

ORDINANCE 20-06

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH REPEALING SUBDIVISION II OF DIVISION 5 OF ARTICLE II OF CHAPTER 10 ENTITLED “VACATION OF TOWN INTEREST IN REAL PROPERTY” OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE AND ADOPTING A NEW ARTICLE VI OF CHAPTER 2 OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH ENTITLED “VACATION OF TOWN INTEREST IN REAL PROPERTY” REGARDING THE VACATION OF TOWN OWNED PROPERTY AND RIGHT-OF-WAY; PROVIDING FOR INCLUSION IN THE CODE AND SCRIVENER’S ERRORS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR 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 Council desires to streamline and update the Town’s procedures to vacate Town owned property to provide a cost effective and efficient process; and

WHEREAS, the Town recognizes that notice to adjacent property owners and a public hearing before vacating Town owned property ensures that due process is provided; and

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

WHEREAS, on February 3, 2020 the Town Council held a second reading of this proposed Ordinance.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:¹

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

^{1/} 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 2. Subdivision II of Division 5 of Article II of Chapter 10 of the Town of Fort Myers Beach Land Development Code, a copy of which is attached hereto as Exhibit "A" is hereby repealed.

Section 3. A new Article VI of Chapter 2 of the Code of Ordinances of the Town of Fort Myers Beach entitled "Vacation of Town Interest in Real Property" is hereby adopted to read as follows:

CHAPTER 2 – ADMINISTRATION
ARTICLE VI– VACATION OF TOWN INTEREST IN REAL
PROPERTY

Sec. ____ - Purpose and Intent

The purpose of this Article is to provide updated and best practices for the vacation of any Town interest in real property. It is the intent of these regulations to provide a cost effective and efficient procedure, while ensuring the proposed vacation meets the criteria set forth herein and complies with due process before the Town Council approves the vacation of the Town's interest in real property.

Sec. ____ - Generally

(a) The Town Council is the approving authority for vacation of any interest the Town may have in any property, plats either in whole or in part of subdivisions within the corporate limits of the Town, returning public property such as municipal street rights-of-way and municipal easements covered in such plats either in whole or in part to acreage, and for the relocation, modification or removal of municipal rights-of-way and easements. The Town recognizes it is unlawful to vacate public rights-of-way solely for private purposes, and these procedures herein are intended to ensure that vacations are legally effective according to the law of the state, and that the property rights of other landowners and public entities are protected.

~~(b) In an effort to ensure that there is no further public purpose and to offset the loss in public access, every application to vacate a public right-of-way, alley, platted subdivision or portions thereof that is currently improved and in use, shall be evaluated to determine an appropriate amount of monetary or other exchange required to support the vacation request.~~

Sec. ____ - Application to vacate.

An application to vacate an un-platted right-of-way, utility easement, plat, a portion of a plat or public right-of-way dedicated in a plat under this article shall be made to the community development department and shall include:

(a) Title certificate or attorney's title opinion and a copy of the most recent tax bill indicating the applicant owns fee simple title to the tract or parcel of land covered by the plat or portion of the plat for which vacation is sought, including a receipt from the county tax collector office certifying that all taxes, and payments on assessments to date, have been paid.

(b) The approximate location of the existing improvements, including drainage, utilities, surface water management facilities, streets, buildings, and other physical features within ~~300~~ 500 feet of the land sought to be vacated.

(b) Location sketch showing the relationship of the subdivision to the surrounding area, and where a right-of-way is sought to be vacated, a sketch showing the most direct route to the nearest arterial street.

(c) A copy of the plat showing a portion thereof for which vacation is sought, and the assessed value as reported on the most recent final tax roll for all property abutting the area to be vacated.

(d) A list of the names, addresses, and signatures shall be supplied to the development services division of all property owners holding private legal interest in the plat, portion of plat, right-of-way, public utility easement, or portion thereof. All persons holding such a private legal interest to sign the vacation request; provided, however, that private legal interest as used herein shall not be interpreted to mean a private easement right in a dedicated public right-of-way acquired by the owner of a platted lot as a consequence of the right-of-way having been dedicated on the same plat. Private legal interest does mean the rights of persons who abut a public right-of-way which is to be vacated and who would acquire ownership to the centerline of said right-of-way as a consequence of the vacation.

(e) A typed list of all current property owners, STRAP numbers, and mailing addresses within a ~~300~~ 500 foot radius of the property covered in the application. The information may be obtained from the tax assessor's office.

(f) Letter of intent stating facts that certify establish:

(1) That in the case of a partial vacation of a platted subdivision, the vacation will not adversely affect the ownership or rights of persons owning other lands, and will not adversely affect the convenient access of persons owning

other lands, and will not adversely affect the convenient access of persons owning other part of the subdivision.

(2) That such vacation will not adversely affect future infrastructure and is not in conflict with city, county, or state plans regarding road rights-of-way, water retention, utility or drainage plans.

(3) That before such a resolution to vacate any plat, either in whole or in part, shall be entered, by the Town Council, it must be shown that the persons making application for said vacation own the fee simple title to the whole or that part of the tract covered by plat sought to be vacated, and it must be further shown that the vacation by the governing body will not affect the ownership or right of convenient access of persons owning other parts of the subdivision.

~~(g) Pursuant to F.S. § 177.101(5), the resolution shall have the effect of vacating all streets and alleys which have not become highways necessary for use by the traveling public.~~

~~(h) Where applicable, the monetary exchange required for vacation applications for improved properties currently in use as calculated in Section _____ below.~~

(i g) Letter of approval or no objection from the following:

(1) The Town public works and utility departments.

(2) Florida Power and Light.

(3) The local cable company serving the area.

(4) The local telephone company serving the area.

(5) Florida Department of Transportation (if applicable as determined by the Town).

(6) Fort Myers Beach Fire Department.

(7) Lee County Department of Transportation (if applicable as determined by the Town).

(8) Lee County Sheriff's Office.

(j) Application fee.

Sec. _____ - Review of application.

(a) Applications for vacation of municipal easements or road rights-of-way shall be reviewed to determine whether there is any future likelihood that the easement or right-of-way may be needed by the Town, county or the state.

(b) Such application shall be analyzed to ensure that the convenient access of property owners on adjoining street rights-of-way will not be adversely affected. Applications to vacate a public right-of-way, alley, platted subdivision or portions thereof that are currently improved and in use, shall be evaluated to determine an appropriate amount of monetary or other compensation for and in exchange for supporting the vacation request. To offset the private benefit gained from the vacation by acquiring additional land and therefore additional development rights, the Town shall seek a monetary or other exchange. A vacation application for the above referenced vacation types, shall be accompanied by the assessed value as reported on the most recent final tax roll for all property abutting the area to be vacated.

(c) No unplatted right-of-way, easement, utility easement, plat, a portion of a plat or public right-of-way dedicated in a plat giving public access to any waters in the Town shall be vacated unless:

(1) The Town Council determines that the applicant meets all of the review criteria of this article; and

(2) The applicant provides comparable public access at no cost to the Town, or gives the Town comparable easement, property or right-of-way to access the same body of water. The reasonableness of the alternate access shall be at the sole discretion of the Town Council.

(d) The staff report to the Town LPA and Town Council shall include an approximate evaluation of the proposed vacation by obtaining and any alternate easement, property or right-of-way any monetary exchange for additional rights of way, or any combination thereof, in return for the requested vacation. At the discretion of Town Council, the assessed value may be utilized by the Town to determine an appropriate value for monetary or other contribution for acquisition of additional land. The value shall be calculated by dividing the assessed value of property (AV) abutting the area to be vacated by the square footage of property (SFP) to obtain the value per square foot (V/SF). The value per square foot (V/SF) shall be

~~multiplied by the square footage of the right-of-way, alley, platted subdivision, or portions thereof to be vacated to determine the appropriate monetary exchange. Any monetary exchange shall be expressly designated as such and shall be required to be deposited into the Town's land acquisition fund. The monetary exchange shall be in addition to any costs the applicant may incur with regard to utility relocation.~~

Sec. _____ - Public hearings.

~~(a) Vacations shall require a public hearing before the Town LPA and Town Council, except a public hearing before the Town LPA is not required if the requested vacation is the result of a condition of approval of an application for the issuance of a development permit previously reviewed by the Town LPA and approved by the Town Council. After the staff review, the application to vacate under this Article shall be submitted to the Town Council for consideration and approval or denial to consider whether the vacation will adversely affect the rights of persons owning other lands, conflict with future road plans, and whether the convenient access of property owners on adjoining street rights-of-way will be adversely affected. The applicant shall provide mailed notice of the public hearing to all current property owners within a 300-500-foot radius of the property to be vacated.~~

~~(b) A public hearing before the Town LPA is not required if the requested vacation is the result of a condition of approval of an application for the issuance of a development permit previously reviewed by the Town LPA and approved by the Town Council. At least 15 days prior to the public hearing before the Town Council, the applicant shall provide mailed notice of the public hearing to all current property owners within a 300-500-foot radius of the property to be vacated. Prior to the Town Council public hearing the applicant shall file with the Town an affidavit certifying that the required notice was mailed in accordance with this section.~~

~~(b c) The Town Council shall cause to be published a notice of intention to vacate such right-of-way, alley, plat, or portions thereof, which shall be advertised in accordance with F.S. §§ 177.101(4) and 336.10. In instances where active drainage or utility facilities exist in the tract vacated, a public easement shall be deemed reserved by the Town. The Town Council shall have full authority to attach any conditions it deems necessary to protect the property rights of neighboring landowners and public entities, and may require as a condition to such vacation that the petitioner pay the cost of relocating any street or any utility or drainage improvements in the easement or right-of-way vacated, or require a monetary or other exchange for land area to be vacated as required above.~~

(d) Pursuant to F.S. § 177.101(5), unless otherwise specified as a condition of approval, a resolution of the Town Council approving an application to vacate shall have the effect of vacating all interest the Town may have in any alleys, property, plats either in whole or in part of subdivisions, streets or rights-of-way within the corporate limits of the Town that do not serve a public purpose or have not become alleys, streets or rights-of-way necessary for use by the traveling public.

Section 4. 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 5. 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 6. 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 7. This ordinance shall become effective upon adoption by the Town Council.

The foregoing Ordinance was adopted by the Town Council upon a motion by Councilmember Council Member Hosafros and seconded by Vice Mayor Murphy 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.

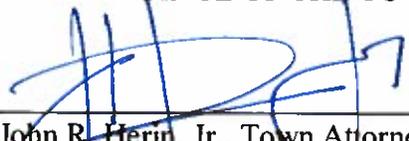
TOWN OF FORT MYERS BEACH


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 R. Herin, Jr., Town Attorney

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

EXHIBIT "A"

~~Subdivision II. Vacation of Town Interest in Real Property~~

~~Sec. 10-218. Purpose and intent.~~

~~It is the purpose and intent of this subdivision to establish procedures for the town to follow in considering the vacating of public interests in real property. The procedures established by this subdivision 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:~~

- ~~(1) 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.~~
- ~~(2) The application must be notarized and must include the following:~~
 - ~~a. Title certificate or attorney's 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~~
 - ~~b. 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~~
 - ~~c. 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~~
 - ~~d. A copy of the plat indicating the area thereof subject to the request, if applicable; and~~
 - ~~e. 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~~
 - ~~f. The original signatures of all persons holding any private legal interest; and~~
 - ~~g. A printed list of all current property owners, STRAP numbers, and mailing addresses within a 500-foot radius of the subject property, including two sets of mailing labels for the real property owners on this list; and~~

- ~~h.—An affidavit of intent stating facts that establish that the vacation or other disposition of the town-owned public interest in real property:~~
- ~~1.— Is not for the purpose of unlawfully obtaining public property for private purposes;~~
 - ~~2.— Will not adversely affect the ownership rights or convenient access of persons owning other real property; and~~
 - ~~3.— Will not adversely affect future infrastructure and is not in conflict with town, county, state, federal, or other governmental entities' plans regarding transportation, surface water management, utility, drainage, or other public purposes.~~
- ~~i.— Signed letters of approval or no objection from:~~
- ~~1.— The town department of public works;~~
 - ~~2.— Florida Power and Light;~~
 - ~~3.— The local cable television company serving the town;~~
 - ~~4.— The local telephone company serving the town;~~
 - ~~5.— The local liquid propane gas company serving the town;~~
 - ~~6.— Lee County or other provider of sanitary sewer services;~~
 - ~~7.— Lee County Sheriffs Office;~~
 - ~~8.— Fort Myers Beach Fire Control District;~~
 - ~~9.— 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.~~
- ~~j.— 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.~~
- ~~k.— Subordination agreements with all holders of liens against the real property subject to the request.~~

~~1.—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 policies 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 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 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 this code, 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 from 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 subsections (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.~~

~~Secs. 10-221—10-250. Reserved.~~