

ORDINANCE 21-07

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE, DIVISION 5, SUBDIVISION V, SECTIONS 34-701 THROUGH 34-707 "CB ZONING DISTRICT" TO CLARIFY WHAT CONSTITUTES AN EXISTING USE AND HOW AND WHEN THAT EXISTING USE CAN BE CONTINUED OR MODIFIED; TO ALLOW THE CONTINUATION OF EXISTING USES; PROVIDING FOR CONFLICTS OF LAW; SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; AND AN EFFECTIVE DATE.

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

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

WHEREAS, the Town Council desires to update the Fort Myers Beach Land Development Code ("LDC") to clarify, improve, and create consistency among sections; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on October 20, 2021, at which the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the record, and the testimony of all interested persons, and the LPA voted 6-0, with one member absent, to recommend approval of the requested amendment to Sec. 34-701 through 34-707 of the LDC, with additional language discussed during the meeting, and

WHEREAS, on November 1, 2021 the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the request of the proposed edits to the Land Development Code, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons; and

WHEREAS, the Town Council set a second reading of the proposed Ordinance and a public hearing on this matter to be legally advertised and held before the Town Council on November 15, 2021; at which time the Town Council gave full and complete consideration to the request, the recommendation of the LPA, the recommendation of staff, consistency with the Comprehensive Plan and Land Development Code, the documents in the record, and the testimony of all interested persons.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, 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.

Section 2. Subdivision V – CB Zoning District, Section 34-701 through Section 34-707 of the Fort Myers Beach Land Development Code is hereby amended to read as follows:

CHAPTER 34, DIVISION 5, SUBDIVISION V. CB ZONING DISTRICT

Sec. 34-702. - Applicability.

- (a) *Continued use.* The regulations in this code section ~~subdivision~~ allow apply ~~to~~ the continued use of existing buildings and structures for allowable uses as defined in § 34-703 below, on all properties zoned CB.
- (b) *Enlarging or replacing buildings for existing commercial uses.* The regulations in this code section ~~subdivision~~ also allow apply ~~to~~ the following activities:
 - (1) Physical enlargement of buildings or structures containing existing commercial uses, provided that the improvements do not constitute a "substantial improvement" as that term is defined in § ~~6-424~~ 6-405 of this code, and
 - (2) Replacement buildings for existing commercial uses that will not increase the existing floor area ratio, as that term is defined in § 34-633 of this chapter.
- (c) *Enlarging or replacing buildings for all other allowable uses.* The regulations in this code section ~~subdivision~~ also allow apply ~~to~~ the physical enlargement of and replacement of buildings for all allowable uses, other than existing commercial uses (which are governed by subsection (b) of this section) or new or expanded commercial uses (which are governed by subsection (d) of this section).
- (d) *New or expanded commercial uses.* In accordance with Policies 4-B-5 and 4-C-3-iv of the Fort Myers Beach Comprehensive Plan:
 - (1) New or expanded commercial uses in the "boulevard" category of the Fort Myers Beach Comprehensive Plan require rezoning as a

^{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.

commercial planned development (see § 34-951 of this chapter).

- (2) Physical enlargements of existing commercial buildings that constitute a "substantial improvement" as that term is defined in § ~~6-424~~ ~~6-405~~ of this LDC also require rezoning as a commercial planned development.
- (3) For purposes of this section only, the following types of re-use of existing floor area shall be deemed a continuation of an existing commercial use rather than a new or expanded commercial use.
 - a. Conversion of an existing space to office, retail, or restaurant use, when that use previously existed on that parcel; ~~An existing office use converted to another office use;~~
 - b. ~~An existing retail use converted to another retail use or to an office use;~~ ~~An existing bar or cocktail lounge converted to another bar or cocktail lounge or to a restaurant, retail, or office use;~~
 - c. ~~An existing restaurant converted to another restaurant or to a retail or office use;~~ ~~Existing areas of outdoor dining may be converted to another outdoor dining area;~~
 - d. Existing areas of outdoor display of merchandise may be converted to another outdoor display of merchandise area;
 - e. Conversion of existing space previously used as a financial institution with drive-through to small retail, with outdoor display. Outdoor display shall be located in the area previously utilized as a drive-through and shall not exceed 1,500 sq. ft. under roof. Parking spaces may not be used for outdoor display.

Sec. 34-706. - Circulation and parking.

- (a) *Parking lot locations.* Off-street parking lots shall be placed in side or rear yards (see Figure 34-5). Off-street parking lots are not permitted in front yards.
- (c) *Under-building parking.* Off-street parking may be provided under commercial or mixed-use buildings provided that all under-building parking spaces are screened in accordance with § ~~34-693(1)~~ ~~34-992(a)(2)~~ of this chapter.

Sec. 34-707. - Commercial design standards.

The commercial design standards (§§ 34-991—34-1010 of this chapter) shall apply to all commercial and mixed-use buildings, or portions thereof, that are being newly built, and to "substantial improvements" to such buildings as defined in § ~~6-424~~ ~~6-405~~ of this LDC.

Section 3. Whenever the requirements or provisions of this Ordinance conflict with the requirements or provisions of any other lawfully adopted LDC or Town Code provision, ordinance, or statute, the most restrictive shall apply.

Section 4. 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 5. 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.

Section 6. Any typographical errors that do not affect intent may be corrected with notice to and authorization of the Town Manager without further process.

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 Veach and seconded by Council Member Atterholt, 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 15th day of November 2021 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH



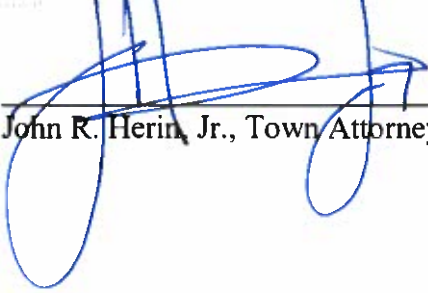
Raymond P. Murphy, Mayor

ATTEST:



Amy Baker, 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 8 day of December, 2021