

1. **Requested Motion:** Motion to adopt Ordinance 13-01, International Property Maintenance Code

Meeting Date: Jan 22, 2013

Why the action is necessary: Ordinances must be approved by a vote of the Town Council.

What the action accomplishes: Adoption of this ordinance will provide Town code enforcement with the appropriate tools to bring properties into compliance.

2. **Agenda:**

- Consent
- Administrative
- Public Hearing

3. **Requirement/Purpose:**

- Resolution
- Ordinance
- Other

4. **Submitter of Information:**

- Council
- Town Staff
- Town Attorney

5. **Background:**

The Code Enforcement Division has recommended adoption of the International Property Maintenance Code (IPMC) to address property maintenance issues in the Town. The current property maintenance provisions in the Land Development Code lack the specificity necessary for proper enforcement. Certain provisions of the IPMC have been modified to comply with Florida legal requirements such as insertion of the Florida Building Code in place of the International Building Code. The Ordinance was introduced at the January 7, 2013 Town Council meeting, at which time a public hearing was set for January 22, 2013 at 6:30 PM.

6. **Alternative Action:** Decline to adopt the proposed ordinance.

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

ORDINANCE 13-01

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA REPEALING CHAPTER 6, ARTICLE I, DIVISION 1, "MAINTENANCE CODE," SECTIONS 6-1 THROUGH 6-15; ADOPTING THE 2009 EDITION OF THE INTERNATIONAL PROPERTY MAINTENANCE CODE, REGULATING AND GOVERNING THE CONDITIONS AND MAINTENANCE OF ALL PROPERTY, BUILDINGS AND STRUCTURES WITH SPECIFIC AMENDMENTS AS SET FORTH IN SECTION TWO OF THIS ORDINANCE; PROVIDING FOR SCOPE AND ADMINISTRATION; DEFINITIONS; GENERAL REQUIREMENTS; LIGHT, VENTILATION AND OCCUPANCY LIMITATIONS; PLUMBING FACILITIES AND FIXTURE REQUIREMENTS; MECHANICAL AND ELECTRICAL REQUIREMENTS; FIRE SAFETY REQUIREMENTS; REFERENCED STANDARDS; SAID PROVISIONS BEING ADOPTED TO ENSURE THAT STRUCTURES ARE SAFE, SANITARY AND FIT FOR OCCUPATION AND USE; PROVIDING FOR THE CONDEMNATION OF BUILDINGS AND STRUCTURES UNFIT FOR HUMAN OCCUPANCY AND USE, AND THE DEMOLITION OF SUCH EXISTING STRUCTURES IN THE TOWN OF FORT MYERS BEACH; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AS FOLLOWS:

Section 1. Chapter 6, Article I, Division 1, "Maintenance Code," Sections 6-1 through 6-15 is hereby repealed in its entirety.

Section 2. A new Chapter 6, Article I, Division 1, to be entitled "International Property Maintenance Code," is hereby adopted as follows:

Sec. 6-1. Adoption of International Property Maintenance Code.

Except as amended or modified in the sections below, the 2009 edition of the International Property Maintenance Code, published by the International Code Council, is hereby adopted as the Town of Fort Myers Beach Property Maintenance Code and shall be the governing law with respect to all structures and premises in the Town of Fort Myers Beach. A complete copy of this code shall be maintained on file in the office of the Town Clerk.

Sec. 6-2. Amendments.

The 2009 Edition of the International Property Maintenance Code is hereby amended as follows:

(a) Wherever the term “*code official*” appears in the International Property Maintenance Code, that term shall be interpreted to mean the Director of the Department or Community Development or his or her designee. Wherever the term “*department*” appears in this code, it shall be interpreted to mean the Department of Community Development. Wherever the terms “International Building Code” or “International Existing Building Code” appear in this code, the term “Florida Building Code” shall be substituted for such terms.

(b) *Section 101.1 Title*, is amended to read as follows:

These regulations shall be known as the International Property Maintenance Code of the Town of Fort Myers Beach, Florida, hereinafter referred to as “this code.”

(c) *Section 102.3 Application of other codes*, is amended to read as follows:

Repairs, additions or alterations to a structure, or changes of *occupancy* shall be done in accordance with the procedures and provisions of the Florida Building Code, as amended.

(d) *Section 102.6 Historic Buildings*, is amended to read as follows:

The provisions of this code shall not be mandatory for existing buildings or structures formally or officially designated as historic buildings by either the federal government, the state, or the Town, provided such buildings or structures are judged by the Building Official to be safe and in the public interest of health, safety and welfare.

(e) *Section 102.7 Referenced codes and standards*, is amended to read as follows:

The codes and standards referenced in this code shall be the Florida Building Code, the Florida Fire Prevention Code, the Life Safety Code and any other code or standard contained in Articles II, III and IV in Chapter 6 of the Land Development Code. Where there are differences between provisions of this code, the Florida Building Code and any other code or standard contained in Articles II, III and IV in Chapter 6 of the Land Development Code, the Florida Building Code, the Florida Fire Prevention Code, the Life Safety Code, and any other code or standard contained in Articles II, III, and IV in Chapter 6 of the Land Development Code shall prevail.

(f) *Section 103 Department of Property Maintenance Inspection* is hereby deleted in its entirety.

(g) *Section 104.4 Right of Entry* is hereby deleted in its entirety.

(h) *Section 106.3 Prosecution of Violation*, is hereby amended to read as follows:

Any person who fails to comply with a notice of violation or order served in accordance with Section 107 shall be adjudicated in accordance with the provisions of Chapter 162 of the Florida Statutes or any other method allowed by Florida law.

(i) *Section 107.2 Form*, is hereby amended to read as follows:

The notice prescribed in Section 107.1 shall comply with the requirements of Chapter 162, Florida Statutes.

(j) *Section 107.3 Method of Service*, is hereby amended to read as follows:

All notices shall be deemed to have been properly served if the service requirements contained in Chapter 162, Florida Statutes have been met.

(k) *Section 107.5 Penalties*, is hereby amended to read as follows:

Penalties for noncompliance with orders and notices shall be as set forth in Chapter 162, Florida Statutes, and the codes and ordinances of the Town of Fort Myers Beach.

(l) *Section 107.6 Transfer of Ownership*, is hereby amended to read as follows:

If the owner of property that is subject to an code enforcement proceeding before the special magistrate, or court transfers ownership of such property between the time the notice of violation was served and the time of the hearing, such owner shall:

(1) Disclose, in writing, the existence and the nature of the proceeding to the prospective transferee.

(2) Deliver to the prospective transferee a copy of the pleadings, notices, and other materials relating to the code enforcement proceeding received by the transferor.

(3) Disclose, in writing, to the prospective transferee that the new owner will be responsible for compliance with the applicable code and with orders issued in the code enforcement proceeding.

(4) File a notice with the code official of the transfer of the property, with the identity and address of the new owner and copies of the disclosures made to the new owner, within 5 days after the date of the transfer.

(5) A failure to make the disclosures described in paragraphs (1), (2), and (3) before the transfer creates a rebuttable presumption of fraud. If the property is transferred before the hearing, the proceeding shall not be dismissed, but the

new owner shall be provided a reasonable period of time to correct the violation before the hearing is held.

(m) *Section 108.2 Closing of vacant structures*, is hereby amended to read as follows:

If the structure is vacant and unfit for human habitation and *occupancy*, and is not in danger of structural collapse, the *code official* is authorized to post a placard of condemnation on the *premises* and order the structure closed up so as not to be an attractive nuisance. Upon failure of the *owner* to close up the *premises* within the time specified in the order, the *code official* shall cause the *premises* to be closed and secured through any available public agency or by contract or arrangement by private persons and the cost thereof shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate for said costs. The lien shall be superior to all other liens and encumbrances, including prior recorded mortgage or judgments and only inferior to liens for taxes. In the event the owner or person creating the need for closing or securing the premises fails and refuses to pay or reimburse the Town for the costs, the Town may foreclose said lien in accordance with the law applicable to the foreclosure of such liens and the Town shall be entitled to recover its reasonable attorney's fees and costs incurred in such foreclosure action.

(n) *Section 108.7 Record*, is hereby amended to read as follows:

The code official shall prepare a report on an unsafe condition. In addition, a written notice of the unsafe condition shall be recorded in the public records for Lee County. The notice shall state the occupancy of the structure and the nature of the unsafe condition.

(o) *Section 109.5 Costs of emergency repairs*, is hereby amended to read as follows:

Costs incurred in the performance of emergency work shall be paid by the Town. All costs incurred by the Town in the performance of emergency work shall be a lien upon such real estate for said costs. The lien shall be superior to all other liens and encumbrances, including prior recorded mortgage or judgments and only inferior to liens for taxes. In the event the owner or person creating the need for emergency repairs fails and refuses to pay or reimburse the Town for the costs, the Town may foreclose said lien in accordance with the law applicable to the foreclosure of such liens and the Town shall be entitled to recover its reasonable attorney's fees and costs incurred in such foreclosure action.

(p) *Section 109.6 Hearing*, is hereby amended to read as follows:

Any person ordered to take emergency measures shall comply with such order forthwith. Any affected person shall thereafter, upon appeal to the Town Council, be afforded a hearing as described in this code.

(q) *Section 110.1 General*, is hereby amended to read as follows:

The *code official* shall order the *owner* of any *premises* upon which is located any structure, which in the *code official's* judgment after review is so deteriorated or has become so out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human habitation or occupancy, and such that it is unreasonable to repair the structure, to demolish and remove such structure; or if such structure is capable of being made safe by repairs, to repair and make safe and sanitary, or to board up and hold for future repair or to demolish and remove at the *owner's* option; or where there has been a cessation of normal construction in accordance with the Florida Building Code, the *code official* shall order the owner to demolish and remove such structure, or board up until future repair. Boarding the building up for future repair shall not extend beyond one year, unless approved by the Building Official.

(r) *Section 110.3 Failure to comply*, is hereby amended as follows:

If the *owner* of a *premises* fails to comply with a demolition order within the time prescribed, the Town shall cause the structure to be demolished and removed, either through an available public agency or by contract or arrangement with private persons, and the cost of such demolition and removal shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate for said costs. In the event the owner or person creating the need for demolition and removal fails and refuses to pay or reimburse the Town for the costs, the Town may foreclose said lien in accordance with the law applicable to the foreclosure of such liens and the Town shall be entitled to recover its reasonable attorney's fees and costs incurred in such foreclosure action.

(s) *Section 111.1 Application for appeal*, is hereby amended to read as follows:

Any person directly affected by a decision of the *code official* or a notice or order issued pursuant to this code shall have the right to appeal to the Town Council, provided that a written application for appeal is filed within 20 days after the day the decision, notice or order was served on the affected person or from the date of posting on the property. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, that the provisions of this code do not fully apply, or the requirements of this code are adequately satisfied by other means. This section shall not apply to orders issued by the Town special magistrate in connection with a code enforcement special magistrate hearing.

(t) *Sections 111.2 through Section 111.8* are hereby deleted in their entirety.

(u) *Section 112.4 Failure to comply*, is hereby amended to read as follows:

Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or

unsafe condition, shall be guilty of a code violation and shall be subject to a fine as determined by the Town special magistrate.

(v) *Section 302.3 Sidewalks and driveways*, is hereby amended to read as follows:

Section 302.3. Sidewalks, driveways and rights-of-way. All sidewalks, walkways, stairs, driveways, parking spaces, and similar areas shall be kept in a proper state of repair, and maintained free from hazardous conditions. Trees and shrubs shall be maintained to provide for horizontal clearance of at least three (3) feet from and vertical clearance of at least eight (8) feet above any sidewalk, bike path, or street right-of-way. Unpaved areas shall be regularly mowed or otherwise maintained in a neat and attractive condition.

(w) *Section 302.4 Weeds*, is hereby amended to read as follows:

All *premises* and *exterior property* shall be maintained free from weeds or plant growth in excess of 12 inches. Weeds shall be defined as all grasses, annual plants and vegetation, other than trees or shrubs, provided, however, this term shall not include cultivated flowers and gardens and native beach vegetation such as sea oats. Upon failure of the *owner* or agent having charge of a property to cut and destroy weeds after service of a notice of violation and having been given a reasonable time to cut and destroy the weeds, any duly authorized employee of the Town or contractor hired by the Town shall be authorized to enter upon the property in violation and cut and destroy the weeds growing thereon, and the costs of such removal shall be paid by the *owner* or agent responsible for the property. All costs incurred by the Town cut and destroy the weeds shall be a lien upon such real estate for said costs. The lien shall be superior to all other liens and encumbrances, including prior recorded mortgage or judgments and only inferior to liens for taxes. In the event the owner or agent fails and refuses to pay or reimburse the Town for its costs, the Town may foreclose said lien in accordance with the law applicable to the foreclosure of such liens and the Town shall be entitled to recover its reasonable attorney's fees and costs incurred in such foreclosure action.

(x) *Section 302.8 Motor Vehicles*, is hereby amended to read as follows:

Section 302.8 Motor Vehicles and Boats. Except as provided for in other regulations, no inoperative or unlicensed motor vehicle or boat shall be parked, kept or stored on any *premises*, and no vehicle or boat shall at any time be in a state of major disassemble, disrepair, or in the process of being stripped or dismantled. Painting of vehicles or boats is prohibited unless conducted inside an *approved* spray booth.

Exception: A vehicle or boat of any type is permitted to undergo major overhaul, including body or hull work, provided that such work is performed inside a structure or similarly enclosed area designed and *approved* for such purposes.

(y) A new *Section 302.10* is hereby added as follows:

Section 302.10 Exterior Storage.

1. No temporary or permanent storage of materials or equipment is permitted on any vacant parcel, unless in conjunction with an active building permit or where such storage is specifically permitted by Chapter 34 of the Land Development Code.
2. Equipment, materials, and furnishings not designed for use outdoors, such as automotive parts and tires, building materials, and interior furniture, may not be stored outdoors.

(z) *Section 303.2 Enclosures*, is hereby amended to read as follows:

Public swimming pools, hot tubs and spas shall include all safety features specified by Section 514.0315, Florida Statutes, including any subsequent amendments thereto. Residential swimming pools shall be maintained in compliance with the State Residential Swimming Pool Safety Act, as contained in Chapter 515 of the Florida Statutes.

(aa) A new *Section 303.3* is hereby added as follows:

Section 303.3 Disposal of swimming pool water. Prior to disposing of any swimming pool water, chlorine and bromine levels must be reduced by not adding chlorine or bromine for a least five (5) days or until levels are below 0.1 mg per liter. One of the following methods of disposal shall be utilized:

1. Discharge of the water into roadside swales to allow for percolation of the water into the ground without any runoff to canals, beaches, wetlands, other tidal waters, or onto adjoining properties. This shall be the preferred method of disposal.
2. Discharge of the water into the sanitary sewer system operated by Lee County Utilities is also permitted, but is not the preferred method.

Under no circumstances shall any swimming pool water be discharged either directly or indirectly onto the beach, or into canals, wetlands, or any other tidal waters.

(bb) *Section 304.3 Premises Identification*, is hereby amended to read as follows:

All buildings shall have address numbers that have been assigned by Lee County placed in a position to be plainly legible and visible by emergency personnel from the street or road fronting the property. All address numbers shall contrast with their background. Address numbers shall be Arabic numerals or alphabet letters. Numbers shall be a minimum of 3 inches high. Numbers on all commercial, institutional, or multifamily buildings that are set back more than fifty (50) feet from the street shall be at least eight (8) inches high.

(cc) *Section 304.14 Insect screens*, is hereby amended to read as follows:

Every window in a residential structure that is capable of being opened and every door, window, and other outside opening required for ventilation of habitable rooms, food preparation areas, food service areas or any areas where products to be included or utilized in food for human consumption are processed, manufactured, packaged, or stored shall be supplied with approved tightly fitting screens of not less than 16 mesh per inch (16 mesh per 25 mm), and every screen door used for insect control shall have a self-closing device in good working condition. Screens shall not, however, be required where other approved means, such as air curtains or insect repellent fans, are employed.

(dd) A new *Section 308.4* is hereby added as follows:

308.4 Additional Regulations for Rubbish and Garbage Containers.

1. Rubbish and Garbage containers shall not be moved to the street more than twenty-four (24) hours prior to scheduled curbside collection, nor remain there more than twenty-four hours after scheduled collection.
2. Each refuse container that is not movable shall be opaquely screened from view from streets and adjoining properties and such screening shall be of sufficient height to entirely screen the container. Screening may be achieved by landscaping, wall, or opaque fencing provided the wall or fence does not exceed the maximum height permitted for the property.
3. Any rubbish or garbage container not located within a roofed enclosure must have a cover or lid that renders the interior of the container inaccessible to animals.

(ee) *Section 402.2 Common halls and stairways*, is hereby amended to read as follows:

Every common hall and stairway in residential occupancies, other than in one- and two-family dwellings, shall be lighted at all times with at least a 60-watt standard incandescent light bulb for each 200 square feet (19 m²) of floor area or equivalent illumination, provided that the spacing between lights shall not be greater than 30 feet (9144 mm). In other than residential occupancies, means of egress, including exterior means of egress, stairways shall be illuminated at all times the building space served by the means of egress is occupied with a minimum of 1 footcandle (11 lux) at floors, landings and treads, provided, however, that during Sea turtle nesting season (May 1 through October 31), the provisions of Chapter 14, Article II of the Fort Myers Beach Land Development Code shall supersede the foregoing requirements.

(ff) *Section 507 Storm Drainage*, is hereby amended to read as follows:

Drainage of roofs and paved areas, yards and courts, and other open areas on the premises shall not be discharged in a manner that creates a public nuisance. Point sources of stormwater discharge from private property directly onto the beach are prohibited. This prohibition includes drainage collected from parking lots or other paved surfaces and stormwater from roofs of buildings.

(gg) A new *Section 602.7* is hereby added as follows:

Section 602.7 Screening of Mechanical Equipment. Any new mechanical equipment placed on a roof shall be screened from view from ground level of adjoining properties and public rights-of-way. When mechanical equipment is being replaced on a roof of a building that is not undergoing structural alterations, such equipment shall be screened to the same standard using non-structural materials such as ornamental latticework.

(hh) *Section 701.1 Scope*, is hereby amended to read as follows:

The provisions of this chapter shall govern the minimum conditions and standards for fire safety relating to structures and exterior premises, including fire safety facilities and equipment to be provided. All references to the “*International Fire Code*” in this Chapter 7 shall be replaced with the “*Florida Fire Prevention Code*.”

Section 5. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 6. Effective Date. This ordinance shall take effect immediately upon adoption by the Town Council.

The foregoing Ordinance was adopted by the Town Council upon a motion by _____ and seconded by _____ and upon being put to a vote, the result was as follows:

Bob Raymond, Mayor
Joe Kosinski
Jo List

Alan Mandel, Vice Mayor
Dan Andre

DULY PASSED AND ADOPTED THIS ____ DAY OF _____ 2013, BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH

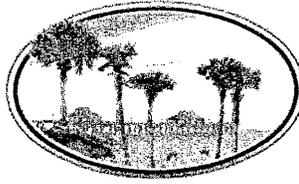
ATTEST:

By: _____
Bob Raymond, Mayor

By: _____
Michelle D. Mayher, Town Clerk

Approved as to form and legal sufficiency:

By: _____
FOWLER WHITE BOGGS, Town Attorney



**FORT MYERS BEACH
LOCAL PLANNING AGENCY (LPA)**

Town Hall – Council Chambers

2523 Estero Boulevard

Fort Myers Beach, Florida

November 13, 2012

I. CALL TO ORDER

Meeting was called to order at 9:05 a.m. by Vice Chair Zuba; other members present:

Al Durrett
John Kakatsch
Jane Plummer
Joanne Shamp – excused.
Alan Smith
Hank Zuba

LPA Attorney, Marilyn Miller
Staff Present: Walter Fluegel, Community Development Director
Leslee Chapman, Zoning Coordinator
Ken Miller, Building Safety Services Coordinator

II. PLEDGE OF ALLEGIANCE

III. INVOCATION

IV. MINUTES

A. Minutes of October 9, 2012

MOTION: Mr. Kakatsch moved to approve the October 9, 2012 minutes as presented; second by Ms. Plummer.

VOTE: Motion approved 5-0.

V. PUBLIC HEARING

A. VAR2012-0001 Neptune Inn

Vice Chair Zuba opened the hearing at 9:08 a.m.

LPA Attorney Miller swore in the witnesses.

Zoning Coordinator Chapman presented comments for VAR2012-0001 Neptune Inn sign variance on behalf of the Town of Fort Myers Beach. She noted the location of the subject property was 2310 Estero Boulevard; and the request was for a variance from 30-154(c), which limited the height of a monument sign to be elevated no more than 18" above grade and 5' overall to allow 4'6" for the monument supports and an overall height of 8'. She pointed out that also included was a new request for a variance from Section 30-93(b), which required a 3' setback from any street right-of-way to allow a 0' street setback; and she noted this new request had not been heard at the LPA meeting in August which was the reason why the variance request was remanded from the Town Council back to the LPA. She displayed photographs of the existing conditions of the subject property; reviewed site considerations (existing sign, planted hedge – at grade – maintained at 48-55" +/-). She reported the request was reviewed according to the Town's supporting regulations (Section 34-87), and that staff's position on their review remained the same as when the request came before the LPA in August. She discussed how staff worked to find the minimum variance for the subject property; displayed the artist's rendering of the initial request and monument sign dimensions (Section 30-154(c)-4'3" to the bottom of the sign and 8' 10" overall height) at the August 14, 2012 LPA meeting; and staff's original recommendation of denial and an alternative recommendation of 6'6" and the LPA's approval with a revised overall height allowance from staff's recommendation to a height of 8'7" from the August meeting. She briefly reviewed the public hearing from the Town Council Meeting on October 1, 2012; and how Council wanted additional detail and analysis before making a decision so they continued the case to their November 5th meeting with directives that the applicant was to provide additional analysis of the hardship on-site and reconsider their request to ensure it was the minimum variance necessary. She reported that staff met on-site with the applicant and his sign contractor on October 10th, and discussed alternative locations, wall signs, zero foot setback, height, and measured off the alternative recommendation height of 6'6", and the applicant was to provide updated documents to staff in time for the November 5th Council Meeting. Zoning Coordinator Chapman stated the applicant came back with a reduced height request from 8'10" to 6', and a new variance request for a zero foot setback which had not been heard by the LPA in August and ultimately required the Town Council to remand the request back to the LPA. She displayed an artist's rendering of the sign depicting the request at 6' and a zero foot setback; and noted that the applicant met with staff on-site on November 6, 2012 to discuss the 6' height request, hedge, and minimum variance necessary. She also discussed and displayed an artist's rendering of the current request for a zero foot setback and 4'6" to the bottom of the sign and an overall height of 8'; the applicant's concern about the hedge height; and the sign face. She noted that the applicant believed that wall signs were not an option because the building was set too far back and staff had disagreed. She mentioned staff did recognize the buffering value of the existing hedge. Staff recommended approval of the requested setback variance which required 3' to the zero foot setback; and denial of the requested variance for an overall height of 8'. She stated that staff did offer an alternative

recommendation with conditions and in particular pointed out #4, *“The existing hedge planted in place along the subject property’s Estero Boulevard property line must be maintained at 36” in height at all times. Removal of the hedge or maintenance of the hedge less than 36” will cause this variance to expire.”* She remarked that if the hedge was used as a justification for the variance then there needed to be a recommendation or condition as part of it that was clear that the hedge must be in place.

Ms. Plummer asked if there was a standard height for most vehicle headlights as it related to the hedge height.

Zoning Coordinator Chapman explained it depended upon the vehicle model.

Discussion ensued regarding a 36” height and the hood of a car; the proposed hedge height of 36” for the hedges that run parallel to Estero Boulevard; the previous approvals by the LPA for the subject property; and whether or not there were encroachment issues onto Estero Boulevard at the subject site.

KC Williams representing the Neptune Inn, and Grant Vosburg of Robson Corporation of Sarasota, introduced themselves.

KC Williams, representing the Neptune Inn, stated his presentation would include photos of a ‘physical mock-up of the sign’ with it held at different heights. He recounted his description of the meeting with staff on November 6, 2012. He prepared and utilized a PowerPoint presentation which highlighted the basis for his variance request such as but not limited to the height of certain vehicles with respect to sign visibility, the angle of the building as it related to Estero Boulevard and visibility, the planter box and hedge height, a zero setback, and the unsuitability of other locations for the sign on the property.

Discussion ensued regarding the hedge height, wall signage, the signage limitation of 32 square feet, and the proposed graphics on the sign.

Grant Vosburg from Robson Corporation of Sarasota explained the basis for why he configured the proposed sign as presented by the applicant.

Discussion was held concerning a ‘hanging sign’; the current height of the hedges (approximately 55”); the proposed maintenance height of the hedges and replacement if the hedge died; staff’s recommendation and the applicant’s requested sign dimensions; sign square footage, lettering, and graphics; and on-site vehicle parking as it related to sign visibility.

Community Development Director Fluegel explained how staff had struggled to find the minimum variance that was necessary, and how deliberation would need to determine the more important aesthetic consideration - the vegetation or the signage.

Public Comment opened.

No speakers.

Public Comment closed.

Vice Chair Zuba asked if any LPA Member had ex-parte communication regarding this item. Mr. Kakatsch – none; Mr. Durrett – none; Mr. Zuba – site visit; Mr. Smith: - site visit; Ms. Plummer – site visit.

Zoning Coordinator Chapman restated that staff was recommending approval for the Staff recommended approval of the requested setback variance which requires 3' to allow the zero foot setback; and denial of the requested variance for an overall height of 8'. She stated that staff did offer an alternative recommendation of a 6'6" height requirement with a 36" base with a planter and shrubs maintained at 36" and the sign face would be the remainder of the 42" with the 6'6" overall and 9 conditions.

Discussion was held concerning the hedge height, viewing angle of the sign as it related to the hedge height, and the requested 8' overall sign height and zero setback.

Ms. Plummer requested Mr. Williams review his 'mock-up' photographs again.

KC Williams displayed and reviewed the photographs in his presentation showing a 'physical mock-up of the sign' held at different heights.

MOTION: Mr. Kakatsch moved to recommend for VAR2012-0001, Neptune Inn, that the Town Council approve the applicant's request for a variance from Section 30-93(b) to allow a monument sign with a 0' setback from the front right-of-way/property line of the subject property; and recommend the Town Council approve the applicant's request for a variance from Section 30-154(c) of the LDC which incorporates a 4'6" tall sign base and an overall sign height of 8', measured from the highest adjacent grade or the crown of the adjacent street, whichever is higher, to the highest point of the sign face or its supporting structural elements, with the approval subject to the following conditions:

1. The height of the sign, as measured from the highest adjacent grade or the crown of the adjacent street, whichever is higher, to the highest point of the sign face or its supporting structural elements is not to exceed 8'.
2. The sign base as measured from the highest adjacent grade or the crown of the adjacent street, whichever is higher, is not to exceed 4'6" in height.
3. The sign setback as measured from the front right-of-way/property line will be zero (0) feet.
4. The existing hedge planted in place along the subject property's Estero Boulevard property line must be maintained at 4'6" in height at all times. Removal of the hedge or maintenance of the hedge at a height less than 4'6" will cause this variance to expire.
5. Approval of this variance does not exempt the subject property from the LDC Section 30-55 permit requirements for signs.
6. Construction and/or remodeling of the sign must comply with all applicable codes and regulations, including building codes and lighting standards.

7. If the principal building on the subject property was removed or replaced for any reason, the variance would expire. The sign allowed by the variance must be removed within 30 days of the issuance of any demolition permit for the principal building. If the building is destroyed or damaged by natural disaster to the extent that it is rendered uninhabitable, then the sign must be removed within 30 days of the issuance of a demolition permit or within 30 days of the expiration of the federal, state, county, or local declaration of disaster, whichever occurs first. Placement of regulations in effect at the time of application for a permit.
8. The applicant has 60 days from the day of Town Council approval to permit and install the approved monument sign.
9. The applicant must provide an as-built survey of the sign and foundations to confirm the zero (0) foot setback, and no right-of-way, encroachment, prior to Town approving the final inspection of the sign permit.

Recommended Conditions of Approval:

- A. There **are** exceptional or extraordinary conditions or circumstances that are inherent to the property in question, and the request **is** for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.
- B. The conditions justifying the variance **are not** the result of actions of the applicant taken after the adoption of the regulation in question.
- C. The variance granted **is** the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation to the property in question.
- D. The granting of the variance **will not** be injurious to the neighborhood or otherwise detrimental to the public welfare.
- E. The conditions or circumstances on the specific piece of property for which the variance is sought **are not** of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question;
second by Mr. Durrett.

Discussion was held concerning the maintenance height of the hedge.

VOTE: Motion approved; 5-0.

Vice Chair Zuba closed the hearing at 10:08 a.m.

B. IPMC

LPA Attorney Miller noted that Chair Shamp had many good comments about the proposed ordinance concerning the International Property Maintenance Code (IPMC). She mentioned how she had prepared the proposed ordinance. She reviewed the 'red-line' copy of the proposed ordinance she submitted to the LPA which indicated the changes recommended by the LPA at the September 11, 2012 meeting.

Discussion ensued regarding the proposed added language in the red-line copy:

Town of Fort Myers Beach – Local Planning Agency

November 13, 2012

Page 5 of 9

- Page 6 – maintenance of trees and shrubs and horizontal and vertical clearance from sidewalks, bicycle paths, and street rights-of-way; weed control and sea oats; inoperable/unregistered motor vehicles or boats.
- Page 7 – exterior storage, outdoor storage; disposal of swimming pool water; use of the ASTM standard as it related to disposal of pool water.
- Page 8 - premise identification; placement times for trash cans and types of trash can screening; premise window screening and operable doors requirements; stairways and lighting.
- Page 9 – storm drainage; screening of mechanical equipment on commercial properties.

LPA Attorney Miller noted that some items were left out of the proposed ordinance because it was covered in other sections of the Town’s Code such as but not limited to ‘noise’.

Mr. Smith questioned Page 2, Section 6.2, regarding where ‘International Building Code’ appeared the term ‘Florida Building Code’ would be substituted.

LPA Attorney Miller explained that after Hurricane Andrew the State of Florida pre-empted to review buildings codes and developed their own buildings codes by State Statute.

Vice Chair Zuba asked if by adopting the IPMC into the Town’s Codes gave them more tools to address deterioration.

Ken Miller, Building Safety Services Coordinator for the Town of Fort Myers Beach, responded in the affirmative. He added that the existing Land Development Code was vague in certain areas as it pertained to property maintenance.

Discussion was held concerning other Florida communities that had already adopted the IPMC; and the definitiveness of definitions in the Code and how that related to an enforcement tool.

Public Comment opened.

No speakers.

Public Comment closed.

MOTION: Ms. Plummer moved to recommend approval of the adoption of proposed ^{Resolution} ~~Ordinance~~ 2012-015 International Property Maintenance Code (IPMC); second by Mr. Smith.

VOTE: Motion approved; 5-0.

Vice Chair Zuba closed the Public Hearing at 10:44 a.m.

Adjourn as LPA and Reconvened as Historic Preservation Board - Withdrawn

VI. LPA MEMBER ITEMS AND REPORTS

A. Committee Reorganization

Vice Chair Zuba explained at this time it was necessary to discuss and determine the Chair and Vice Chair positions for the LPA.

LPA Attorney Miller ensured that the LPA Members all had received Chair Shamp's letter indicating that she did not wish to be nominated for Chair. She opened the floor for nominations.

Ms. Plummer nominated Mr. Zuba for Chair.

LPA Attorney Miller asked if there were any other nominations; seeing none, closed the floor for nominations.

QUESTION: LPA Attorney Miller asked who was in favor of Mr. Zuba as Chair of the LPA.

VOTE: Nomination approved 5-0.

LPA Attorney Miller opened the floor for nominations of Vice Chair.

Mr. Kakatsch nominated Ms. Shamp for Vice Chair.

LPA Attorney Miller asked if there were any other nominations; seeing none, closed the floor for nominations.

QUESTION: LPA Attorney Miller asked who was in favor of Ms. Shamp as Vice Chair of the LPA.

VOTE: Nomination approved 5-0.

Discussion was held regarding the Chair and Vice Chair positions for the Historical Preservation Board and the current Chair (Ms. Plummer) and Vice Chair (Mr. Kakatsch); and both indicated they would accept remaining in their respective capacity.

Chair Zuba nominated Ms. Plummer as Chair and Mr. Kakatsch as Vice Chair of the HPB.

LPA Attorney Miller asked if there were any other nominations; seeing none, closed the floor for nominations.

QUESTION: LPA Attorney Miller asked who was in favor of Ms. Plummer as Chair and Mr. Kakatsch as Vice Chair of the HPB.

VOTE: Nomination approved 5-0.

VII. LPA ATTORNEY ITEMS

LPA Attorney Miller – no items or report.

VIII. COMMUNITY DEVELOPMENT DIRECTOR ITEMS

Community Development Director Fluegel reported staff was working on a date for the joint meeting, and requested the LPA Members forward to him any topics they may want to consider for placement on the Joint Meeting Agenda.

Ms. Plummer suggested a play area on Fort Myers Beach since the Town was ‘family-oriented’.

Mr. Zuba suggested an update on the Seafarer property.

Community Development Director Fluegel suggested Seafarer be included within a ‘downtown and transportation issues’ update. He added that the Selection Advisory Committee was forwarding a recommendation to Town Council for November 19th for a land use consultant, and briefly described the consultant’s initial scope of work (i.e. Seafarer).

Discussion was held concerning five of the responsive consulting firms reviewed by the Selection Advisory Committee with Calvin Giordano ranked as number one.

Mr. Kakatsch commended staff for their work on the demolition of the buildings on 4545 Estero Boulevard.

Discussion was held concerning the building demolition; another potential demolition for an unsafe structure on Avenue E; the 50% rule and the National Flood Insurance Program; non-conforming structures; density and density credits; future Comp Plan review; deferred maintenance and unsafe structures; possible Town-initiated rezoning; and building elevations, FEMA elevation grants, and FEMA standards.

Mr. Kakatsch suggested placing the water and sewer issue on the Joint Meeting Agenda.

Zoning Coordinator Chapman recapped the suggested items for the Joint Meeting Agenda:

- Play areas
- Seafarer property
- Downtown and transit issues
- Estero Boulevard water, sewer, and drainage issues
- FEMA 50/50 rule

Mr. Kakatsch noted the activities on San Carlos Island.

Community Development Director Fluegel briefly described the Ebtide rezoning request to Lee County and gave an update on the status of the project. He noted the project would come before a Lee County Hearing Examiner tomorrow, and the Town had obtained the services of a traffic consultant to review Ebtide's proposal. He reported the traffic consultant did find some issues with Ebtide's project because there would be impacts on Estero and San Carlos Boulevards; and that Council did approve a resolution which would be part of the package presented by the staff to the Hearing Examiner. He added that the Town would be requesting the developer conduct a Traffic Impact Mitigation Plan to address the issues with Estero and San Carlos Boulevards.

Discussion was held concerning the traffic impacts to Estero and San Carlos Boulevards and potential impacts to water quality.

IX. LPA ACTION ITEM LIST REVIEW

X. ITEMS FOR NEXT MONTH'S AGENDA

XI. PUBLIC COMMENT

Public Comment opened.

No speakers.

Public Comment closed.

XII. ADJOURNMENT

MOTION: Motion by Ms. Plummer, seconded by Mr. Smith to adjourn.

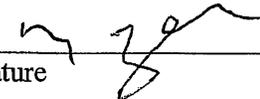
VOTE: Motion approved, 5-0.

Meeting adjourned at 11:12 a.m.

Adopted 12/11/12 With Without changes. Motion by Kakatsch, 2nd Plummer

Vote: 7-0 6-0, Shamp absent

PS 6 of 9

Signature 

End of document.

RESOLUTION OF THE LOCAL PLANNING AGENCY OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 2012-015
ADOPTION OF INTERNATIONAL PROPERTY MAINTENANCE CODE
CHAPTER 6, ARTICLE I, DIVISION 1
LAND DEVELOPMENT CODE

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 November 13, 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 property maintenance 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 repeal Chapter 6, Article I, Division 1, "Maintenance Code," Sections 6-1 through 6-15 and adopting the 2009 Edition of the International Property Maintenance Code, 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 ordinance is 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 ordinance with changes as noted below.

(The remainder of this page intentionally left blank)

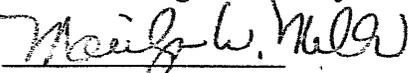
The foregoing Resolution was adopted by the LPA upon a motion by LPA Member **Plummer** and seconded by LPA Member **Smith**, and upon being put to a vote, the result was as follows:

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

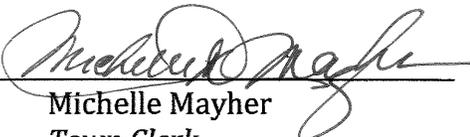
DULY PASSED AND ADOPTED THIS 13th day of NOVEMBER, 2012.

By: 
Hank Zuba, LPA Chair

Approved as to legal sufficiency:

By: 
Marilyn W. Miller, Esquire
LPA Attorney

ATTEST:

By: 
Michelle Mayher
Town Clerk

ORDINANCE -12

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA REPEALING CHAPTER 6, ARTICLE I, DIVISION 1, "MAINTENANCE CODE," SECTIONS 6-1 THROUGH 6-15; ADOPTING THE 2009 EDITION OF THE INTERNATIONAL PROPERTY MAINTENANCE CODE, REGULATING AND GOVERNING THE CONDITIONS AND MAINTENANCE OF ALL PROPERTY, BUILDINGS AND STRUCTURES WITH SPECIFIC AMENDMENTS AS SET FORTH IN SECTION TWO OF THIS ORDINANCE; PROVIDING FOR SCOPE AND ADMINISTRATION; DEFINITIONS; GENERAL REQUIREMENTS; LIGHT, VENTILATION AND OCCUPANCY LIMITATIONS; PLUMBING FACILITIES AND FIXTURE REQUIREMENTS; MECHANICAL AND ELECTRICAL REQUIREMENTS; FIRE SAFETY REQUIREMENTS; REFERENCED STANDARDS; SAID PROVISIONS BEING ADOPTED TO ENSURE THAT STRUCTURES ARE SAFE, SANITARY AND FIT FOR OCCUPATION AND USE; PROVIDING FOR THE CONDEMNATION OF BUILDINGS AND STRUCTURES UNFIT FOR HUMAN OCCUPANCY AND USE, AND THE DEMOLITION OF SUCH EXISTING STRUCTURES IN THE TOWN OF FORT MYERS BEACH; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AS FOLLOWS:

Section 1. Chapter 6, Article I, Division 1, "Maintenance Code," Sections 6-1 through 6-15 is hereby repealed in its entirety.

Section 2. A new Chapter 6, Article I, Division 1, to be entitled "International Property Maintenance Code," is hereby adopted as follows:

Sec. 6-1. Adoption of International Property Maintenance Code.

Except as amended or modified in the sections below, the 2009 edition of the International Property Maintenance Code, published by the International Code Council, is hereby adopted as the Town of Fort Myers Beach Property Maintenance Code and shall be the governing law with respect to all structures and premises in the Town of Fort Myers Beach. A complete copy of this code shall be maintained on file in the office of the Town Clerk.

Sec. 6-2. Amendments.

The 2009 Edition of the International Property Maintenance Code is hereby amended as follows:

(a) Wherever the term “*code official*” appears in the International Property Maintenance Code, that term shall be interpreted to mean the Director of the Department or Community Development or his or her designee. Wherever the term “*department*” appears in this code, it shall be interpreted to mean the Department of Community Development. Wherever the terms “International Building Code” or “International Existing Building Code” appear in this code, the term “Florida Building Code” shall be substituted for such terms.

(b) *Section 101.1 Title*, is amended to read as follows:

These regulations shall be known as the International Property Maintenance Code of the Town of Fort Myers Beach, Florida, hereinafter referred to as “this code.”

(c) *Section 102.3 Application of other codes*, is amended to read as follows:

Repairs, additions or alterations to a structure, or changes of *occupancy* shall be done in accordance with the procedures and provisions of the Florida Building Code, as amended.

(d) *Section 102.6 Historic Buildings*, is amended to read as follows:

The provisions of this code shall not be mandatory for existing buildings or structures formally or officially designated as historic buildings by either the federal government, the state, or the Town, provided such buildings or structures are judged by the Building Official to be safe and in the public interest of health, safety and welfare.

(e) *Section 102.7 Referenced codes and standards*, is amended to read as follows:

The codes and standards referenced in this code shall be the Florida Building Code, the Florida Fire Prevention Code, the Life Safety Code and any other code or standard contained in Articles II, III and IV in Chapter 6 of the Land Development Code. Where there are differences between provisions of this code, the Florida Building Code and any other code or standard contained in Articles II, III and IV in Chapter 6 of the Land Development Code, the Florida Building Code, the Florida Fire Prevention Code, the Life Safety Code, and any other code or standard contained in Articles II, III, and IV in Chapter 6 of the Land Development Code shall prevail.

(f) *Section 103 Department of Property Maintenance Inspection* is hereby deleted in its entirety.

(g) *Section 104.4 Right of Entry* is hereby deleted in its entirety.

(h) *Section 106.3 Prosecution of Violation*, is hereby amended to read as follows:

Any person who fails to comply with a notice of violation or order served in accordance with Section 107 shall be adjudicated in accordance with the provisions of Chapter 162 of the Florida Statutes or any other method allowed by Florida law.

(i) *Section 107.2 Form*, is hereby amended to read as follows:

The notice prescribed in Section 107.1 shall comply with the requirements of Chapter 162, Florida Statutes.

(j) *Section 107.3 Method of Service*, is hereby amended to read as follows:

All notices shall be deemed to have been properly served if the service requirements contained in Chapter 162, Florida Statutes have been met.

(k) *Section 107.5 Penalties*, is hereby amended to read as follows:

Penalties for noncompliance with orders and notices shall be as set forth in Chapter 162, Florida Statutes, and the codes and ordinances of the Town of Fort Myers Beach.

(l) *Section 107.6 Transfer of Ownership*, is hereby amended to read as follows:

If the owner of property that is subject to an code enforcement proceeding before the special magistrate, or court transfers ownership of such property between the time the notice of violation was served and the time of the hearing, such owner shall:

(1) Disclose, in writing, the existence and the nature of the proceeding to the prospective transferee.

(2) Deliver to the prospective transferee a copy of the pleadings, notices, and other materials relating to the code enforcement proceeding received by the transferor.

(3) Disclose, in writing, to the prospective transferee that the new owner will be responsible for compliance with the applicable code and with orders issued in the code enforcement proceeding.

(4) File a notice with the code official of the transfer of the property, with the identity and address of the new owner and copies of the disclosures made to the new owner, within 5 days after the date of the transfer.

(5) A failure to make the disclosures described in paragraphs (1), (2), and (3) before the transfer creates a rebuttable presumption of fraud. If the property is transferred before the hearing, the proceeding shall not be dismissed, but the

new owner shall be provided a reasonable period of time to correct the violation before the hearing is held.

(m) *Section 108.2 Closing of vacant structures*, is hereby amended to read as follows:

If the structure is vacant and unfit for human habitation and *occupancy*, and is not in danger of structural collapse, the *code official* is authorized to post a placard of condemnation on the *premises* and order the structure closed up so as not to be an attractive nuisance. Upon failure of the *owner* to close up the *premises* within the time specified in the order, the *code official* shall cause the *premises* to be closed and secured through any available public agency or by contract or arrangement by private persons and the cost thereof shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate for said costs. The lien shall be superior to all other liens and encumbrances, including prior recorded mortgage or judgments and only inferior to liens for taxes. In the event the owner or person creating the need for closing or securing the premises fails and refuses to pay or reimburse the Town for the costs, the Town may foreclose said lien in accordance with the law applicable to the foreclosure of such liens and the Town shall be entitled to recover its reasonable attorney's fees and costs incurred in such foreclosure action.

(n) *Section 108.7 Record*, is hereby amended to read as follows:

The code official shall prepare a report on an unsafe condition. In addition, a written notice of the unsafe condition shall be recorded in the public records for Lee County. The notice shall state the occupancy of the structure and the nature of the unsafe condition.

(o) *Section 109.5 Costs of emergency repairs*, is hereby amended to read as follows:

Costs incurred in the performance of emergency work shall be paid by the Town. All costs incurred by the Town in the performance of emergency work shall be a lien upon such real estate for said costs. The lien shall be superior to all other liens and encumbrances, including prior recorded mortgage or judgments and only inferior to liens for taxes. In the event the owner or person creating the need for emergency repairs fails and refuses to pay or reimburse the Town for the costs, the Town may foreclose said lien in accordance with the law applicable to the foreclosure of such liens and the Town shall be entitled to recover its reasonable attorney's fees and costs incurred in such foreclosure action.

(p) *Section 109.6 Hearing*, is hereby amended to read as follows:

Any person ordered to take emergency measures shall comply with such order forthwith. Any affected person shall thereafter, upon appeal to the Town Council, be afforded a hearing as described in this code.

(q) *Section 110.1 General*, is hereby amended to read as follows:

The *code official* shall order the *owner* of any *premises* upon which is located any structure, which in the *code official's* judgment after review is so deteriorated or has become so out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human habitation or occupancy, and such that it is unreasonable to repair the structure, to demolish and remove such structure; or if such structure is capable of being made safe by repairs, to repair and make safe and sanitary, or to board up and hold for future repair or to demolish and remove at the *owner's* option; or where there has been a cessation of normal construction in accordance with the Florida Building Code, the *code official* shall order the owner to demolish and remove such structure, or board up until future repair. Boarding the building up for future repair shall not extend beyond one year, unless approved by the Building Official.

(r) *Section 110.3 Failure to comply*, is hereby amended as follows:

If the *owner* of a *premises* fails to comply with a demolition order within the time prescribed, the Town shall cause the structure to be demolished and removed, either through an available public agency or by contract or arrangement with private persons, and the cost of such demolition and removal shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate for said costs. In the event the owner or person creating the need for demolition and removal fails and refuses to pay or reimburse the Town for the costs, the Town may foreclose said lien in accordance with the law applicable to the foreclosure of such liens and the Town shall be entitled to recover its reasonable attorney's fees and costs incurred in such foreclosure action.

(s) *Section 111.1 Application for appeal*, is hereby amended to read as follows:

Any person directly affected by a decision of the *code official* or a notice or order issued pursuant to this code shall have the right to appeal to the Town Council, provided that a written application for appeal is filed within 20 days after the day the decision, notice or order was served on the affected person or from the date of posting on the property. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, that the provisions of this code do not fully apply, or the requirements of this code are adequately satisfied by other means. This section shall not apply to orders issued by the Town special magistrate in connection with a code enforcement special magistrate hearing.

(t) *Sections 111.2 through Section 111.8* are hereby deleted in their entirety.

(u) *Section 112.4 Failure to comply*, is hereby amended to read as follows:

Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or

unsafe condition, shall be guilty of a code violation and shall be subject to a fine as determined by the Town special magistrate.

(v) *Section 302.3 Sidewalks and driveways*, is hereby amended to read as follows:

Section 302.3. Sidewalks, driveways and rights-of-way. All sidewalks, walkways, stairs, driveways, parking spaces, and similar areas shall be kept in a proper state of repair, and maintained free from hazardous conditions. Trees and shrubs shall be maintained to provide for horizontal clearance of at least three (3) feet from and vertical clearance of at least eight (8) feet above any sidewalk, bike path, or street right-of-way. Unpaved areas shall be regularly mowed or otherwise maintained in a neat and attractive condition.

(w) *Section 302.4 Weeds*, is hereby amended to read as follows:

All *premises* and *exterior property* shall be maintained free from weeds or plant growth in excess of 12 inches. Weeds shall be defined as all grasses, annual plants and vegetation, other than trees or shrubs, provided, however, this term shall not include cultivated flowers and gardens and native beach vegetation such as sea oats. Upon failure of the *owner* or agent having charge of a property to cut and destroy weeds after service of a notice of violation and having been given a reasonable time to cut and destroy the weeds, any duly authorized employee of the Town or contractor hired by the Town shall be authorized to enter upon the property in violation and cut and destroy the weeds growing thereon, and the costs of such removal shall be paid by the *owner* or agent responsible for the property. All costs incurred by the Town cut and destroy the weeds shall be a lien upon such real estate for said costs. The lien shall be superior to all other liens and encumbrances, including prior recorded mortgage or judgments and only inferior to liens for taxes. In the event the owner or agent fails and refuses to pay or reimburse the Town for its costs, the Town may foreclose said lien in accordance with the law applicable to the foreclosure of such liens and the Town shall be entitled to recover its reasonable attorney's fees and costs incurred in such foreclosure action.

(x) *Section 302.8 Motor Vehicles*, is hereby amended to read as follows:

Section 302.8 Motor Vehicles and Boats. Except as provided for in other regulations, no inoperative or unlicensed motor vehicle or boat shall be parked, kept or stored on any *premises*, and no vehicle or boat shall at any time be in a state of major disassemble, disrepair, or in the process of being stripped or dismantled. Painting of vehicles or boats is prohibited unless conducted inside an *approved* spray booth.

Exception: A vehicle or boat of any type is permitted to undergo major overhaul, including body or hull work, provided that such work is performed inside a structure or similarly enclosed area designed and *approved* for such purposes.

(y) A new *Section 302.10* is hereby added as follows:

Section 302.10 Exterior Storage.

1. No temporary or permanent storage of materials or equipment is permitted on any vacant parcel, unless in conjunction with an active building permit or where such storage is specifically permitted by Chapter 34 of the Land Development Code.
2. Equipment, materials, and furnishings not designed for use outdoors, such as automotive parts and tires, building materials, and interior furniture, may not be stored outdoors.

(z) *Section 303.2 Enclosures*, is hereby amended to read as follows:

Public swimming pools, hot tubs and spas shall include all safety features specified by Section 514.0315, Florida Statutes, including any subsequent amendments thereto. Residential swimming pools shall be maintained in compliance with the State Residential Swimming Pool Safety Act, as contained in Chapter 515 of the Florida Statutes.

(aa) A new *Section 303.3* is hereby added as follows:

Section 303.3 Disposal of swimming pool water. Prior to disposing of any swimming pool water, chlorine and bromine levels must be reduced by not adding chlorine or bromine for a least five (5) days or until levels are below 0.1 mg per liter. One of the following methods of disposal shall be utilized:

1. Discharge of the water into roadside swales to allow for percolation of the water into the ground without any runoff to canals, beaches, wetlands, other tidal waters, or onto adjoining properties. This shall be the preferred method of disposal.
2. Discharge of the water into the sanitary sewer system operated by Lee County Utilities is also permitted, but is not the preferred method.

Under no circumstances shall any swimming pool water be discharged either directly or indirectly onto the beach, or into canals, wetlands, or any other tidal waters.

(bb) *Section 304.3 Premises Identification*, is hereby amended to read as follows:

All buildings shall have address numbers that have been assigned by Lee County placed in a position to be plainly legible and visible by emergency personnel from the street or road fronting the property. All address numbers shall contrast with their background. Address numbers shall be Arabic numerals or alphabet letters. Numbers shall be a minimum of 3 inches high. Numbers on all commercial, institutional, or multifamily buildings that are set back more than fifty (50) feet from the street shall be at least eight (8) inches high.

(cc) *Section 304.14 Insect screens*, is hereby amended to read as follows:

Every window in a residential structure that is capable of being opened and every door, window, and other outside opening required for ventilation of habitable rooms, food preparation areas, food service areas or any areas where products to be included or utilized in food for human consumption are processed, manufactured, packaged, or stored shall be supplied with approved tightly fitting screens of not less than 16 mesh per inch (16 mesh per 25 mm), and every screen door used for insect control shall have a self-closing device in good working condition. Screens shall not, however, be required where other approved means, such as air curtains or insect repellent fans, are employed.

(dd) A new *Section 308.4* is hereby added as follows:

308.4 Additional Regulations for Rubbish and Garbage Containers.

1. Rubbish and Garbage containers shall not be moved to the street more than twenty-four (24) hours prior to scheduled curbside collection, nor remain there more than twenty-four hours after scheduled collection.
2. Each refuse container that is not movable shall be opaquely screened from view from streets and adjoining properties and such screening shall be of sufficient height to entirely screen the container. Screening may be achieved by landscaping, wall, or opaque fencing provided the wall or fence does not exceed the maximum height permitted for the property.
3. Any rubbish or garbage container not located within a roofed enclosure must have a cover or lid that renders the interior of the container inaccessible to animals.

(ee) *Section 402.2 Common halls and stairways*, is hereby amended to read as follows:

Every common hall and stairway in residential occupancies, other than in one- and two-family dwellings, shall be lighted at all times with at least a 60-watt standard incandescent light bulb for each 200 square feet (19 m²) of floor area or equivalent illumination, provided that the spacing between lights shall not be greater than 30 feet (9144 mm). In other than residential occupancies, means of egress, including exterior means of egress, stairways shall be illuminated at all times the building space served by the means of egress is occupied with a minimum of 1 footcandle (11 lux) at floors, landings and treads, provided, however, that during Sea turtle nesting season (May 1 through October 31), the provisions of Chapter 14, Article II of the Fort Myers Beach Land Development Code shall supersede the foregoing requirements.

(ff) *Section 507 Storm Drainage*, is hereby amended to read as follows:

Drainage of roofs and paved areas, *yards* and courts, and other open areas on the *premises* shall not be discharged in a manner that creates a public nuisance. Point sources of stormwater discharge from private property directly onto the beach are prohibited. This prohibition includes drainage collected from parking lots or other paved surfaces and stormwater from roofs of buildings.

(gg) A new *Section 602.7* is hereby added as follows:

Section 602.7 Screening of Mechanical Equipment. Any new mechanical equipment placed on a roof shall be screened from view from ground level of adjoining properties and public rights-of-way. When mechanical equipment is being replaced on a roof of a building that is not undergoing structural alterations, such equipment shall be screened to the same standard using non-structural materials such as ornamental latticework.

(hh) *Section 701.1 Scope*, is hereby amended to read as follows:

The provisions of this chapter shall govern the minimum conditions and standards for fire safety relating to structures and exterior premises, including fire safety facilities and equipment to be provided. All references to the "*International Fire Code*" in this Chapter 7 shall be replaced with the "*Florida Fire Prevention Code*."

Section 5. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 6. Effective Date. This ordinance shall take effect immediately upon adoption by the Town Council.

The foregoing Ordinance was adopted by the Town Council upon a motion by _____ and seconded by _____ and upon being put to a vote, the result was as follows:

Bob Raymond, Mayor
Joe Kosinski
Jo List

Alan Mandel, Vice Mayor
Dan Andre

DULY PASSED AND ADOPTED THIS ____ DAY OF _____ 2013, BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH

ATTEST:

By: _____
Bob Raymond, Mayor

By: _____
Michelle D. Mayher, Town Clerk

Approved as to form and legal sufficiency:

By: _____
FOWLER WHITE BOGGS, Town Attorney

DRAFT