

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.

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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 Vice Chair

Approved as to legal sufficiency:
By: 
Gray Robinson
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:

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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.

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(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.

(wx) 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.

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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.

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

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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.

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(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:

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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:

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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.

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

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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:

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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.

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

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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.

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(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:

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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.

(yhh) 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
Dan Andre

Alan Mandel, Vice Mayor
Jo List

DULY PASSED AND ADOPTED THIS ____ DAY OF _____ 2012, 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