

**ORDINANCE NO. 20-02**

**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING SECTION 34-652 – EC (ENVIRONMENTALLY CRITICAL) ZONING DISTRICT, SECTION 34-1575 – COASTAL ZONES, AND SECTION 6-366 – LOCATION OF CONSTRUCTION NEAR BEACHES – OF THE FORT MYERS BEACH LAND DEVELOPMENT CODE, PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER’S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE.**

**WHEREAS**, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

**WHEREAS**, Article X of the Town Charter of the Town of Fort Myers Beach empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

**WHEREAS**, the Town of Fort Myers Beach, Florida recognizes that development within the Environmentally Critical (EC) zoning district established in the Town of Fort Myers Beach Land Development Code (“LDC”) is subject to reasonable regulations as proposed herein to maintain the health, safety and welfare of residents of the Town; and

**WHEREAS**, the Town Council desires to update the Land Development Code language to clarify, improve, and create consistency among sections; and

**WHEREAS**, the Town of Fort Myers Beach recognizes that limiting uses and development within the EC zoning district protects people, existing development and the environment; and

**WHEREAS**, on January 14, 2020 the Town of Fort Myers Beach Local Planning Agency (LPA) reviewed and provided a recommendation of approval to the proposed language by a vote of 6-0; and

**WHEREAS**, on January 21, 2020 the Town Council held a first reading of the proposed Ordinance; and

**WHEREAS**, on February 18, 2020 the Town Council held a second reading of the proposed Ordinance.

**NOW THEREFORE IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH, FLORIDA:**<sup>1</sup>

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<sup>1/</sup> Additions to existing text are shown by underline, changes to existing text on second reading are shown by double underline, and deletions are shown as ~~strikethrough~~.

Section 1. The above recitals are true and correct, and incorporated herein by this reference and are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. The Town of Fort Myers Beach Land Development Code is hereby amended to read as follows:

Sec. 34-652. – ~~(EC)~~ Environmentally Critical (EC) zoning district.

(a) *Purpose.* The purpose of the EC zoning district is to designate beaches and significant wetlands whose preservation is deemed critical to the Town of Fort Myers Beach through its comprehensive plan, including:

(1) Beaches that have been designated in the "Recreation" category on the future land use map; and

(2) Wetlands that have been correctly designated in the "Wetlands" category on the future land use map.

(b) *Intent.* The application of the EC district is intended to prevent a public harm by precluding the use of land for purposes for which it is unsuited in its natural state and which injures the rights of others or otherwise adversely affects a defined public interest.

(c) *Accretion.* Accretions of beaches or wetlands, whether by natural causes or through beach renourishment or ~~artificial approved~~ filling, will may be permitted in automatically be assigned to the EC zoning district, with appropriate easements as may be required by regulatory agencies.

(d) *Permitted uses and structures.* In the EC district, no land or water use shall be permitted by right except for those uses and developments described below and consistent with permitted by the Fort Myers Beach Comprehensive Plan for uses in wetlands and beaches, or critical wildlife habitats, as applicable, including:

(1) Boating, with no motors permitted except electric trolling motors.

(2) Fishing.

(3) Removal of intrusive, exotic species or diseased or dead trees, and pest control.

~~(4) Hiking or nature study, including pedestrian boardwalks and dune crossovers.~~

(54) Outdoor education, in keeping with the intent of the district.

~~(65) Passive Recreation activities on public property, residential accessory uses, including the rental of beach furniture when accessory to a multifamily residential building located adjacent to the Gulf of Mexico containing more than 50 dwelling units, and resort accessory uses that are performed outdoors. These activities and uses include passive recreation and active recreation that may requires no permanent temporary structures or but no alteration of the natural landscape (except as may be permitted by special exception (see § 6-366 and subsection (e) below). Any temporary structure used in conjunction with such uses must comply with all provisions of this land development code (for instance, see chapters 14 and 27). Artificial lighting may not be installed in the EC zoning district unless approved by special exception or as a deviation in the planned development rezoning process (see §§ 6-366 and 14-76).~~

(6) Outdoor Residential accessory uses, including the rental of beach furniture, when accessory to a multifamily residential or resort building located adjacent to the Gulf of Mexico containing more than 50 dwelling units, and resort accessory uses that are performed outdoors.

(7) Wildlife management, as wildlife preserves.

(8) Expansion of area designated for the consumption and service of alcoholic beverages, subject to the regulations in § 34-1264(g)(1).

(9) Temporary, movable and Occasional minor structures on private property that do not alter the natural environment, landscape or obstruct pedestrian traffic. Artificial lighting and signs are prohibited unless the lighting or signage complies with §§ 14-5 or 27-51 of this LDC.

(10) Temporary, movable structures that are part of a permitted special event in accordance with § 14-11 of this LDC.

(11) Licensed beach vendor rental equipment or a temporary movable structure permitted in accordance with § 14-5, ch. 27, and § 34-3151 of this LDC.

a. During the sea turtle nesting season (May 1 through October 31) temporary, movable structures may not be moved across the beach unless:

1. The movement is after 9:00 a.m., or after completion of daily monitoring for turtle nesting activity by a FWCC-authorized marine turtle permit holder, whichever occurs first; and

2. The movement does not disturb any sea turtle or sea turtle nest.

(12) On-grade, pathways through a dune, not to exceed 40 inches in width, subject to compliance with all applicable state and local environmental regulations. No more than one (1) pathway per property.

*(e) Special exception uses and structures.* Upon a finding that the proposed use or structure is consistent with the standards set forth in § 34-88 of this LDC, as well as all other applicable town regulations, the town council ~~may permit any specific use or structure from the following list, may approve with or without conditions as a special exception, subject to conditions set forth in this chapter and in the resolution of approval~~ the following structures or uses:

(1) Accessory structures, ~~to include structures, or impervious surface areas~~ which are accessory to a use permitted ~~by right or~~ by special exception in the EC district.

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

(3) Redevelopment of existing ~~single-family residences,~~ which encroach into the EC district and ~~its~~ their customary accessory uses ~~at a maximum density of one dwelling unit per 20 acres.~~

(4) ~~Minor structures, that are not permitted by right may be approved in the EC zoning district through the special exception process or as deviations in the planned development rezoning process. Such minor structures which~~

may include stairways, walkways, ramps, fences, walls, decks, bathhouses, viewing platforms, gazebos, chickees, patios, and other paved areas. These structures which shall be located as close to the landward edge of the EC zoning district line as possible and must minimize adverse effects on the beach and dune system. See §§ 34-88, and 34-932(b), and 34-652 of this LDC for details.

(5) Artificial lighting, in compliance with sea turtle lighting regulations.

(6) Perpendicular dune walkovers on property, when required to protect indigenous plant communities and when elevation change exists, in accordance with § 10-415(b) and subsection (f), below.

(7) Signs, as approved by a planned development.

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

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

(2) Any dune walkover must be state approved and constructed consistent with the following requirements:

a. Walkovers must be placed perpendicular to the dune or no more than 30 degrees from perpendicular. New walkovers cannot be placed closer than 150 feet to the nearest walkover.

b Walkovers must be supported on posts embedded to a sufficient depth to provide structural stability. These posts may not be encased in concrete.

c. Walkovers cannot exceed four feet in width when serving single-family homes or six feet in width otherwise. Alternate widths require a variance.

d. Walkovers must be elevated at least two feet, and no more than 3 feet, above the highest point of the dune and dune vegetation and must extend to the seaward toe of any existing dune and dune vegetation.

e. Walkovers must be constructed in a manner that minimizes short-term disturbance of the dune system. Any dune vegetation destroyed during

construction must be replaced with similar native vegetation that is suitable for beach and dune stabilization and increases either plant density or area of plantings.

f. Walkovers may not be constructed during the sea turtle nesting season (May 1 through October 31).

g. Walkovers may not be attached to any other structures.

(23) Article IV of Ch. 14 pertaining to wetlands protection; and

(34) Coastal zone regulations in § 34-1575 of this LDC.

Sec. 34-1575. - Coastal zones.

(a) Development, other than minor structures as defined in § ~~34-26-333~~ 34-26-333 of this LDC, is prohibited seaward of the 1978 coastal construction control line. This line has been incorporated into the future land use map of the Fort Myers Beach Comprehensive Plan as the landward boundary of the beachfront recreation category (see also Policy 5-D-1.v), and as the landward boundary of the EC zoning district (see § 34-652 of this chapter). Regulations for ~~minor structures~~ development and activities in the EC zoning district (seaward of the 1978 coastal construction control line) are found in § 6-366 and § 34-652 of this LDC.

~~(b) Minor structures do not include structures supported by or extensions of the principal structure. The minor structures identified as acceptable in this section are considered expendable under design wind, wave, and storm forces.~~

~~(eb) No vehicular or foot traffic from developments or access strips to crossovers will be allowed to cross over directly on dune ridges or beach escarpments. Access to the beach must be via elevated dune walkovers (see §§ ~~34-652~~ 6-366 and 10-415(b) of this LDC).~~

~~(ec) No development will be permitted which alters the dune system, except for narrow pathways as permitted by § 34-652(d)(10) of this LDC and excavations for the installation of pilings necessary for the construction of elevated structures as permitted by the state department of environmental protection.~~

(d) Only dune vegetation may be planted in the EC zoning district. Dune vegetation means plant species typically growing on the dune as defined by the Florida Natural Areas Inventory. Characteristic species include sea oats, railroad vines, bitter panicum and beach elder.

Sec. 6-366. - Location of construction near beaches.

~~(a) Except for beach renourishment and for minor structures such as lifeguard support stands and beach access ramps,~~ All construction must be located a sufficient distance landward of the beach to permit natural shoreline fluctuations and to preserve dune stability. In addition to complying with all other provisions of this code, major structures must be built landward of the 1978 coastal construction control line except where a major structure may be specifically allowed by this code to extend across this line. The 1978 coastal construction control line is depicted on the Future Land Use Map as the seaward edge of land-use categories allowing urban development and as the landward edge of the recreation land-use category. This line is also the landward edge of the EC (Environmentally Critical) zoning district. A copy of the 1978 Coastal Construction Control Line is recorded at Plat Book 48, Page 15, and available at the Ft. Myers Beach Town Hall.

~~(b) Occasional minor structures are permitted by right in the EC zoning district if they are placed on private property and do not alter the natural landscape or obstruct pedestrian traffic (examples are mono post shade structures, movable picnic tables, beach volleyball courts, and similar recreational equipment, see § 34-652 of this LDC). Artificial lighting and signs may not be installed in the EC zoning district unless approved by special exception or as a deviation in the planned development rezoning process or unless explicitly permitted by §§ 14-5 or 27-51 of this LDC.~~

~~(1) Other provisions of this code provide for certain other minor structures in the EC zoning district:~~

~~a. Perpendicular dune walkovers are permitted by right in accordance with § 10-415(b) and subsection (d), below.~~

~~b. Some temporary structures such as tents may be permitted through a temporary use permit for special events held on the beach, in accordance with § 14-11 of this LDC.~~

~~e. Licensed beach vendors may place rental equipment and/or a temporary movable structure in accordance with § 14-5, Ch. 27, and § 34-3151 of this code.~~

~~(2) Minor structures that are not permitted by right may be approved in the EC zoning district through the special exception process or as deviations in the planned development rezoning process. Such minor structures may include stairways, walkways, ramps, fences, walls, decks, bathhouses, viewing platforms, gazebos, chickees, patios, and other paved areas. These structures should be located as close to the landward edge of the EC zoning district as possible and must minimize adverse effects on the beach and dune system. See §§ 34-88, 34-932(b), and 34-652 of this LDC for details.~~

~~(3) Minor structures not qualifying by right, by special exception, or through another provision of this code are not permitted in the EC zoning district. See § 34-652 of this LDC for details.~~

~~(eb) When existing major structures that were built partially or fully seaward of the 1978 coastal construction control line are reconstructed, they shall be rebuilt landward of this line. Exceptions to this rule may be permitted through the planned development zoning process only where it can be scientifically demonstrated that the 1978 coastal construction control line is irrelevant because of more recent changes to the natural shoreline. The town shall seek the opinion of the Florida Department of Environmental Protection in evaluating any requests for exceptions. Exceptions must also comply all state laws and regulations regarding coastal construction.~~

~~(1) Repairs to existing primary structures, in the EC zoning district, are permitted without a Special Exception only if the repairs do not exceed 25% of the value of the structure. Expansion of existing primary structures, in the EC zoning district, are not permitted without a Special Exception.~~

~~(2) Repairs to accessory structures in the EC zoning district are not permitted.~~

~~(d) New and expanded beachfront development must construct state approved dune walkover structures at appropriate crossing points (see § 10-415(b) of this LDC). All walkovers must meet these criteria in addition to state approval:~~

~~(1) Walkovers must be placed perpendicular to the dune or no more than 30 degrees from perpendicular. New walkovers cannot be placed closer than 150 feet to the nearest walkover.~~

~~(2) Walkovers must be supported on posts embedded to a sufficient depth to provide structural stability. These posts may not be encased in concrete.~~

~~(3) Walkovers cannot exceed four feet in width when serving single family homes or six feet in width otherwise.~~

~~(4) Walkovers must be elevated at least two feet above the highest point of the dune and dune vegetation and must extend to the seaward toe of any existing dune and dune vegetation.~~

~~(5) Walkovers must be constructed in a manner that minimizes short term disturbance of the dune system. Any dune vegetation destroyed during construction must be replaced with similar native vegetation that is suitable for beach and dune stabilization.~~

~~(6) Walkovers may not be constructed during the sea turtle nesting season (May 1 through October 31).~~

(ec) For newly created lots and parcels, a 50-foot separation between structures and dunes is required by § 10-415(b) of this LDC.

#### Sec. 34-2 Definitions

Accretion means the increase of land by the action of natural forces or by human addition of sand or soils.

Minor structure is a small, accessory structure that is considered expendable under design wind, wave, and storm forces and are of a size and design to have a minor impact on the beach and dune system. Minor structures do not include structures supported by or extensions of the principal structure.

Recreation, passive means, recreation that involves existing natural resources and has a minimal impact. Passive activities include but are not limited to, walking/jogging, picnicking and birdwatching.

Dune Walkover: Walkovers are designed to be minor, expendable structures that pose a minimal interference with coastal processes and generate minimal amounts of debris. Walkovers constructed across native beach and dune vegetation should be post-supported and elevated a sufficient distance above the existing or proposed vegetation to allow for sand build-up and clearance above the vegetation. Whenever possible, stairways and ramps leading from the dune bluff or crest down to the beach should be designed with posts that completely span the seaward slope of the dune. The structure should be designed to minimize the quantity of material used in construction, such as avoiding the use of vertical wood pickets, and reducing the length and width of construction on the beach.

Major Structures which, as a result of design, location, or size could cause an adverse impact to the beach and dune system. Major structures include, nonhabitable major structures such as roads, bridges, storm water outfalls, bathhouses, cabanas, swimming pools, and garages, as well as any habitable structures.

Section 3. The Town Council intends that the provisions of this ordinance be made a part of the Fort Myers Beach Code of Ordinances, and that sections herein may be renumbered or re-lettered and the words or phrases herein may be changed to accomplish codification; regardless, typographical errors that do not affect intent may be corrected with notice to and authorization of the Town Manager without further process.

Section 4. Whenever the requirements or provisions of this ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive shall apply.

Section 5. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the ordinance as a whole, or any part thereof, other than the part so declared.

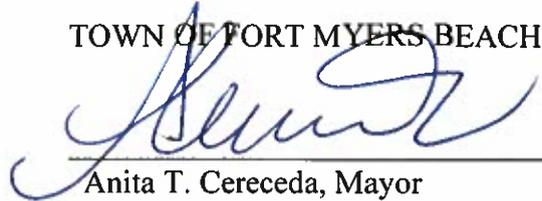
Section 6. This ordinance shall become effective upon adoption by the Town Council.

The foregoing Ordinance was adopted by the Town Council upon a motion by Vice Mayor Murphy and seconded by Councilmember Shamp and upon being put to a roll call vote, the result was as follows:

Anita Cereceda, Mayor	Aye
Ray Murphy, Vice Mayor	Aye
Joanne Shamp, Councilmember	Aye
Rexann Hosafros, Councilmember	Aye
Bruce Butcher, Councilmember	Aye

ADOPTED this 18th day of February, 2020 by the Town Council of the Town of Fort Myers Beach, Florida.

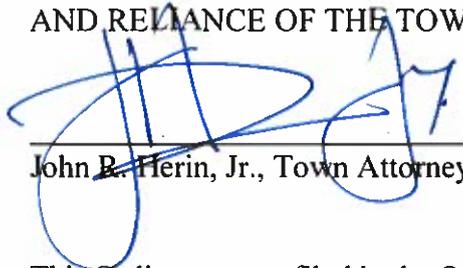
TOWN OF FORT MYERS BEACH

  
Anita T. Cereceda, Mayor

ATTEST:

  
Michelle D. Mayher, Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:

  
John B. Herin, Jr., Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this 3rd day of March 2020.