ORDINANCE 09-01

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE; PROVIDING AUTHORITY; FINDING OF NECESSITY; PURPOSE AND INTENT; ADOPTING AMENDMENTS TO CHAPTER 10 OF THE LAND DEVELOPMENT CODE WHICH IS ENTITLED "DEVELOPMENT ORDERS AND ENGINEERING STANDARDS"; ESTABLISHING APPLICATION REQUIREMENTS AND LEGAL PROCEDURES FOR VACATING TOWN-OWNED PUBLIC INTERESTS IN REAL PROPERTY; AMENDING DIVISION 5 "PLATS AND VACATIONS"; AMENDING SUBDIVISION II "VACATION OF TOWN INTEREST IN REAL PROPERTY"; ADDING SECTION 10-218 "PURPOSE AND INTENT"; ADDING SECTION 10-219 "APPLICATIONS"; ADDING SECTION 10-220 "PROCEDURE"; PROVIDING SEVERABILITY; EFFECT OF ORDINANCE; AND EFFECTIVE DATE.

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

SECTION 1. Authority. This Ordinance is enacted pursuant to the provisions of Chapter 95-494 Laws of Florida; Chapters 163, 166, 177, and 336, Florida Statutes, and other applicable provisions of law.

SECTION 2. Finding of Necessity. The town council finds that the establishment of application requirements and legal procedures for vacating town-owned public interests in real property as set forth elsewhere in this Ordinance is necessary for the effective administration and operation of the town.

SECTION 3. Purpose and Intent. It is the purpose and intent of this Ordinance to establish procedures for the town to follow in considering the vacating of town-owned public interests in real property. The procedures established by this ordinance are intended to ensure that the vacation of town-owned public interests in real property are legally effective, according to the law of Florida, and that the property rights of private landowners and public entities are protected.

SECTION 4. Adoption of Amendments to Chapter 10 of the Land Development Code. Chapter 10 of the Town of Fort Myers Beach Land Development Code is titled "DEVELOPMENT ORDERS AND ENGINEERING STANDARDS." Chapter 10 is hereby amended as shown in Exhibit A. Entirely new language is indicated by <u>underlining.</u> Language being repealed is indicated with ~~strikethroughs~~. This Ordinance amends the following sections of Chapter 10:

Division 5. Plats <u>and Vacations</u>
<u>Subdivision II. Vacation of Town Interest in Real Property</u>
Sec. 10-218. <u>Purpose and Intent.</u>
Sec. 10-219. <u>Applications.</u>
Sec. 10-220. <u>Procedure.</u>

SECTION 5. Severability. If any one of the provisions of this Ordinance should be held contrary to any express provision of law or contrary to the policy of express law, although not expressly prohibited, or against public policy, or should for any reason whatsoever be held invalid, then such provision will be null and void and will be deemed

separate from the remaining provisions of this Ordinance, and in no way affect the validity of all other provisions of this Ordinance.

SECTION 6. Effect of Ordinance. The provisions of this Ordinance are deemed cumulative and supplemental and will have no legal effect on the ordinances of the Town of Fort Myers Beach, except as expressly provided.

SECTION 7. Effective Date. This Ordinance will become effective immediately upon its adoption.

The foregoing was enacted by the Town Council upon a motion by Councilmember Babcock and seconded by Council Member List and, upon being put to a vote, the result was as follows:

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

DULY PASSED AND ENACTED this 21st day of December, 2009.

ATTEST:

By: _____
Michelle Mayher, Town Clerk

TOWN OF FORT MYERS BEACH, FLORIDA

By: _____
Larry Kiker, Mayor

Approved as to form by:

_____
Anne Dalton, Esquire
Town Attorney

Exhibit "A"

Chapter 10 DEVELOPMENT ORDERS AND ENGINEERING STANDARDS
ARTICLE II. DEVELOPMENT ORDERS AND PLATS
DIVISION 5. PLATS AND VACATIONS
Subdivision I. Plats

Sec. 10-211 through Sec. 10-217 [No changes]

Subdivision II. Vacation of Town Interests in Real Property

Sec. 10-218. **Purpose and Intent.** It is the purpose and intent of this ordinance to establish procedures for the town to follow in considering the vacating of public interests in real property. The procedures established by this ordinance are intended to ensure that the vacation of town-owned public interests in real property are legally effective, according to the law of Florida, and that the property rights of private landowners and public entities are protected.

Sec. 10-219. **Applications.** All applications must comply with the requirements below.

(a) An application to vacate town-owned public interests in real property must be submitted to the Town Department of Community Development with a duplicate copy submitted to the Department of Public Works, on forms provided by the Town.

(b) The application must be notarized and must include the following:

(1) Title certificate or attorneys title opinion acceptable to the town indicating that the applicant owns fee simple title to the tract or parcel of real property to which the vacation of the town-owned public interest in real property will inure as well as indicating what liens or assessments currently exist on the property; and
(2) A copy of the most recent tax bill applicable to the property in question as well as proof of payment in full of all current and former tax bills; and
(3) A legal description of the area to be vacated and an accompanying survey indicating the location of all existing improvements including, but not limited to, drainage, utilities, surface water management facilities, streets, buildings, and other physical features within 100 feet of the real property that is the subject of the application request. This drawing must also show the relationship of the subject property to other real property in the surrounding area and the most direct route to the nearest arterial street and must be signed and sealed; and
(4) A copy of the plat indicating the area thereof subject to the request, if applicable; and

(5) A printed list containing the names, addresses, and signatures of all real property owners holding legal interest in the real property subject to or affected by the requested vacation; and

(6) The original signatures of all persons holding any private legal interest; and

(7) A printed list of all current property owners, STRAP numbers, and mailing addresses within a 500-foot radius of the subject property, including two (2) sets of mailing labels for the real property owners on this list; and

(8) An affidavit of intent stating facts that establish that the vacation or other disposition of the town-owned public interest in real property:

   a. Is not for the purpose of unlawfully obtaining public property for private purposes;
   b. Will not adversely affect the ownership rights or convenient access of persons owning other real property; and
   c. Will not adversely affect future infrastructure and is not in conflict with town, county, state, federal, or other governmental entity's plans regarding transportation, surface water management, utility, drainage, or other public purposes.

(9) Signed letters of approval or no objection from:

   a. The Town Department of Public Works
   b. Florida Power and Light
   c. The local cable television company serving the town
   d. The local telephone company serving the town
   e. The local liquid propane gas company serving the town
   f. Lee County or other provider of sanitary sewer services
   g. Lee County Sheriff's Office
   h. Fort Myers Beach Fire Control District
   i. Any other provider of private or public utilities whose facilities or infrastructure may be affected by the action requested, as determined by the director following review of an otherwise complete application.

   If the required reviewing entity determines that the vacation may not serve the best interest of the public, the applicant may offer an alternative or replacement easement. However, the reviewing entity is under no obligation to accept the offered alternative. If an application to vacate is premised on the grant of an alternative or replacement easement, town council will not take action on the application until the instrument necessary to grant the alternative or replacement easement has been accepted in form and content by the town, properly executed by the granting or conveying entity, and delivered to the town to be held in trust pending the town council's consideration of the requested vacation.

(10) Payment of the applicable application fee in accordance with the schedule of fees adopted by resolution of the town council. In the absence of a resolution by the town council, the director will charge fees that are comparable to the fees charged by the board of county commissioners for similar applications.

(11) Subordinations agreements with all holders of liens against the real property subject to the request.

(12) Disclosure of county requirement of vacation or statement by the Lee County director of community development or designee that no county vacation is required.

Sec. 10-220. Procedure.

(a) After receipt of a complete application for vacation of town-owned public interests in real property, the director of community development will prepare a report stating both the current and potential town uses, both short-term and long-term, of the town-owned public interests in real property subject to the vacation request. This report will make specific reference to the adopted Capital Improvements Program (CIP) and to the goals, objectives, and polices of the Town of Fort Myers Beach Comprehensive Plan, and will evaluate how both retention and disposition of the subject town-owned public interest in real property does, or does not further the adopted goals, objectives, and policies of the Comprehensive Plan and the adopted CIP.

(b) The complete report will be provided to the town public works director, town finance director, and any other applicable town staff for review and comment. All written staff comments will be included in the packet provided to the local planning agency and the town council.

(c) The packet, with staff comments, will be referred to the local planning agency for public hearing and recommendations. The town will publish the notice of public hearing on the application to vacate in a newspaper of general circulation at least once a week for each of two (2) weeks prior to the public hearing. The first legal notice must appear at least 15 days prior to the date of the public hearing. An affidavit of publication confirming legal notice of the public hearing must be presented to the local planning agency at the time of the public hearing.

Following the public hearing before the local planning agency, the complete report and staff recommendations and the local planning agency minutes and resolution with recommendations will be reviewed by the town council in a public meeting. If, after reviewing the report and the local planning agency minutes and recommendations, the town council decides to pursue possible vacation of the town-owned public interest in real property, the town council will direct the town manager to schedule a properly noticed public hearing on the possible vacation. The town will publish the notice of public hearing on the application to vacate in a newspaper of general circulation at least once a week for two (2) weeks prior to the public hearing. The first legal notice must appear at least 15 days prior to the date of the public hearing. An affidavit of public hearing confirming legal notice of the public hearing must be presented to the town council at the time of public hearing. At this hearing, the town council will determine:

(1) Whether the vacation of the subject real property for other use will adversely affect the future land use map category, as set forth in the Comprehensive Plan, or adversely affect the zoning district, as set forth in the LDC, and whether it is otherwise consistent with the requirements of state and federal law; and
(2) The original intended use of the real property at the time of its acquisition by the town; and
(3) Whether the conditions and circumstances of the use of the real property have undergone change with respect to intended town use of the real property; and
(4) What constitutes surplus property, in terms of the original intent, and whether the real property is surplus property; and
(5) The basis of the vacation of town-owned public interest in real property; and
(6) Findings of fact and conclusions of law in support of the action to be taken; and
(7) Whether and how the public would benefit from the proposed vacation

(d) If, following the public hearing held as set forth above, the town council decides to pursue vacation of the town-owned public interest in real property, town council will direct the preparation of a resolution declaring the subject real property interest as surplus to the town's needs, containing the details of the proposed disposition, and setting a date for an adoption hearing for the resolution no less than 30 days form the date of the decision and direction to prepare the resolution. The applicant is responsible for all recording costs.

(e) Notwithstanding the foregoing process, after review and consideration of the report referenced in subsection (a) of this section, town council, in its discretion, may determine that to proceed, subsections (c) and/or (d) are not required if:

(1) The conveyance is back to the original grantor(s), its successors and assigns, who are currently the abutting owner(s); or
(2) It is part of another process, such as:

a. Straightening of a real property boundary line in connection with a boundary dispute;
b. Settling an action to quiet title; or
c. Other like proceeding, as determined in the discretion of the town council upon the consideration of the director's recommendation;

or;
(3) It is a vacation that is *de minimis* in area, cost, and overall impact.

Upon finding any of the items enumerated in this subsection (e), the town council may exempt the transaction in question from continuing with the procedures set forth in paragraphs (c) and/or (d) and continue with the determination concerning the vacation of the subject real property interest. The town council, however, may apply any of the considerations contained therein that it deems relevant and helpful in rendering its decision.