

ORDINANCE 20-08

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING SECTION 34-638 ENTITLED "MINIMUM SETBACKS" OF THE FORT MYERS BEACH LAND DEVELOPMENT CODE, REVISING THE SETBACKS FROM WATERBODIES; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW 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 update the Land Development Code language to clarify, improve, and create consistency among sections; and

WHEREAS, the Town also recognizes that both its economy and the quality of life of its residents are enriched by a healthy environment and clean nearshore waters; and

WHEREAS, on February 11, 2020 the Local Planning Agency, after giving consideration to the staff recommendation, public testimony, and consistency with the Comprehensive Plan, recommended approval of the proposed amendment ; and

WHEREAS, on March 2, 2020 the Town Council held a first reading of the proposed Ordinance; and.

WHEREAS, on April 6, 2020 the Town Council held a second reading of the proposed Ordinance; and.

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

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:

^{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~~.

Sec. 34-638 Minimum setbacks.

(3) *Waterbody setbacks.*

- a. *Gulf of Mexico.* Except as provided in this section or elsewhere in this code, no building or structure shall be placed closer to the Gulf of Mexico than set forth in ch. 6, articles III and IV of this LDC, or 50 feet from mean high-water, whichever is the most restrictive. See also special regulations for the EC zoning district in § 34-652 of this chapter and the coastal zone restrictions in § 34-1575 of this chapter.
- b. *Other bodies of water.* Except as provided in this section or elsewhere in this chapter, no building or structure shall be placed closer than 25 feet to a property line adjacent to a canal, or to a bay, or other waterbody. For purposes of measuring setbacks from a canal, bay, or other body of water, the following will also be used:
 1. If the body of water is subject to tidal changes ~~and the property does not have a seawall~~, the setback will be measured from the mean high-water line.
 2. If the body of water is not subject to tidal changes ~~and the property does not have a seawall~~, the setback will be measured from the control elevation of the body of water if known, or from the ordinary high-water line if unknown.
 3. In addition to the property line setback, ~~if the property has a seawall, the~~ a minimum setback of five (5) feet will be measured from the seaward side of the seawall, not including the seawall cap.
 4. If property lines encroach into the waterbody, then no more than five (5) feet shall be applied to the setback measurement.
 45. If plats or legal descriptions of property reference water bodies as boundaries, the mean high-water line shall be utilized, unless

otherwise stated in those legal descriptions or survey.

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.

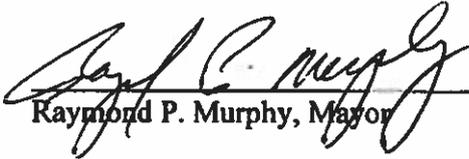
Section 7. This ordinance shall become effective upon adoption by the Town Council.

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

Raymond P. Murphy, Mayor	aye
Rexann Hosafros, Vice Mayor	aye
Dan Allers, Council Member	aye
Jim Atterholt, Council Member	aye
Bill Veach, Council Member	aye

ADOPTED this 6th day of April, 2020 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH


Raymond P. Murphy, 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 9th day of April, 2020.