. She noted the subject property was already located in one of the Town's most highly developed areas and the request was compatible and appropriate within its neighborhood.
5. *Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property* – staff did not anticipate any damage, hazard or nuisance and the LPA was able to condition the request.
6. *Whether the requested use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34* – the consumption on premises of alcoholic beverages on the subject property would be required to comply with the applicable standards in the Fort Myers Beach LDC including but not limited to Chapter 34-671 et seq. and 34-1264. She reported that staff found, with some conditions, would be in compliance with the applicable general zoning codes.

She stated that staff recommended approval of the special exception in the Downtown Zoning District to allow 2-COP [beer and wine] alcoholic beverage license in conjunction with wine tasting and package sales at the location of 159 Old San Carlos Boulevard with six conditions:

1. That the special exception be approved only for a 2-COP [beer and wine] alcoholic beverage permit to allow consumption on premises of specialty fruit wines and the package sales thereof. If an increase in the alcoholic beverage licenses series is sought, a new approval in accordance with the LDC will be required.
2. Consumption on premises is limited to the retail package store located at 159 Old San Carlos Boulevard, currently operated as East Winds, as shown on the attached floor plan Exhibit C.
3. The 2-COP for consumption on premises is limited to tastings of one-half [1/2] to one [1] ounce servings to adults age 21 or above, who are interested in purchasing the specialty Florida fruit wines.
4. Sales of specialty wines for consumption off the premises must be in factor-sealed containers. At no time shall alcoholic beverages be sold "by the glass" for consumption on premises.
5. Hours of operation for consumption on premises shall be limited to the hours of 10:00 a.m. to 10:00 p.m., daily. The package store may be open during hours outside of this restriction, but consumption on premises shall be limited to the hours listed herein.
6. The subject application does not include consumption on premises in conjunction with outdoor seating areas. All consumption [tasting] activities must take place inside the retail store.

Eric Malasky, applicant, showed an example of the size of the wine tasting sample cup (1/2 to 1 ounce) that would be used at the tastings. He explained the basis for conducting wine tastings was due to the customers wanting to taste the uniqueness of the fruity Florida wine prior to purchase.

Mr. Smith questioned the 2-COP approval request and if he had any consideration for beer tasting in the future.

Mr. Malasky responded in the negative; and stated it would be for the wine, wine-related items, and gift items.

Mr. Zuba questioned the appearance of staff's proposed restriction to "fruit" wines.

Zoning Coordinator Chapman stated it was not staff's intent to restrict it to fruit wines; however, that was the label the applicant gave to the Town for their product. She explained "fruit" could be removed from the wording.

Mr. Zuba noted it appeared on the drawing that the bathroom had been eliminated from the existing store.

Mr. Malasky explained there would be a public bathroom and it would be maintained.

Ms. Plummer asked the applicant regarding the proposed condition for the hours of operation for the tastings.

Mr. Malasky stated he had no problem with the proposed hours for the tastings.

Discussion was held concerning the wine distributor used; Mr. Malasky's store location in Cape Coral; and selling other items in the subject store such as food.

Ms. Shamp questioned aspects of Chapter 34-1263 and 1264 as it applied to the special exception request and noted that there was one existing package store on Fort Myers Beach with consumption on premises which had a separate door to the bar section from the package store area and on premise consumption; and discussed whether or not this could be approved according to code and would it be setting precedent.

LPA Attorney Miller responded by noting in Chapter 34-1263(d), Location of Package Stores, it stated “*no package store or other establishment primarily engaged in the retail sale of retail liquor*”. She would research in the State statutes the definition of “liquor” since she believed there was a separate definition of liquor, beer, and wine.

Community Development Director Fluegel pointed out that within Chapter 34-1263 the sale for off-premises of consumption it established the permissibility of the use itself.

Discussion was held regarding Chapter 34-1264, sale for off-premise consumption, locational standards as applicable to package stores, and the wine tasting which was on-premise consumption.

Mr. Zuba also questioned if approving the resolution would cause a proliferation of similar matters.

Community Development Director Fluegel noted these types of requests would be handled through a special exception application process.

Discussion ensued regarding the location of the subject property as it pertained to be in the Downtown Core and it was noted that the establishment was within 500’ to a park, and staff noted there were other other establishments within 500’ of the property currently licensed to allow consumption on-premises.

LPA Attorney Miller noted that the sale of liquor and wine were regulated by the State under different chapters - Chapter 565 for liquor and Chapter 564 for wine. It was her opinion that the 2-COP only applied to beer and wine.

Discussion ensued regarding the difference between the State’s definition of beer, wine, and liquor.

Community Development Director Fluegel pointed out that if approved, the LPA would be granting two which would specifically say that the only State liquor license the Town could sign off zoning approval would be for a 2-COP.

Public Comment opened.

John Lallo, Owner of Pete’s Time Out, was sworn in by LPA Attorney Miller. He pointed out the location of his business in Times Square, welcomed Mr. Malasky to the area, and discussed his belief that Mr. Malasky would offer unique items. He suggested the LPA may want to limit how many ounces the attendees could have at a tasting.

Public Comment closed.

Mr. Smith discussed his viewpoint that the subject business would be an appropriate use in the Times Square location.

Mr. Zuba explained why he would be in support of the special exception; questioned why the applicant was being limited to “fruit” wines; and the floor plan should be modified to indicate the bathroom.

Ms. Shamp noted the plan did indicate a half-bath; discussion ensued regarding the location of the bathroom on the floor plan.

Zoning Coordinator Chapman stated staff would obtain a clear floor plan indicating the bathroom.

Messrs. Durrett and Kakatsch welcomed Mr. Malasky and his business to Fort Myers Beach.

Ms. Plummer recounted her experience visiting a similar type of store in St. Augustine.

Ms. Shamp asked if the LPA wanted to consider limiting the number of samples per customer.

Consensus was not place a limit on the number of samples per customer and to remove the word “fruit”.

**MOTION:** Mr. Smith moved that the LPA recommend to the Town Council to approve the applicant’s request for a special exception in the Downtown Zoning District to allow a 2-COP alcoholic beverage license in conjunction with consumption on premises (wine tasting) and package sales of specialty wines, with any approval subject to the recommended conditions of approval. In accordance with the requirements of LDC Sections 34-84 and 34-88 regarding consideration of eligibility for a special exception, the LPA recommends that the Town Council make the following findings and reach the following conclusions:

1. Changed or changing conditions do not exist that make the request approval, as conditioned appropriate;
2. The requested special exception, as conditioned, is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan;
3. The requested special exception, as conditioned, meets or exceeds all performance and locational standards set forth for the proposed use;
4. The requested special exception, as conditioned, will protect, conserve, or preserve environmentally critical areas and natural resources;
5. The requested special exception, as conditioned, will be compatible with existing or planned uses and will not cause damage, hazard, nuisance or other detriment to persons or property;
6. The requested special exception, as conditioned, will be in compliance with the applicable general zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34;

second by Ms. Plummer.

**VOTE:** Motion passed, 6-0.

Ms. Shamp closed the hearing at 9:40 a.m.

Town of Fort Myers Beach

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### C. COP Ordinance

Community Development Director Fluegel reported the proposed ordinance would be assigned a number prior to presentation to Town Council.

Ms. Shamp opened the public hearing on the COP Ordinance at 9:42 a.m.

Community Development Director Fluegel stated the Notice of Public Hearing was posted.

LPA Attorney Miller read the title of the COP Ordinance into the record:

AN ORDINANCE AMENDING CHAPTER 34, ARTICLE III, DIVISION 4 IN THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE, "CONVENTIONAL ZONING DISTRICTS" AMENDING SECTION 34-652, "EC (ENVIRONMENTALLY CRITICAL) ZONING DISTRICT" BY ADDING "EXPANSION OF AREA DESIGNATED FOR SERVICE OF ALCOHOLIC BEVERAGES" AS PERMITTED USE; AMENDING CHAPTER 34, ARTICLE IV, DIVISION 5 IN THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE, "ALCOHOLIC BEVERAGES", AMENDING SECTION 34-1261, DEFINITIONS; AMENDING SECTION 34-1264, "SALE OR SERVICE FOR ON-PREMISES CONSUMPTION" BY ADDING REGULATIONS GOVERNING THE EXPANSION OF ON-PREMISES CONSUMPTION INTO THE EC ZONING DISTRICT; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

Community Development Director Fluegel recapped staff's presentation of the proposed ordinance at last month's LPA Meeting; pointed out that to facilitate the understanding of the proposed regulatory approach there was an Excel spreadsheet included in the agenda item back-up which broke down the proposed regulatory approach on an issue-by-issue basis; and reported staff would present today their recommendation for the best approach to regulate COP in the EC Zoning District. He thoroughly discussed Exhibit A, Section 34-652. EC, Section 34-1261. Definitions, and Section 34-1264. Sale or Service for On-Premise Consumption:

- As it pertained to establishment of permitted uses;
- Noted that language was added under (d) (8) "*Expansion of area designated for the consumption and service of alcoholic beverages, subject to the regulations in §34-1264(g)(1).*";
- Examined Section 34-1261. Definitions as it pertained to changing definitions so that they were consistent with other chapters as well as the Town Code of Ordinances (i.e. beach, EC Zoning District, Erosion Control Line, etc.
- Reviewed page 10, §(g), Regulations Applicable to Expansion into EC Zoning District, Expansion of area designated for permit, and §(g)(1) Regulations Applicable to Expansion into EC Zoning District and subparagraphs (a) Area of Expansion and (b) Defined Area, (i) Standard conditions of approval (1-7) and ii, iii, iv (1-5);
- Examined page 12 §(2), Procedure for Approval of COP in the EC Zoning District, subparagraphs a, b, c (Commercial Planned Development, 1-2).

Public Comment opened.

John Lallo, Owner of Pete's Time Out in Times Square, reported he spoke last night with John Richard the owner of Shipwreck, and Brad Benson the owner of Wahoo Willie's, and they were both unable to

attend today's LPA meeting. He reported that the three of them agree there should be equal enforcement up and down the beach concerning the subject issue. He stated that the following comments would be his own and he relayed comments he received from tourists who questioned why they could not drink on the beach. He explained why he disagreed with the requirement for plastic cups to have the identity of the bar. He commented on the definition sunset and noted that it lasted for approximately 45 minutes after the sunset and the time usually changed every day.

Lee Melsek, resident and representing the Board of Directors of the Fort Myers Beach Civic Association, stated they opposed the expansion of the sale of alcohol onto the bathing beaches, and it was the Association's intention to challenge the ordinance at the Council level.

Larry Arnold, resident, noted that he received many emails and was contacted by people on the beach who were in favor of the COP. He discussed his views that supported designated areas for COP in the EC Zone which would give the Town the ability to control unwanted and illegal consumption on public beaches and would allow for the protection of environmentally sensitive areas. He discussed his belief on how the designated COP would benefit the businesses and the Town.

John Albion, President of the Fort Myers Beach Chamber of Commerce, stated he was glad to see the matter addressed and an attempt to create a "fairness" doctrine in the area. He noted his concern for the proposal in the ordinance that the Town Manager has the authority to reduce the area of expansion (unless there was a hurricane or other emergency that reduced beach access) and suggested instead it should fall under the elected Town officials. He also addressed his concerns regarding the "rope and post" requirement and discussed the basis for his objection to the business name on the plastic cups as it pertained to business insurance liability issues.

Tom Babcock read his statement into record which questioned if it was the Town's intention to expand the COP into the EC Zone (environmentally critical zone) then the ordinance needed further consideration. He discussed his opinion that proposed ordinance should not be interpreted as though the Town Council wanted to have expansion of the COP in the EC Zone, rather it should be that the Council wanted appropriate and fair regulation of this issue. He felt the LPA was not required to change the LDC to allow the expansion of alcohol sales onto the beach. He suggested that visitors should be informed that they are not permitted to bring coolers with alcohol onto the beach and that the only places to consume alcohol were in the areas designed to allow consumption of alcohol. He noted he believed extra enforcement costs would be incurred and asked if the Town was prepared to pay for that enforcement. He expressed his opinion that allowing expansion of the COP as an administrative approval would eliminate due process (neighbors needed to be informed and permitted time for public comment); and how the wording of the proposed ordinance conflicted with other sections of the LDR (i.e. separating a section with rope and bollards require a special exception). He stressed the importance of the proposed draft ordinance and requested that all the issues be fully researched, discussed, and resolved to the LPA's satisfaction.

Pat Cenello, Owner of Nemo's on the Beach, noted he had seven liquor licenses and had been in existence for 30 years. He applauded the attempt for creating a level playing field through the proposed draft ordinance and stated he would like to see the ordinance approved.

Annie Babcock, resident, explained that she was speaking with the perspective of a resident and not a business owner. She asked the LPA to vision the downtown area in 5 years and in 10 years, and then asked if they saw families, young people, young couples, older couples, "spring breakers", or people striving to make ends meet on the beach. She discussed how it appeared there was not a notice of today's meeting in the two newspapers nor was there anything easily visible on the Town of Fort Myers Beach website regarding the meeting or the agenda; however, she did find information on the COP and the meeting in the archives on the website. She recounted how she walked the beach two times a day and noted the differences in attitude and behavior and the difference in ages in the areas as she passes them; the difference between in the level of respect she encountered in each area as she passed (i.e. residential, business area). She reviewed her concerns regarding the proposed draft ordinance and how it would change the character of the beach; she stressed the need for specific enforcement if the ordinance was approved. She asked the LPA to make the ordinance specific for containers to the Downtown area, to consider the effect as it pertained to turtle season; remember additional enforcement costs. She discussed the importance of keeping in mind the rights of others.

Maury Gingrich, seasonal resident, questioned the definition of the Downtown Zoning Area.

Community Development Director Fluegel described the boundaries of the Downtown Zoning Area.

Maury Gingrich, seasonal resident, addressed a previous comment to tell visitors not to bring their coolers to Fort Myers Beach was the same as telling visitors not to come to Fort Myers Beach.

Leslee Donovan, bartender and manager at the Gulfshore Grill, explained that her customers consisted of locals and tourists and all they wanted to do is put their feet in the sand and have a beverage. She recounted the Gulfshore Grill's experience with Lee County prior to the Town's incorporation as it pertained to COP. She explained how the Gulfshore Grill worked to comply with the Town's regulations as they currently exist. She noted her objection to having the business name on the beverage cups, and to the rope and post requirement noting potential safety issues to pedestrians/bicyclists since there were no lights on the beach.

Steve Malakaikis, Owner of Plaka Restaurant in Times Square, stated he also spoke for the owner of another Times Square business. He discussed the support of the rope and post requirement; an objection to the business name on the plastic cups; and the support of what staff was trying to accomplish through the proposed ordinance.

Public Comment closed.

Mr. Durrett discussed the rope and post aspect of the proposed ordinance, and suggested there was a better method to define an area such as but not limited to potted plants. He noted the potential for liability issues with the use of rope and post. He also addressed the criteria of "half an hour after sunset" and how it was not fair to the public; and disagreed with the requirement for businesses to have their name on the cups.

Mr. Kakatsch stated he had the same concerns as Mr. Durrett plus he wanted to know the potential cost for enforcement.

Ms. Plummer agreed that having a business name on a cup would probably hurt businesses due to liability issues and be an additional expense. She discussed her objection to rope and posts and how they interfered with the line of vision down the beach and suggested investigating other methods to indicate areas of containment (i.e. uniform signage); how containment of patrons on the business property should be a matter for the business to enforce; that sea oats were as intrusive as rope and post; and that she was appalled regarding the number of flags, chairs, jet skis, and parasails were actually left on the beach overnight. She stated she was in favor of consumption on premise and that the Town needed to provide rules, regulations, and guidelines for the businesses.

Ms. Shamp discussed the purpose and creation of the EC Zone; and explained her belief that the EC Zone was created to protect the Town's greatest asset which was the beach, and how this major expansion of COP onto the beach would be a significantly greater precedent than anything that was previously set. She addressed her belief that the proposed ordinance did not address regulating the few existing businesses which was presented to the LPA a year or two ago, rather it dealt with expanding alcohol consumption in an unprecedented fashion throughout the island. She discussed her beliefs that the LPA historically had not supported expansion of COP; that if the proposed ordinance was approved, the Town could not "backtrack" later; that the purpose of the LPA which included but was not limited to protecting the Town's resources from commercial intrusion; and that the LPA should have an option to send to Council a proposed ordinance that does not allow for expansion but does regulate the existing businesses. She explained how she did not approve of the proposed ordinance; however, she would work to make it the best it could be to present to Town Council. She reviewed her concerns and commented on the following sections in Exhibit "A" Section 34-652.EC (Environmentally Critical) Zoning District:

- Page 3, (d)(8) – expanding the consumption of alcohol in an environmentally critical zone, and questioned if food services would be expanded onto the beach as well.

Community Development Director Fluegel stated the business would be permitted to do food service; however, it was the alcohol license which was the issue.

Discussion ensued regarding the food sale requirement of serving alcohol and serving percentages in conjunction with an SRX rider on licenses.

Ms. Shamp questioned if the proposed ordinance should be changed to include the "service of food" on Page 3, (d)(8).

LPA Attorney Miller recommended adding "and any required food service".

Ms. Shamp continued reviewing her concerns and commented on the following sections in Exhibit "A" Section 34-1261. Definitions:

- Page 4, "beach", addressed consistency throughout the LDC and the word "that" should be included.

LPA Attorney Miller agreed with the recommendation.

Ms. Shamp continued reviewing her concerns and commented on the following sections in Exhibit "A" Section 34-1261. Definitions and Section 34-1264. Sale or Service for On-Premises Consumption:

- Page 5, noted a scrivener's error on the second line from the bottom should be "proposed" and not "proposes".
- Page 11, (b) Defined Area, "*The area of expansion of a COP licensed premises extending seaward into the E zoning district, shall be limited to no more than 33% of the land area...*" and suggested saying "the distance".

LPA Attorney Miller noted it stated it was "*limited to no more than 33%*" and gives the option of doing less.

Discussion ensued regarding linear distance measurement, the 33% limitation, and Mean High Water Line.

LPA Attorney Miller concurred that the measurement was a linear distance and not square footage.

Ms. Shamp continued reviewing her concerns and commented on the following sections in Exhibit "A" Section 34-1264. Sale or Service for On-Premises Consumption:

- Page 11, (b)(i)(1), questioned if the word "seaward" should be included as follows: "...upland licensed premise must be located immediately seaward adjacent to and contiguous with the EC zoning district."

LPA Attorney Miller responded in the negative and explained that there was the requirement that it has to be the same ownership.

Ms. Shamp continued reviewing her concerns and commented on the following sections in Exhibit "A" Section 34-1264. Sale or Service for On-Premises Consumption:

- Page 11, (b)(i)(3), questioned if the requirement to have the business name on the cups was a liability or a responsibility; and explained her opinion that the purpose was to contain the cups within an area and was essential to enforcement.
- Page 12, (iv), noted she did not like the appearance of rope and post; however, they were probably the lesser of two evils. She commented how she more strongly disliked the proliferation of signs she has seen on current properties that serve alcohol. She described how rope and post would have to be installed as it pertained to turtle season according to the DEP. She discussed her interpretation of the Comp Plan to re-vegetate the beach.

Discussion was held regarding beach furniture and how it was addressed in the Town codes.

Ms. Shamp continued reviewing her concerns and commented on the following sections in Exhibit "A" Section 34-1264. Sale or Service for On-Premises Consumption:

- Page 12 and 13, (2), Procedure for Approval of COP in the EC Zoning District, (a) Administrative Approval and (b) Special Exception, she noted her opposition to having the option for an administrative approval and discussed her viewpoint that the administrative approval process would remove the rights of neighboring property owners right to comment on the matter.

- Page 13, (c) Commercial Planned Development, (2), - she questioned how many businesses currently exist outside the Downtown Zoning District with COP permitted in EC.

Community Development Director Fluegel reported there were five such establishments.

Ms. Shamp stated then they would circumvent the Commercial Planned Development for Special Exception.

Community Development Director Fluegel explained that this was to bring the businesses into compliance; they were already approved for COP in the EC.

Ms. Shamp continued reviewing her concerns and commented on the following sections in Exhibit "A" Section 34-1264. Sale or Service for On-Premises Consumption:

- Discussed her concerns that there was no education provision for residents or visitors so they would know the Town's alcohol policies.

Discussion ensued regarding the Town's current open container law, enforcement, practicality of enforcement, and how to educate the public on the topic; and how Council would need to give consideration to these matters.

Community Development Director Fluegel reported the State's alcohol licensing require dominion and control over the licensed premise; and staff felt that the rope and post method was the best way of dominion and control which was based mostly on observations last year of how the current licensed premises worked. He added there appeared to be three methods to accomplish dominion and control: 1) rope and post, 2) decks, and 3) physical security details; and discussed each method.

Ms. Shamp pointed out that according to code currently no signs were permitted on the beach and in the downtown there was information as to whether signs could advertise alcohol; and asked if any other regulations would be necessary to address signage facing the beach.

Community Development Director Fluegel explained which signage was addressed in the sign ordinance and which was addressed in the proposed COP ordinance.

Mr. Smith discussed the need to address the request from the business owners for a level playing field to attract patrons; the importance of the downtown area to tourism; the need to investigate options to establish dominion for each business; his opposition to the business names on cups; the proposed restriction concerning when to stop serving after "sunset"; and questioned enforcement issues.

Community Development Director Fluegel reported that it would continue to be a Code Enforcement issue, and explained why there needed to be rules in order to enforce.

Mr. Zuba discussed the historical nature of the COP issue and how it related to the urgency of the proposed ordinance. He questioned how staff determined the expansion area should be 1/3.

Community Development Director Fluegel explained how staff determined that it would provide each business with some degree of expansion and provided some degree against erosion and tidal events; but also, recognized the public's right to use the beach.

Mr. Zuba asked what extent (minimum or maximum amount) the establishments had that already had permission to serve on the beach.

Community Development Director Fluegel stated that many of them already go to the water line; and noted that the Beach Pub was at the minimal.

Discussion ensued regarding the degree of expansion permitted; licensing fees which were already set and fees pertaining to administrative approval; what could happen if the draft ordinance was not approved; ways to educate the public and the responsibility of the public to question what the regulations were pertaining to open containers; the use of rope as an alternative to rope and posts; and the State's requirement of dominion and control.

Community Development Director Fluegel explained that outside the Downtown area the ordinance addressed resorts and the definition of resorts.

Discussion continued regarding potential enforcement issues; the use of rope and post; and the use of less intrusive control methods.

Mr. Kakatsch asked if it was staff's opinion that the current Sherriff and Town Code Enforcement staff would be adequate to enforce the proposed ordinance.

Community Development Director Fluegel responded in the affirmative; and he added that he shared a copy of the proposed ordinance with the Sherriff's Office.

Discussion was held concerning the expansion area for areas other than the downtown; and potentially unique variance requests; and potentially different requirements for the south end of the island.

**MOTION:** Ms. Plummer moved to recess at p.m. and reconvene at 12:30 p.m.; second by Mr. Kakatsch.

**VOTE:** Motion approved, 6-0.

Recess at 12:10 p.m. – Reconvened at 12:30 p.m.

Ms. Shamp reviewed a list of specific items of interest that was mentioned by LPA Members during the previous discussion period.

1. Considerable discussion regarding the rope and post (bollard) as the means of dominion and control - 4/2 in favor (show of hands)
2. Whether half an hour after "sunset" and "service and consumption" was an appropriate time frame and wording - 3/3 in favor of not changing the wording (show of hands). Discussion was held.
3. Requiring business names on cups – 3/3 in favor (show of hands). Discussion was held.

Community Development Director Fluegel reviewed the basis for staff's recommendation to require business names on the cups.

Ms. Shamp continued to review a list of specific items of interest that was mentioned by LPA Members during the previous discussion period.

4. The 33% or a maximum of "X" linear feet for distance – discussion was held.

Community Development Director Fluegel reviewed the basis for staff's recommendation to as it pertained to recommending "half an hour after sunset" with respect to service and consumption on the beach.

Ms. Shamp continued to review a list of specific items of interest that was mentioned by LPA Members during the previous discussion period and asked for a show of hands regarding the 33% or a maximum of "X" linear feet for distance – 5/1 were in favor of changing half an hour to one hour.

**MOTION:** Mr. Zuba moved to recommend approval of the proposed ordinance with the change to "one hour after sunset" and suggest that staff define the maximum number of linear feet; second by Mr. Durrett.

Ms. Shamp reiterated her desire to give Town Council an option regarding regulating existing businesses and not include expansion.

LPA Attorney Miller questioned the earlier comments regarding changing language (i.e. scrivener's error, etc.)

Community Development Director Fluegel stated staff would handle those recommended changes/corrections.

Ms. Shamp asked for a show of hands to determine who was in favor of offering a vegetative option to rope and post. The show of hands revealed 5/1 in favor of offering the vegetative option.

Discussion was held concerning a vegetative option; and the food service amount for SRX requirements.

Consensus was that the LPA agreed with the proposed ordinance with a change to "one hour after sunset", and staff acknowledged the other concerns which they would address (i.e. define linear feet).

**MOTION:** Mr. Zuba restated the motion: that now therefore be it resolved, that the LPA recommends that the Town Council approve and adopt the proposed Town Ordinance to amend Chapter 34, Article IV, Division 5, Alcoholic Beverages, in the Town Land Development Code and recommends the following findings of fact and conclusions with regard thereto: Proposed Findings of Fact and Conclusions of Law:

1) The proposed amendments are in the best interest of the health, safety and welfare of the citizens, residents, visitors, and business owners of the Town of Fort Myers Beach and the LPA hereby recommends that the Town Council adopt the proposed amendments to the Land Development code with changes as noted below.

2. The LPA hereby recommends the following revisions to the proposed amendments:  
“one hour after sunset provision versus thirty minutes”  
Second by Mr. Smith.

**VOTE:** Motion approved, 4-2; Ms. Shamp and Mr. Kakatsch dissenting.

Ms. Shamp closed the Public Hearing at 1:05 p.m.

**MOTION:** Ms. Plummer moved to adjourn the LPA and reconvene as the HPB; second by Mr. Kakatsch.

**VOTE:** Motion approved, 6-0.

**ADJOURN AS LOCAL PLANNING AGENCY AND RECONVENE AS HISTORIC  
PRESERVATION BOARD 1:06 P.M.**

**VI. HISTORIC PRESERVATION**

Ms. Plummer stated she had nothing to report since the HAC did not have a meeting and has no meeting planned because they were waiting the re-opening of the Mound House to do a plan for the first visionary sign.

Mr. Durrett requested to be appointed to the Historic Advisory Committee.

Ms. Plummer acknowledged the request.

Ms. Shamp questioned how the meetings were noticed.

Mr. Plummer explained that at the last meeting it was decided not to have another meeting until it was determined when the Mound House would open. She added the Board was contacted to learn if they had any items for an agenda, but until the date was known there was no agenda to set.

Ms. Shamp noted Ms. Plummer was the Chair; however, she asked the status of the Vice Chair.

Discussion was held regarding Chair and Vice Chair of the HAC; and the composition of the HPB's representation on the HAC.

**MOTION:** Ms. Plummer moved to appoint Mr. Kakatsch as Vice Chair of the HPB; second by Ms. Shamp.

**VOTE:** Motion carried, 6-0.

**MOTION:** Mr. Kakatsch moved to adjourn the HPB and reconvene as the LPA; second by Mr. Smith.

**VOTE:** Motion carried, 6-0.

**HISTORIC PRESERVATION BOARD ADJOURNED AND  
RECONVENED AS THE LOCAL PLANNING AGENCY 1:12 P.M.**

**VII. LPA MEMBER ITEMS AND REPORTS**

Mr. Zuba – inquired as to the state of the Seafarer’s planning and organization.

Community Development Director Fluegel reported the County needed to come forward and apply for an amendment to the CPD zoning on the subject property and that the Town staff met with the County regarding the matter.

Mr. Zuba – asked if Community Development Director Fluegel was representing the LPA as it pertained to the subject property development and uses on Estero Boulevard as well as the parking issues.

Community Development Director Fluegel explained staff would review the application and basically informed the County the need to go through the process. He mentioned there would be legal issues to address once the County applied.

Mr. Zuba – encouraged staff to address the issue of traffic.

Community Development Director Fluegel noted that the County had already been informed that when they applied they would need to submit a traffic study too.

Ms. Plummer – stated she wanted to go on record as being concerned about the pond at the north end of the island and the growing bacteria and the related health issues. She added that since it was private property, the Town should address the property owner regarding health and liability issues. She suggested the Town should step-up their enforcement of removing chairs and jet ski equipment at that end of the beach.

Mr. Kakatsch – complimented the Holiday Inn on the new sign. He questioned if the Old Fort Myers Beach Marina had reached as far as they were going towards the water.

Community Development Director Fluegel stated he was under the impression that the property owner had a development order still had some lower profile improvements towards the beach. He explained he would have to pull the development order to remember the specifics.

Ms. Shamp – reported some members of the public requested her to address the lighthouse sign which came before the HPB that had been denied a historic designation. She questioned if the lighthouse sign had been designated as a structure.

LPA Attorney Miller reported they had come in for a variance.

Ms. Shamp – asked since there were new LPA members who had not been through the CIP process if the Community Development Director could explain to the LPA why the Town was having a

referendum for the amount of money to be potentially be spent for a Town Hall; and if the referendum passed would there be a role the LPA would play.

Community Development Director Fluegel gave a brief description of the CIP process as it pertained to the referendum for a Town Hall.

LPA Attorney Miller mentioned the various options regarding a Town Hall; and she reported the two informational meetings for the public on the Town Hall would be held tonight at 6:30 p.m. and on January 23, 2012 at 6:30 p.m.

Mr. Durrett – no items or reports.

Mr. Van Duzer – no items or reports.

Mr. Smith – no items or reports.

### **VIII. LPA ATTORNEY ITEMS**

LPA Attorney Miller had no items or reports.

### **IX. COMMUNITY DEVELOPMENT DIRECTOR ITEMS**

Community Development Director Fluegel – mentioned the sign ordinance and reported the implementation was going extremely well. He noted all five 7/11 stores came into compliance; staff was working with Holiday Inn; there were approximately 40 signs not in compliance and staff had issued notices.

Ms. Plummer discussed her belief that if there was an identifiable sign that was uniform with size, color, etc. designed by the Town to place on the rope and post regarding alcohol consumption on the beach it would be helpful.

Discussion was briefly held regarding the wording in the proposed ordinance regarding (“no alcohol beyond this point”) and standardized signage.

### **X. LPA/HPB ACTION ITEM LIST REVIEW**

Ms. Shamp thanked Mr. Kakatsch for representing the LPA at Town Council meetings. She reviewed the LPA/HPB Action List from December 13, 2011:

- Beach Raking – remains TBD
- LPA Resolution 2011-XX PWVL – no representation needed; Community Development Director gave a brief update; if comprehensive changes are made it would come back to the LPA.
- 216 Connecticut Street – TBD; discussion was held.
- Sign ordinance - TBD; briefly discussed.

Future Work Activities

- Rights-of-way, residential connection – TBD; briefly discussed.

- Stormwater – TBD; briefly discussed.
- IPMC – staff in the process of finding a replacement for Code Officer.
- COP in EC – to move up to “Resolutions Before Town Council”; staff to transmit memo to Council; Mr. Zuba to represent the LPA at Council.
- EAR – TBD; next step would be stakeholder workshops and analysis. Community Development Director noted they anticipated FEMA asking for a community rating system which would have a profound effect on flood insurance rates; and he noted this would increase staff time on the matter and then the Comp Plan work would be pushed back.
- Post-Disaster Reconstruction & Recovery – requested joint meeting with Town Council; Community Development Director noted how what happened with FEMA would relate to this topic and how the Comp Plan policies tied into this matter.

Ms. Shamp announced the next LPA meeting would be held on February 14, 2012.

#### XI. PUBLIC COMMENT

Public Comment opened.

Garr Reynolds, resident, commented on how he believed the current LPA members operated differently from past LPA members; recounted his experience on various committees throughout his lifetime; and described his view of an effectively working group. He hoped that the proposed COP ordinance would not be approved.

Public Comment closed.

#### XII. ADJOURNMENT

**MOTION:** Motion by Durrett, seconded by Mr. Kakatsch  
Mr. Smith – no items or reports.  
to adjourn.

**VOTE:** Motion approved, 6-0.

Meeting adjourned at 1:56 p.m.

Adopted 2-14-12 With/Without changes. Motion by Plummer/Zuba

Vote: 7-0

  
Signature

- End of document.

RESOLUTION OF THE LOCAL PLANNING AGENCY OF  
THE TOWN OF FORT MYERS BEACH FLORIDA  
RESOLUTION NUMBER 2012-003  
AMENDMENT TO CHAPTER 34 LAND DEVELOPMENT CODE  
CONSUMPTION ON PREMISES REGULATIONS

WHEREAS, the existence of the Local Planning Agency (LPA) is mandated by Florida Statutes Section 163.3174; and

WHEREAS, the Local Planning Agency (LPA) is statutorily responsible under Chapter 163, Florida Statutes, and the Town of Fort Myers Land Development Code (LDC) Section 34-120 for the review of proposed land development regulations, land development codes, or amendments thereto, and for making recommendations to the Town Council with regard thereto and performing such other reviews as are requested by the Town Council; and

WHEREAS, following proper notice and as required under Florida Statute and the LDC, the LPA conducted a public hearing on January 10, 2012 to consider a proposed Town Ordinance, which is attached hereto as Exhibit A and is hereby incorporated by reference; and

WHEREAS, the aforesaid Ordinance, if passed, would amend the regulations relating to COP that are applicable within Town municipal limits, as is more fully set forth in the proposed Ordinance; and

NOW THEREFORE BE IT RESOLVED, that the LPA **RECOMMENDS** that Town Council approve and adopt the proposed Town Ordinance to amend Chapter 34, Article IV, Division 5, Alcoholic Beverages, in the Town Land Development Code and **RECOMMENDS** the following findings of fact and conclusions with regard thereto:

**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

1. *The proposed amendments are in the best interest of the health, safety and welfare of the citizens, residents, visitors, and business owners of the Town of Fort Myers Beach and the LPA hereby recommends that the Town Council adopt the proposed amendments to the Land Development Code with changes as noted below.*
2. *The LPA hereby recommends the following revision to the proposed amendments:*
3. *Revise the language in Section 34-1264(g)(1)b.i.5. to provide that the hours of service shall be limited to between the hours of 11:00 A.M. and one (1) hour after sunset.*

The foregoing Resolution was adopted by the LPA upon a motion by **LPA Member HANK ZUBA** and seconded by **LPA Member ALAN SMITH** and upon being put to a vote, the result was as follows:

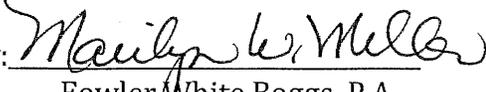
Joanne Shamp, Chair	NAY	Al Durrett, Member	AYE
Alan Smith, Member	AYE	John Kakatsch, Member	NAY
Hank Zuba, Member	AYE	Jane Plummer, Member	AYE

DULY PASSED AND ADOPTED THIS **10th** day of JANUARY, 2012.

Local Planning Agency of the Town of Fort Myers Beach

By:   
Joanne Shamp, LPA Chair

Approved as to legal sufficiency:

By:   
Fowler White Boggs, P.A.  
LPA Attorney

ATTEST:

By:   
Michelle Mayher  
Town Clerk