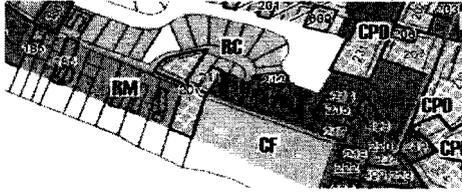


**Town of Fort Myers Beach**  
**Department of Community Development**



**MEMORANDUM**

To: LPA

From: Frank Shockey, Interim Community Development Director

Date: October 8, 2008

RE: LDC Alcoholic Beverages provisions and prior approvals

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Throughout the Town's existence and under Lee County before incorporation, approval of alcoholic beverage consumption on premises ("COP") has been on a case-by-case basis, for individual establishments and individual locations. The Town's current land development regulations allow for administrative (staff) approval under some circumstances, and require approval to be issued only by Town Council through the special exception (public hearing) process under other circumstances. In either situation, conditions to mitigate the potential impacts of the COP use can be attached to the approval.

Recently members of Town Council have expressed discomfort that the conditions attached to one approval differ from the conditions attached to another approval, often in seemingly inexplicable ways. Although it is true that the conditions that are appropriate to mitigate potential impacts in one location often differ from the conditions that are appropriate in another location, an examination of the conditions attached to prior approvals suggests that such matters are often over-analyzed and could be standardized for easier enforcement and more consistent regulation.

Community Development Staff compiled the conditions attached to prior approvals for a nearly 10-year period from the Town's incorporation to 2004 and sorted them into the topical groupings, presented on the attached sheets. These groupings involve restrictions on the hours of the use; restrictions on music and other entertainment; restrictions on the visibility of external advertisement;

restrictions on numbers of seats and service area, in conjunction with specific uses such as restaurants and motels; restrictions requiring buffering or partial enclosures on outdoor seating; and restrictions purporting to limit the specific type and/or series of State alcoholic beverage license.

The hours of operation and the restrictions on entertainment appear to be the most widely variable. Some restrictions on entertainment went so far as to prohibit specific styles of music.

In any effort to develop standards, the requirements and limitations of Florida Beverage Law should be borne in mind. The Beverage Law provides limits to the hours of operation that apply unless the local government establishes other limits, for example. Also included are limitations on locations of certain types of establishments.

The Town Manager has engaged a consultant to develop some alternatives for future amendments to the Land Development Code, including this issue. At this time a discussion of general parameters for the standardization would be most helpful, so that specific alternatives can be discussed in the future.

Town of Fort Myers Beach  
Summary of all Types of Beverage Licenses and Restaurants with Licenses for  
COP/Outdoor Seating with Conditions, 1995-2004

1. The outdoor seating shall be limited to a 2-COP license for beer and wine in conjunction with a restaurant.
2. The Special Permit is limited to a 2-COP beverage license for beer and wine in conjunction with a restaurant.
3. The location is limited to a Group II Restaurant and a 2-COP service bar.
4. The Special Permit for consumption on premises with outdoor seating shall be limited to a 4-COP license for sale of beer, wine and liquor in conjunction with a Group II Restaurant.
5. The use of the outdoor seating area may only be in conjunction with the restaurant use and limited to a 4-COP-SRX beverage license.
6. The Special Permit is limited to a 4-COP SRX liquor license.
7. The 2-COP beverage license is in conjunction with a Group III restaurant.
8. The consumption on premises for a 4-COP-SRX beverage license shall be used in conjunction with a Group II restaurant located on the 6<sup>th</sup> floor of the hotel
9. The consumption on premises is limited to a 2-COP beverage license to be used in conjunction with at restaurant group III. A bar or cocktail Lounge is prohibited.
10. The applicant must provide proof semi-annually that food sales exceed 50% of total revenue.
11. The consumption on premises (4-COP SRX) is in conjunction with a Group III, Restaurant
12. The Consumption on Premises (4-COP-S license) is in conjunction with room service and a Group II Restaurant with a lounge
13. The consumption on premises for an S-hotel beverage license shall be used in conjunction with a hotel convention hall and meeting rooms
14. The consumption on premises shall be used in conjunction with a Group II restaurant located on the 6<sup>th</sup> floor of the hotel
15. The Consumption on Premises (4-COP-S license) is in conjunction with room service and a Group II Restaurant with a lounge
16. The Special Permit is limited to the indoor movie theater use only.
17. All sales must be conducted within the theater, no sales or consumption may occur outside of the building. This approval is limited to a 2-COP license only.
18. The consumption on premises is limited to a 2-COP beverage license to be used in conjunction with a restaurant, group III, including outdoor seating. Full menu will be available during hours of operation.
19. The subject COP with outdoor seating is limited to no more than one restaurant to be located within SeaFarer's Mall
20. Consumption on premises approval for the 2 outdoor seating areas is in conjunction with the existing 4-COP-S hotel/motel license
21. Consumption on premises is limited to a 4-COP SRX series license in conjunction with the existing Group II and Group III Restaurants.
22. Consumption on premises is limited to a 2-COP series license in conjunction with a Group III Restaurant.

23. The Special Exception is limited to on premises consumption of alcoholic beverages in conjunction with outdoor seating, limited to a 4-COP SRX beverage license to be used in conjunction with the group 3 restaurant as approved under VAR2001-00053.
24. The consumption on premises is limited to a 2-COP license to be used in conjunction with a restaurant, group III, including outdoor seating.
25. The outdoor seating is limited to use in conjunction with the existing Hooters Restaurant. The consumption on premises is limited to a 2-COP beverage license to be used on conjunction with a restaurant, group 3, including outdoor seating.
26. The approval limited the consumption on premises to a 2-COP beverage license.
27. The Special Exception is limited to on premises consumption of alcoholic beverages in conjunction with outdoor seating, limited to a 4-COP SRX beverage license to be used in conjunction with the Snug Harbor Restaurant, as approved under VAR2001-00053.
28. Consumption on premises (2-COP, beer and wine only) is only in conjunction with a Restaurant.
29. Should at any time the sale of beer or wine become the primary use of the establishment, this approval shall become null and void.
30. Package sales of beer and wine is prohibited.
31. The consumption on premises (4-COP SRX) is in conjunction with a Group III Restaurant.
32. The use of the outdoor seating area may only be in conjunction with the restaurant use and limited to a 4-COP-SRX beverage license.

Town of Fort Myers Beach  
Summary of all Hours of Operation and Alcohol Service Requirements for all Licenses  
for COP/Outdoor Seating with Conditions, 1995-2004

1. The outdoor seating shall only be used between the hours of 10:00am to 12:00 midnight, daily.
2. The consumption on premises in the outdoor seating shall only be between the hours of 10:00am and 12:00 midnight, daily.
3. Outside service of beer and wine in the outside seating area for group parties or special events shall not extend beyond 10:00pm, nightly.
4. Operation of the restaurant and consumption use in the outdoor seating area is restricted to the hours of 10:00am to 10:00pm, daily.
5. The hours of operation will be between the hours of 10:00am until 10:30pm, daily.
6. Hours of operation for the outdoor seating area are limited to 10:00am to 10:00pm, daily.
7. Service and consumption of alcoholic beverages in the outdoor seating area will be restricted to the hours between 8:00am to 10:00pm, daily.
8. The hours of operation for the outdoor seating will be restricted to the hours of 11:00am to 10:00pm. Hours of operation for service of alcohol shall be as follows:
  - i. Service to outdoor seating – 11:00am to 9:00pm
  - ii. Restaurant – 11:00am to midnight, daily
9. Restaurant service to outdoor seating will end at 9:00pm.
10. The hours of operation are limited to 11:00am to 12:00pm daily.
11. The hours of operation are limited to 7:00am to midnight.
12. The hours of operation for the outdoor seating area will be restricted to the hours of 11:00am to 12:00 midnight for Monday through Thursday, the hours of 11:00am to 1:00am for Friday and Saturday, and the hours of 12:00 noon to 10:00 pm on Sunday with food service available during all hours of operation.
13. Hours of operation are limited from 11:00am to 11:00pm.
14. Hours of operation for service of alcoholic beverages will be from 9:00am to 2:00am daily.
15. The sale of beer and wine may only occur during the hours of 12 noon to 11pm
16. Alcoholic beverages to be available at office desk from 12 noon to 8pm only.
17. The hours of operation for the outdoor seating will be restricted to the hours of 11:00am to 10:00pm daily.
18. The hours of use for the outdoor seating area shall be the same as the hours of the associated restaurant's food service operations, but in any case shall not be later than 11:00 pm.
19. The hours of operation for the 2 outdoor seating areas will be restricted to the hours of 9:00am to 10:00pm daily.
20. Hours of operation for service of alcoholic beverages in conjunction with the Group II and II Restaurants will be:

|                     |  |
|---------------------|--|
| The Beach Dog House | 10:00am to 10:00pm Monday through Sunday |
| The Cottage         | 10:00am to 2:00am Monday through Sunday  |

The Gulf Shores Grill 7:00am to 10:00pm Monday through Sunday

21. Hours of operation for service of alcoholic beverages in conjunction with the restaurant will be 11:00am to 9:30pm daily.
22. The outdoor seating will only be used in conjunction with the service of alcoholic beverages between the hours of 11am and 12am, Monday through Thursday and between the hours of 11am and 1am, Friday and Saturday and between the hours of 12pm and 10pm Sunday.
23. The outdoor seating will only be used between the hours of 11am and 9:30pm, Sunday through Saturday.
24. The hours the outdoor seating can be used to 10:00am to 12:00 midnight, daily.
25. The outdoor seating will only be used in conjunction with the service of alcoholic beverages between the hours of 11am and 12am Monday through Thursday and between the hours of 11am and 1am Friday and Saturday and between the hours of 12pm and 10pm on Sunday.
26. The hours of operation for the service of alcoholic beverages in conjunction with the restaurant will be from 10:30am to 11:00pm Monday through Sunday.
27. Hours of operation are limited from 5:00pm to 10:00pm.
28. The hours of operation for the outdoor seating will be restricted to the hours of 11:00am to 10:00pm.

Town of Fort Myers Beach  
Summary of all Music and Entertainment Requirements for all Licenses for  
COP/Outdoor Seating with Conditions, 1995-2004

1. Outdoor entertainment/music shall be prohibited.
2. Outside entertainment in the outside seating area for group parties or special events shall not extend beyond 10:00pm, nightly.
3. The following outdoor entertainments are prohibited: a) Live musical performances of bands, jazz musicians, drum musicians, and amplified musical groups or instruments; b) Sporting events, whether live or televised; c) Karaoke or other sing-along activities; and d) Recorded rap, jazz, heavy metal, or rock music. Live background music from a non-amplified piano or guitar, or recorded background music will be allowed, provided such music is played at a low volume. Background music does not include rap, jazz, heavy metal, or hard rock music.
4. No outdoor live entertainment will be permitted.
5. Live entertainment is limited to the hours of 10:00am to 8:00pm, daily.
6. Live outdoor entertainment, music, and/or any type of outdoor speakers are prohibited.
7. There shall be no live entertainment, juke boxes, or television sets in the outdoor seating area; only recorded background music (excluding rap, hard rock and heavy metal music) will be allowed.
8. Any outdoor entertainment is prohibited.
9. Entertainment and live music will be restricted to non amplified acoustic music such as but not limited to, classical guitar, violin, etc., and be contained indoors.
10. Live entertainment is not permitted in conjunction with the Consumption on Premises with outdoor seating.
11. Live entertainment is not permitted in conjunction with the Consumption on Premises with outdoor seating.
12. The hours of operation for the 2 outdoor seating areas, for outdoor music and/or entertainment, will be restricted to the hours of 9:00am to 10:00pm daily.
13. The following conditions will apply to any outdoor music and/or entertainment located around the pool area or the proposed elevated deck;
  - a. Recorded background music that is restricted to a mono background system, which is defined as a 60 amps system with speakers limited to 1 to 2 watts that provides for a volume that is kept at or below normal conversation level, is allowed.
  - b. Only non-amplified string instruments are allowed to be played "live" without plugging into the mono background system.
  - c. Entertainment and/or live music, (excluding non-amplified string instruments), which is defined as a keyboard that is limited to the function of a piano with or without a Disc Jockey, referred to as a "DJ" and/or a vocalist is allowed only when the keyboard and all microphones, for a "DJ" or vocalist are plugged into the mono background system and the volume is kept at or below normal conversation level.

- d. Any music that is played in the Lounge Area located on the first elevated floor must comply with Conditions 4.a, 4.b, and 4.c, or else the outside door(s) from the Lounge to the proposed elevated deck must be closed.
- 14. Outdoor music and entertainment are prohibited in the outdoor seating areas.
- 15. Outdoor music or entertainment is limited to 11pm and live music is limited to non-amplified acoustical music.
- 16. Outdoor music or entertainment is prohibited.
- 17. Outdoor music and entertainment is prohibited.
- 18. Prohibited outdoor music/entertainment.
- 19. Outdoor music or entertainment is limited to 11pm and live music is limited to non-amplified acoustical music.
- 20. Live outdoor entertainment, music and/or any type of outdoor speakers are prohibited.

Town of Fort Myers Beach  
Summary of all Advertisement Requirements for all Licenses for COP/Outdoor Seating  
with Conditions, 1995-2004

1. There will be no advertisements visible from Estero Boulevard or from the beach indicating the outdoor seating area or the service of alcoholic beverages.
2. No advertising of the restaurant is permitted except in connection with advertising for the hotel operation.
3. There will be no outside advertisement visible from Estero Boulevard or Ohio Avenue indicating the service of alcoholic beverages.
4. There will be no advertisement visible from Estero Boulevard or from the beach indicating the service of Alcoholic Beverages.
5. There will be no advertisement visible from Estero Blvd. or Carolina Ave., indicating the service of alcoholic beverages.
6. There will be no advertisement visible from Estero Blvd. or Alva Ave. indicating the service of alcoholic beverages.
7. There will be no outside advertisement visible from Estero Boulevard or Ohio Avenue indicating the service of alcoholic beverages.

Town of Fort Myers Beach  
Summary of all Indoor/Outdoor Seating and Service Requirements for all Licenses for  
COP/Outdoor Seating with Conditions, 1995-2004

1. The outdoor seating shall be limited to use in conjunction with a restaurant.
2. The consumption on premises in the outdoor seating is limited to the areas reflected on the site plan attached as Exhibit B to the Staff Report.
3. The Special Permit is limited to a 1,106-square-foot restaurant with 12 indoor seats and 50 outdoor seats.
4. The location of the outdoor seating area is limited to the 29-foot by 52-foot area as reflected on the Applicant's site plan attached as Exhibit B to the Staff Report, and is limited to a Group II Restaurant with a maximum of 63 seats.
5. The use of the outdoor seating area must be ancillary to, and in conjunction with, the motel use only.
6. The use of the outdoor seating area will be incidental and subordinate to the principal use (motel).
7. The Special Permit for outdoor seating is limited to the approximately 2,800-square-foot (40-foot by 70-foot) pool/patio and pavilion area located in the center of the facility as indicated on the site plan. The pool/patio area will contain 28 seats and the pavilion area will contain two tables with four seats each and 10 stools for a total of approximately 46 seats.
8. The service area of the Group II restaurant is limited to room service, and the pool/pavilion area at the center of the site.
9. The location of the Special Permit for consumption on premises in conjunction with outdoor seating is limited to the outdoor deck area (approximately 10 feet by 40 feet as shown on Attachment B to the Staff Report) which separates the retail use from the beach area, and on the first 50 feet of the beach which extends south from the deck area toward the water. The seating for both areas may not exceed 75 seats. The alcohol consumption portion of the beach area will be clearly marked.
10. The service of alcoholic beverages shall be only in the 9-foot by 9-foot tiki hut (as reflected on the site plan attached as Exhibit B to the Staff Report) which is limited to a Group II snack bar. The outdoor seating area for consumption of the beverages is restricted to the central courtyard/pool/activity area.
11. The use of the outdoor seating area may only be in conjunction with the motel use.
12. The location of the outdoor seating area is limited to the area designated on the applicant's site plan attached as B, not to exceed 60 seats in outdoor seating for a total of 159 seats.
13. The Special Permit is restricted to a 3,650 square foot restaurant with 40 outdoor seats at the location reflected on the site plan attached as Exhibit A. The restaurant with outdoor seating will be an accessory use to the marina use.
14. Service of food and alcohol from the tiki-hut will be eliminated. The outdoor seating area will be served only from the restaurant interior as part of the operation of a full service restaurant.
15. Consumption on premises in conjunction with outdoor seating is prohibited.

16. The location of the outdoor seating area is limited to the 785 square foot deck as shown on the applicant's site plan attached as Exhibit B. Use of a bar for the service of alcoholic beverage is prohibited. The applicant is limited to 52 seats on the outside deck and 50 seats inside the restaurant.
17. The total floor area of the restaurant facility shall not exceed 4,574 square feet in area. The approval for consumption on premises (4COP-SRX) is based on the floor/site plan marked received July 1, 1997 and does not approve the COP in conjunction with outdoor seating.
18. The approval for Consumption on Premises (4-COP-S license) is based on the floor/site plans date stamped Received September 11, 1998 by the Permit Counter and does not approve the COP in conjunction with outdoor seating.
19. No bar or pool-side service (motel).
20. The applicant is limited to 47 seats with no more than 24 to be on the outside deck. The location of the outdoor seating area is limited to a 453 square foot deck as designated on the applicant's site plan attached as Exhibit B.
21. The outdoor seating area shall not exceed 1500 square feet if located on the roof, and shall not exceed 1000 square feet if located on one of the lower levels.
22. The subject COP with outdoor seating is limited to no more than three restaurants to be located within SeaFarer's Village Mall and is limited to the following maximum floor area and capacity:
  - a. 2899 total SF with 152 total seats, including 1677 square feet of outdoor seating area with 84 outdoor seats (1<sup>st</sup> floor),
  - b. 3472 total SF & 155 total seats, including 1017 SF of outdoor seating area with 56 outdoor seats (2<sup>nd</sup> floor),
  - c. 2698 total SF & 165 total seats, including 1571 SF of outdoor seating with 132 outdoor seats (1<sup>st</sup> floor).
23. COP2000-00020 may be utilized for the proposed restaurant with 5160 total SF with 151 total seats, including 1086 SF of outdoor seating area with 60 outdoor seats (3<sup>rd</sup> floor).
24. Consumption on premises for the 2 outdoor seating areas is restricted to the areas depicted on the attached site plan, Attachment G (8,324 square feet pool-deck service area and 2,280 square foot deck located on the first elevated floor).
25. The approval for consumption on premises (4-COP SRX) is limited to the existing restaurant complex known as the Gulf Shores Grill, The Cottage, and The Beach Dog House and the existing outdoor seating areas shown on the wood deck on the above referenced floor plan.
26. Consumption on premises in conjunction with outdoor seating is prohibited.
27. The total outdoor seating capacity is limited to a total of 170 seats. The location of the outdoor seating area is as specified in Exhibits B, C, and D which have attached hereto and incorporated herein as reference. The outdoor seating in the "Courtyard area" is further limited to no more than 60 of the 170 total seats.
28. The total outdoor seating capacity is limited to 6 tables with a total of 24 seats in the outdoor seating area associated with Unit 7 of Key Estero Center as indicated on the applicant's site plan attached as Exhibit B.
29. The special Exception is limited to the expansion of an existing on premises consumption of alcoholic beverages in conjunction with outdoor seating to

include a proposed enclosure and expansion of the wooden deck in the front of the existing restaurant at this location.

30. The total outdoor seating capacity is limited to a total of 64 seats. The location of the outdoor seating area is limited to the "Existing rear deck" and "New front room addition" as shown in the Staff Report dated 9/6/02.
31. The outdoor seating will only be used between the hours of 11am and 12am Monday through Thursday and between the hours of 11am and 1am Friday and Saturday and between the hours of 12pm and 10pm on Sunday.
32. The total outdoor seating capacity is limited to 253 seats (an addition of 65 seats to the 170 seats approved under Resolution 02-40, Case No. COP2002-00095). The location of the outdoor seating is specified in Exhibits B, C, and D, attached hereto and incorporated herein by reference. The outdoor seating is further limited to no more than 72 seats in the 2,500 sq. ft. "Courtyard" area (Exhibit B) and no more than 60 seats in the additional 650 sq. ft. "Deck Extension" area (Exhibit D) approved for outdoor seating in conjunction with on premises consumption of alcoholic beverages outdoors by this request.
33. The approval for consumption on premises (2-COP) is based on the floor plan drawn on 9/21/03, approved by Lee County development services on 10/6/03 and does not approve the consumption of premises in conjunction with outdoor seating.
34. No outdoor seating is approved as part of this consumption on premises.
35. The location of the outdoor seating area is limited to the area as designated on the applicant's site plan attached as B, not to exceed 60 seats in outdoor seating for a total of 159 seats.

Town of Fort Myers Beach  
Summary of all Customer Requirements for all Licenses for COP/Outdoor Seating with  
Conditions, 1995-2004

1. Food and beverage service will be limited to guests of the Lighthouse Island Resort. The Applicants will post a prominently displayed sign indicating that the restaurant is for guests only.
2. The Special Permit for consumption on premises in conjunction with outdoor seating is limited to the use in conjunction with the existing retail use. The use of a bar/service bar on this property is prohibited. However, this does not prohibit the sale of draft beer and wine which is poured from a large bottle so long as it is consumed only in the designated locations. There will be no waiter or waitress service; the customers must order their drinks from inside the premises and directly from the person who pours the drinks.
3. Service and consumption of alcoholic beverages in the outdoor seating area is allowed only to guests or residents of the resort.
4. The ten (10) slips on the south side of the east pier (directly in front of the restaurant) will be dedicated to restaurant use only.
5. Sale limited to guests only and charged to occupied rooms.

Town of Fort Myers Beach  
Summary of all Enclosure and Buffer Requirements for all Licenses for COP/Outdoor  
Seating with Conditions, 1995-2004

1. The Applicant will enclose the outdoor seating area on the north and west sides with an 8-foot-high masonry or block wall. The first six feet of the height of the wall shall be solid (i.e., no opening unless required by development codes or ordinances), but the top two feet may incorporate a decorative design with small openings.
2. The ten-foot buffer and fence have been installed along the south property line. Owner shall install an additional twenty-six (26) trees along the south property line (as part of the Development Order issued by Lee County under the authority delegated by the Town of Fort Myers Beach pursuant to Land Development Code Chapter 10.) Owner shall install thirty (30) trees within the ten-foot buffer along the north property line. If the existing fence on the north (Ocean Harbor) property line is removed, owner shall install a fence not less than eight feet in height so that visibility through said structure is not more than 25% when viewed from right angles.
3. The applicant shall provide a vegetative buffer along the south property line within the 9 feet of open space consisting of 5 trees and 24 shrubs per 100 linear feet. The trees will be a minimum of 10 feet high at planting and the shrubs will be a minimum of 36 inches high at planting. All trees and shrubs will be native, salt tolerant vegetation.
4. Prior to the issuance of a Certificate of compliancy by the Development Services Division, the applicant must install, at a minimum, the Landscape Buffer depicted in Exhibit E of the staff report dated May 7, 2001, which is attached hereto and incorporated herein by reference. Any additional landscaping required by the limited review development order (LDO2000-00166) must also be installed. This Landscape Buffer must be installed prior to the mono background system on the elevated deck becoming operational.
5. The service area located adjacent to the bridge structure and First Street shall be screened off by the use of an appropriate fence. Staff recommended a 6 foot white pvc fence. The FPL box will also be screened with plantings made up of silver/green buttonwoods that are at least 36 inches tall.

Town of Fort Myers Beach  
Summary of all Lighting Requirements for all Licenses for COP/Outdoor Seating with  
Conditions, 1995-2004

1. Lighting on the deck will be shuttered and shielded from the surrounding properties.
2. Lighting on the deck will be shuttered and shielded from the surrounding properties.
3. Lighting on the deck will be shuttered and shielded from the surrounding properties.
4. Lighting on the deck will be shuttered and shielded from the surrounding properties.
5. Lighting on the deck will be shuttered and shielded from the surrounding properties.