

RESOLUTION OF THE LOCAL PLANNING AGENCY OF THE  
TOWN OF FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER 2010-01

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

WHEREAS, the Local Planning Agency 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 December 15, 2009, and February 9, 2010 to consider a proposed Town Ordinance amending the LDC with regard to storage and removal of refuse and specifically addressing changes in regulations for refuse containers within the Town of Fort Myers Beach, Florida, specifically Section 6-11 (Refuse Containers) and Section 34-1744 (Location and Height of fences and walls) of the LDC; and

WHEREAS, the LPA considered the report and other information provided by the Town Ad Hoc Committee on Refuse Containers at the aforesaid hearing; and

WHEREAS, a copy of said proposed Ordinance (which is currently unnumbered) is attached hereto as Exhibit A and is hereby incorporated by reference.

NOW THEREFORE BE IT RESOLVED, that the LPA **recommends** that the Town Council of the Town of Fort Myers Beach **approve** and adopt a Town Ordinance amending the LDC with regard to regulating screening and coverage of refuse containers within the Town of Fort Myers Beach, Florida, as set forth with specificity below and in the unnumbered Ordinance which is attached as Exhibit "A".

1. With regard to LDC Section 6-11 (Refuse Containers) the LPA **recommends** recommend that the deletions be made and the following language be added:  
Sec. 6-11. Refuse containers

- (a) Refuse containers shall not be moved to the street more than 24 hours prior to scheduled curbside collections nor remain there more than 24 hours after scheduled collections.
- (b) Any refuse containers that are not movable in accordance with subsection (a) shall be opaquely screened from view from streets and adjoining properties at the full height of each such container above the adjacent grade. This screening may be achieved by landscaping or by virtue of the location of the container on the site. Screening may also be achieved by walls or opaque fencing provided the wall or fence does not exceed the maximum height permitted for the location (see §§ 34-1171 et seq. and 34-1744). ). ~~If the nonmovable refuse container would be visible above the allowable height, it must be replaced with a shorter container.~~

(c) Any refuse container not located within a roofed enclosure must have a lid that renders the interior of the container inaccessible to animals.

2. With regard to LDC Section 34-1744 (Location and height of fences and walls), the LPA **recommends** that the following underlined language be added to Section 34-1744(c)(1):

“(1) Front yards. Any fence or wall located in a front yard (between a street right-of-way or easement and the minimum required street setback or build-to line) shall not exceed 42 inches in height, except as provided in subsection 34-1744(c)(4)d. below. This division does not excuse any fence or wall from compliance with any lesser height required to meet vehicle visibility requirements (see § 34-3131) at traffic access points.”

3. With regard to LDC Section 34-1744 (Location and height of fences and walls), the LPA **recommends** that the following language be added as a new section 34-1744 (c) (4)d:

“ d. Screening of refuse containers. On sites where the location and configuration of existing structures and vehicle use areas prevent the placement of refuse containers outside the front yard, fences and/or walls erected for the sole purpose of providing reasonable screening of refuse containers located in a front yard may exceed 42 inches in height, but shall not exceed six feet in height.”

4. With regard to LDC Section 34-1745 (Buffer for commercial uses), the LPA **recommends** the following modification to existing language be made:

Sec. 34-1745. Buffer for commercial uses.

Some land uses are required to provide perimeter buffers in accordance with §§ 34-3005 or 10-416. Where buffers are required by other provisions of this code, this division will not be interpreted to restrict the height, location, or other features of required buffers.

The foregoing Resolution was adopted by the LPA upon a motion by LPA Member Ryffel and seconded by LPA Member Mandel and upon being put to a vote, the result was as follows:

Joanne Shamp, Chair	Aye	Bill Van Duzer, Vice Chair	Absent
Rochelle Kay, Member	Aye	Alan Mandel, Member	Aye
Carleton Ryffel, Member	Aye	Chuck Moorefield, Member	Nay

DULY PASSED AND ADOPTED THIS 9th day of February, 2010.

LPA of the Town of Fort Myers Beach

By: Joanne K. Shamp  
Joanne Shamp, LPA Chair

Approved as to legal sufficiency:

By: Anne Dalton  
Anne Dalton, Esquire  
LPA Attorney

ATTEST:

By: Michelle Mayher  
Michelle Mayher, Town Clerk

Exhibit A

Town of Fort Myers Beach  
ORDINANCE NO. 10-xx

AN ORDINANCE AMENDING REGULATIONS IN CHAPTER SIX AND THIRTY-FOUR OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE; PROVIDING AUTHORITY; ADOPTING AMENDMENTS TO ARTICLE I (PROPERTY MAINTENANCE CODE) OF CHAPTER SIX WHICH IS ENTITLED MAINTENANCE CODES, BUILDING CODES, AND COASTAL REGULATIONS; ADOPTING AMENDMENTS TO DIVISION 17 (ENTITLED FENCES, WALLS AND ENTRANCE GATES) OF ARTICLE IV (ENTITLED SUPPLEMENTAL REGULATIONS) OF CHAPTER 34 (ZONING DISTRICTS, DESIGN STANDARDS, AND NONCONFORMITIES); PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

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

Section 1. Authority. 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 Six of the Town of Fort Myers Beach Land Development Code.

Chapter Six of the Town of Fort Myers Beach Land Development Code is entitled "Maintenance Codes, Building Codes and Coastal Regulations." Article I of Chapter Six is hereby amended as set forth herein. Entirely new language is indicated with underlining. Language being repealed from the existing code is indicated with ~~strikethroughs~~. Existing language being retained is either omitted entirely or is shown without underlining or strike-throughs. The specific language is as follows:

Sec. 6-11. Refuse containers

- (d) Refuse containers shall not be moved to the street more than 24 hours prior to scheduled curbside collections nor remain there more than 24 hours after scheduled collections.
- (e) Any refuse containers that are not movable in accordance with subsection (a) shall be opaquely screened from view from streets and adjoining properties at the full height of any such container above the adjacent grade. This screening may be achieved by landscaping or by virtue of the location of the container on the site. Screening may also be achieved by walls or opaque fencing provided the wall or fence does not exceed the maximum height permitted for the location (see §§ 34-1171 et seq. and 34-1744). ~~If the nonmovable refuse container would be visible above the allowable height, it must be replaced with a shorter container.~~
- (f) Any refuse container not located within a roofed enclosure must have a lid that renders the interior of the container inaccessible to animals.

Section 3. Adoption of Amendments to Article IV of Chapter Thirty-four of the Town of Fort Myers Beach Land Development Code. Chapter Thirty-four of the Town of Fort Myers Beach Land Development Code is entitled "Zoning Districts, Design Standards,

and Nonconformities.” Article I of Chapter Six is hereby amended as set forth herein. Entirely new language is indicated with underlining. Language being repealed from the existing code is indicated with ~~strike-throughs~~. Existing language being retained is either omitted entirely or is shown without underlining or strike-throughs. The specific language is as follows:

Section 34-1744 Location and Height of Fences and Walls

....

(c)(4)(d)Screening of refuse containers. On sites where the location and configuration of existing structures and vehicle use areas prevent the placement of refuse containers outside the front yard, fences and/or walls erected for the sole purpose of providing reasonable screening of refuse containers located in a front yard may exceed 42 inches in height, but shall not exceed six feet in height.

Section 4. Adoption of Amendments to Article IV of Chapter Thirty-four of the Town of Fort Myers Beach Land Development Code. Chapter Thirty-four of the Town of Fort Myers Beach Land Development Code is entitled “Zoning Districts, Design Standards, and Nonconformities.” Article I of Chapter Six is hereby amended as set forth herein. Entirely new language is indicated with underlining. Existing language being retained is either omitted entirely or is shown without underlining or strike-throughs. The specific language is as follow:

Sec. 34-1745. Buffer for commercial uses.

Some land uses are required to provide perimeter buffers in accordance with §§ 34-3005 or 10-416. Where buffers are required by other provisions of this code, this division will not be interpreted to restrict the height, location, or other features of required buffers.

**Section 5. 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 6. 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 \_\_\_\_\_ and, upon being put to a vote, the result was as follows:

Larry Kiker, Mayor	_____	Herb Acken, Vice Mayor	_____
Tom Babcock	_____	Jo List	_____
Bob Raymond	_____		

**DULY PASSED AND ENACTED by the Council of the Town of Fort Myers Beach, Florida, this \_\_\_\_\_th day of \_\_\_\_\_, 2010.**

ATTEST:

TOWN OF FORT MYERS BEACH