

ORIGINAL ORDINANCE WITH CLARIFICATIONS

Town of Fort Myers Beach
ORDINANCE NO. 12-03

AN ORDINANCE AMENDING CHAPTER 34, ARTICLE III, DIVISION 4 IN THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE, "CONVENTIONAL ZONING DISTRICTS" AMENDING SECTION 34-652, "EC (ENVIRONMENTALLY CRITICAL) ZONING DISTRICT" BY ADDING "EXPANSION OF AREA DESIGNATED FOR SERVICE OF ALCOHOLIC BEVERAGES" AS A PERMITTED USE; AMENDING CHAPTER 34, ARTICLE IV, DIVISION 5 IN THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE, "ALCOHOLIC BEVERAGES," AMENDING SECTION 34-1261, DEFINITIONS; AMENDING SECTION 34-1264, "SALE OR SERVICE FOR ON-PREMISES CONSUMPTION" BY ADDING REGULATIONS GOVERNING THE EXPANSION OF ON-PREMISES CONSUMPTION INTO THE EC ZONING DISTRICT; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

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

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

Section 2. Adoption of Amendments to Chapter 34 of the Town of Fort Myers Beach Land Development Code. Chapter 34 of the Town of Fort Myers Beach Land Development Code, entitled "Zoning Districts, Design Standards and Nonconformities," is hereby amended as set forth in Exhibit "A," attached hereto and incorporated herein by reference. Entirely new language is indicated with underlining. Language being repealed from the existing code is indicated with strikethroughs. Existing language being retained is shown without underlining or strikethrough.

Section 3. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance, or application hereof, is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion or application shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion or application hereof.

Section 4. Effective Date. this Ordinance shall be effective immediately upon adoption.

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

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Larry Kiker, Mayor
Bob Raymond, Vice Mayor
Joe Kosinski

Alan Mandel
Jo List

DULY PASSED AND ENACTED by the Council of the Town of Fort Myers Beach, Florida, this ____ day of _____, 2012.

ATTEST:

TOWN OF FORT MYERS BEACH

BY: _____
Michelle D. Mayher, Town Clerk

BY: _____
Larry Kiker, Mayor

Approved as to legal sufficiency by:

Fowler White Boggs, Town Attorney

DRAFT

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EXHIBIT "A"

Sec. 34-652. EC (Environmentally Critical) 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 filling, will automatically be assigned to the EC zoning district.
- (d) *Permitted uses.* In the EC district, no land or water use shall be permitted by right except for those uses and developments permitted by the Fort Myers Beach Comprehensive Plan in wetlands, 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.
 - (5) Outdoor education, in keeping with the intent of the district.
 - (6) Recreation activities, residential accessory uses, and resort accessory uses that are performed outdoors. These activities and uses include passive recreation and active recreation that requires no permanent structures or 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 code (for instance see Chapters 14 and 27). Artificial lighting may not be installed in the EC zoning district unless approved by a special exception or as a deviation in the planned development rezoning process (see §§ 6-366 and 14-76)
 - (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).
- (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, as well as all other

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applicable town regulations, the town council may permit any specific use or structure from the following list as a special exception, subject to conditions set forth in this chapter and in the resolution of approval:

(1) Accessory structures, to include any building, structure, or impervious surface area which is accessory to a use permitted by right or by special exception in the EC district (see § 6-366).

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

(3) Single-family residence and its customary accessory uses at a maximum density of one dwelling unit per twenty acres.

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

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

(2) Article IV of ch. 14 pertaining to wetlands protection; and

(3) Coastal zone regulations in § 34-1575.

. . .

Sec. 34-1261. Definitions.

For purposes of this division and when referred to elsewhere in this chapter, certain terms or phrases shall have the following meaning:

Alcoholic beverage – means distilled spirits and all beverages, other than medicine, intended for human consumption and containing one-half of one percent or more alcohol by volume.

Beach – means an area of sand along the Gulf of Mexico that extends landward from the mean low-water line to the place where there is a marked change in material or physiographic form, or to the line of permanent vegetation, usually the effective limit of storm waves.

Beer, wine and liquor – have the same meanings as provided in F.S. chs. 563, 564, and 565, respectively.

EC (Environmentally Critical) Zoning District – When used in this division, EC Zoning District only refers to beach areas located in the Recreation category on the FLU map.

Erosion Control Line – means the line established by the Board of Trustees of the Internal Improvement Trust Fund prior to the commencement of a beach erosion control project in accordance with the provisions of F.S. § 161.141-161.211. Pursuant to F.S. §161.191, title to all lands seaward of the erosion control line shall be deemed to be vested in the state by right of its sovereignty, and title to all lands landward of the erosion control line shall be vested in the riparian upland owners whose lands either

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abut the erosion control line or would have abutted the line if it had been located directly on the line of mean high water on the date the board of trustees' survey was recorded.

Full course meals – means items on a menu at a restaurant which include soups and salads, main dishes with side orders, and desserts.

Kitchen, commercial – means a facility used for the preparation of food which is sold to the public and that is subject to state and local health department inspections.

Licensed premise – means the geographic area approved by either administrative approval, special exception, or other approval, for the retail sale, service and consumption on-site of alcoholic beverages.

Liquor license – means a license issued by the state for the retail sale, service, and consumption of liquor.

Mean High Water Line – means the intersection of the tidal plane of mean high water with the shore. Mean high water is the average height of high waters over a 19-year period. [See F.S. § 177.27(14-15)].

Park – only when used in this division, means a park facility which is owned, leased, or operated by a governmental agency. It does not include beach access strips.

Public beach – means any beach which is below mean high water lines; is owned by the town or county; has arisen upon it a right of customary use by the public; has arisen upon it a public easement, prescriptive or otherwise; or is the fore shore of tidal navigable waters, that is the land between the high water mark and the low water mark, and is owned by the state.

Sale of – only when used in this division, includes the term “or service.”

Sunset – means the daily disappearance of the sun below the horizon to the West, due to the Earth's rotation.

. . .

Sec. 34-1264. Sale or service for on-premises consumption.

(a) *Approval required.* The sale or service of alcoholic beverages for consumption on premises shall not be permitted until such location has been approved by the town as follows:

(1) *Administrative Approval.* The director may administratively approve the sale or service of alcoholic beverages for consumption on the premises when in conjunction with the following uses if the proposes use satisfies the requirements set forth in this division. When circumstances so warrant, the

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director may determine that administrative approval is not the appropriate action and that the applicant must instead apply for approval as a special exception. Such circumstances may include the previous denial of a similar use at that location, the record of public opposition to a similar use at that location, and similar circumstances. When the director has approved a request for consumption on the premises at a location where the actual building has not been constructed, the director shall not approve another request for consumption on the premises which could potentially violate the distance requirements. If the first building is completed within less than one year, and it can be shown the second use would not violate the prescribed distance requirements, the director may approve the second location subject to all other requirements contained in this division.

- a. *Bars or cocktail lounges* located in commercial zoning districts which permit bars or cocktail lounges, provided the standards set forth in subsections (b)(1) and (3) of this section are met;
- b. *Charter, party fishing boat, or cruise ship*, provided the standards of section (b)(3) are met. The COP approval is specific to the charter, party fishing boat, or cruise ship operating from a specific location, and does not run with the land nor is it transferable.
- c. *Clubs and membership organizations* located in commercial zoning districts, where permitted, provided the standards set forth in subsections (b)(2)d and (b)(3) of this section are met;
- d. *Cocktail lounges in golf course clubs*, provided the standards set forth in subsections (b)(2)c and (b)(3) of this section are met;
- e. *Hotels/motels*, provided the standards set forth in subsections (b)(2)b and (b)(3) of this section are met; and
- f. *Restaurants*, provided the standards set forth in subsections (b)(2)a and (b)(3) of this section are met.

(2) *Special exception.*

- a. A special exception for consumption on the premises shall be required for:
 1. Any establishment not covered by subsection (a)(1) of this section; or
 2. Any establishment which provides outdoor seating areas for its patrons consuming alcoholic beverages, except that a restaurant may have outdoor seating approved administratively provided the outdoor seating area is not within 500 feet of a place of worship, religious facility, school (noncommercial), day care center (child), park, or dwelling unit under separate ownership.
- b. The burden of proof that the grant of the special exception will not have an adverse effect on surrounding properties lies with the applicant.
- c. A single special exception for consumption on the premises for a multiple-occupancy complex in a conventional zoning district shall be sufficient to permit consumption on the premises in every restaurant which exists or may be established within the multiple-occupancy complex.

(3) *Planned Developments.*

- a. No administrative approval is necessary where an individual establishment or other facility proposing consumption on the premises is explicitly

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designated on the master concept plan and is included on the approved schedule of uses.

- b. If consumption on the premises is shown as a permitted use on the approved schedule of uses for a multiple-occupancy complex, no administrative approval for consumption on the premises shall be required for restaurants within the multiple-occupancy complex.
- c. Consumption on the premises for other uses within planned developments require administrative approval or a special exception.

(b) *Location; parking.*

(1) *Prohibited locations.*

- a. Except as may be exempted in subsections (a)(1) or (b)(2) of this section, no establishment for the sale or service of alcoholic beverages for consumption on the premises shall be located within 500 feet of:
 - 1. A place of worship, religious facility, school (noncommercial), day care center (child), or park;
 - 2. A dwelling unit under separate ownership, except when approved as part of a planned development; or
 - 3. Another establishment primarily engaged in the sale of alcoholic beverages for consumption on the premises, excluding those uses listed under subsection (b)(2) of this section.

Distance shall be measured from any public entrance or exit of the establishment in a straight line to the nearest property line of the place of worship, religious facility, school (noncommercial), day care center (child), dwelling unit, or park, or to the closest public entrance or exit of any other establishment primarily engaged in the sale of alcoholic beverages.

- b. Where an establishment for the sale of alcoholic beverages is located in conformity with the provisions of this subsection, and a place of worship, religious facility, school (noncommercial), day care center (child) park, or dwelling unit is subsequently established in the proximity of such existing establishment, then the separation requirements shall not apply.

(2) *Exceptions to location standards.* Exceptions to location standards are as follows:

a. *Restaurants, provided:*

- 1. The restaurant is in full compliance with state requirements;
- 2. The restaurant serves cooked, full-course meals, prepared daily on the premises; and
- 3. Only a service bar is used and the sale or service of alcoholic beverages is only to patrons ordering meals, or, if the restaurant contains a cocktail lounge for patrons waiting to be seated at dining tables, the lounge shall be located so that there is no indication from the outside of the structure that the cocktail lounge is within the building.
- 4. The other requirements of § 34-1264(k) shall be met.

b. *Hotels/motels:*

- 1. The hotel/motel contains at least 100 guest rooms under the same roof and that bars or cocktail lounges are located within the hotel or motel

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and under the same roof; and

2. The exterior of the building must not have storefronts or give the appearance of commercial or mercantile activity visible from the street.

If the use contains windows visible from the street, the windows shall be of fixed, obscure glass. Access to the cocktail lounge or bar must be through the lobby. Additional entrances are not permitted unless the additional entrance or door opens into an enclosed courtyard or patio. The additional entrance may not be visible from the street. A fire door or exit shall be permitted, provided that the door or exit is equipped with panic type hardware and is maintained in a locked position except in an emergency.

c. *Golf course clubhouses*, provided that:

1. The golf course consists of at least nine holes, a clubhouse, locker rooms, and attendant golf facilities, and comprises in all at least 35 acres of land.

2. Failure of such club to maintain the golf course, clubhouse, and golf facilities shall automatically terminate the privilege of the cocktail lounge and sale of beer from the refreshment stands.

d. *Membership organizations*, provided that:

1. such club or organization conforms to all the requirements of F.S. ch. 561 and other applicable state laws, and

2. there are no signs or other indications visible from the exterior of the clubhouse, building, or structure that alcoholic beverages are served.

(3) *Parking*. Restaurants providing alcoholic beverages for consumption on the premises must comply with the parking requirements set forth in § 34-2020(d)(2). Any bar or cocktail lounge must provide parking in accordance with § 34-2020(d)(2). All other uses must meet the parking requirements of the principal use.

(c) *Procedure for approval*

(1) *Administrative approval*

a. *Application*. An applicant for a consumption on the premises permit shall submit the following information on a form provided by the town:

1. The name, address, and telephone number of the applicant.

2. The name, address, and telephone number of the owner of the premises, if not the applicant.

3. A notarized authorization from the property owner to apply for the permit.

4. Location by STRAP and street address.

5. Type of state liquor license being requested.

6. A site plan, drawn to scale, showing:

i. The property in question, including all buildings on the property and adjacent property;

ii. Entrances to and exits from the building to be used by the public;

iii. A parking plan, including entrances and exits;

iv. The floor area of the building and proposed seating capacity. If a restaurant is proposing a bar or lounge for patrons waiting to be seated in the restaurant, the floor area and seating area of the

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lounge shall be shown in addition to the restaurant seating area.

7. A town map marked to indicate all of the property within 500 feet of the building to be used for consumption on the premises.
 8. An notarized affidavit executed by the applicant indicating that no place of worship, religious facilities, day care centers (child), noncommercial schools, dwelling units or parks are located within 500 feet of the building to be used.
- b. *Findings by director.* Prior to permit approval, the director shall conclude that all applicable standards have been met. In addition, the director shall make the following findings of fact:
1. There will be no apparent deleterious effect upon surrounding properties and the immediate neighborhood as represented by property owners within 500 feet of the premises.
 2. The premises are suitable in regard to their location, site characteristics, and intended purpose. Lighting must be shuttered and shielded from surrounding properties.
- (2) *Special exception.*
- a. Applications for special exceptions shall be submitted on forms supplied by the town and shall contain the same information as required for administrative approval.
 - b. Advertisements and public hearings shall be conducted in accordance with the requirements set forth in article II of this chapter.
- (d) *Temporary one-day permit.*
- (1) *Intent; applicability.* It is the intent of this subsection to require that nonprofit and for-profit organizations and establishments in the town obtain a one-day temporary alcoholic beverage permit for the sale of alcoholic beverages at the specific location where an event is held. This subsection will pertain to but not necessarily be limited to the following uses:
- a. Grand openings or open houses at residential or commercial developments;
 - b. Special outdoor holiday or celebration events at bars and restaurants;
 - c. Weddings and other special occasions at clubhouses;
 - d. Political rallies or events;
 - e. Block parties; and
 - f. Carnivals.
- (2) Only twelve temporary alcoholic beverage permits may be issued per year to a specific location. If more than twelve permits are sought per year for a specific location, then the location must obtain a permanent alcoholic beverage special exception. If the event for which the temporary alcoholic beverage permit is sought continues for more than one day, the applicant may petition the director for an extended permit. A temporary alcoholic beverage permit may not be issued for more than three days.
- (3) *Procedure for approval.*
- a. Any owner, lessee, or tenant asking for consumption on the premises for a temporary alcoholic beverage permit, must submit a written request to the director. The written request must include:

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1. The name and address of the applicant;
 2. A general description of the exact site where alcoholic beverages are to be sold and consumed;
 3. The type of alcoholic beverages to be sold and consumed; and
 4. A fee in accordance with the adopted fee schedule.
- b. The director will make a final decision within ten working days. The decision will be in the form of approval, approval with conditions, or denial. The director may forward the request to other appropriate agencies for comment.
- c. The town council will review all requests for temporary alcoholic beverage permits where an event will run longer than three days. Under no circumstances will a temporary alcoholic beverage permit be issued for more than ten days.
- (e) *Expiration of approval.* After the following time periods, the administrative or special exception approval of a location for the sale and consumption of alcoholic beverages on the premises granted in accordance with this section shall expire, and become null and void:
- (1) In the case of an existing structure, the approval shall expire six months from the date of approval unless, within that period of time, operation of the alcoholic beverage establishment has commenced. For purposes of this subsection, the term "operation" shall be defined as the sale of alcoholic beverages in the normal course of business.
 - (2) In the case of a new structure, the approval shall expire one year from the date of approval unless, within that period of time, operation of the alcoholic beverage establishment has commenced. The director may grant one extension of up to six months if construction is substantially complete.
- (f) *Transfer of permit.* Alcoholic beverage permits, as noted in subsection 34-1264(i), issued by virtue of this section are a privilege running with the land. Sale of the real property shall automatically vest the purchaser with all rights and obligations originally granted to or imposed on the applicant. Such privilege may not be separated from the fee simple interest in the realty.
- (g) *Expansion of area designated for permit.*
The area designated for an alcoholic beverage permit cannot be expanded without filing a new application for an alcoholic beverage permit in accordance with the requirements contained in this chapter. The new application must cover both the existing designated area as well as the proposed expanded area. All areas approved must be under the same alcoholic beverage permit and subject to uniform rules and regulations.
- (1) Regulations Applicable to Expansion into EC Zoning District. A lawfully permitted establishment may expand the area where service of alcoholic beverages is permitted into an adjacent EC zoning district, subject to the following conditions and subject to the procedures established in § 34-1264(g)(2):
- a. Area of expansion. The beach ecosystem is dynamic in nature and the physical characteristics of the EC zoning district are subject to change. Since the public has a right of access to the public beach area, pedestrian

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access to the shoreline must be a paramount consideration when determining the area where COP is permitted, understanding that the shoreline's location can vary greatly during extreme weather and tidal events, as well as due to erosion of the beach. The Town Manager shall therefore have the authority to temporarily enforce reductions in the area of expansion for the licensed premise into the EC zoning district when necessary to protect natural systems from the encroachment permitted by this section.

b. Defined area. The area of expansion of a COP licensed premises extending seaward into the EC zoning district, shall be limited to no more than 33% of the land area between the landward EC zoning district boundary and the Mean High Water Line (Up to a maximum of 100 feet), provided, however, that the Erosion Control Line shall be used in place of the Mean High Water Line in those areas where the beach has been nourished. The area of expansion inside the Downtown zoning District shall be set in from the establishment side boundary a distance of 7 feet. In instances where an existing licensed establishment has an existing deck and/or building seaward of the EC Zoning line, the measurement of the allowable area of expansion, shall commence from the most seaward point of the rear deck or building. Dominion and control of the area of the licensed premise that extends into the EC zoning district shall be established by rope and post. The rope and post shall extend from the rear of the upland licensed premise in the adjacent zoning district and shall define the area in the EC zoning district where COP is permitted. Specific requirements for the rope and post method of dominion and control are established in subsection 34-1264(g)(1)b.iv below.

i. Standard conditions of approval. The following requirements shall be applicable to all premises that are approved for COP in the EC Zoning District. Violation of any of the following provisions may be grounds for revocation in accordance with § 34-1264(i):

1. The area of expansion of licensed premises in the EC zoning district must be under the same ownership as the principal upland licensed premise (as licensed by the State of Florida Division of Alcoholic Beverages and Tobacco) and the upland licensed premise must be located immediately adjacent to and contiguous with the EC zoning district.
2. Patrons of the permitted establishments may not bring any alcoholic beverages or coolers into the licensed premise in the EC zoning district, nor may they consume any alcohol that has not been purchased from the permitted establishment.
3. Alcohol served in the EC zoning district may only be dispensed in plastic cups. No glass, aluminum or other non-biodegradable material may be utilized for service of any beverages in the EC Zoning District. Further, the cup shall bear the name of the establishment.

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4. The permit holder shall be responsible for ensuring that the licensed premises in the EC Zoning District is free of litter and debris. Refuse containers that meet the requirements of § 34-1264(g)(1)b.iv.4. must be provided.
 5. Hours of service and consumption for the area of the licensed premises that is located in the EC zoning district shall be limited to between the hours of 11:00AM and 1 hour after Sunset, except for any additional hours that may have been granted by a special events permit. Hours granted by a previously granted Special Exception shall prevail.
 6. Entertainment within the area of the licensed premises that is located in the EC zoning district may only be accomplished by special exception or special events permit, unless previously granted by special exception.
 7. Applicant shall maintain a valid Certificate of Insurance that covers the area of the licensed premises that is located in the EC zoning district.
- ii. All conditions applicable to the upland area, as previously approved, shall likewise apply within the expanded area. In the event of any conflict with conditions for the expanded area of licensed premises in the EC zoning district established herein, the provisions herein shall prevail within the expanded area.
 - iii. No additional parking shall be required for the area of expansion in the EC zoning district.
 - iv. Rope and post requirements:
 1. The permit holder shall establish dominion and control of the area of expansion in the EC zoning district with rope and post.
 2. Rope and post shall extend **a minimum of 7 feet in from each** property line, as well as the seaward extension of the area of expansion. Dune vegetation may be planted on the outboard side of the rope and post.
 3. A maximum of one six-foot wide pedestrian access opening is allowed per one hundred feet of the rope and post along the side parallel to the waterline.
 4. The permit holder must provide refuse containers at each pedestrian access point onto the beach to ensure that no outside alcoholic beverage containers are brought onto the licensed premise, and that no alcoholic beverage cups are taken off of the licensed premise onto the beach.
 5. Each access point in the rope and post to the beach shall contain a sign stating, "NO ALCOHOL ALLOWED BEYOND THIS POINT. **ORDINANCE () FINE \$125.**" The sign shall have a maximum size of two(2) feet by one(1) foot **and be printed on each side.**

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(2) Procedure for Approval of COP in the EC Zoning District. The following procedures are applicable to premises seeking expansion of COP into the EC zoning district:

- a. Administrative approval: An existing, establishment that has been approved for COP in the Downtown zoning district may expand the area where COP is permitted into an adjacent EC zoning district by administrative approval, subject to all conditions contained in § 34-1264(g)(1). Existing establishments with prior approval for COP in the EC zoning district must come into compliance with the conditions set forth in § 34-1264(g)(1) through the administrative approval process prior to (Insert date) or such use will become a non-conforming and any future expansion will require special exception approval.
- b. Special exception: Any establishment in the Downtown zoning district that has not been approved for COP prior to (Insert date) may seek approval for expansion of COP into the EC zoning district, provided it is requested at the time the COP in the Downtown zoning district is sought and provided further that all conditions identified in § 34-1264 (g)(1) are met.
- c. Commercial Planned Development:
 1. **No** new Establishment **shall be permitted** outside of the Downtown zoning district.
 2. Existing establishments located outside the Downtown Zoning District with COP permitted in EC through either CPD Zoning or a Special Permit previously approved by Lee County will be considered nonconforming and may **only** expand the area for COP **by bringing** their property into compliance with current regulations by incorporating the conditions of § 34-1264(g)(1) through the administrative approval process.

(h) Nonconforming establishments.

(1) Expansion. A legally existing establishment engaged in the sale or service of alcoholic beverages which is made nonconforming by reason of new regulations contained in this chapter shall not be expanded without a special exception. The term "expansion," as used in this subsection, shall include the enlargement of space for such use and uses incidental thereto, the expansion of a beer and wine bar to include intoxicating liquor, as that term is defined by the Florida Statutes, and the expansion of a bar use to a nightclub use. Nothing in this subsection may be construed as an attempt to modify any prohibition or diminish any requirement of the state.

(2) Abandonment. An establishment engaged in the sale or service of alcoholic beverages may thereafter become a nonconforming use due to a change in regulations, as provided in division 3 of article V of this chapter. Nonconforming uses may continue until there is an abandonment of the permitted location for a continuous nine-month period. For purposes of this subsection, the term "abandonment" shall mean failure to use the location for consumption on premises purposes as authorized by the special exception, administrative approval, or other approval. Once a nonconforming use is

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abandoned, it cannot be reestablished unless it conforms to the requirements of this chapter and new permits are issued.

(i) *Revocation of permit or approval.*

- (1) The town council has the authority to revoke an alcoholic beverage special exception, administrative approval, or other approval upon any of the following grounds:
 - a. A determination that an application for special exception or administrative approval contains knowingly false or misleading information.
 - b. Violation by the permit holder of any provision of this chapter, or violation of any state statute which results in the revocation of the permit holder's state alcoholic beverage license by the state alcoholic beverage license board or any successor regulatory authority.
 - c. Repeated violation of any town ordinance at the location within the 12-month period preceding the revocation period.
 - d. Failure to renew a state liquor license, or written declaration of abandonment by the tenant and owner of the premises if under lease, or by the owner himself if not under lease.
 - e. Abandonment of the premises. An establishment which continually maintains (renews) its state liquor license, even though it has suspended active business with the public, shall not be deemed to have been abandoned for purposes of this subsection.
 - f. Violation by the permit holder of any condition imposed upon the issuance of the special exception or administrative approval.
 - g. Violation of any of the minimum standards of the special exception.
 - (2) Prior to revoking an administrative approval, special exception, or other approval for alcoholic beverages, the town council shall conduct a public hearing at which the permit holder may appear and present evidence and testimony concerning the proposed revocation. At the hearing, the town council may revoke the permit if a violation described in this subsection is established by a preponderance of the evidence. The permit holder shall be notified of the grounds upon which revocation is sought prior to any hearing, and shall be given notice of the time and place of the hearing in the same manner as set forth in article II of this chapter.
 - (3) When an alcoholic beverage permit is revoked in accordance with the terms of this subsection, the town may not consider a petition requesting an alcoholic beverage permit on the property for a period of 12 months from the date of final action on the revocation.
 - (4) Upon written demand of the town council, any owner or operator of an establishment with a COP license, must make, under oath, a statement itemizing the percentage of gross receipts that are from the sale of alcoholic beverages. Failure to comply with such demand within 60 days of the date of demand shall be grounds for revocation of the special exception, administrative approval, or other approval.
- (j) *Appeals.* All appeals of decisions by the director shall be in accordance with procedures set forth in § 34-86 for appeals of administrative decisions.
- (k) *Alcoholic beverages in restaurants.* The sale of alcoholic beverages for on-

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premises consumption in restaurants (see § 34-1264(b)(2)) must conform to the following regulations:

- (1) The sale of alcoholic beverages must be incidental to the sale of food, and restaurants permitted to serve alcohol shall provide that food service facilities will remain open serving appropriate food items on the menu at all times coincident with the sale of alcoholic beverages.
- (2) The sale of alcoholic beverages shall be permitted only when it accounts for no more than 49% of the combined gross sales attributable to the sale of food and all beverages during any continuous twelve-month period.
- (3) Restaurants selling alcoholic beverages shall keep separate books and records reflecting the gross sales of food and nonalcoholic beverages and the gross sales of alcoholic beverages for each month. The failure to keep the books and records required herein shall be a violation of this code.
- (4) The town manager or designee may, during normal working hours, request to inspect and audit the books and records of the business from which alcoholic beverages sales are wholly for the purpose of verifying that the gross sales of alcoholic beverages are no more than 49% of the gross sales of food and all beverages during any continuous twelve-month period. Refusal of an owner or operator of such business to allow said inspection shall be a violation of this code. Should the audit reveal that this requirement is not being met, the town manager shall initiate enforcement proceedings for a violation of this code.
- (5) For any restaurant which has been selling alcoholic beverages for less than twelve months, the provisions of this section shall be interpreted and applied with respect to said lesser period of time.
- (6) These regulations may be enforced through the normal code enforcement procedures of this code (for example, § 1-5, or article V of ch. 2). In addition to these procedures, violations of these regulations may be restricted by an injunction initiated by the Town of Fort Myers Beach, by any citizen thereof, or by any person affected by the violation of such regulations.