



Fort Myers Beach Town Council

**Diamondhead Beach Resort
2000 Estero Blvd.
Fort Myers Beach, FL 33931**

Agenda

Monday, October 16, 2023

9:00 AM

ORDER OF BUSINESS

- I. CALL TO ORDER**
- II. INVOCATION**
- III. PLEDGE OF ALLEGIANCE**
- IV. APPROVAL OF FINAL AGENDA**
- V. PUBLIC COMMENT**
- VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS**
- VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS**
 - A. Anchorage Advisory Committee (AAC)
Appoint Members to the FY2023-2024 Anchorage Advisory Committee (AAC)
- VIII. PRESENTATION**
 - A. Marcus Goodman - Executive Director of Lee County Housing Authority
- IX. APPROVAL OF MINUTES**
 - A. Town Council - September 25, 2023
 - B. Town Council Budget Hearings - September 25, 2023
 - C. Town Council - October 2, 2023
- X. CONSENT AGENDA**
 - A. Resolutions 23-126, 23-127 and 23-128; Extending Local State of Emergency-Hurricane Ian
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND EXTENDING THE PROCLAMATION THAT A STATE OF LOCAL EMERGENCY EXISTS BECAUSE OF THE CATASTROPHIC IMPACTS CAUSED BY HURRICANE IAN; PROVIDING FOR CONFLICTS; PROVIDING FOR SCRIVENER

ERRORS, PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

- B. Resolutions 23-129, 23-130, 23-131 and 23-132; Extending Declaration of State of Local Emergency-Hurricane Idalia

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO HURRICANE IDALIA; PROVIDING THE TOWN WITH POWERS, INCLUDING, BUT NOT LIMITED TO THOSE PURSUANT TO FLORIDA STATUTES, CHAPTER 252, AND TOWN CODE CHAPTER 2, ARTICLE VI; PROVIDING FOR PENALTIES FOR VIOLATIONS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND FOR AN EFFECTIVE DATE AND A TERMINATION DATE

XI. PUBLIC HEARINGS

- A. Ordinance 23-15; Owner Builder Permit

Final Reading and final Public Hearing: **AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTION 6-325, "OWNER-BUILDER EXEMPTION", OF DIVISION 5, "CONTRACTOR LICENSING", OF ARTICLE II, "BUILDING CODES", OF CHAPTER 6, "MAINTENANCE CODES, BUILDING CODES AND COASTAL REGULATIONS", OF THE CODE OF THE TOWN OF FORT MYERS BEACH, TO CLARIFY WHO IS ELIGIBLE FOR AN OWNER-BUILDER PERMIT, PROVIDING FOR CONFLICTS OF LAW; SCRIVENER'S ERRORS; SEVERABILITY; AND AN EFFECTIVE DATE.**

- B. Ordinance 23-13; Amending EC Zoning/Location of Construction Near Beaches

Final Reading and Public Hearing: **AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE III., DIVISION 4, SECTION 34-652 ENVIRONMENTALLY CRITICAL (EC) ZONING DISTRICT AND CHAPTER 6, ARTICLE III., DIVISION 2, SECTION 6-366 LOCATION OF CONSTRUCTION NEAR BEACHES; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE.**

- C. Ordinance 23-14; Administrative Setback Variances

Final Reading and Public Hearing: **AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE II., DIVISION 6, SECTION 34-268 ADMINISTRATIVE SETBACK VARIANCES; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE.**

XII. ADMINISTRATIVE AGENDA

- A. Resolution 23-124; RFQ-20-06-AD, STA #20, Post-Ian Residential Canal Debris Assessment Survey

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING AN AGREEMENT BETWEEN

THE TOWN AND COASTAL ENGINEERING CONSULTANTS, INC. FOR DEBRIS DATA COLLECTING AND ASSESSMENT SURVEY IN TOWN OF FORT MYERS BEACH CANALS FOR A COST NOT TO EXCEED \$42,020.00; AND PROVIDING FOR AN EFFECTIVE DATE.

B. Resolution 23-134; Upland Services

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING AN AGREEMENT BETWEEN THE TOWN AND MATANZAS INN FOR UPLAND SERVICES FOR THE MATANZAS MOORING FIELD FOR AN ANNUAL COST NOT TO EXCEED \$36,000.00

C. Resolution 23-133; Mobile Harbormaster Office

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING AN AGREEMENT BETWEEN THE TOWN AND COOL-BINZ OF GREATER NAPLES TO LEASE A MOBILE OFFICE FOR A COST OF \$8,305.99; AND PROVIDING FOR AN EFFECTIVE DATE.

XIII. FINAL PUBLIC COMMENT

XIV. TOWN MANAGER'S ITEMS

XV. TOWN ATTORNEY'S ITEMS

XVI. COUNCILMEMBERS ITEMS AND REPORTS

XVII. ADJOURNMENT

NOTE: THIS MEETING IS STREAMED LIVE ON FACEBOOK AND YOUTUBE.

IF A PERSON DECIDES TO APPEAL A DECISION MADE BY THE COUNCIL IN ANY MATTER CONSIDERED AT THIS MEETING/HEARING, SUCH PERSONS MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDING IS MADE, TO INCLUDE THE TESTIMONY AND EVIDENCE UPON WHICH ANY SUCH APPEAL IS TO BE BASED.



For special accommodation, please notify the Town Clerk's Office at least 72 hours in advance. (239) 765-0202

In accordance with the Americans with Disabilities Act (ADA), persons needing a special accommodation to participate in the Board's proceedings should contact the Town Clerk's Office not later than three days prior to the proceedings.

1. **Requested Motion:**

Meeting Date: October 16, 2023

Appoint Members to the FY2023-2024 Anchorage Advisory Committee (AAC)

Why the action is necessary:

One seat on the Anchorage Advisory Committee expired September 30, 2023 leaving four vacancies on the committee.

What the action accomplishes:

2. **Agenda:**

ADVISORY COMMITTEES ITEMS
/ REPORTS / APPOINTMENTS

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

5. **Background:**

Per Sec. 2 of Ordinance 18-06:

Qualifications and Appointment of members

In addition to qualification, which may be specified for membership by state statutes, charter, ordinance or resolution, a person appointed to an Agency, Board, Committee or Commission shall give preference to a registered voter within the Town's jurisdiction or a property owner within the Town's jurisdiction. Although no specific experience requirements shall be necessary as a prerequisite to appointment, consideration shall be given to applicants who have experience or who have shown interest in the subject matter. In the event that any member is no longer a qualified elector, or is convicted of a felony, an offense involving moral turpitude in office or has unpaid fines or liens due to the Town of Fort Myers Beach, the Town Council shall terminate the appointment of such person as a member of the agency, board, committee or commission.

(a) Anchorage Advisory Committee. The anchorage advisory committee shall advise the Town Council concerning all matters relevant to the management and use of the waters of the Town for mooring and anchoring. The Anchorage Advisory Committee shall prepare and submit the Matanzas Harbor Management Plan and any amendments thereto for review and approval by the Town Council and make recommendations for the establishment of managed municipal anchorages and mooring fields where warranted by objective evidence of environmental damage or user conflicts; or any other topics as assigned by the Town Council.

There are currently two vacancies on the Anchorage Advisory Committee. Fort Myers Beach resident Edward Schoonover and un-incorporated Fort Myers Beach resident James Hockett have submitted applications for consideration to the committee.

Attachments:

1. Hockett, James
2. Schoonover, Edward

Financial Impact:

None

6. **Alternative Action**

Do not appoint/reappoint members and advertise for the vacancies

7. **Management Recommendations:**

8. **Recommended Approval:**

, - 10/4/2023
, - 10/4/2023
, - 10/4/2023
, - 10/4/2023



RECEIVED

By Amy Baker at 1:55 pm, Oct 04, 2023

Town of Fort Myers Beach
Advisory Boards and Committees Application

Complete one form for each application/committee appointment. Your application will be a public record subject to disclosure on request.

Please type or print clearly. Do not leave blanks.

Today's Date:

Name:
Last First Middle initial

Telephone Number:

Email Address:

Home Address:

Mailing Address

(if different from home address):

Are you currently serving on any of the Town's committees? Yes ☐ No ☒

If yes, which committee(s)?

If yes, when is your term expiration?

I am applying for appointment to: (Check one)

- ☒ Anchorage Advisory Committee
- ☐ Audit Committee
- ☐ Bay Oaks Recreational Campus Advisory Board
- ☐ Cultural and Environmental Learning Center Advisory
- ☐ Board Historic Preservation Advisory Committee
- ☐ Local Planning Agency
- ☐ Marine and Environmental Resources Task Force Nuisance
- ☐ Abatement Board
- ☐ Public Safety Committee

Have you been convicted of a felony, an offense involving moral turpitude while in office? Yes ☐ No ☒

Do you have unpaid fines or liens due the Town? Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction? Yes ☐ No ☒

Are you a resident within the Town's jurisdiction?

Yes ☐ No ☒

Are you an owner of real property within the Town's jurisdiction?

Yes ☐ No ☒

Are you currently serving on a board, authority, committee or commission for another governmental agency?

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

To support the community and utilize my management and strategic skills to add value to my community. I am passionate about our waterways, and enabling responsible recreation and tourism in those areas. I have executive level P&L experience with multi-billion dollar organizations that would be useful when advising the Council on fiscal topics

Community Involvement:

I have only lived in FMB for 2.5 years, but have been active in several areas. At the request of the current Mayor, Dan Allers, I served on an adhoc advisory committee for the street lighting and have been engaged with the Chamber of Commerce and have volunteered at several of their events in addition to other clean-up events.

Interests / Activities:

I have been an avid boater for 35 years. I'm a licensed USGC Boat Captain and familiar with navigational regulations, best practices, and passionate about our local waterways. I am also a PADI certified scuba diver.

I have experience serving on large advisory committees through my business interactions that could be useful in the role. From 2012-2015, I served on the University

You may attach a resume in addition to the above information.

Do you qualify for Special Exemptions per § 119.071(4)(d)3., F.S.

Yes ☐ No ☒

If yes, fill out [Public Records Exemption Request](#) form and submit with the application.

I swear or affirm that all information on this form is true and accurate.

Signed

Hockett, James

Digitally signed by Hockett, James
Date: 2023.10.04 12:05:02 -04'00'

Date

10/04/23

Please return this form to the Town Clerk's Office, Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, FL 33931 Amy@fmbgov.com

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____



RECEIVED

By Amy Baker at 12:02 pm, Oct 04, 2023

Town of Fort Myers Beach
Advisory Boards and Committees Application

Complete one form for each application/committee appointment. Your application will be a public record subject to disclosure on request.

Please type or print clearly. Do not leave blanks.

Today's Date:

Name:
Last First Middle initial

Telephone Number:

Email Address:

Home Address:

Mailing Address

(if different from home address):

Are you currently serving on any of the Town's committees? Yes ☐ No ☒

If yes, which committee(s)?

If yes, when is your term expiration?

I am applying for appointment to: (Check one)

- ☒ Anchorage Advisory Committee
☐ Audit Committee
☐ Bay Oaks Recreational Campus Advisory Board
☐ Cultural and Environmental Learning Center Advisory
☐ Board Historic Preservation Advisory Committee
☐ Local Planning Agency
☐ Marine and Environmental Resources Task Force Nuisance
☐ Abatement Board
☐ Public Safety Committee
☐

Have you been convicted of a felony, an offense involving moral turpitude while in office? Yes ☐ No ☒

Do you have unpaid fines or liens due the Town? Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction? Yes ☒ No ☐

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

Are you an owner of real property within the Town's jurisdiction?

Yes ☒ No ☐

Are you currently serving on a board, authority, committee or commission for another governmental agency?

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

I have 30 years of experience working and sports and recreational facilities in both the private and public sector. I believe this experience in facility management will be of assistance to the committee and the council.

Community Involvement:

Laguna Shores HOA, Outreach Africa Advisory Board, Past President Lakeshore Village (MN), Vice President JMKS Properties

Interests / Activities:

Past Director Brainerd (MN) Brainerd Braves Amateur Baseball, Organizer Community Activities, Property Manager, Mission Work, Travel (Kenya, Tanzania Oct. 9 - 26) (Antartica Over Thanksgiving)

You may attach a resume in addition to the above information.

Do you qualify for Special Exemptions per § 119.071(4)(d)3., F.S.

Yes ☐ No ☒

If yes, fill out Public Records Exemption Request form and submit with the application.

I swear or affirm that all information on this form is true and accurate.

Signed



Date

10/04/20

Please return this form to the Town Clerk's Office, Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, FL 33931 Amy@fmbgov.com

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____



Fort Myers Beach Town Council

Diamondhead Beach Resort
2000 Estero Blvd.
Fort Myers Beach, FL 33931

Minutes

Monday, September 25, 2023

9:00 AM

ORDER OF BUSINESS

DRAFT

I. CALL TO ORDER

Members present: Mayor Allers, Vice Mayor Atterholt, Council Member King, Council Member Veatch and Council Member Woodson.

II. INVOCATION

Town Clerk Baker.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

Pull items D-M from the Consent Agenda for discussion. Move A under Town Attorney's Items after Proclamations. Move A from Public Hearings to the first item under the Administrative Agenda. Allow public comment on all items under the Administrative Agenda.

Council Member King moved to approve the amended agenda; second by Council Member Woodson.

Motion carried unanimously.

V. PUBLIC COMMENT

Rita Murray, resident, commented about a water taxi on her canal and did not believe the canals could handle the increased boat traffic. She noted that furniture was still under the water in the bay. She did not think her privacy and security should be compromised by commercial developers and she brought up the harm to wildlife and the environment.

Rose Larkin, resident, described all the wildlife in the canals and beach 37 years ago. She stated that the clarity of the water has diminished over the years. She noted that it was up to the Town Council to work towards a healthy environment. Nadine DeGenova, resident, indicated she chose the island because of the tranquility

and wildlife. She did not support commercial water taxis and docks in the residential canals. She suggested that water taxis be located at marinas. She had 14 letters from neighbors who asked that the town keep nature and wildlife in mind. They did not support the dune walkover because more people would want one on their property.

Roxana Rascoe, resident, commented on water taxis in residential canals. She noted it was not a viable idea because the canals were narrow and manatees used them. She indicated that there was not one restaurant that was accessed via residential canals in the area. She compared the lack of wildlife in Malibu to Fort Myers Beach. She added that Malibu missed the opportunity to save its wildlife.

John McClain, resident, did not support commercial traffic on residential canals. He cannot turn his 30-foot boat around in his canal and described how he had to maneuver around. Besides the impact on wildlife and loss of privacy, he felt there was a safety issue with commercial traffic because there was not enough space in the canals.

Jim Dunlap, resident and representing several neighbors, commented that Ian did not take away the mangroves, but people did and now they have to live with the impact. They should be thinking about saving the culture and not tolerating development.

Cindy Johnson, resident, did not support commercial traffic in residential canals. She described interactions with the barge workers who were removing debris from the canals. She commented on the lack of privacy and constant interruptions.

She asked that they go to marinas and not the canals. She had positive comments regarding Utilities Manager Steve Matuska. She invited everyone to the Let's Go FMB meeting on Wednesday at 2:00 p.m.

Jason Howard, resident, described growing up on the island. He commented on the potential of Fort Myers Beach and opening a bicycle rental company.

Marty Bartow, resident, agreed that commercial traffic in residential canals was ridiculous. He suggested a tunnel and thinking outside the box.

VI. PRESENTATION

A. Honorable Matt Caldwell - Lee County Property Appraiser

Mr. Caldwell explained his role and noted his responsibility was to determine the value of all the real estate in Lee County for tax purposes. He commented that the property was valued based on the condition of the property on January 1. He stated that you can only be taxed on the improved portion of real estate if it could be used for the purpose for which it was designed, regardless of when a certificate of occupancy was issued.

Uninhabitable structures would not be taxed, but the land would be. Mr. Caldwell explained how condominiums were assessed and noted it was an expansion of the single-family calculation.

Mayor Allers thanked Mr. Caldwell for interacting with FEMA on behalf of the town.

Mr. Caldwell remarked that homeowners should communicate with his office to address the condition of their property, especially flood damage. He discussed additional relief from the legislation and the changes in the market regarding the valuation of property. He explained how vacant lots were appraised after they were sold. He added that property owners who were rebuilding had three years to maintain their homestead regardless of whether they could live on the property. He encouraged property owners to contact his office for guidance and made himself available to answer questions after his presentation.

B. Chief Meteorologist Matt Devitt, WINK News

Mr. Devitt thanked the Town Council for the opportunity to speak and commended the town for everything they had done. He stated that Hurricane Ian was number one in the history of Florida for storm surge and the deadliest and costliest. He confirmed that Ian was a category five off the coast with surges of 160. He explained how they determined it was a category five hurricane and described the eyewall replacement cycle on the morning of September 28. In his opinion, gusts on the beach reached 170, but categories were determined by sustained winds over a one-minute period.

Mr. Devitt stated that it was always possible to get hit again this year and he would be alert to what was happening in the Caribbean. He indicated he would do his best to give everyone as much of a heads-up as possible. He felt that people were complacent because the immediate area dodged a bullet with Irma. He knew the storm surge would be deadly and begged people to evacuate. He noted that WINK purchased a new office in Gateway since the previous building was damaged.

Mr. Devitt explained that he looked at the average of over 100 models when he made a forecast. He also brought up a messaging problem concerning the official cone. He felt they needed to look at the cone in its entirety, so he removed the center line. He reiterated that every hurricane was different and no one should be complacent. He stated that Hurricane Michael was the hypothetical worst-case scenario that meteorologists feared the most because it went from nothing to a category five in three days.

VII. PROCLAMATIONS

A. Florida Climate Week - Aly DySard, VoLo Foundation

This event seeks to unite industry leaders, front-line advocates, businesses, and individuals alike to address the urgency of the climate crisis and its impact on our state. Florida Climate Week will focus on solutions to reduce carbon emissions and create more resilient communities.

Mayor Allers read the proclamation and presented it to Aly DySard. She thanked the town for addressing climate change and its associated impacts.

VIII. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member King thanked the volunteers who painted the wavy wall in Times Square and Beach Talk Radio for coordinating the fundraising event. He thanked Tony Bone of Anthony Bone Painting for his hard work and expertise.

Vice Mayor Atterholt noted there was a remembrance ceremony on Thursday for the one-year anniversary of Ian. He indicated that the veteran's memorial at Bayside Park would be installed at a later date.

Council Member Woodson agreed with both comments and felt they needed to keep the focus on what happened last year and what the day means to everyone. Council Member Veach stated that Idalia washed up a lot of debris and cautioned people to be careful. He noted that a Hawaiian tradition of a paddle out was scheduled for 6:00 p.m. and people would form a ring and have a memorial.

IX. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS

LPA (Local Planning Agency) Chair Anita Cereceda requested a joint meeting with the Town Council on October 5, 2023. She suggested that both groups discuss changes to the Comprehensive Plan to make sure they were all on the same page. She recommended that they have the original Comp. Plan sections along with the consultant's sections. The future land use map will change and Chair Cereceda requested large maps to make it easier to identify streets and look at the island as a whole. Mayor Allers questioned allowing public comment during the meeting and Chair Cereceda agreed.

Council Member Veach suggested holding two meetings with a charrette in the afternoon for public comment.

Mayor Allers preferred to hear from the public before discussions. Chair Cereceda commented that it was critical to have a well-thought-out agenda. Vice Mayor Atterholt suggested that everyone read the Comp. Plan on the town's website.

He encouraged everyone to watch the last hour of the previous LPA meeting. Community Development Planner Sarah Propst stated that a charrette was inappropriate at this late stage, but a question-answer session made more sense. Council Member Woodson suggested having a public meeting before the joint meeting, but Planner Propst did not think there was enough time to plan it as Council Member Woodson envisioned. Planner Propst indicated that copying the maps and height and density use charts was doable before the meeting and they could open the doors early for the public. (Technical issues ensued with the recording.) Due to time constraints, the joint meeting will be held at the next LPA meeting on October 10, 2023, with details to follow.

MERTF (Marine & Environmental Resources Task Force) member Jennifer Rusk reviewed two motions passed unanimously at the last MERTF meeting. One motion regarded commercial uses in residential canals and the other concerned the possible demolition of the walkover if the applicant loses his appeal. She provided an update on the dates of future pop-up tent activities. She stated that a chapter of the Native Plant Society would donate native plants that would be distributed to residents at a pop-up.

X. APPROVAL OF MINUTES**A. Town Council - September 11, 2023**

Council Member Veach moved to approve the minutes; second by Council Member King.

Motion carried unanimously.

B. Town Council Budget Hearing - September 11, 2023

Council Member Veach moved to approve the minutes; second by Council Member King.

Motion carried unanimously.

XI. CONSENT AGENDA

Council Member Woodson moved to approve the remainder of the Consent Agenda; second by Council Member Veach.

Motion passed unanimously.

A. Resolutions 23-112, 23-113 and 23-114: Extending Local State of Emergency-Hurricane Ian

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND EXTENDING THE PROCLAMATION THAT A STATE OF LOCAL EMERGENCY EXISTS BECAUSE OF THE CATASTROPHIC IMPACTS CAUSED BY HURRICANE IAN; PROVIDING FOR CONFLICTS; PROVIDING FOR SCRIVENER ERRORS, PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution.

Council Member Woodson moved to approve the resolution; second by Council Member Veach.

Motion carried unanimously.

B. Resolutions 23-109, 23-110 & 23-111: Extending Declaration of State of Local Emergency-Hurricane Idalia

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO HURRICANE IDALIA; PROVIDING THE TOWN WITH POWERS, INCLUDING, BUT NOT LIMITED TO THOSE PURSUANT TO FLORIDA STATUTES, CHAPTER 252, AND TOWN CODE CHAPTER 2, ARTICLE VI; PROVIDING FOR PENALTIES FOR VIOLATIONS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND FOR AN EFFECTIVE DATE AND A TERMINATION DATE

Mayor Allers read the title of the resolution.

Council Member Woodson moved to approve the resolution; second by Council Member Veach.

Motion carried unanimously.

- C. Town Comprehensive Emergency Management Plan Official Adoption
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA ADOPTING THE UPDATED COMPREHENSIVE EMERGENCY MANAGEMENT PLAN; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution.

Council Member Woodson moved to approve the resolution; second by Council Member Veach.

Motion carried unanimously.

- D. Resolution 23-120; Bayside Park Repairs

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RATIFYING ACTION OF THE TOWN TAKEN REGARDING THE WAIVING OF THE TOWN'S COMPETITIVE PROCUREMENT POLICY AND APPROVAL OF THE PROPOSALS RECEIVED FOR TURF, IRRIGATION, AND LANDSCAPE FOR BAYSIDE PARK IN THE AMOUNTS NOT TO EXCEED \$92,050.00 AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Town Manager Hyatt reviewed the background of the issue as stated on the blue sheet.

Council Member King moved to approve the resolution; second by Council Member Veach.

Motion carried unanimously.

- E. Resolution 23-119; Bay Oaks Electrical Work

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RATIFYING ACTION OF THE TOWN TAKEN SEPTEMBER 7, 2023 REGARDING THE WAIVING OF THE TOWN'S COMPETITIVE PROCUREMENT POLICY AND APPROVAL OF THE PROPOSALS RECEIVED FOR ELECTRIC WORK FOR BAY OAKS RECREATIONAL CAMPUS IN AN AMOUNT NOT TO EXCEED \$177,000; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Town Manager Hyatt reviewed the background of the issue as stated on the blue sheet.

Council Member King moved to approve the resolution; second by Council Member Veach.

Motion carried unanimously.

- F. Resolution 23-118; Estero Island Beach Truck Haul

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING AN AGREEMENT BETWEEN THE TOWN AND COASTAL ENGINEERING CONSULTANTS, INC. FOR FINAL DESIGN, BID PHASE SERVICES, CONSTRUCTION SERVICES AND STAKEHOLDER AND ADMINISTRATIVE SERVICES FOR THE ESTERO ISLAND BEACH TRUCK HAUL PROJECT; AND PROVIDING AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Environmental Project Manager Chadd Chustz reviewed the issue as stated on the blue sheet.

Council Member King moved to approve the resolution; second by Mayor Allers.

Motion carried unanimously.

G. Resolution 23-121; Boxx Modular

Approve a four year lease agreement with Boxx Modular, waive the Town's procurement policy, and authorize the Town Manager to execute the necessary documentation for the new, temporary Town Hall business complex to be located on the Bay Oaks Campus.

Mayor Allers read the title of the resolution. Operations and Compliance Director Frankie Korpocek reviewed the issue as stated on the blue sheet. He hoped to move into the new trailers by Halloween and they would be reimbursed by FEMA.

Council Member King moved to approve the resolution; second by Council Member Veach.

Motion carried unanimously.

H. Surplus Items

Declare listed items as surplus and authorize staff to dispose of these items utilizing a municipal government auction service.

Town Manager Hyatt listed items that were damaged by Ian and would be sold.

Council Member King moved to approve the surplus items; second by Council Member Veach.

Motion carried unanimously.

I. Lobbyist Ronald L. Book, P.A. Contract Renewal

Authorize the Town Manager to renew and execute an agreement in the amount of \$45,000 with the Town's State Lobbyist, Ronald L. Book, P.A.

Town Manager Hyatt stated the reasons for renewing the agreement.

Council Member King moved to approve authorization; second by Council Member Veach.

Motion carried unanimously.

J. RFQ-20-22-AD; Ongoing Professional Services Renewal #1 of 2

Authorize the Town Manager to execute renewal #1 of 2 to the firms contracted under RFQ-20-22-AD, Ongoing Misc. Professional Services.

Town Manager Hyatt noted that renewing this would help with a smoother transition.

Council Member King moved to approve the renewal; second by Council Member Veach.

Motion carried unanimously.

K. RFQ-20-22-AD; On-Going Professional Services

Approve two Supplemental Task Authorizations for FY24 exceeding \$25,000 for Professional Services for Community Development in the areas of Planning/Zoning and Building Services, and authorize the Town Manager to execute the required documentation.

Town Manager Hyatt stated that approving this authorization would help with continuity moving forward.

Council Member King moved to approve the authorizations; second by Council Member Veach.

Motion carried unanimously.

L. 5-Year Flock Safety Agreement

Authorize the Town Manager to execute a 5-year agreement with Flock Safety to continue license plate reader services for the Town for an additional term with increased cost savings.

Public Works Director Jason Freeman reviewed the reason for the authorization as stated on the blue sheet.

Council Member King moved to approve the authorization; second by Council Member Veach.

Mayor Allers recounted a personal story regarding the cameras and police on the Sanibel causeway.

Motion carried unanimously.

M. Bay Oaks Recreation Center fitness equipment replacement.

Approve and allocate funds for the purchase and replacement of fitness equipment from Gym Source at the Bay Oaks Recreation Center, not to exceed \$64,000

Culture, Parks & Recreation Director Jeff Hauge stated that the company provided the best quote.

Council Member King moved to approve the purchase; second by Council Member Veach.

Motion carried unanimously.

XII. PUBLIC HEARINGS

A. Provide input regarding open view and open space requirements

Provide input regarding Downtown Zoning District requirements

Planner Propst noted that staff needed to know what the Town Council wanted. She read the section of the code concerning lot frontage in the downtown district and open views of the Gulf of Mexico. She stated that this was an option, not a requirement. Council Member Woodson questioned whether it would be cleaner to change the code. Planner Propst indicated that there were only two places in the code that supported clear views of the water, although the Comp. Plan addressed it quite often. She questioned whether they intended to preserve open view corridors to the water. Vice Mayor Atterholt replied that the view corridors were worth preserving and he did not mind reviewing requests on a case-by-case basis. Mayor Allers was not comfortable changing the requirements and supported requests on a case-by-case basis.

Council Member King agreed with Mayor Allers because there were avenues to address it.

Council Member Veach questioned view corridors on certain properties on the Gulf versus properties on the bay side. Mayor Allers responded that the requirements only pertain to the downtown district. Consensus was reached not to change the code.

XIII. ADMINISTRATIVE AGENDA**A. Town Radios****Public Safety Motorola Radio Purchase**

Director Freeman stated that they lost some of their radios during Ian and he reviewed the features of the two radios as stated on the blue sheet. Both models could be connected to the Lee County Public Safety Network.

Finance Director Joe Onzick indicated there were funds available for purchase. Mayor Allers favored the more expensive model. Director Freeman will obtain a quote for the N70 and bring it back for approval. No public comment.

Council Member Veach moved to table the discussion until they received the final purchase price; second by Council Member Woodson.
Motion carried unanimously.

B. Approve the replacement of outdoor fitness equipment for a not to exceed amount of \$140,000**Approve purchase of National Fitness Court Outdoor Equipment**

Director Hauge explained that the pad was still there, but all the equipment was lost. A \$40,000.00 grant was available for the purchase and the equipment was covered by \$40,000.00 of insurance.

Public comment:

Marty Bartow, resident, commented on the outdoor exercise equipment and questioned why they wanted to put something on Estero Blvd.

Public comment closed.

Mayor Allers moved to approve the purchase; second by Council Member Woodson.

Motion carried 4-1, with Council Member Veach dissenting.

C. FY24 Fee Schedule and Budget**Provide Clarification of FY24 Tentative Fee Schedule and Budget Items, including: Special Magistrate Program; Short Term Rental Program; \$1 Million FDOT Grant; Financial Impact of Replacing Contractors with Employees; Update on the Storm Water and Water Projects; Status of SRF Loans; and Explanation of Variance Fees.**

Finance Director Onzick provided clarification with a PowerPoint presentation. Slides include FY23-24 Fee Schedule & Budget Clarifications and Clarification on Beach Access Wedding Fees. Special Event Coordinator Patty Prevost explained the process and preferred that the fee be \$150.00 or \$350.00 for continuity or go back to \$50.00 and \$150.00.

Discussion was held regarding rental fees versus special event fees and combinations of the two. Vice Mayor Atterholt suggested removing the word wedding from a special event. Coordinator Prevost agreed.

Director Hauge indicated that a new rental agreement would be created for the Mound House, which would include a permit. Director Onzick summarized that the words wedding and permit would be removed and the beach access rental fee would be \$150.00 or \$350.00, depending on the number of people. He continued with the Clarification of the Special Magistrate Fee of \$250.00, Recommended Special Magistrate Fee Components, Current Cost of Bringing Code Enforcement Cases to the Special Magistrate Compared to Actual Fees Ordered/Collected, Allocation of Short Term Rental Fee Income to Workforce Housing after Covering Cost of Program, Short Term Rental Fee Allocation and Update on \$1 Million FDOT Grant - Jason Freeman.

Director Freeman provided an update on the grant.

The following slide was the Budget Impact of Replacing Contractors with Employees, Clarification of Florida State Revolving Fund, Update on Storm Water and Water Projects - Steve Matuska. Utilities Manager Matuska provided an update on the loans and the stormwater project. He described an underground stormwater retention facility, swale reclamation and restoration and the \$10 million grant that will be used for repairs and improvements to the stormwater system. He noted that new meter reading software was purchased to allow staff more time in the field.

Community Development Senior Planner Jason Smalley stated the base charge for a variance was \$1,800.00 and \$500.00 for each additional ask after the base charge. The variance process is intended to limit the number of asks. Mayor Allers questioned charging the same fee to replace a fence that existed before the hurricane as a one-foot variance for a \$5 million house. He felt a different fee for the fence versus the house should exist.

Senior Planner Smalley responded that every variance was different, but he mentioned combining variances or a sliding scale for accessory structure variances. He described the staff time involved and noted the department was working with a small number of staff. Mayor Allers suggested that replacing a fence lost to Ian should be taken care of administratively instead of going through the variance process. Senior Planner Smalley agreed with streamlining the process. Town Attorney Vose will look at the code to see if it provides for fees or guidelines. Senior Planner Smalley will bring back ideas. Public comment:

Tom Connors commented on the application, the system and the fee schedule. He could see a \$500.00 fee for the fence but not \$1,800.00. Public comment closed.

D. Dune Walkover permit for 8150/8170 Estero

Motion to approve issuance of permit for beach/dune walk-over at 8150/ 8170 Estero Boulevard pursuant to Special Exception previously approved by the Town Council (Resolution 23-22) and accept letter of indemnity and intent to hold harmless document supplied by applicants.

Or

Motion to disapprove issuance of permit for beach/dune walk-over at 8150/ 8170 Estero Boulevard pursuant to Special Exception previously approved by the Town Council (Resolution 23-22).

Town Attorney Vose reviewed the issue and indicated that the applicants agreed to a hold harmless document to acknowledge that the walkover might have to be removed if the applicants lose their case in court. If the walkover has to be demolished, the applicants would reimburse the town. She stated that it was highly unusual to grant permission to do something but not issue a permit.

Attorney Seth Bane represented the owners and requested that the permit be released. He noted that the building permit portal stated that the permit was ready to be issued and the applicants provided a letter of indemnification.

Applicant Eddie Rood described conversations with the FWC and concessions they made to the design of the walkover. He offered to close the walkover during the bird nesting season from April to August if nests were found within a 300-foot radius of the terminus of the walkover. He noted that the FWC supported his proposal and asked that the permit be released.

Public comment:

John Cameron, resident, commented that the Audubon Society was the enemy and should not be given special treatment.

Cindy Johnson, resident, described harming the natural resources around the walkover. She stated members of the Audubon Society had an equal stake in what went on in Florida. She noted that the Shoremapper map indicated that the end of the walkover landed on an area critical to the survival of the snowy plover. She felt the town should let the judicial process finish.

Larry Denherder, resident, supported the beach walkover and felt it kept people out of the critical area. He asked that the town issue the permit.

Dennis Prock, resident, reviewed the voting history of the LPA and Town Council regarding the walkover.

Mr. Drenth, resident, supported the walkover and asked that the permit be issued. He commented that the whole neighborhood supported it.

Tom Connors, resident, commented on walking his dogs and ownership of the property. He did not support the walkover at first but does now.

Public comment closed.

Council Member Veach noted nothing in the indemnification letter addressed restoring the area to its pre-construction condition if the walkover was removed. Town Attorney Vose did not think the town would be liable based on the language in the letter. Attorney Bane stated that the DEP permit required restoration, but he agreed to add a clause in the letter. Town Attorney Vose did not believe there was any reason not to issue the permit.

Council Member Woodson moved to approve the issuance of the permit; second by Council Member King.

Motion carried, 3-2 with Vice Mayor Atterholt and Council Member Veach dissenting.

XIV. FINAL PUBLIC COMMENT

No public comment.

XV. TOWN MANAGER'S ITEMS

Town Manager Hyatt stated there would be a power outage on the north end at 4:00 p.m. to inspect the grid.

XVI. TOWN ATTORNEY'S ITEMS**A. Proposed Jamieson Settlement Agreement**

Attorney Hudson Gill represented the Town of Fort Myers Beach and presented a settlement agreement to the town for their consideration. He reviewed the property's history, litigation and exposure to the town. He stated that Mr. Jamieson signed the agreement and the town's attorneys recommended that the Town Council approve the document. He explained the benefits to the town if they signed the agreement. He added that "with prejudice" means Mr. Jamison cannot file suit again over the same allegations.

Vice Mayor Atterholt supported the settlement agreement.
No public comment.

Vice Mayor Atterholt moved approval of the settlement agreement; second by Council Member King.
Motion carried unanimously.

B. Development Agreements with Deviations

To be part of the joint meeting with the LPA.

XVII. COUNCILMEMBERS ITEMS AND REPORTS

Council Member Woodson stated they needed to move forward with community policing.

Vice Mayor Atterholt asked for an update on purchasing property. Town Manager Hyatt replied negatively.

Council Member King noted that the LeeTran would begin on November 16, 2023. He forwarded addresses to Century Link that had boxes on their property. Some residents asked why the town allowed fiber optics to be installed before removing boxes. Town Attorney Vose stated the town had no authority to prevent the work. Mayor Allers stated a remembrance would be held from 9-10 a.m. at Bayside Park and the clock would be unveiled at Times Square. Music and food will be in Times Square to Bayside Park from 11:00 a.m.

No items from Council Member Veach.

XVIII. ADJOURNMENT

Council Member King moved to adjourn; second by Council Member Veach.
Motion carried unanimously.

The meeting was adjourned at 3:16 p.m.



Fort Myers Beach Town Council

**Diamondhead Beach Resort
2000 Estero Blvd.
Fort Myers Beach, FL 33931**

Minutes

Monday, September 25, 2023

5:01 PM

ORDER OF BUSINESS

DRAFT

I. CALL TO ORDER

Members present: Mayor Allers, Vice Mayor Atterholt, Council Member King, Council Member Veatch and Council Member Woodson.

II. PUBLIC COMMENT

No public comment.

III. PUBLIC HEARINGS - BUDGET ITEMS

A. Resolution; 23-116; Final FY23/24 Ad Valorem Millage Rate

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, ADOPTING THE FINAL AD VALOREM MILLAGE RATE FOR THE TOWN OF FORT MYERS BEACH, FLORIDA FOR FISCAL YEAR 2023-2024 COMMENCING OCTOBER 1, 2023 AND ENDING SEPTEMBER 30, 2024 FOR THE PURPOSE OF PROVIDING SUFFICIENT FUNDS FOR THE GENERAL FUND; AND PROVIDING AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution.

Council Member Woodson moved to approve the final ad valorem millage rate; second by Council Member Veatch.

Finance Director Joe Onzick discussed slides regarding the Budget Impact of Replacing Contractors with Employees, Additional Personnel to Support Recovery, Resulting Total Budget, Maintaining Millage Rate, Roll Back Rate, Proposed Millage Rate Compared to Roll Back Rate, Revenue Generated by Proposed Millage Rate, Average Taxable Assessed Value 5 Year Graph, Taxes on Average Taxable Assessed Value 5 Year Graph, Tax Percentage of Taxing Authority, Net Change Between FY24 Final Budget and FY23 Adopted Budget, General Fund Expenses by Department, Where the

General Fund Money Goes, Funding Strategy for General Fund, Where the General Fund Money Comes From, Expense Budgets of All Funds, Where the Money Goes - All Funds, Where the Money Comes From - All Funds, \$10 MM Capital Improvement Note, DEO Bridge Loan and Florida State Revolving Fund.

Mark Brewer from Angie Brewer estimated that \$2.7 million needed to be covered by additional loans or grants. He stated that the state deferred payments for two fiscal years due to the hurricane and was open to extending the deferment. He indicated that the town had four years to go through the legislative process for additional funding.

Director Onzick reported that the total cost of 31.28 personnel positions would increase the budget by \$2.5 million, but after subtracting savings, the total net cost increase was approximately \$1.4 million.

Motion carried unanimously by roll call vote.

B. Resolution 23-117; Final FY23/24 Budget

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, ADOPTING THE FINAL BUDGET FOR FISCAL YEAR 2023-2024 COMMENCING OCTOBER 1, 2023 AND ENDING ON SEPTEMBER 30, 2024; AND PROVIDING FOR AN EFFECTIVE DATE

Mayor Allers read the title of the resolution.

Director Onzick requested that Resolution 23-117 be amended to replace Exhibit A with the revised Final Annual Budget to correct a typo in the formula errors on page 20.

Council Member Woodson moved to adopt the final budget as amended; second by Council Member Veatch.

Motion carried unanimously by roll call vote.

C. Resolution 23-115; Final FY23/24 Fee Schedule

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, ADOPTING THE FINAL FEE SCHEDULE FOR FISCAL YEAR 2023-2024 COMMENCING OCTOBER 1, 2023 AND ENDING ON SEPTEMBER 30, 2024; AND PROVIDING FOR AN EFFECTIVE DATE

Mayor Allers read the title of the resolution.

Director Onzick described a couple of minor corrections to the earlier presentation. First was the Financial Impact of Fee Changes Proposed by Community Development, Financial Impact of Fee Changes Proposed by Town Council at April 17, 2023 Meeting, Proposed Fee Changes that Have No Financial Impact (Corrections/Clarification to Fee Schedule), Allocation of Short Term Rental Fee Income to Workforce Housing after Covering Cost of Program and Comparison of Short Term Rental Fee Income to Expenses Including Enforcement and Action Required to Amend Resolution 23-115.

Council Member Woodson moved to approve the final fee schedule as amended; second by Council Member Veatch.

Motion carried unanimously by roll call vote.

IV. FINAL PUBLIC COMMENT

No public comment.

V. ADJOURNMENT

Council Member King moved to adjourn; second by Mayor Allers.
Motion carried unanimously.

The meeting was adjourned at 5:38 p.m.



Fort Myers Beach Town Council

**Diamondhead Beach Resort
2000 Estero Blvd.
Fort Myers Beach, FL 33931**

Minutes

Monday, October 2, 2023

9:00 AM

ORDER OF BUSINESS

DRAFT

I. CALL TO ORDER

Members present: Mayor Allers, Vice Mayor Atterholt, Council Member King, Council Member Veatch and Council Member Woodson.

II. INVOCATION

Town Clerk Baker.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

Council Member King moved to approve the Final Agenda as amended with Item C in the Consent Agenda pulled for clarification and move D in Public Hearings up to the first slot; second by Vice Mayor Atterholt.

Motion carried 4-1 with Council Member Veatch dissenting.

V. PUBLIC COMMENT

Ellen Vaughn, resident, stated she would like to be reappointed to CELCAB (Cultural & Environmental Learning Center Advisory Board).

Linda Miller, Manager of Shop Local Productions, requested permits for Moss Marina and Santini Plaza to hold Farmer's Markets. She thanked the Council for approving the Farmers Market in Times Square. She hoped to open the Farmers Market on Wednesdays in November at Moss Marina.

Ron Benak, resident, indicated he was applying for a position on the Public Safety Committee (PSC). He reviewed his experience in public safety and felt he had a lot to give to the committee.

Ed Rood, resident, noted that he was applying for a position on the Marine & Environmental Resources Task Force (MERTF) and felt his experience with nesting birds would be helpful to the committee.

Wendy DeGaetano, resident, stated that she would like to be reappointed to MERTF to continue her work with the committee.

VI. PRESENTATION**A. Friends of the Mound House**

Ellen Vaughn and Jim Steele presented a check for \$10,000.00 to the Mound House to replace museum store inventory lost in the hurricane.

B. Let's Go FMB

Allen Shanosky discussed the pier and noted that Let's Go FMB has five steppingstones in their mission statement, including research, site visits, rough design ideas, budget and funding. He utilized PowerPoint for his presentation, starting with Old Pier History/Facts - What did Ian take?, Why Rebuild the Pier?, Lee County Visitors, What's Possible?, What's not Possible?, Site Visits, Float Away Decking, Piling Options, Interesting Additions, Rough Design Ideas, Pier Design Goals, What Size Should be Built?, Town stats vs. FMB, St. Augustine Before/After Nourishment, The Committee Choose 1000' Length - Now, How Wide?, options #1 & #2, Partial Example of Daily Pedestrian Increase, Average Daily Sunset Visitors to Pier (2,648 Total), Option #1, Option #2, Much Discussion Amongst Committee - Back to the Drawing Board, Option #1 Estimated Cost \$18-\$22 million, Option #2 Estimated Cost \$34-\$38 million, Visitor Taxes, TDC Collected \$57,528,841.00 in 2021, HUD CDBG Funds \$1,107, 881,000.00, \$38,000,000.00 =, and 110 Days of LTC will Pay for Pier.

Mayor Allers suggested that Mr. Shanosky provide details to Lee County regarding the cost. He mentioned a private/public collaboration that could help fund and build the pier sooner. Vice Mayor Atterholt thanked those involved with the pier research and their sense of urgency. Mayor Allers suggested that Mr. Shanosky share his presentation with the TDC (Tourist Development Council).

VII. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member Veach reported that the Island Hopper was a successful event and it was hard to find a table.

Council Member Woodson noted that the staff did an amazing job of preparing Times Square for Ian's anniversary memorial. She described the employee appreciation lunch for the Mound House staff. She hoped that the town would recognize its staff more often.

Vice Mayor Atterholt reviewed the one-year anniversary memorial and thanked everyone who was involved.

Council Member King thanked everyone who participated in the remembrance ceremony, including the media. He also thanked the town staff for their dedication.

Mayor Allers thanked the Island Hopper and thanked Beach Talk Radio for their plaque donation. He thanked the legislators who attended the ceremony.

VIII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS**A. Local Planning Agency****Appoint Members to the FY2023-2024 Local Planning Agency (LPA)**

Mayor Allers stated there were three open seats and five applicants. James Boan, Anita Cereceda and Jane Plummer submitted applications for reappointment. Darcy Grout and Joseph Publiese were new applicants. James Boan, Anita Cereceda and Jane Plummer were reappointed.

B. Anchorage Advisory Committee**Appoint Members to the FY2023-2024 Anchorage Advisory Committee (AAC)**

Council Member Veach moved to accept the applicants; second by Vice Mayor Atterholt.
Motion carried unanimously.

C. Audit Committee**Appoint Members to the FY2023-2024 Audit Committee**

Council Member Veach moved to accept the applicants; second by Vice Mayor Atterholt.
Motion carried unanimously.

D. Bay Oaks Recreational Campus Advisory Board**Appoint Members to the FY2023-2024 Bay Oaks Recreational Campus Advisory Board (BORCAB)**

Mayor Allers reported there were four open seats and five candidates. Jesse Field, Becky Guidry, Barbara Hill and Joy Sullivan submitted applications for reappointment. Beverly Milligan was the new applicant.
Jesse Field, Becky Guidry, Barbara Hill and Joy Sullivan were reappointed.

E. Cultural and Environmental Learning Center Advisory Board**Appoint Members to the FY2023-2024 Cultural and Environmental Learning Center Advisory Board (CELCAB)**

Mayor Allers indicated there were three open seats and five applicants. Ellen Vaughan and Becky Werner submitted reappointment applicants. The new applicants were Alison Bartlett-O'Donald, Lainey Holt, Patrick McKeown and Chris Riedel King. Ellen Vaughan, Becky Werner and Patrick McKeown were appointed.

F. Marine and Environmental Resources Task Force**Appoint Members to the FY2023-2024 Marine and Environmental Resources Task Force (MERTF)**

Mayor Allers noted there were three open seats and eight applicants. Wendy DeGaetano, Greg Fossum and Mary Rose Spalletta submitted applications for reappointment. The new applicants were William Althoff, David Nusbaum, David Patton, Ed Rood and Edward Schoonover.
David Nusbaum, William Althoff and Mary Rose Spalletta were appointed.

G. Public Safety Committee**Appoint Members to the FY2023-2024 Public Safety Committee (PSC)**

Mayor Allers stated there were three vacancies and four applicants. James Bougoulas and James Knickle submitted applications for reappointment. Ron Benak and Kathy Nash were the new applicants. James Bougoulas, James Knickle and Ron Benak were appointed.

IX. **APPROVAL OF MINUTES**

Council Member Veach moved to table the minutes until the next meeting; second by Council Member King.

Motion carried unanimously.

X. **CONSENT AGENDA**

Council Member Veach moved to approve items A and B of the Consent Agenda; second by Council Member Woodson.

Motion carried unanimously.

A. Special Event: Santini Farmers Market**Requesting permission to hold a recurring special event**

Council Member Veach moved to approve; second by Council Member Woodson.

Motion carried unanimously.

B. Moss Marine Farmers Market**Requesting permission to hold a Farmers Market at Moss Marine from November 1, 2023 through April 24, 2024 from 7 am - 2pm with set up and break down of event.**

Council Member Veach moved to approve; second by Council Member Woodson.

Motion carried unanimously.

C. Communication Plan**Adopt Annual Communication Plan for 2023-24**

Town Manager Hyatt clarified that the plan was absorbed into the budget for merchandise and branding. He stated that if they hired an intern, it would be a non-paid position through the university.

Mayor Allers moved to approve; second by Council Member Woodson.
Motion carried unanimously.

XI. PUBLIC HEARINGS

A. Ordinance 23-15; Owner Builder Permit

First Reading and Public Hearing: **AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTION 6-325, "OWNER-BUILDER EXEMPTION", OF DIVISION 5, "CONTRACTOR LICENSING", OF ARTICLE II, "BUILDING CODES", OF CHAPTER 6, "MAINTENANCE CODES, BUILDING CODES AND COASTAL REGULATIONS", OF THE CODE OF THE TOWN OF FORT MYERS BEACH, TO CLARIFY WHO IS ELIGIBLE FOR AN OWNER-BUILDER PERMIT, PROVIDING FOR CONFLICTS OF LAW; SCRIVENER'S ERRORS; SEVERABILITY; AND AN EFFECTIVE DATE.** Open the first public hearing and schedule for second reading and final adoption on October 16, 2023 at 9:00 a.m.

Mayor Allers read the title of the ordinance. Town Attorney Vose reviewed the background as stated on the blue sheet. Council Member Veach questioned some of the language. She will add a sentence and review each one of the trusts before a permit is issued to ensure that it is the proper type of trust. Anyone with questions regarding their trust should contact the town. No public comment.

Council Member Veach moved to move the ordinance to a second reading on October 16, 2023, at 9:00 a.m. and the Town Attorney will clarify that other types of trusts were not eligible; second by Vice Mayor Atterholt.

Motion carried unanimously by roll call vote.

B. Ordinance 23-13; Amending EC Zoning/Location of Construction Near Beaches

First Reading and Public Hearing: **AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE III., DIVISION 4, SECTION 34-652 ENVIRONMENTALLY CRITICAL (EC) ZONING DISTRICT AND CHAPTER 6, ARTICLE III., DIVISION 2, SECTION 6-366 LOCATION OF CONSTRUCTION NEAR BEACHES; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE.** Open the first public hearing and schedule for second reading and final adoption on October 16, 2023 at 9:00 a.m.

Mayor Allers read the title of the ordinance. Community Development Planner Sarah Propst reviewed the background as stated on the blue sheet. She requested that Town Council members consider the proposed language recommended by the LPA. She clarified redevelopment, reconstruction and repair. The word redevelopment was removed because new structures were not allowed in the EC (Environmentally Critical) zone. She questioned how to define the difference between a repair and reconstruction. Mayor Allers suggested that a change to the design would not be considered a reconstruction. Planner Propst stated that the owner would not have to come before the town if a repair could be done without a permit. She noted that the town implemented the EC zone, not the state.

Community Development Director Steve Poposki read the definition of repair

from the existing Florida Building Code. Repair is the reconstruction or renewal of any part of an existing building for the purpose of its maintenance or to correct damage. Mayor Allers questioned whether that language could be adopted in the code. He was confident that staff could determine what constituted a repair or reconstruction.

No public comment.

Council Member Veach moved to move the ordinance to a second reading on October 16, 2023, at 9:00 a.m. with the suggestions made to staff by Council; second by Council Member Woodson.

Motion carried unanimously by roll call vote.

C. Ordinance 23-14; Administrative Setback Variances

First Reading and Public Hearing: **AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE II., DIVISION 6, SECTION 34-268 ADMINISTRATIVE SETBACK VARIANCES; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE.** Open the first public hearing and schedule for second reading and final adoption on October 16, 2023 at 9:00 a.m.

Mayor Allers read the title of the ordinance. Planner Propst reviewed the background of the request as stated on the blue sheet. She noted the LPA recommended approval. Council Member Veach indicated that the edits in (b)(3) pertained to non-conforming lots only.

Public comment:

John McClain, resident, commended the town staff for correcting the oversight in the ordinance.

Public comment closed.

Council Member Veach moved to move the ordinance to a second reading on October 16, 2023, at 9:00 a.m.; second by Vice Mayor Atterholt. Motion carried unanimously by roll call vote.

D. Resolution 23-123; VAR20230071, 185 Jefferson Street

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20230071 AN INCREASE OF 2 FEET TO ALLOWABLE FENCE HEIGHT WITHIN THE FRONT SETBACK; TO ALLOW CHAIN LINK FENCE TO EXTEND 19 FEET INTO THE FRONT SETBACK; TO ALLOW A FENCE WITHIN THE VISIBILITY TRIANGLE BETWEEN 2 AND 6 FEET ABOVE GRADE; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Town Clerk Baker stated that the hearing was properly advertised and she swore in those providing testimony. Ex parte communications: Council Member Veach - spoke to the applicant and is familiar with the property; Council Member Woodson - is familiar with the property; Mayor Allers - spoke to the applicant and is familiar with the property; Vice Mayor Atterholt - spoke with the applicant and is familiar with the property; Council Member King - is familiar with the property.

Community Development Senior Planner Jason Smalley reviewed the background of the variance requests as stated on the blue sheet.

He stated that the staff recommended denial due to a concern regarding the visibility triangle. There have not been any objections.

Kara Stewart represented the applicant. She noted they agreed with the conditions that were added to the resolution. She addressed the visibility triangle and indicated the fence was set back five feet from the edge of the road. She added the fence had been there for over 30 years without an incident and neighbors sent letters of support. Ms. Stewart added that the house will be 100 years old in two years.

Vice Mayor Atterholt questioned the chain link fence. Ms. Stewart replied that it would be a black vinyl chain-link with landscaping planted. No public comment.

Vice Mayor Atterholt moved to approve the resolution; second by Council Member Veach.

Motion carried unanimously by roll call vote.

XII. ADMINISTRATIVE AGENDA

A. Resolution 23-122; Mooring Field Systems Purchase

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING A SOLE SOURCE PURCHASE AGREEMENT BETWEEN THE TOWN AND AMERICAN UNDERWATER CONTRACTORS, INC. FOR THE SOLE SOURCE PURCHASE OF 70 MOORING SYSTEMS FOR A COST OF \$ 194,410.00.

Mayor Allers read the title of the resolution. Environmental Projects Manager Chadd Chustz stated that this company was the only one that made the systems. He indicated that FEMA would reimburse most of the costs and Mayor Allers added that the town's portion would be \$9,720.50.

Council Member Veach moved to approve; second by Council Member King. Motion carried unanimously.

B. Resolution 23-124; Stewart Materials

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING A SOLE SOURCE PURCHASE AGREEMENT BETWEEN THE TOWN AND STEWART MATERIALS FOR THE SOLE SOURCE PURCHASE OF 26,460 TONS OF BEACH COMPATIBLE SAND FOR A COST OF \$313,551.00.

Mayor Allers read the title of the resolution. Project Manager Chustz stated the sand was needed to restore frequently used beach accesses and restore the berm in the 7000 block along the beach. The state will pay for the project because this area was outside of the renourishment area and did not qualify for FEMA funds.

Council Member King moved to approve the resolution; second by Council Member Veach.

Motion carried unanimously.

XIII. FINAL PUBLIC COMMENT

Becky Weber, resident, commented on behalf of Let's Go Fort Myers Beach regarding the pier and stated they would proceed with the Council's recommendation to get more detailed financial information. She asked the Council to discuss whether they could take it to Lee County. They were concerned about the funding and wanted a seat at the table. Mayor Allers stated that it was important for her to work with staff regarding setbacks, heights and zoning. Ms. Weber said she would obtain a quote to present to Lee County. Mayor Allers suggested that she contact the County regarding funding the design services since it was their asset.

XIV. TOWN MANAGER'S ITEMS

Town Manager Hyatt revealed that Steve Poposki had been promoted to Town Engineer. He indicated that he was working with a group to bring them in-house for permitting, inspections, plan reviews and maybe an additional in-house planner. He stated that once they move into the temporary town hall trailers, hours would be extended to 10 hours per day and they might be available on weekends.

Operations and Compliance Director Frankie Kropocek described the neighborhood services to incorporate more eyes and ears on the road. He explained developing a four-zone area from the beach to the bay to look for people installing illegal street signs and things that would impact the community. He noted they stopped targeting parking lots for parking fees and were collecting fees in the proper way. He explained that the system would change under the direction of a management team.

Vice Mayor Atterholt noted that the paradigm would change to education to bring people into compliance, a warning and the last result would be a fine. Director Kropocek agreed that education was the priority and that the town would provide opportunities for people to become compliant.

Town Manager Hyatt stated that the town would have a fireworks display on New Year's Eve at no cost to the town.

XV. TOWN ATTORNEY'S ITEMS

No items.

XVI. COUNCILMEMBERS ITEMS AND REPORTS

Vice Mayor Atterholt shared pictures of flooding on Bahia Via Road and questioned when it would be repaired. Director Kropocek replied that the road would be taken care of shortly and outfalls would be addressed.

Council Member Woodson questioned how to proceed regarding Let's Go FMB. Mayor Allers commented that everything should go through her since she was the liaison. He suggested working with the Town Manager for more information.

Council Member Veach stated that Let's Go FMB was not an advisory committee for the town and felt that the Town Council should represent the town.

Town Attorney Vose indicated that since Let's Go FMB was not a part of the town, they could only present ideas for the Town Council to discuss. Mayor Allers suggested that the group go to the TDC first.

Council Member Veach suggested that the group present to BORCAB. Mayor Allers was not opposed to the idea and noted that BORCAB could provide an official recommendation. Council Member Woodson was the liaison for BORCAB and agreed with the idea. Vice Mayor Atterholt questioned why they were creating an additional step after the Town Council already supported their idea. Council Member Woodson discussed moving forward with ideas and starting with a presentation to the TDC. Council Member Veach felt it was important to attach the group with an advisory committee. Council Member King felt that a group of citizens who rallied around an idea carried a lot of weight. Town Attorney Vose was concerned about hooking up Let's Go FMB with an official advisory committee and stated they needed to be separate. She said that typically, citizen groups went directly to the elected body. Mayor Allers did not want Let's Go FMB to present to Lee County without providing as much detail as possible. Town Attorney Vose stated the town needed to clarify that Let's Go FMB was not part of the town. Council Member Woodson felt she could move forward with the Town Manager and Let's Go FMB.

Council Member Woodson discussed a group providing ideas for marketing and PR. They would like to present their ideas at the next Town Council meeting with input from Communications Coordinator Jenny Dexter. Town Attorney Vose did not see a problem with that. Town Manager Hyatt will add the topic to the next regular meeting if the agenda is light. Consensus was reached to allow the Town Manager and Town Clerk to make the decision.

Council Member Woodson stated that October 1 was the deadline for vendor and short-term license renewals and applications. She noted that the vendors did not know who to contact and the town needed to get the process back in place.

Council Member Veach provided an update on Resilient Lee and economic revitalization. He noted the next meeting was pushed back to February 2024. He requested that Town Attorney Vose review the Policies and Procedures and recommend improvement. Town Attorney Vose agreed. Council Member Veach requested that the M&P printout with the agenda include a spreadsheet with an agenda item list with dates included. Vice Mayor Atterholt agreed.

Mayor Allers described the two letters from FDEM (Florida Department of Emergency Management) approving a \$5 million loan and an \$8 million grant for beach renourishment. Unofficially, the money for the street lighting would go through Lee County and he hoped to receive clarification by the end of the day. No items from Council Member King.

XVII. ADJOURNMENT

Council Member King moved to adjourn; second by Council Member Veach. Motion carried unanimously.

The meeting was adjourned at 12:28 p.m.

1. **Requested Motion:**

Meeting Date: October 16, 2023

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND EXTENDING THE PROCLAMATION THAT A STATE OF LOCAL EMERGENCY EXISTS BECAUSE OF THE CATASTROPHIC IMPACTS CAUSED BY HURRICANE IAN; PROVIDING FOR CONFLICTS; PROVIDING FOR SCRIVENER ERRORS, PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

Extending the local state of emergency provides the Town with the needed flexibility to respond to the catastrophic disaster caused by Hurricane Ian and maintains the Town's eligibility for federal and state reimbursement funding for the costs of recovery.

What the action accomplishes:

Extends the Town's Declaration of state of local emergency.

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

5. **Background:**

Hurricane Ian has caused a catastrophic disaster in the Town, causing extensive damage to public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas. Approving and ratifying these Resolutions will maintain in place the Town Declaration of State of Local Emergency originally adopted via Resolution 22-34.

Attachments:

1. 23-126, Extending Declaration of Local Emergency Ian 10.16-10.22.23
2. 23-127, Extending Declaration of Local Emergency Ian 10.23.23-10.29.23
3. 23-128, Extending Declaration of Local Emergency Ian 10.24.23-10.30.23

Financial Impact:

6. **Alternative Action**

Not adopt resolutions and the end the Local State of Emergency for Fort Myers Beach

7. **Management Recommendations:**

8. **Recommended Approval:**

- , - 10/4/2023
- , - 10/4/2023
- , - 10/4/2023
- , - 10/4/2023

RESOLUTION 23-126

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND EXTENDING THE PROCLAMATION THAT A STATE OF LOCAL EMERGENCY EXISTS BECAUSE OF THE CATASTROPHIC IMPACTS CAUSED BY HURRICANE IAN; PROVIDING FOR CONFLICTS; PROVIDING FOR SCRIVENER ERRORS, PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 252, *Florida Statutes*, authorizes the waiver of procedures and formalities, otherwise required of municipalities, and to take whatever prudent action is necessary to ensure the health, safety, and welfare of the community in the event of a state of emergency; and

WHEREAS, Section 252.38 *Florida Statutes*, specifically authorizes municipalities to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions required by law pertaining to performance of public work and taking whatever action is necessary to ensure the health, safety, and welfare of the community such as but not limited to entering into contracts; incurring obligations; employing permanent and temporary workers; utilizing volunteer workers; renting of equipment; acquiring and distributing supplies, materials and facilities with or without compensation, and appropriating and expending public funds; and

WHEREAS, the Town of Fort Myers Beach, Florida (Town), pursuant to its inherent home rule powers under Florida Constitution and otherwise has adopted certain emergency procedures set forth in Chapter 12, Article II – “Emergency and Disaster Planning” of the Code of Ordinances, Town of Fort Myers Beach, Florida (“Code”), and is otherwise authorized to activate the Town’s emergency plan; and

WHEREAS, the State of Florida and Lee County have declared a state of local emergency due to the catastrophic impacts of Hurricane Ian to Lee County; and

WHEREAS, as defined in the Code, Hurricane Ian has caused a catastrophic disaster in the Town causing extensive damage to public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas; and

WHEREAS, Section 12-21 of the Code provides that where it is not possible to obtain a quorum to convene an emergency meeting to proclaim a state of local emergency, or extend or rescind such a proclamation, the Mayor, Vice-Mayor, or Town Manager are authorized to proclaim, extend, or rescind a local state of emergency.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

Section 1. The foregoing whereas clauses are true and correct and hereby adopted as the legislative and administrative findings of the Town Council and made a specific part of this Resolution; all exhibits attached hereto are incorporated herein and made a specific part of this Resolution.

Section 2. Hurricane Ian has caused a catastrophic disaster in the Town, damaging, or destroying over ninety percent (90%) of the Town's public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas and continues to pose a serious threat to the health, lives, property, and safety of the business owners and residents of the Town. Accordingly, the state of local emergency is hereby extended for seven (7) additional days *nun pro tunc* from 9:00 AM on the 16th day of October 2023.

Section 3. The amendment and extension of the proclamation of a state of local emergency set forth in Resolution 22-35 is an emergency measure necessary for the protection of the public safety, due to the catastrophic disaster caused by Hurricane Ian.

Section 4. As provided in Section 252.38(3)(a), *Florida Statutes* and Chapter 12, Article II of the Code, the Town hereby waives the procedures and formalities otherwise required by law of a municipality as set forth in said State law and the Code.

Section 5. The Town Manager or designee is hereby designated as the declaring official for purposes of implementing the emergency and disaster regulations of the Town. The Town Manager or designee will exercise all powers necessary to protect the health and safety of the public set forth in any Executive Order that may be issued by the Governor, Chapter 252, Fla. Stat., and Chapter 12, Article II of the Code. This proclamation also authorizes the Town Manager or designee to utilize government employees and volunteers to assist in securing private property to minimize the overall damage to the Town.

Section 6. The state of local emergency shall remain in effect until terminated as provided in Section 12-21 of the Code. However, the mandatory curfew and prohibition regarding the use of fresh water supplied by the County or local water company for any purpose other than cooking, drinking, or bathing set forth in Section 12-24 of the Code are hereby waived at this time.

Section 7. As provided in Section 12-21(a) of the Code, the Mayor, Vice-Mayor, or Town Manager may extend the proclamation of a state of local emergency as the "responsible official" of the Town.

Section 8. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 9. Any scrivener or typographical errors that do not affect intent of this Resolution may be corrected with notice to and authorization of the Town Attorney and Town Manager without further process.

Section 10. If any clause, section, other part, or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

Section 11. This Resolution shall become effective upon the signature of the Mayor.

This Resolution was ADOPTED this 16th day of September 2023 upon the signature of the Mayor at 9:00 a.m.

TOWN OF FORT MYERS BEACH

Dan Allers, 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:

Vose Law Firm, Town Attorneys

This Resolution was filed in the Office of the Town Clerk on this 16th day of September 2023.

RESOLUTION 23-127

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND EXTENDING THE PROCLAMATION THAT A STATE OF LOCAL EMERGENCY EXISTS BECAUSE OF THE CATASTROPHIC IMPACTS CAUSED BY HURRICANE IAN; PROVIDING FOR CONFLICTS; PROVIDING FOR SCRIVENER ERRORS, PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 252, *Florida Statutes*, authorizes the waiver of procedures and formalities, otherwise required of municipalities, and to take whatever prudent action is necessary to ensure the health, safety, and welfare of the community in the event of a state of emergency; and

WHEREAS, Section 252.38 *Florida Statutes*, specifically authorizes municipalities to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions required by law pertaining to performance of public work and taking whatever action is necessary to ensure the health, safety, and welfare of the community such as but not limited to entering into contracts; incurring obligations; employing permanent and temporary workers; utilizing volunteer workers; renting of equipment; acquiring and distributing supplies, materials and facilities with or without compensation, and appropriating and expending public funds; and

WHEREAS, the Town of Fort Myers Beach, Florida (Town), pursuant to its inherent home rule powers under Florida Constitution and otherwise has adopted certain emergency procedures set forth in Chapter 12, Article II – “Emergency and Disaster Planning” of the Code of Ordinances, Town of Fort Myers Beach, Florida (“Code”), and is otherwise authorized to activate the Town’s emergency plan; and

WHEREAS, the State of Florida and Lee County have declared a state of local emergency due to the catastrophic impacts of Hurricane Ian to Lee County; and

WHEREAS, as defined in the Code, Hurricane Ian has caused a catastrophic disaster in the Town causing extensive damage to public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas; and

WHEREAS, Section 12-21 of the Code provides that where it is not possible to obtain a quorum to convene an emergency meeting to proclaim a state of local emergency, or extend or rescind such a proclamation, the Mayor, Vice-Mayor, or Town Manager are authorized to proclaim, extend, or rescind a local state of emergency.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

Section 1. The foregoing whereas clauses are true and correct and hereby adopted as the legislative and administrative findings of the Town Council and made a specific part of this Resolution; all exhibits attached hereto are incorporated herein and made a specific part of this Resolution.

Section 2. Hurricane Ian has caused a catastrophic disaster in the Town, damaging, or destroying over ninety percent (90%) of the Town's public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas and continues to pose a serious threat to the health, lives, property, and safety of the business owners and residents of the Town. Accordingly, the state of local emergency is hereby extended for seven (7) additional days *nun pro tunc* from 9:00 AM on the 23rd day of October 2023.

Section 3. The amendment and extension of the proclamation of a state of local emergency set forth in Resolution 22-35 is an emergency measure necessary for the protection of the public safety, due to the catastrophic disaster caused by Hurricane Ian.

Section 4. As provided in Section 252.38(3)(a), *Florida Statutes* and Chapter 12, Article II of the Code, the Town hereby waives the procedures and formalities otherwise required by law of a municipality as set forth in said State law and the Code.

Section 5. The Town Manager or designee is hereby designated as the declaring official for purposes of implementing the emergency and disaster regulations of the Town. The Town Manager or designee will exercise all powers necessary to protect the health and safety of the public set forth in any Executive Order that may be issued by the Governor, Chapter 252, Fla. Stat., and Chapter 12, Article II of the Code. This proclamation also authorizes the Town Manager or designee to utilize government employees and volunteers to assist in securing private property to minimize the overall damage to the Town.

Section 6. The state of local emergency shall remain in effect until terminated as provided in Section 12-21 of the Code. However, the mandatory curfew and prohibition regarding the use of fresh water supplied by the County or local water company for any purpose other than cooking, drinking, or bathing set forth in Section 12-24 of the Code are hereby waived at this time.

Section 7. As provided in Section 12-21(a) of the Code, the Mayor, Vice-Mayor, or Town Manager may extend the proclamation of a state of local emergency as the "responsible official" of the Town.

Section 8. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 9. Any scrivener or typographical errors that do not affect intent of this Resolution may be corrected with notice to and authorization of the Town Attorney and Town Manager without further process.

Section 10. If any clause, section, other part, or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

Section 11. This Resolution shall become effective upon the signature of the Mayor.

This Resolution was ADOPTED this 16th day of September 2023 upon the signature of the Mayor at 9:00 a.m.

TOWN OF FORT MYERS BEACH

Dan Allers, 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:

Vose Law Firm, Town Attorneys

This Resolution was filed in the Office of the Town Clerk on this 16th day of September 2023.

RESOLUTION 23-128

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND EXTENDING THE PROCLAMATION THAT A STATE OF LOCAL EMERGENCY EXISTS BECAUSE OF THE CATASTROPHIC IMPACTS CAUSED BY HURRICANE IAN; PROVIDING FOR CONFLICTS; PROVIDING FOR SCRIVENER ERRORS, PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 252, *Florida Statutes*, authorizes the waiver of procedures and formalities, otherwise required of municipalities, and to take whatever prudent action is necessary to ensure the health, safety, and welfare of the community in the event of a state of emergency; and

WHEREAS, Section 252.38 *Florida Statutes*, specifically authorizes municipalities to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions required by law pertaining to performance of public work and taking whatever action is necessary to ensure the health, safety, and welfare of the community such as but not limited to entering into contracts; incurring obligations; employing permanent and temporary workers; utilizing volunteer workers; renting of equipment; acquiring and distributing supplies, materials and facilities with or without compensation, and appropriating and expending public funds; and

WHEREAS, the Town of Fort Myers Beach, Florida (Town), pursuant to its inherent home rule powers under Florida Constitution and otherwise has adopted certain emergency procedures set forth in Chapter 12, Article II – “Emergency and Disaster Planning” of the Code of Ordinances, Town of Fort Myers Beach, Florida (“Code”), and is otherwise authorized to activate the Town’s emergency plan; and

WHEREAS, the State of Florida and Lee County have declared a state of local emergency due to the catastrophic impacts of Hurricane Ian to Lee County; and

WHEREAS, as defined in the Code, Hurricane Ian has caused a catastrophic disaster in the Town causing extensive damage to public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas; and

WHEREAS, Section 12-21 of the Code provides that where it is not possible to obtain a quorum to convene an emergency meeting to proclaim a state of local emergency, or extend or rescind such a proclamation, the Mayor, Vice-Mayor, or Town Manager are authorized to proclaim, extend, or rescind a local state of emergency.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

Section 1. The foregoing whereas clauses are true and correct and hereby adopted as the legislative and administrative findings of the Town Council and made a specific part of this Resolution; all exhibits attached hereto are incorporated herein and made a specific part of this Resolution.

Section 2. Hurricane Ian has caused a catastrophic disaster in the Town, damaging, or destroying over ninety percent (90%) of the Town's public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas and continues to pose a serious threat to the health, lives, property, and safety of the business owners and residents of the Town. Accordingly, the state of local emergency is hereby extended for seven (7) additional days *nun pro tunc* from 9:00 AM on the 30th day of October 2023.

Section 3. The amendment and extension of the proclamation of a state of local emergency set forth in Resolution 22-35 is an emergency measure necessary for the protection of the public safety, due to the catastrophic disaster caused by Hurricane Ian.

Section 4. As provided in Section 252.38(3)(a), *Florida Statutes* and Chapter 12, Article II of the Code, the Town hereby waives the procedures and formalities otherwise required by law of a municipality as set forth in said State law and the Code.

Section 5. The Town Manager or designee is hereby designated as the declaring official for purposes of implementing the emergency and disaster regulations of the Town. The Town Manager or designee will exercise all powers necessary to protect the health and safety of the public set forth in any Executive Order that may be issued by the Governor, Chapter 252, Fla. Stat., and Chapter 12, Article II of the Code. This proclamation also authorizes the Town Manager or designee to utilize government employees and volunteers to assist in securing private property to minimize the overall damage to the Town.

Section 6. The state of local emergency shall remain in effect until terminated as provided in Section 12-21 of the Code. However, the mandatory curfew and prohibition regarding the use of fresh water supplied by the County or local water company for any purpose other than cooking, drinking, or bathing set forth in Section 12-24 of the Code are hereby waived at this time.

Section 7. As provided in Section 12-21(a) of the Code, the Mayor, Vice-Mayor, or Town Manager may extend the proclamation of a state of local emergency as the "responsible official" of the Town.

Section 8. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 9. Any scrivener or typographical errors that do not affect intent of this Resolution may be corrected with notice to and authorization of the Town Attorney and Town Manager without further process.

Section 10. If any clause, section, other part, or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

Section 11. This Resolution shall become effective upon the signature of the Mayor.

This Resolution was ADOPTED this 16th day of September 2023 upon the signature of the Mayor at 9:00 a.m.

TOWN OF FORT MYERS BEACH

Dan Allers, 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:

Vose Law Firm, Town Attorneys

This Resolution was filed in the Office of the Town Clerk on this 16th day of September 2023.

1. **Requested Motion:**

Meeting Date: October 16, 2023

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO HURRICANE IDALIA; PROVIDING THE TOWN WITH POWERS, INCLUDING, BUT NOT LIMITED TO THOSE PURSUANT TO FLORIDA STATUTES, CHAPTER 252, AND TOWN CODE CHAPTER 2, ARTICLE VI; PROVIDING FOR PENALTIES FOR VIOLATIONS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND FOR AN EFFECTIVE DATE AND A TERMINATION DATE

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

Approving and ratifying this Resolution will maintain in place the Town Declaration of State of Local Emergency originally adopted via Resolution 23-99.

Attachments:

1. 23-129, Extension of Local Emergency - Idalia 10.3.23-10.9.23
2. 23-130, Extension of Local Emergency - Idalia 10.10.23-10.16.23
3. 23-131, Extension of Local Emergency - Idalia 10.17.23-10.23.23
4. 23-132, Extension of Local Emergency - Idalia 10.24.23-10.30.23

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

- , - 10/4/2023
- , - 10/4/2023
- , - 10/4/2023
- , - 10/4/2023

RESOLUTION NUMBER 23-129

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO HURRICANE IDALIA; PROVIDING THE TOWN WITH POWERS, INCLUDING, BUT NOT LIMITED TO THOSE PURSUANT TO FLORIDA STATUTES, CHAPTER 252, AND TOWN CODE CHAPTER 2, ARTICLE VI; PROVIDING FOR PENALTIES FOR VIOLATIONS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND FOR AN EFFECTIVE DATE AND A TERMINATION DATE

WHEREAS, Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

WHEREAS, Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

WHEREAS, a state of local emergency proclamation is allowed for seven (7) days with appropriate extensions pursuant to law; and

WHEREAS, the effects of Hurricane Idalia impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on August 29, 2023, must be extended.

THEREFORE, under the powers vested in it pursuant to Chapter 252, Florida Statutes, and under Chapter 12 of the Town Code of the Town of Fort Myers Beach, the **Town Council does hereby extend the proclamation of a state of local emergency in the Town of Fort Myers Beach, Florida, as identified above beginning at the end of the previously adopted state of local emergency to 7 days thereafter.**

SECTION 1. State of Local Emergency. The following emergency powers and other provisions shall be in force during this state of local emergency:

1. The Town Manager, or designee, is authorized to take all actions necessary and appropriate to protect human life and property, including the promulgation of rules and orders as may be necessary subject to the limitations of Section 252.33, Florida Statutes. This resolution further authorizes the Town Manager, or designee, to utilize all lawful authority granted to the Town of Fort Myers Beach by Federal, State, County, or Town Emergency Management Laws, Rules, Regulations, Orders and, including, but not limited to, Section 252.46 and Section 252.38(3)(a)(1) through Section 252.38(3)(a)(5), Florida Statutes, inclusive.
2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or

order specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.

3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
 - Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
 - Entering into contracts;
 - Incurring obligations;
 - Employment of permanent and temporary workers;
 - Utilization of volunteer workers;
 - Rental of equipment;
 - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.
 - (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.

- (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
 - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.
8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be

made effective pursuant to this article. Such other lawful action shall include but shall not be limited to, an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefor, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

SECTION 2. Conflicts. Any and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

SECTION 3. Severability. If any provision or portion of this Resolution or the application is held invalid, the invalidity shall not affect other provisions, portions or applications of the Resolution, which can be given effect without the invalid provision, portion or application, and to this end the provisions, portions, or applications of this Resolution are declared severable.

SECTION 4. Effective Date and Termination Date. This Resolution shall take effect immediately upon the termination of the previously adopted state of local emergency and shall terminate automatically seven (7) days from that date unless terminated earlier or extended by a document of equal dignity herewith.

SECTION 5. Direction to Implement. The Town Manager is directed to implement this Resolution.

The foregoing Resolution was adopted 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:

Dan Allers, Mayor
Jim Atterholt, Vice Mayor
John R. King
Bill Veach
Karen Woodson

ADOPTED this 16th day of September 2023 by the Town Council of the Town of Fort Myers Beach, Florida.

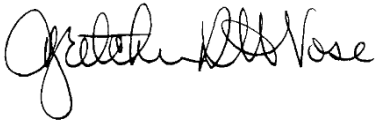
FORT MYERS BEACH TOWN COUNCIL

Dan Allers, 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:**

A handwritten signature in black ink, appearing to read "Matthew D. Vose". The signature is fluid and cursive, with the first name "Matthew" being more prominent than the last name "Vose".

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 16th day of September 2023.

RESOLUTION NUMBER 23-130

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO HURRICANE IDALIA; PROVIDING THE TOWN WITH POWERS, INCLUDING, BUT NOT LIMITED TO THOSE PURSUANT TO FLORIDA STATUTES, CHAPTER 252, AND TOWN CODE CHAPTER 2, ARTICLE VI; PROVIDING FOR PENALTIES FOR VIOLATIONS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND FOR AN EFFECTIVE DATE AND A TERMINATION DATE

WHEREAS, Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

WHEREAS, Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

WHEREAS, a state of local emergency proclamation is allowed for seven (7) days with appropriate extensions pursuant to law; and

WHEREAS, the effects of Hurricane Idalia impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on August 29, 2023, must be extended.

THEREFORE, under the powers vested in it pursuant to Chapter 252, Florida Statutes, and under Chapter 12 of the Town Code of the Town of Fort Myers Beach, the **Town Council does hereby extend the proclamation of a state of local emergency in the Town of Fort Myers Beach, Florida, as identified above beginning at the end of the previously adopted state of local emergency to 7 days thereafter.**

SECTION 1. State of Local Emergency. The following emergency powers and other provisions shall be in force during this state of local emergency:

1. The Town Manager, or designee, is authorized to take all actions necessary and appropriate to protect human life and property, including the promulgation of rules and orders as may be necessary subject to the limitations of Section 252.33, Florida Statutes. This resolution further authorizes the Town Manager, or designee, to utilize all lawful authority granted to the Town of Fort Myers Beach by Federal, State, County, or Town Emergency Management Laws, Rules, Regulations, Orders and, including, but not limited to, Section 252.46 and Section 252.38(3)(a)(1) through Section 252.38(3)(a)(5), Florida Statutes, inclusive.
2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or

order specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.

3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
 - Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
 - Entering into contracts;
 - Incurring obligations;
 - Employment of permanent and temporary workers;
 - Utilization of volunteer workers;
 - Rental of equipment;
 - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.
 - (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.

- (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
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 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
 - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.
8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be

made effective pursuant to this article. Such other lawful action shall include but shall not be limited to, an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefor, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

SECTION 2. Conflicts. Any and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

SECTION 3. Severability. If any provision or portion of this Resolution or the application is held invalid, the invalidity shall not affect other provisions, portions or applications of the Resolution, which can be given effect without the invalid provision, portion or application, and to this end the provisions, portions, or applications of this Resolution are declared severable.

SECTION 4. Effective Date and Termination Date. This Resolution shall take effect immediately upon the termination of the previously adopted state of local emergency and shall terminate automatically seven (7) days from that date unless terminated earlier or extended by a document of equal dignity herewith.

SECTION 5. Direction to Implement. The Town Manager is directed to implement this Resolution.

The foregoing Resolution was adopted 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:

Dan Allers, Mayor
Jim Atterholt, Vice Mayor
John R. King
Bill Veach
Karen Woodson

ADOPTED this 16th day of September 2023 by the Town Council of the Town of Fort Myers Beach, Florida.

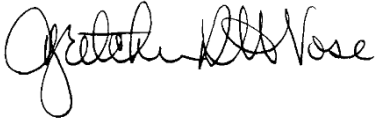
FORT MYERS BEACH TOWN COUNCIL

Dan Allers, 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:**

A handwritten signature in black ink, appearing to read "Matthew D. Vose". The signature is fluid and cursive, with the first name "Matthew" being more prominent than the last name "Vose".

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 16th day of September 2023.

RESOLUTION NUMBER 23-131

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO HURRICANE IDALIA; PROVIDING THE TOWN WITH POWERS, INCLUDING, BUT NOT LIMITED TO THOSE PURSUANT TO FLORIDA STATUTES, CHAPTER 252, AND TOWN CODE CHAPTER 2, ARTICLE VI; PROVIDING FOR PENALTIES FOR VIOLATIONS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND FOR AN EFFECTIVE DATE AND A TERMINATION DATE

WHEREAS, Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

WHEREAS, Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

WHEREAS, a state of local emergency proclamation is allowed for seven (7) days with appropriate extensions pursuant to law; and

WHEREAS, the effects of Hurricane Idalia impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on August 29, 2023, must be extended.

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order specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.

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8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be

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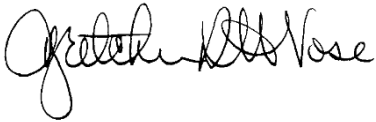
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Jim Atterholt, Vice Mayor
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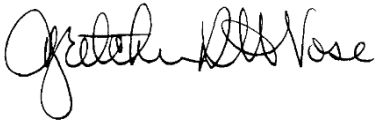
FORT MYERS BEACH TOWN COUNCIL

Dan Allers, 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:**

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Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 16th day of September 2023.

1. **Requested Motion:**

Meeting Date: October 16, 2023

Final Reading and final Public Hearing: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTION 6-325, "OWNER-BUILDER EXEMPTION", OF DIVISION 5, "CONTRACTOR LICENSING", OF ARTICLE II, "BUILDING CODES", OF CHAPTER 6, "MAINTENANCE CODES, BUILDING CODES AND COASTAL REGULATIONS", OF THE CODE OF THE TOWN OF FORT MYERS BEACH, TO CLARIFY WHO IS ELIGIBLE FOR AN OWNER-BUILDER PERMIT, PROVIDING FOR CONFLICTS OF LAW; SCRIVENER'S ERRORS; SEVERABILITY; AND AN EFFECTIVE DATE.

Why the action is necessary:

Allow Owner-Builder permits to be issued as to some types of trusts.

What the action accomplishes:

Owners who own their homes in a trust can get an Owner-Builder permit as long as they have the appropriate type of trust and they otherwise follow all Owner-Builder requirements.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

Gretchen R.H. Vose, Town
Attorney

5. **Background:**

Some residents who own their home in a trust have requested Owner-Builder permits and have been turned down. The current Town Code prohibits issuance of Owner-Builder permits if the property is owned in a trust. This ordinance would allow certain trusts to obtain owner-builder permits.

Attachments:

1. 23-15, Owner Builder Permit

Financial Impact:

None

6. **Alternative Action**

Do not pass ordinance.

7. **Management Recommendations:**

8. **Recommended Approval:**

- , - 10/4/2023
- , - 10/4/2023
- , - 10/4/2023
- , - 10/4/2023

ORDINANCE 23-15

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTION 6-325, "OWNER-BUILDER EXEMPTION", OF DIVISION 5, "CONTRACTOR LICENSING", OF ARTICLE II, "BUILDING CODES", OF CHAPTER 6, "MAINTENANCE CODES, BUILDING CODES AND COASTAL REGULATIONS", OF THE CODE OF THE TOWN OF FORT MYERS BEACH, TO CLARIFY WHO IS ELIGIBLE FOR AN OWNER-BUILDER PERMIT, PROVIDING FOR CONFLICTS OF LAW; SCRIVENER'S ERRORS; SEVERABILITY; 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 recognizes that clarification is necessary as to the identity of persons who are permitted to qualify for an owner-builder building permit; and

WHEREAS, the Town finds that it is in the best interests of the health, safety, and welfare of the Town to make revisions to Section 6-325, "Owner-Builder Exemption". Additions to existing text are shown by underlining, and deletions are shown as ~~striketroughs~~.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:

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. Section 6-325, "Owner-Builder Exemption", of Division 5, "Contractor Licensing", of Article II, "Building Codes", of Chapter 6, "Maintenance Codes, Building Codes and Coastal Regulations", of the Code of the Town of Fort Myers Beach is hereby revised to read as follows:

Sec. 6-235. - Owner-builder exemption.

- (a) Owners of property may act as their own contractor and provide direct on-site supervision themselves of all work not performed by licensed contractors when building or improving:
 - (1) One-family or two-family residences on the owner's property for the occupancy or use of the owners and not offered for sale or lease; and
 - (2) Commercial buildings on the owner's property at a cost not to exceed \$25,000.00 for the occupancy or use of the owners and not offered for sale or lease.

- (b) If, within one year of completion, an owner-builder sells, leases, or offers for sale or lease any building constructed or improved under an owner-builder exemption, the town can presume the construction or improvement was undertaken for the purposes of sale or lease.
- (c) This section does not exempt any person the owner-builder employs, or has a contract with, to act in the capacity of a contractor. The owner cannot delegate the owner's responsibility to directly supervise all work to any other person unless that person is duly licensed in accordance with this code and the work performed is within the scope of that contractor's license.
- (d) To qualify for exemption under this section, an owner cannot be a corporation, company or partnership or trust and must personally appear and sign the building permit application. Similarly to a person through a trust who is allowed to qualify for homestead tax exemption under Sec. 196.041 (2) Fla. Stat., a person who has a possessory right in the person's residence through a trust, which interest is an "equitable title to real estate," as that term is employed in s. 6, Art. VII of the Florida Constitution, may also qualify for an owner-builder permit as to that person's residence. Otherwise, a trust would not be permitted to qualify for an owner-builder permit. The owner must also execute a disclosure statement prepared by the building official acknowledging compliance with all applicable regulations.

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

Section 4. Any typographical errors that do not affect the intent of this Ordinance may be corrected with notice to and authorization of the Town Manager without further process.

Section 5. 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 _____ and seconded by _____, and upon being put to a roll call vote, the result was as follows:

Dan Allers, Mayor
Jim Atterholt, Vice Mayor
John R. King, Council Member
Bill Veach, Council Member
Karen Woodson, Council Member

ADOPTED this __ day of _____, 2023, by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, 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:**

Gretchen R. H. "Becky" Vose, Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this ____ day of _____,
2023.

1. **Requested Motion:**

Meeting Date: October 16, 2023

Final Reading and Public Hearing: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE III., DIVISION 4, SECTION 34-652 ENVIRONMENTALLY CRITICAL (EC) ZONING DISTRICT AND CHAPTER 6, ARTICLE III., DIVISION 2, SECTION 6-366 LOCATION OF CONSTRUCTION NEAR BEACHES; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE.

Why the action is necessary:

The LDC does not allow reconstruction or repair of accessory structures in the EC zoning district. This amendment would allow repair or reconstruction through a special exception.

What the action accomplishes:

Amends the EC zoning district language to allow reconstruction and repair of accessory structures in the EC zoning district, with approval of a special exception.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

Sarah Propst, Planning &
Zoning

5. **Background:**

The 1978 Coastal Construction Control Line (CCCL) marks the beginning of the Environmentally Critical (EC) Zoning District and the Recreation Land Use District. The language pertaining to the EC zoning district was amended in 2020 by ordinance 20-02. The Land Development Code (LDC) limits allowable uses to those that are movable and temporary. The code also lists several items that are allowed by special exception, and they include Sec. 34-652(e)(3) "Redevelopment of existing single family residences, which encroach into the EC district and their customary accessory uses." Sec. 6-366(b).

Staff has been directed to provide recommended language that allows an option for accessory structures to be repaired seaward of the CCCL. The proposed language also expands redevelopment beyond single family residences to include any primary structures, such as condominium buildings that are currently located within the EC district.

Attachments:

1. Ordinance 23-13
2. Exhibit A
3. Exhibit B
4. EC Zoning District Memo
5. Exhibit C Ord 20-02
6. Ordinance 23-13 EC District 9.27.23

Financial Impact:

unknown

6. **Alternative Action**

Do not amend the LDC language.

7. **Management Recommendations:**

Approve the proposed text change.

8. **Recommended Approval:**

, - 10/5/2023
, - 10/11/2023
, - 10/12/2023
, - 10/12/2023

ORDINANCE NO. 23-13

**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA
AMENDING CHAPTER 34, ARTICLE III., DIVISION 4, SECTION 34-652
ENVIRONMENTALLY CRITICAL (EC) ZONING DISTRICT AND
CHAPTER 6, ARTICLE III., DIVISION 2, SECTION 6-366 LOCATION OF
CONSTRUCTION NEAR BEACHES; PROVIDING FOR SEVERABILITY;
CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW 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 recognizes that redevelopment of the Town, following hurricane Ian requires evaluation and updates to the Land Development Code; and

WHEREAS, the Town Council desires updates to the Fort Myers Beach Land Development Code to clarify, improve and create consistency among sections; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on September 12, 2023, 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 7-0, to recommend approval of the requested amendment to Chapter 34., Section 34-652, and Chapter 6, Section 6-366; and

WHEREAS, on October 2, 2023, the Town Council held a first reading of this proposed Ordinance; and

WHEREAS, on October 16, 2023, the Town Council held a second reading of this proposed Ordinance.

NOW THEREFORE IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH, FLORIDA:

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. Chapter 34, Article III., Division 4, Section 34-652 Environmentally Critical (EC) Zoning District and Chapter 6, Article III., Division 2, Section 6-366 Location of

Construction Near Beaches is hereby amended to read as found in **attached Exhibit A** – Sec. 34-652. Environmentally Critical (EC) Zoning District and **attached Exhibit B** – Sec. 6-366. Location of Construction Near Beaches:

Section 3. 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 4. Whenever the requirements or provisions of this ordinance conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive shall apply.

Section 5. 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, or any part thereof, other than the part so declared.

Section 6. 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 Veach and seconded by Vice Mayor Atterholt and upon being put to a roll call vote, the result was as follows:

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John R. King, Council Member	_____
Bill Veach, Council Member	_____
Karen Woodson, Council Member	_____

ADOPTED this 16th day of October 2023, by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, 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:**

Gretchen R. H. ("Becky") Vose, Esq., Town Attorney

EXHIBITS

Exhibit A – Amended Sec. 34-652.

Exhibit B – Amended Sec. 6-366.

Sec. 34-652. - Environmentally Critical (EC) 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 approved filling, may be permitted in the EC zoning district, with appropriate easements as may be required by regulatory agencies.

(d) *Permitted uses and structures.* In the EC district, no land or water use shall be permitted by right except for those uses and developments described below and consistent with the Fort Myers Beach Comprehensive Plan for uses in wetlands and beaches, 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) Outdoor education, in keeping with the intent of the district.

(5) Passive recreation activities on public property. These activities and uses include passive recreation that may requires temporary structures but no alteration of the natural landscape. Any temporary

structure used in conjunction with such uses must comply with all provisions of this land development code (for instance, see chapters 14 and 27).

(6) Outdoor accessory uses, including the rental of beach furniture, when accessory to a multifamily residential or resort building located adjacent to the Gulf of Mexico containing more than 50 dwelling units.

(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)(l).

(9) Temporary, movable structures on private property that do not alter the natural environment. landscape or obstruct pedestrian traffic. Artificial lighting and signs are prohibited unless the lighting or signage complies with §§ 14-5 or 27-51 of this LDC.

(10) Temporary. movable structures that are part of a permitted special event in accordance with § 14-1 I of this LDC.

(11) Licensed beach vendor rental equipment or a temporary movable structure permitted in accordance with § 14-5, ch. 27, and § 34-3151 of this LDC.

a. During the sea turtle nesting season (May 1 through October 31) temporary, movable structures may not be moved across the beach unless:

1. The movement is after 9:00 a.m., or after completion of daily monitoring for turtle nesting activity by a FWCC-authorized marine turtle permit holder, whichever occurs first; and

2. The movement does not disturb any sea turtle or sea turtle nest.

(12) On-grade, pathways through a dune, not to exceed 40 inches in width. subject in compliance with all applicable state and local environmental regulations. No more than one (l) pathway per property.

(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 of this LDC, as well as all other applicable town regulations, the town council may approve with or without conditions as a special exception, the following structures or uses:

(1) Accessory structures, which are accessory to a use permitted by special exception in the EC district.

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

(3) Redevelopment, Reconstruction or renewal of any part of an existing building for the purpose of its maintenance or to correct damage to ~~of existing primary structures single-family residences,~~ which encroach into the EC district and their customary accessory uses. In accordance with § 6-366 (b) of this code of ordinances.

(4) Minor structures, which shall be located as close to the landward edge of the EC zoning district line as possible and must minimize adverse effects on the beach and dune system.

(5) Artificial lighting, in compliance with sea turtle lighting regulations.

(6) Perpendicular dune walkovers on property. when required to protect indigenous plant communities and when elevation change exists, in accordance with § 10-415(b) and subsection (f), below.

(7) Signs, as approved by a planned development.

(f) *Additional regulations:*

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

(2) Any dune walkover must be state approved and constructed consistent with the following requirements:

a. Walkovers must be placed perpendicular to the dune or no more than 30 degrees from

perpendicular. New walkovers cannot be placed closer than 150 feet to the nearest walkover.

b Walkovers must be supported on posts embedded to a sufficient depth to provide structural stability. These posts may not be encased in concrete.

c. Walkovers cannot exceed four feet in width when serving single-family homes or six feet in width otherwise. Alternate widths require a variance.

d. Walkovers must be elevated at least two feet, and no more than 3 feet, above the highest point of the dune and dune vegetation and must extend to the seaward toe of any existing dun and dune vegetation.

e. Walkovers must be constructed in a manner that minimizes short-term disturbance of the dune system. Any dune vegetation destroyed during

construction must be replaced with similar native vegetation that is suitable for beach and dune stabilization and increases either plant density or area of plantings.

f. Walkovers may not be constructed during the sea turtle nesting season (May 1 through October 31).

g. Walkovers may not be attached to any other structures.

(3) Article IV of Ch. 14 pertaining to wetlands protection; and

(4) Coastal zone regulations in§ 34-1575 of this LDC.

Sec. 6-366. - Location of construction near beaches.

(a) All construction must be located a sufficient distance landward of the beach to permit natural shoreline fluctuations and to preserve dune stability. In addition to complying with all other provisions of this code, major structures must be built landward of the 1978 coastal construction control line except where a major structure may be specifically allowed by this code to extend across this line. The 1978 coastal construction control line is depicted on the Future Land Use Map as the seaward edge of land-use categories allowing urban development and as the landward edge of the recreation land-use category. This line is also the landward edge of the EC (Environmentally Critical) zoning district. A copy of the 1978 Coastal Construction Control Line is recorded at Plat Book 48, Page 15, and available at the Ft. Myers Beach Town Hall.

(b) When existing major structures that were built partially or fully seaward of the 1978 coastal construction control line are reconstructed, they shall be rebuilt landward of this line. Exceptions to this rule may be permitted through the planned development zoning process only where it can be scientifically demonstrated that the 1978 coastal construction control line is irrelevant because of more recent changes to the natural shoreline. The town shall seek the opinion of the Florida Department of Environmental Protection in evaluating any requests for exceptions. Exceptions must also comply all state laws and regulations regarding coastal construction.

(1) Repairs to existing primary structures, in the EC zoning district, are permitted without a Special Exception only if the repairs do not exceed 25% of the value of the structure. Expansion of existing primary structures, in the EC zoning district, are not permitted without a Special Exception.

(2) Repairs to accessory structures in the EC zoning district are not permitted without a Special exception.

(3) Additional regulations and considerations for Special Exception approval of repairs in the EC zoning district:

a. Any repairs must comply with all relevant local and state floodplain regulations.

b. Repairs may not damage existing dunes or dune vegetation.

c. Repairs, other than those limited to emergency repairs to enclose a damaged structure, may not be completed during sea turtle nesting season.

d. A new special exception must be applied for each time the structure is repaired.

(c) For newly created lots and parcels, a 50-foot separation between structures and dunes is required by § 10-415(b) of this LDC.



**Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT**

To: Town Council
From: Sarah Propst, Community Development
Date: October 16, 2023
Re: Accessory Structures in the EC Zoning District

BACKGROUND

The 1978 Coastal Construction Control Line (CCCL) marks the beginning of the Environmentally Critical (EC) Zoning District and the Recreation Land Use District. The language pertaining to the EC zoning district was amended in 2020 by ordinance 20-02. This ordinance added needed definitions, clarification and more specific language regarding what can be built, rebuilt and repaired within the EC district.

The current Comprehensive Plan states that seaward of the CCCL residential construction is not allowed and only park structures are allowed seaward of the 1978 CCCL. The Land Development Code (LDC) limits allowable uses to those that are movable and temporary. The code also lists several items that are allowed by special exception, and they include Sec. 34-652(e)(3) "Redevelopment of existing single family residences, which encroach into the EC district and their customary accessory uses." Sec. 6-366(b).

The Town has been approached by a residential condominium that has a pool constructed over the CCCL. Staff has been directed by Council to provide recommended language that allows an option for accessory structures to be repaired seaward of the CCCL. The proposed language also expands redevelopment beyond single family residences to include any primary structures, such as condominium buildings that are currently located within the EC district.

OPTIONS

The Town can continue to disallow the repair of major accessory structures in the EC zoning district. This will result in no changes.

The Town can amend the code to allow repairs of major accessory structures with the approval of a special exception with the criteria provided in the proposed ordinance or additional criteria.



The Town can amend the code in some other fashion that allows repairs of major accessory structures.

SUMMARY

At the September 12th LPA hearing the LPA unanimously recommended the language attached as Exhibit A and Exhibit B to the proposed Ordinance 23-13.

At the October 2nd Town Council hearing the Town Council recommended additional language to clarify the meaning of repair. The definition discussed in the meeting, from the Florida building code, had been incorporated into the Exhibit A. The addition is indicated by a double underline.

The Town may leave the language for construction in the EC zoning district the same or to change it to provide a special exception option for primary or accessory major structures in the EC zoning district, with approval of a special exception. The proposed language includes additional special exception requirements for all major structures seeking a special exception in the EC zoning district.

EXHIBITS

Exhibit A – Proposed Amended 34-652

Exhibit B – Proposed Amended 6-366

Exhibit C – Ordinance 20-02

ORDINANCE NO. 20-02

**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA
AMENDING SECTION 34-652 – EC (ENVIRONMENTALLY CRITICAL)
ZONING DISTRICT, SECTION 34-1575 – COASTAL ZONES, AND
SECTION 6-366 – LOCATION OF CONSTRUCTION NEAR BEACHES –
OF THE FORT MYERS BEACH LAND DEVELOPMENT CODE,
PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S
ERRORS; CONFLICTS OF LAW 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 of Fort Myers Beach, Florida recognizes that development within the Environmentally Critical (EC) zoning district established in the Town of Fort Myers Beach Land Development Code ("LDC") is subject to reasonable regulations as proposed herein to maintain the health, safety and welfare of residents 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 of Fort Myers Beach recognizes that limiting uses and development within the EC zoning district protects people, existing development and the environment; and

WHEREAS, on January 14, 2020 the Town of Fort Myers Beach Local Planning Agency (LPA) reviewed and provided a recommendation of approval to the proposed language by a vote of 6-0; and

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

WHEREAS, on February 18, 2020 the Town Council held a second reading of the proposed Ordinance.

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

^{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 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:

Sec. 34-652. – ~~(EC)~~ Environmentally Critical (EC) 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~~ approved filling, will may be permitted in automatically be assigned to the EC zoning district, with appropriate easements as may be required by regulatory agencies.

(d) *Permitted uses and structures.* In the EC district, no land or water use shall be permitted by right except for those uses and developments described below and consistent with ~~permitted by~~ the Fort Myers Beach Comprehensive Plan for uses in wetlands and 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.~~

(54) Outdoor education, in keeping with the intent of the district.

~~(65) Passive Recreation activities on public property. residential accessory uses, including the rental of beach furniture when accessory to a multifamily residential building located adjacent to the Gulf of Mexico containing more than 50 dwelling units, and resort accessory uses that are performed outdoors. These activities and uses include passive recreation and active recreation that may requires no permanent temporary structures or but no 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 land development code (for instance, see chapters 14 and 27). Artificial lighting may not be installed in the EC zoning district unless approved by special exception or as a deviation in the planned development rezoning process (see §§ 6-366 and 14-76).~~

(6) Outdoor Residential accessory uses, including the rental of beach furniture, when accessory to a multifamily residential or resort building located adjacent to the Gulf of Mexico containing more than 50 dwelling units, ~~and resort accessory uses that are performed outdoors.~~

(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).

(9) Temporary, movable and Occasional minor structures on private property that do not alter the natural environment, landscape or obstruct pedestrian traffic. Artificial lighting and signs are prohibited unless the lighting or signage complies with §§ 14-5 or 27-51 of this LDC.

(10) Temporary, movable structures that are part of a permitted special event in accordance with § 14-11 of this LDC.

(11) Licensed beach vendor rental equipment or a temporary movable structure permitted in accordance with § 14-5, ch. 27, and § 34-3151 of this LDC.

a. During the sea turtle nesting season (May 1 through October 31) temporary, movable structures may not be moved across the beach unless:

1. The movement is after 9:00 a.m., or after completion of daily monitoring for turtle nesting activity by a FWCC-authorized marine turtle permit holder, whichever occurs first; and

2. The movement does not disturb any sea turtle or sea turtle nest.

(12) On-grade, pathways through a dune, not to exceed 40 inches in width, subject to compliance with all applicable state and local environmental regulations. No more than one (1) pathway per property.

(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 of this LDC, as well as all other applicable town regulations, the town council ~~may permit any specific use or structure from the following list, may approve with or without conditions~~ as a special exception, ~~subject to conditions set forth in this chapter and in the resolution of approval~~ the following structures or uses:

(1) Accessory structures, ~~to include structures, or impervious surface areas~~ which are accessory to a use permitted ~~by right~~ or by special exception in the EC district.

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

(3) Redevelopment of existing ~~S~~single-family residences, which encroach into the EC district and ~~its~~ their customary accessory uses ~~at a maximum density of one dwelling unit per 20 acres.~~

(4) ~~Minor structures, that are not permitted by right may be approved in the EC zoning district through the special exception process or as deviations in the planned development rezoning process. Such minor structures which~~

may include stairways, walkways, ramps, fences, walls, decks, bathhouses, viewing platforms, gazebos, chickees, patios, and other paved areas. These structures which shall be located as close to the landward edge of the EC zoning district line as possible and must minimize adverse effects on the beach and dune system. See §§ 34-88, and 34-932(b), and 34-652 of this LDC for details.

(5) Artificial lighting, in compliance with sea turtle lighting regulations.

(6) Perpendicular dune walkovers on property, when required to protect indigenous plant communities and when elevation change exists, in accordance with § 10-415(b) and subsection (f), below.

(7) Signs, as approved by a planned development.

(f) Additional regulations. See additional requirements in:

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

(2) Any dune walkover must be state approved and constructed consistent with the following requirements:

a. Walkovers must be placed perpendicular to the dune or no more than 30 degrees from perpendicular. New walkovers cannot be placed closer than 150 feet to the nearest walkover.

b Walkovers must be supported on posts embedded to a sufficient depth to provide structural stability. These posts may not be encased in concrete.

c. Walkovers cannot exceed four feet in width when serving single-family homes or six feet in width otherwise. Alternate widths require a variance.

d. Walkovers must be elevated at least two feet, and no more than 3 feet, above the highest point of the dune and dune vegetation and must extend to the seaward toe of any existing dune and dune vegetation.

e. Walkovers must be constructed in a manner that minimizes short-term disturbance of the dune system. Any dune vegetation destroyed during

construction must be replaced with similar native vegetation that is suitable for beach and dune stabilization and increases either plant density or area of plantings.

f. Walkovers may not be constructed during the sea turtle nesting season (May 1 through October 31).

g. Walkovers may not be attached to any other structures.

(23) Article IV of Ch. 14 pertaining to wetlands protection; and

(34) Coastal zone regulations in § 34-1575 of this LDC.

Sec. 34-1575. - Coastal zones.

(a) Development, other than minor structures as defined in § ~~34-26-333~~ of this LDC, is prohibited seaward of the 1978 coastal construction control line. This line has been incorporated into the future land use map of the Fort Myers Beach Comprehensive Plan as the landward boundary of the beachfront recreation category (see also Policy 5-D-1.v), and as the landward boundary of the EC zoning district (see § 34-652 of this chapter). Regulations for ~~minor structures~~ development and activities in the EC zoning district (seaward of the 1978 coastal construction control line) are found in § 6-366 and § 34-652 of this LDC.

~~(b) Minor structures do not include structures supported by or extensions of the principal structure. The minor structures identified as acceptable in this section are considered expendable under design wind, wave, and storm forces.~~

~~(eb) No vehicular or foot traffic from developments or access strips to crossovers will be allowed to cross over directly on dune ridges or beach escarpments. Access to the beach must be via elevated dune walkovers (see §§ ~~34-652-366~~ and ~~10-415(b)~~ of this LDC).~~

~~(ec) No development will be permitted which alters the dune system, except for narrow pathways as permitted by § 34-652(d)(10) of this LDC and excavations for the installation of pilings necessary for the construction of elevated structures as permitted by the state department of environmental protection.~~

(d) Only dune vegetation may be planted in the EC zoning district. Dune vegetation means plant species typically growing on the dune as defined by the Florida Natural Areas Inventory. Characteristic species include sea oats, railroad vines, bitter panicum and beach elder.

Sec. 6-366. - Location of construction near beaches.

~~(a) Except for beach renourishment and for minor structures such as lifeguard support stands and beach access ramps, a~~ All construction must be located a sufficient distance landward of the beach to permit natural shoreline fluctuations and to preserve dune stability. In addition to complying with all other provisions of this code, major structures must be built landward of the 1978 coastal construction control line except where a major structure may be specifically allowed by this code to extend across this line. The 1978 coastal construction control line is depicted on the Future Land Use Map as the seaward edge of land-use categories allowing urban development and as the landward edge of the recreation land-use category. This line is also the landward edge of the EC (Environmentally Critical) zoning district. A copy of the 1978 Coastal Construction Control Line is recorded at Plat Book 48, Page 15, and available at the Ft. Myers Beach Town Hall.

~~(b) Occasional minor structures are permitted by right in the EC zoning district if they are placed on private property and do not alter the natural landscape or obstruct pedestrian traffic (examples are mono-post shade structures, movable picnic tables, beach volleyball courts, and similar recreational equipment, see § 34-652 of this LDC). Artificial lighting and signs may not be installed in the EC zoning district unless approved by special exception or as a deviation in the planned development rezoning process or unless explicitly permitted by §§ 14-5 or 27-51 of this LDC.~~

~~(1) Other provisions of this code provide for certain other minor structures in the EC zoning district:~~

~~a. Perpendicular dune walkovers are permitted by right in accordance with § 10-415(b) and subsection (d), below.~~

~~b. Some temporary structures such as tents may be permitted through a temporary use permit for special events held on the beach, in accordance with § 14-11 of this LDC.~~

~~e. Licensed beach vendors may place rental equipment and/or a temporary movable structure in accordance with § 14-5, Ch. 27, and § 34-3151 of this code.~~

~~(2) Minor structures that are not permitted by right may be approved in the EC zoning district through the special exception process or as deviations in the planned development rezoning process. Such minor structures may include stairways, walkways, ramps, fences, walls, decks, bathhouses, viewing platforms, gazebos, chickees, patios, and other paved areas. These structures should be located as close to the landward edge of the EC zoning district as possible and must minimize adverse effects on the beach and dune system. See §§ 34-88, 34-932(b), and 34-652 of this LDC for details.~~

~~(3) Minor structures not qualifying by right, by special exception, or through another provision of this code are not permitted in the EC zoning district. See § 34-652 of this LDC for details.~~

(e**b**) When existing major structures that were built partially or fully seaward of the 1978 coastal construction control line are reconstructed, they shall be rebuilt landward of this line. Exceptions to this rule may be permitted through the planned development zoning process only where it can be scientifically demonstrated that the 1978 coastal construction control line is irrelevant because of more recent changes to the natural shoreline. The town shall seek the opinion of the Florida Department of Environmental Protection in evaluating any requests for exceptions. Exceptions must also comply all state laws and regulations regarding coastal construction.

(1) Repairs to existing primary structures, in the EC zoning district, are permitted without a Special Exception only if the repairs do not exceed 25% of the value of the structure. Expansion of existing primary structures, in the EC zoning district, are not permitted without a Special Exception.

(2) Repairs to accessory structures in the EC zoning district are not permitted.

~~(d) New and expanded beachfront development must construct state approved dune walkover structures at appropriate crossing points (see § 10-415(b) of this LDC). All walkovers must meet these criteria in addition to state approval:~~

~~(1) Walkovers must be placed perpendicular to the dune or no more than 30 degrees from perpendicular. New walkovers cannot be placed closer than 150 feet to the nearest walkover.~~

~~(2) Walkovers must be supported on posts embedded to a sufficient depth to provide structural stability. These posts may not be encased in concrete.~~

~~(3) Walkovers cannot exceed four feet in width when serving single family homes or six feet in width otherwise.~~

~~(4) Walkovers must be elevated at least two feet above the highest point of the dune and dune vegetation and must extend to the seaward toe of any existing dune and dune vegetation.~~

~~(5) Walkovers must be constructed in a manner that minimizes short term disturbance of the dune system. Any dune vegetation destroyed during construction must be replaced with similar native vegetation that is suitable for beach and dune stabilization.~~

~~(6) Walkovers may not be constructed during the sea turtle nesting season (May 1 through October 31).~~

(ec) For newly created lots and parcels, a 50-foot separation between structures and dunes is required by § 10-415(b) of this LDC.

Sec. 34-2 Definitions

Accretion means the increase of land by the action of natural forces or by human addition of sand or soils.

Minor structure is a small, accessory structure that is considered expendable under design wind, wave, and storm forces and are of a size and design to have a minor impact on the beach and dune system. Minor structures do not include structures supported by or extensions of the principal structure.

Recreation, passive means, recreation that involves existing natural resources and has a minimal impact. Passive activities include but are not limited to, walking/jogging, picnicking and birdwatching.

Dune Walkover: Walkovers are designed to be minor, expendable structures that pose a minimal interference with coastal processes and generate minimal amounts of debris. Walkovers constructed across native beach and dune vegetation should be post-supported and elevated a sufficient distance above the existing or proposed vegetation to allow for sand build-up and clearance above the vegetation. Whenever possible, stairways and ramps leading from the dune bluff or crest down to the beach should be designed with posts that completely span the seaward slope of the dune. The structure should be designed to minimize the quantity of material used in construction, such as avoiding the use of vertical wood pickets, and reducing the length and width of construction on the beach.

Major Structures which, as a result of design, location, or size could cause an adverse impact to the beach and dune system. Major structures include, nonhabitable major structures such as roads, bridges, storm water outfalls, bathhouses, cabanas, swimming pools, and garages, as well as any habitable structures.

Section 3. 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 4. 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 5. 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.

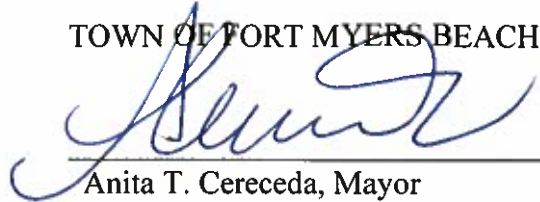
Section 6. This ordinance shall become effective upon adoption by the Town Council.

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

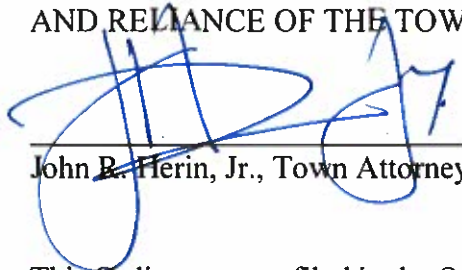
TOWN OF FORT MYERS BEACH


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 B. Herin, Jr., Town Attorney

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

NOTICE OF ZONING DISTRICT USE CHANGE AND PUBLIC HEARING

Notice is hereby given that the Town Council of the Town of Fort Myers Beach will hold two public hearings at two separate meetings both beginning at 9:00 AM on Monday, October 2, 2023 and Monday, October 16, 2023 regarding the ordinance listed below. This meeting and public hearing will take place at Diamondhead Beach Resort, 2000 Estero Boulevard, Fort Myers Beach, FL 33931.

ORDINANCE 23-13

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE III., DIVISION 4, SECTION 34-652 ENVIRONMENTALLY CRITICAL (EC) ZONING DISTRICT AND CHAPTER 6, ARTICLE III., DIVISION 2, SECTION 6-366 LOCATION OF CONSTRUCTION NEAR BEACHES; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE.

If any person should choose to appeal a decision made at this public hearing, such person would need a record of the proceedings, and for that purpose may need to ensure that a verbatim record of the proceedings is made, which record indicates the testimony and evidence upon which the appeal is to be based.

Copies of the full ordinance text are available at Fort Myers Beach temporary Town Hall, 2545 Estero Blvd. Call 239-765-0202 for more information. Town Hall is open between the hours of 8:30 AM and 4:30 PM. Reasonable accommodations will be made in accordance with the Americans with Disabilities Act. If you are in need of reasonable accommodation, contact Town Hall at 239-765-0202. Amy Baker, Town Clerk.

1. **Requested Motion:**

Meeting Date: October 16, 2023

Final Reading and Public Hearing: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE II., DIVISION 6, SECTION 34-268 ADMINISTRATIVE SETBACK VARIANCES; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE.

Why the action is necessary:

The proposed language will correct an error that requires all administrative variances to meet criteria only intended for the cottage lots and allow homes to be raised or a second story to be built in the same footprint when setbacks are nonconforming.

What the action accomplishes:

Adoption of the new language will fix an error and allow nonconforming buildings to add height.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

5. **Background:**

Following the destruction of all of the cottage structures on the Town's "Cottage Lots", the Town adopted new language for Sec. 34-268 Administrative Setback Variances with the adoption of Ordinance 23-03. This added language allowed the construction of homes that did not meet the setbacks, on nonconforming lots, within specific parameters. Staff recognized an error in the language that requires all administrative variances to meet criteria that should only apply to the "cottage lot" administrative variances. The proposed change to the language in (b)(3) addresses this error.

Since the LPA hearing, staff has become aware of an issue regarding raising homes or building second floors on houses that have nonconforming setbacks. Code section 34-268((a)(1) would allow a home with nonconforming setbacks to be raised or a second story to be built on a home with nonconforming setbacks, however, 34-268(a)(1)a disallows remodeling or additions to existing structures with nonconforming setbacks to receive an administrative variance if it increases the height of the structure. Staff asks that the Town Council provide input regarding the proposed change to the language to remove the limitation on additional height.

Attachments:

1. Ordinance 23-14
2. Exhibit A
3. Admin Variance Memo
4. Exhibit B Ord 23-03

Financial Impact:

unknown

6. **Alternative Action**

Propose changes to the language

7. **Management Recommendations:**

Adopt ordinance 23-14 to amend the administrative variance language.

8. **Recommended Approval:**

, - 10/5/2023
, - 10/5/2023
, - 10/5/2023
, - 10/5/2023

ORDINANCE NO. 23-14

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE II., DIVISION 6, SECTION 34-268 ADMINISTRATIVE SETBACK VARIANCES; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW 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 recognizes that redevelopment of the Town, following hurricane Ian requires evaluation and updates to the Land Development Code; and

WHEREAS, the Town Council desires updates to the Fort Myers Beach Land Development Code to clarify, improve and create consistency among sections; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on September 12, 2023, 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 7-0, to recommend approval of the requested amendment to Chapter 34., Section 34-268; and

WHEREAS, on October 2, 2023, the Town Council held a first reading of this proposed Ordinance; and

WHEREAS, on October 16, 2023, the Town Council held a second reading of this proposed Ordinance.

NOW THEREFORE IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH, FLORIDA:

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. Chapter 34, Article II., Division 6, Section 34-268 Administrative Setback Variances is hereby amended to read as found in **attached Exhibit A** – Amended Sec. 34-268.

Section 3. 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 4. Whenever the requirements or provisions of this ordinance conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive shall apply.

Section 5. 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, or any part thereof, other than the part so declared.

Section 6. 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 Veach and seconded by Vice Mayor Atterholt and upon being put to a roll call vote, the result was as follows:

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John R. King, Council Member	_____
Bill Veach, Council Member	_____
Karen Woodson, Council Member	_____

ADOPTED this 16th day of October 2023, by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, 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:**

Gretchen R. H. ("Becky") Vose, Esq., Town Attorney

EXHIBITS

Exhibit A – Amended Sec. 34-268

Sec. 34-268. - Administrative setback variances.

- (a) Upon written request using a form prepared by the director, the director is authorized to modify the setbacks in §§ 34-638, 34-1174—34-1176, and 34-1744 of this chapter under the following circumstances:
- (1) Street, rear, side, or waterbody setbacks may be modified to permit the remodeling of or additions to existing structures that are nonconforming with regard to a specific setback so long as the remodeling or addition will not result in:
 - a. ~~An increase in the height of the structure; or~~
 - b. A further diminution of the setback. The director may approve bay windows, chimneys, and similar architectural features that may encroach further into the setback provided the encroachment does not protrude beyond the existing overhang of the building.
 - (2) Street, rear, side, or waterbody setbacks may be modified to permit the construction of a handicapped access appurtenant to any existing structure.
 - (3) Street, rear, side, or waterbody setbacks may be modified to allow the replacement of stairs or decking that provides access into an existing dwelling unit.
 - (4) Street, rear, side, or waterbody setbacks may be modified to legitimize minor errors, not exceeding 1 foot, in setbacks at the time of construction.
 - (5) Street, rear, or side setbacks may be modified for a residential lot with an unusual shape or orientation where, for instance, side and rear setbacks should be reversed.
 - (6) Buildings or structures that are not in compliance with current setback regulations and which can be proven to have been permitted may also be reviewed by the director for consideration under this section.
 - (7) Requirements for large satellite dishes may be modified as provided in § 34-1175(a)(6) of this chapter.
 - (8) Nonconforming lots that receive an affirmative Minimum Use Determination (see § 34-3274) may qualify for an administrative setback variance.
- (b) The director, prior to approving the modifications, must make the following findings of fact:
- (1) There are no apparent deleterious effects upon the adjoining property owners;
 - (2) The modifications will not have an adverse impact on the public health, safety and welfare including safe access to the subject property or properties which utilize a common access easement; and
 - (3) For administrative setbacks on nonconforming lots, found in Sec. 34-268(a)(8), ~~The~~ modifications will be the minimum required to allow a home with a footprint of the same square footage as was previously legally constructed on that property and one story in height, above flood elevation, with no enclosure below base flood elevation.
 - (4) Modified setbacks may not be less than 5 feet except in instances where homes share a common wall, such as a duplex or townhome.
 - (5) Modified setbacks may not be encroached by mechanical equipment or structures.
- (c) Decisions by the director pursuant to this section are discretionary and may not be appealed in accordance with § 34-86 of this chapter.

(Ord. No. [21-04](#), § 2, 6-7-2021)



**Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT**

To: Town Council
From: Sarah Propst, Community Development
Date: October 16, 2023
Re: Minor Amendment to Administrative Variance Language

BACKGROUND

Following the destruction of all of the cottage structures on the Town's "Cottage Lots", the Town adopted new language for Sec. 34-268 Administrative Setback Variances with the adoption of Ordinance 23-03. This added language allowed the construction of homes that did not meet the setbacks, on nonconforming lots, within specific parameters.

Staff recognized an error in the language that requires all administrative variances to meet criteria that should only apply to the "cottage lot" administrative variances. The proposed language change to 34-268(b)(3) addresses this error.

After the LPA hearing was held, staff was made aware of an issue that the Town Council may want to modify in this code section. 34-268(a)(1) allows street, rear, side, or waterbody setbacks to be modified to permit the remodeling of or additions to existing structures that are nonconforming with regard to a specific setback so long as the remodeling or addition does not increase the height of the structure or further decrease the setbacks. Many home owners are hoping to raise their home on the current foundation or pilings or to build a second floor on top of the existing home to bring the home into compliance with flood regulations. These homes may not meet current setbacks and the addition will not further decrease the setbacks but will increase the height.

Staff asks that the Town Council consider whether it wishes to allow homes with nonconforming setbacks to be raised on the existing footprint, with approval of an administrative variance. This would not require that the raised portion or the new second story would meet current setbacks.

SUMMARY

At the September 12th LPA hearing the LPA unanimously recommended approval of the proposed ordinance to correct this error.



The LPA did not discuss the language in (a)(1)a. that does not allow administrative variances if there is a proposed height increase. This particular issue was raised shortly after that initial LPA hearing.

The language before you in (b)(3) is intended to correct an error that requires all types of administrative variances to meet criteria intended only for the “cottage lot” administrative variances. Staff asks that the LPA consider the proposed language and determine if this is an appropriate correction or if other language would accomplish this goal more clearly.

The potential deletion in (a)(1)a. is intended to allow a common request to be approved through an administrative variance, rather than a full variance.

EXHIBITS

Exhibit A – Proposed Amended Language

Exhibit B – Ordinance 23-03

ORDINANCE NO. 23-03

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE V., DIVISION 4, SECTIONS 34-3273 GENERAL REQUIREMENTS FOR RESIDENTIAL USES ON NONCONFORMING LOTS, SECTION 34-3274 MINIMUM USE DETERMINATIONS, AND CHAPTER 34, ARTICLE II., DIVISION 6, SECTION 34-268 ADMINISTRATIVE SETBACK VARIANCES; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW 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 recognizes that redevelopment of the Town, following hurricane Ian requires evaluation and updates to the Land Development Code; and

WHEREAS, the Town Council desires updates to the Fort Myers Beach Land Development Code to clarify, improve and create consistency among sections; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on January 18, 2023, 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 7-0, to recommend approval of the requested amendment to Chapter 34., Section 34-3273, Section 34-3274 and Section 34-268; and

WHEREAS, on February 6, 2023, the Town Council held a first reading of this proposed Ordinance; and

WHEREAS, on February 21, 2023, the Town Council held a second reading of this proposed Ordinance.

NOW THEREFORE IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH, FLORIDA:

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. Chapter 34, Article V., Division 4, Sections 34-3273 General Requirements

for Residential Uses on Nonconforming Lots, Section 34-3274 Minimum Use Determinations, and Chapter 34, Article II., Division 6, Section 34-268 Administrative Setback Variances is hereby amended to read as found in **attached Exhibit A** – Amended Residential Uses and Minimum Use and **attached Exhibit B** – Amended Administrative Setback Variances:

Section 3. 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 4. Whenever the requirements or provisions of this ordinance conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive shall apply.

Section 5. 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, or any part thereof, other than the part so declared.

Section 6. 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 Vice Mayor Atterholt, and upon being put to a roll call vote, the result was as follows:

Dan Allers, Mayor	aye
Jim Atterholt, Vice Mayor	aye
John R. King, Council Member	aye
Bill Veach, Council Member	aye
Karen Woodson, Council Member	nay

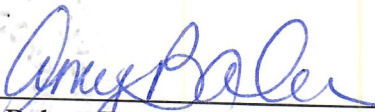
ADOPTED this 21st day of February, 2023, by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH



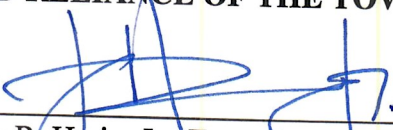
Dan Allers, Mayor

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

EXHIBITS

Exhibit A – Amended Sec. 34-3273 and Sec. 34-3274
Exhibit B – Amended Sec. 34-268

Sec. 34-3273. - General requirements for residential uses on nonconforming lots.

Nonconforming lots may be developed subject to the following provisions:

- (1) All other regulations of this chapter shall be met, except as modified by this division.
- (2) A residential building may be placed on a single nonconforming lot provided the lot receives an affirmative minimum use determination per Sec. 34-3274 or has at least 40 feet in width, 75 feet in depth.
- (3) Any development on nonconforming lots must comply with all density restrictions of the Fort Myers Beach Comprehensive Plan.
 - a. Density computations shall be in accordance with § 34-632 of this chapter.
 - b. If density computations do not allow even one dwelling unit on a nonconforming lot, one single-family residence may still be permitted if a minimum-use determination is obtained in accordance with § 34-3274, below.
- (4) No division of any nonconforming lot may be permitted which creates a lot with width, depth, or area below the minimum requirements stated in this chapter, except for combinations and redivisions in accordance with § 34-3275 of this chapter.
- (5) The burden of proof for demonstrating that a lot is a nonconforming lot in accordance with this division, and lawfully existed at the specified date, shall be with the owner.
- (6) The remaining lot after condemnation shall be treated in accordance with § 34-3206 of this chapter.
- (7) A nonconforming lot, which previously had or currently has a residence constructed on it, and receives an affirmative minimum use determination per Sec. 34-3274 may request an administrative setback variance in accordance with sec. 34-268.

(Ord. No. [21-04](#), § 2, 6-7-2021)

Sec. 34-3274. - Minimum use determinations.

- (a) A single-family residence may be constructed on a nonconforming lot which does not comply with the density requirements of the Fort Myers Beach Comprehensive Plan, provided the owner receives a favorable administrative interpretation of the single-family residence provision (also known as a minimum use determination) in accordance with ch. 15 of the Fort Myers Beach Comprehensive Plan, and the criteria included in subsection 34-3274(b). Density created through this process may not be transferred to any other property.
- (b) To qualify for a minimum use determination, the following additional requirements must be met:
 - (1) *Minimum lot requirements:*
 - a. The property is a legally platted, recorded lot; and
 - b. The property has ~~direct access~~ to a developed, public right-of-way by an approved access easement; and
 - c. The property has access to and will be connected to utilities; and
 - d. The lot is located within a future land use and zoning district that permits construction of a single-family residence.
 - (2) *Unplatted lot (a lot that is described in metes and bounds only and does not exist as part of a recorded subdivision) requirements:*

- a. The owner of any unplatted lot must provide evidence of the lot's existence prior to town incorporation, (January 1, 1996), and the lot's current legal description must match the lot's legal description prior to incorporation;
- b. The property has ~~direct~~ access to a developed, public right-of-way by an approved access easement ; and
- c. The property has access to and will be connected to utilities.
- (c) Lots qualifying for a minimum use determination may not place the home, accessory structures, or driveways on any land in the "wetlands" or "recreation" category on the future land use map of the comprehensive plan.
- (d) The rights granted by a minimum use determination run with the lot and are available to any subsequent owner if the lot is transferred in its entirety.
- (e) Applications for a minimum use determination shall be filed with the town clerk in accordance with ch. 15 of the comprehensive plan. Complete applications will be reviewed by the legal counsel for the local planning agency (see § 34-124(3) of this chapter) and may be referred to the local planning agency for a decision (see § 34-120(6) of this chapter).

([Ord. No. 20-01](#) , § 2, 2-18-2020)

Sec. 34-268. - Administrative setback variances.

- (a) Upon written request using a form prepared by the director, the director is authorized to modify the setbacks in §§ 34-638, 34-1174—34-1176, and 34-1744 of this chapter under the following circumstances:
- (1) Street, rear, side, or waterbody setbacks may be modified to permit the remodeling of or additions to existing structures that are nonconforming with regard to a specific setback so long as the remodeling or addition will not result in:
 - a. An increase in the height of the structure; or
 - b. A further diminution of the setback. The director may approve bay windows, chimneys, and similar architectural features that may encroach further into the setback provided the encroachment does not protrude beyond the existing overhang of the building.
 - (2) Street, rear, side, or waterbody setbacks may be modified to permit the construction of a handicapped access appurtenant to any existing structure.
 - (3) Street, rear, side, or waterbody setbacks may be modified to allow the replacement of stairs or decking that provides access into an existing dwelling unit.
 - (4) Street, rear, side, or waterbody setbacks may be modified to legitimize minor errors, not exceeding 1 foot, in setbacks at the time of construction.
 - (5) Street, rear, or side setbacks may be modified for a residential lot with an unusual shape or orientation where, for instance, side and rear setbacks should be reversed.
 - (6) Buildings or structures that are not in compliance with current setback regulations and which can be proven to have been permitted may also be reviewed by the director for consideration under this section.
 - (7) Requirements for large satellite dishes may be modified as provided in § 34-1175(a)(6) of this chapter.
 - (8) ~~Certain non~~Nonconforming lots that receive an affirmative Minimum Use Determination (see § 34-32743) may qualify for an administrative setback variance.
- (b) The director, prior to approving the modifications, must make the following findings of fact:
- (1) There are no apparent deleterious effects upon the adjoining property owners;
 - (2) The modifications will not have an adverse impact on the public health, safety and welfare including safe access to the subject property or properties which utilize a common access easement; and
 - (3) The modifications will be the minimum required to allow a home with a footprint of the same square footage as was previously legally constructed on that property and one story in height, above flood elevation, with no enclosure below base flood elevation.
 - (4) Modified setbacks may not be less than 5 feet except in instances where homes share a common wall, such as a duplex or townhome.
 - (5) Modified setbacks may not be encroached by mechanical equipment or structures.
- (c) Decisions by the director pursuant to this section are discretionary and may not be appealed in accordance with § 34-86 of this chapter.

(Ord. No. 21-04, § 2, 6-7-2021)

1. **Requested Motion:**

Meeting Date: October 16, 2023

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING AN AGREEMENT BETWEEN THE TOWN AND COASTAL ENGINEERING CONSULTANTS, INC. FOR DEBRIS DATA COLLECTING AND ASSESSMENT SURVEY IN TOWN OF FORT MYERS BEACH CANALS FOR A COST NOT TO EXCEED \$42,020.00; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

The debris in canals is difficult to see due to turbidity and tannins in the back bay waters of Fort Myers Beach. Sidescan technology will locate and tabulate debris targets to provide marine debris contractors reliable data for scope of work to remove debris.

What the action accomplishes:

Purpose of information is to provide contractors reliable data for scope of work to remove debris.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

The Town of Fort Myers Beach was overwashed by historic storm surge due to Hurricane Ian resulting in sand and material deposition into the canals causing navigational hazards and impeding stormwater conveyance endangering public safety. In addition, The Town of Fort Myers Beach suffered catastrophic destruction of properties due to Hurricane Ian resulting in deposition of construction and demolition debris into adjacent canals causing navigational hazards endangering public health and safety.

Attachments:

1. 231016 Resolution - CEC STA Canal Debris Sidescan
2. ATTACHMENT A - 23313_STA 20 _ Post-Ian Residential Canal Debris Assessment Survey 20231004
3. Canal Debris
4. Canal Overwash Sand

Financial Impact:

The cost of the marine debris damage assessment in the canals is expected to be reimbursed by FEMA and FDEM.

6. **Alternative Action**

Do not survey and assess debris in canals.

7. **Management Recommendations:**

Approve Supplemental Task Order #20 of Contract # RFQ-20-06-AD.

8. **Recommended Approval:**

- , - 10/5/2023
, - 10/11/2023

, - 10/11/2023
, - 10/12/2023
, - 10/12/2023

RESOLUTION NUMBER 23-133

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING AN AGREEMENT BETWEEN THE TOWN AND COOL-BINZ OF GREATER NAPLES TO LEASE A MOBILE OFFICE FOR A COST OF \$8,305.99; 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 Harbormaster is responsible for the enforcement of the rules and regulations for the Matanzas Mooring Field, and

WHEREAS, the Town Council has determined it is in the best interest of the Town to approve the requested Agreement.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:

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. The Town Council hereby approves the Agreement between the Town and Cool-Binz of Greater Naples to lease a mobile office for a cost of \$8,305.99. A copy of the Agreement is attached hereto as Attachment "A".

The foregoing Resolution 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:

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John R. King	_____
Bill Veach	_____
Karen Woodson	_____

ADOPTED this 16th day of October 2023 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, 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:**

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this _____ day of _____, 2023.

**TOWN OF FORT MYERS BEACH SERVICE AGREEMENT
SUPPLEMENTAL TASK AUTHORIZATION**

X Supplemental Task Authorization

NO.: 20

CONTRACT/PROJECT NAME: Post-Ian Canal Debris Assessment Survey

CONSULTANT: Coastal Engineering Consultants, Inc.

PROJECT NO.: _____

SOLICIT NO.: RFQ 17-11

CONTRACT NO.: RFQ-20-06-AD

REQUESTED BY: Chadd Chustz, Environmental Project Manager DATE OF REQUEST: 9/25/2023

Upon the completion and execution of this Supplemental Task Authorization by both parties, the Consultant/Provider is authorized to and shall proceed with the following:

EXHIBIT "A" SCOPE OF PROFESSIONAL SERVICE: DATED: October 4, 2023

EXHIBIT "B" COMPENSATION & METHOD OF PAYMENT: DATED: October 4, 2023

EXHIBIT "C" TIME AND SCHEDULE OF PERFORMANCE: DATED: October 4, 2023

EXHIBIT "D" CONSULTANT'S/PROVIDER'S ASSOCIATED
SUB-CONSULTANT(S)/SUB-CONTRACTORS: DATED: October 4, 2023

It is understood and agreed that the acceptance of this modification by the CONSULTANT/PROVIDER constitutes an accord and satisfaction.

RECOMMENDED:

By: _____
Department Director Date

By: _____
Contracts Manager Date

ACCEPTED:

By:  _____
Consultant/Provider Date October 4, 2023

TOWN APPROVAL:

By: _____
Town Manager Date

SCOPE OF PROFESSIONAL SERVICES
POST-IAN CANAL DEBRIS ASSESSMENT SURVEY

Task 1. Data Collection and Assessment

Establish survey control on the uplands for a Real Time Kinematic (RTK) Base Station. Deploy a land-based RTK Global Positioning System (GPS) reference station. The system will transmit corrections to a vessel-mounted RTK GPS system resulting in accurate vessel positioning as well as real-time water level determination at the location of the survey vessel.

Conduct a sidescan sonar survey of 31 residential canals, approximately 11 miles, on Estero Island. Two longitudinal centerlines shall be surveyed in each canal to identify submerged debris. See attached map depicting canals to be surveyed. Sidescan data will be tabulated on targets identified by the survey that may adversely impact navigation. The table shall include target coordinates, approximate size, and water depth. Concurrent with the sidescan sonar survey, collect bathymetric data along each canal centerline. Purpose of information is to provide contractors reliable data for scope of work to remove debris.

Standard calibrations will be performed on-site including navigation control checks and bar checks. The survey will be conducted in accordance with U.S. Army Corps of Engineers Hydrographic Surveying Manual EM-1110-2-100 and meet State of Florida standards including the requirements set forth in Chapter 5J-17 (F.A.C.) Florida Administrative Code.

All survey units will be in feet and referenced horizontally to the Florida State Plane Coordinate System, West Zone (NAD83/07 Florida West Zone). Sounding data will be feet referenced vertically, in real-time utilizing the RTK GPS installed onboard the vessel, to the NAVD88 vertical datum.

The deliverables will include the one (1) electronic PDF file of tabulated targets and one (1) XYZ file of bathymetric data.

Task 2. Data Collection Contingencies

Because of the complex nature of the work involving marine surveying and instrument deployment, a contingency budget is included to accommodate complications with the data collection such as weather, unforeseen site conditions, and GPS/satellite issues. The budget includes a contingency for potential downtime for weather or additional data collection as determined by CEC and approved by the Town.

Task 3. Owner Coordination

Coordination with Town and FEMA consultant, including attendance of meetings with Town and representatives, to review reports and recommendations, and provide written or phone correspondence in reference to project.

EXHIBIT BDate: October 4, 2023COMPENSATION AND METHOD OF PAYMENTPOST-IAN CANAL DEBRIS ASSESSMENT SURVEYSection 1. BASIC SERVICES/TASK(S)

The TOWN shall compensate the CONSULTANT for providing and performing the Task(s) set forth and enumerated in EXHIBIT "A", entitled "SCOPE OF PROFESSIONAL SERVICES", as follows:

NOTE: A Lump Sum (L.S.) or Not-to-Exceed (N.T.E.) amount of compensation to be paid the CONSULTANT should be established and set forth below for each task or sub-task described and authorized in Exhibit "A". In accordance with Agreement Article 5.02(2) "Method of Payment", tasks to be paid on a Work-in-Progress payment basis should be identified (WIPP).

Task Number	Task Title	Amount of Compensation	Indicate Basis of Compensation LS or NTE	If Applicable Indicate (W.I.P.P.)
Task 1	Data Collection and Assessment	\$ 31,250	LS	Y
Task 2	Data Collection Contingencies	\$ 4,560	NTE	Y
Task 3	Owner Coordination	\$ 6,210	NTE	Y
TOTAL		\$ 42,020		

(Unless list is continued on next page)

Section 2. ADDITIONAL SERVICES

The TOWN shall compensate the CONSULTANT for such ADDITIONAL SERVICES as are requested and authorized in writing for such amounts or on such a basis as may be mutually agreed to in writing by both parties to this Agreement. The basis and/or amount of compensation to be paid the CONSULTANT for ADDITIONAL SERVICES requested and authorized in writing by the TOWN shall be as set forth in Article 4 of this Agreement.

Should it be mutually agreed to base compensation for ADDITIONAL SERVICES on an hourly rate charge basis for each involved professional and technical employee's wage rate classification, the applicable hourly rates to be charged are as set forth and contained in ATTACHMENT NO. 1 hereto dated 10/4/2023, entitled "CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE".

Section 3. REIMBURSABLE EXPENSES AND COSTS

When the CONSULTANT'S compensation and method of payment is based on an hourly rate for professional and/or technical personnel, the CONSULTANT shall, in addition to such hourly rates as are set forth in Attachment No. 1 hereto, be entitled to reimbursement of out-of-pocket, non-personnel expenses and costs as set forth in ATTACHMENT NO. 2 hereto dated 10/4/2023, entitled "NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS".

ATTACHMENT NO. 1 TO EXHIBIT B

Date: October 4, 2023

CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE *** FOR

POST-IAN CANAL DEBRIS ASSESSMENT SURVEY

Consultant or Sub-Consultant Name: Coastal Engineering Consultants, Inc.
(A separate Attachment No. 1 should be included for each Sub-Consultant)

(1) Project Position or Classification (Function to be Performed)	(2) Current Direct* Payroll Average Hourly Rate	(3) Multiplier**	(4) Hourly Rate To Be Charged (Column 2x3)
Standard Rate Schedule Included in Master Contract			

*NOTE: Direct Payroll hourly rate means the actual gross hourly wage paid.

**NOTE: Indicate applicable multiplier for indirect personnel costs, general administrative & overhead costs, and profit.

***NOTE: A separate personnel hourly rate schedule should also be attached for each Sub-Consultant listed in Exhibit "D".

ATTACHMENT NO. 2 TO EXHIBIT B

Date: October 4, 2023

NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS

POST-IAN CANAL DEBRIS ASSESSMENT SURVEY

CONSULTANT OR SUB-CONSULTANT NAME: Coastal Engineering Consultants, Inc.

(A separate Attachment No. 2 should be included for each Sub-Consultant)

ITEM	BASIS OF CHARGE
Telephone (Long Distance)	Actual Cost
Postage and Shipping	Actual Cost
Commercial Air Travel	Actual Cost (Coach)
Vehicle Travel Allowance (N.T.E. 50 miles one-way) (or)	\$0.405/mile
Vehicle Rental/Gas	Actual Cost
Lodging (Per Person)	Actual Cost or NTE \$100.00
Meals: Breakfast Lunch Dinner In accordance with the Runzheimer rate service for Travel utilizing the "average", dated 5/4/06	\$12.01 \$11.82 \$24.72
Reproduction (Photocopy) 8 1/2" x 11"	\$0.15/Page
8 1/2" x 14"	\$0.20/Page
11" x 14"	\$0.35/Page
Reproduction (Blue/White Prints)	\$0.20/Sq. Ft.
Printing/Binding	Actual Cost
Mylar Sheets	Actual Cost
Photographic Supplies & Services	Actual Cost
Tolls	Actual Cost
*List other specific project related reimbursables (i.e., film/developing):	
Permit Fees	Actual Cost
NOTE: Receipts or in-house logs are required for all non-personnel reimbursable expenses unless exempt (such as meals).	
Administrative Services Fee – Applicable only when specifically authorized by the Town, for administering the procurement of special additional services, equipment, reimbursables etc. not covered under the costs and/or changes established in the Agreement.	

*NOTE: N.T.E. indicates Not-To-Exceed

EXHIBIT C

Date: October 4, 2023

TIME AND SCHEDULE OF PERFORMANCE

POST-IAN CANAL DEBRIS ASSESSMENT SURVEY

This EXHIBIT "C" establishes times of completion for the various phases and tasks required to provide and perform the services and work set forth in EXHIBIT "A" of this Agreement. The times and schedule of performance set forth hereinafter is established pursuant to this Agreement.

Phase and/or Task Reference As Enumerated in EXHIBIT "A"	NAME OR TITLE Of Phase and/Task	Number Of Calendar Days For Completion Of Each Phase And/or Task	Cumulative Number of Calendar Days for Completion From Date of Notice to Proceed
Task 1	Data Collection and Assessment	60	60
Task 2	Data Collection Contingencies	60	60
Task 3	Owner Coordination	180	240

EXHIBIT D

Date: October 4, 2023

CONSULTANT'S ASSOCIATED SUB-CONSULTANT(S) AND SUBCONTRACTOR(S)

POST-IAN CANAL DEBRIS ASSESSMENT SURVEY

CONSULTANT has identified the following Sub-Consultant(s) and/or Subcontractor(s) which may be engaged to assist the CONSULTANT in providing and performing services and work on this Project:

(If none, enter the word "none" in the space below.)

Service and/or Work to be Provided or Performed	Name and Address of Individual or Firm				Sub-Consultant Services are Exempted from Prime Consultant's Insurance Coverage	
					Yes	No
NONE						



SHEET 2 COASTAL ENGINEERING CONSULTANTS INC. Serving Florida Since 1977 28421 BONITA CROSSINGS BLVD BONITA SPRINGS, FLORIDA 34135	COASTAL AND MARINE ENGINEERING ENVIRONMENTAL SERVICES GEOLOGICAL SERVICES SURVEY AND MAPPING		CLIENT: TOWN OF FORT MYERS BEACH TITLE: POST-IAN RESIDENTIAL CANAL DEBRIS ASSESSMENT SURVEY		DATE: 9/28/2023 DRAWN: GVT CHECKED: MAK SEC. TW. RNG. ACAD NO. FMB Canal Debris Survey.dwg REF. NO. 23.313		SCALE: AS NOTED F.B. PG. NO. DATE BY REVISION DESCRIPTION	
	PHONE: (239)643-2324 FAX: (239)643-1143 www.coastalengineering.com E-Mail: info@cecifl.com							



SHEET 3 FILE NO: 23313 CANALS	COASTAL ENGINEERING CONSULTANTS INC. Serving Florida Since 1977 28421 BONITA CROSSINGS BLVD BONITA SPRINGS, FLORIDA 34135 PHONE: (239)643-2324 FAX: (239)643-1143 www.coastalengineering.com E-Mail: info@cecifl.com	CLIENT: TOWN OF FORT MYERS BEACH		DATE: 9/28/2023	SCALE: AS NOTED				
		TITLE: POST-IAN RESIDENTIAL CANAL DEBRIS ASSESSMENT SURVEY		DRAWN: GVT	F.B.				
				CHECKED: MAK	PG.				
		SEC.	TWP.	RNG.					
		ACAD NO. FMB Canal Debris Survey.dwg							
		REF. NO. 23.313							
				NO.	DATE	BY	REVISION DESCRIPTION		

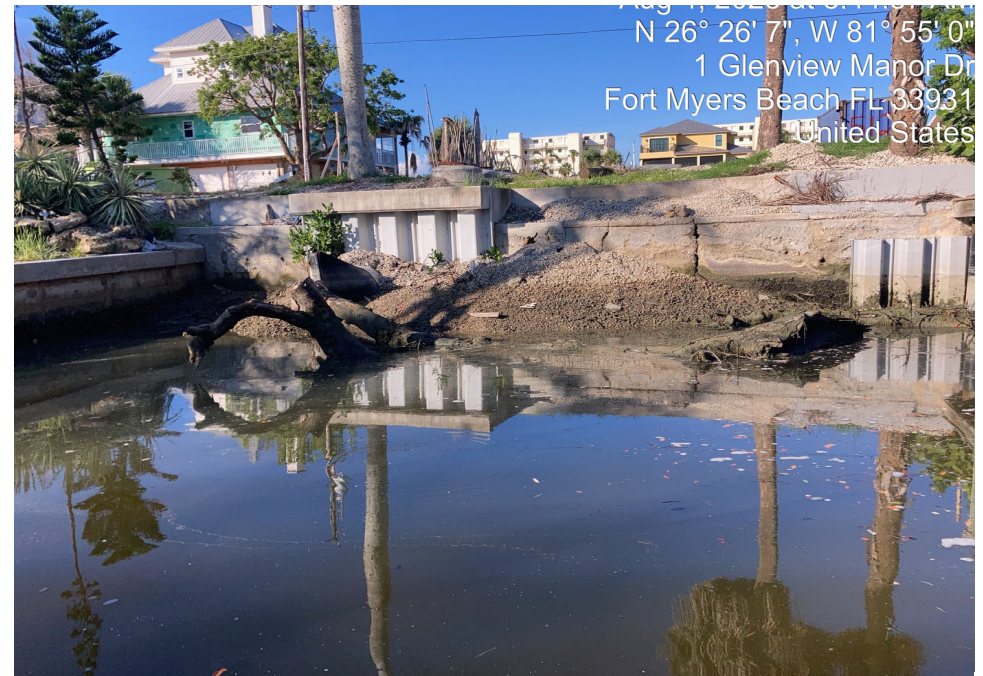


SHEET 4 FILE NO.: 23313 CANALS COASTAL ENGINEERING CONSULTANTS INC. Serving Florida Since 1977 28421 BONITA CROSSINGS BLVD BONITA SPRINGS, FLORIDA 34135 COASTAL AND MARINE ENGINEERING ENVIRONMENTAL SERVICES GEOLOGICAL SERVICES SURVEY AND MAPPING PHONE: (239)643-2324 FAX: (239)643-1143 www.coastalengineering.com E-Mail: info@ceciff.com	CLIENT: TOWN OF FORT MYERS BEACH		DATE: 9/28/2023	SCALE: AS NOTED				
	TITLE: POST-IAN RESIDENTIAL CANAL DEBRIS ASSESSMENT SURVEY		DRAWN: GVT	F.B.				
			CHECKED: MAK	PG.				
			SEC. TWP. RNG.					
			ACAD NO. FMB Canal Debris Survey.dwg					
			REF. NO. 23.313		NO.	DATE	BY	REVISION DESCRIPTION



SHEET 5 COASTAL ENGINEERING CONSULTANTS INC. Serving Florida Since 1977 28421 BONITA CROSSINGS BLVD BONITA SPRINGS, FLORIDA 34135	COASTAL AND MARINE ENGINEERING ENVIRONMENTAL SERVICES GEOLOGICAL SERVICES SURVEY AND MAPPING		CLIENT: TOWN OF FORT MYERS BEACH TITLE: POST-IAN RESIDENTIAL CANAL DEBRIS ASSESSMENT SURVEY		DATE: 9/28/2023 DRAWN: GVT CHECKED: MAK SEC. TWP. RNG. ACAD NO. FMB Canal Debris Survey.dwg REF. NO. 23.313		SCALE: AS NOTED F.B. PG. F.B. PG. F.B. PG.		NO. DATE BY REVISION DESCRIPTION	
	PHONE: (239)643-2324 FAX: (239)643-1143 www.coastalengineering.com E-Mail: info@cecifl.com									







1. **Requested Motion:**

Meeting Date: October 16, 2023

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING AN AGREEMENT BETWEEN THE TOWN AND MATANZAS INN FOR UPLAND SERVICES FOR THE MATANZAS MOORING FIELD FOR AN ANNUAL COST NOT TO EXCEED \$36,000.00

Why the action is necessary:

The Town of Fort Myers Beach Harbor Management Plan Rental Agreement provides for bathrooms and showers to renters in the mooring field to reduce the impacts associated with gray water discharges from vessels including increased phosphates, reduced dissolved oxygen, and other nutrient rich discharges that cause degradation of water quality within the waters of the Town of Fort Myers Beach.

What the action accomplishes:

The agreement with Matanzas Inn provides upland services, dinghy mooring and Town Pumpout Boat mooring in a centralized location for mooring field operations.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

The Town of Fort Myers Beach Matanzas Mooring Field was devastated by Hurricane Ian, rendering it inoperable to service liveaboard boaters for the last year. 13 mooring balls are ready for operation. The goal is to have the remainder of the mooring balls ready for service and a temporary dinghy dock installed by January 2024.

Town Staff has reached an agreement with Matanzas Inn management to resume upland services and mooring facilities for dinghies and the Town's pumpout boat to service the field.

Attachments:

1. 231016 Resolution - Matanzas Inn Mooring Field Upland Services
2. Attachment A - Matanzas Inn Mooring Field Upland Services Cost

Financial Impact:

The cost to the Town is \$36,000 annually.

6. **Alternative Action**

Do not approve agreement with Matanzas Inn for Mooring Field Upland Services.

7. **Management Recommendations:**

Approve the Town agreement for upland services to be provided by Matanzas Inn.

8. **Recommended Approval:**

- , - 10/6/2023
- , - 10/11/2023
- , - 10/11/2023

, - 10/11/2023
, - 10/12/2023

RESOLUTION NUMBER 23-134

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING AN AGREEMENT BETWEEN THE TOWN AND MATANZAS INN FOR UPLAND SERVICES FOR THE MATANZAS MOORING FIELD FOR AN ANNUAL COST NOT TO EXCEED \$36,000.00; 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 of Fort Myers Beach Harbor Management Plan Rental Agreement provides for bathrooms and showers to renters to reduce the impacts associated with gray water discharges from vessels including increased phosphates, reduced dissolved oxygen, and other nutrient rich discharges that cause degradation of water quality within the waters of the Town of Fort Myers Beach, and

WHEREAS, the Town Council has determined it is in the best interest of the Town to approve the requested agreement with Matanzas Pass Inn for a cost not to exceed \$36,000 annually.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:

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. The Town Council hereby approves the agreement between the Town and Matanzas Inn for \$36,000.00. A copy of the itemized cost is attached hereto as Attachment "A".

The foregoing Resolution 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:

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John R. King	_____
Bill Veach	_____
Karen Woodson	_____

ADOPTED this 16TH day of October 2023 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, 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:**

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this _____ day of _____, 2023.

Matanzas Mooring Field Upland Services at Matanzas Inn

Proposed				
Item #	Description	per day	2023 Sept	Notes
1	Current bathrooms/laundry in Resort Cottages		\$ 1,340.00	670 square foot space at \$25 per square foot
2	Current electric per month		\$ 235.00	
3	Current water per month		\$ 300.00	
4	Current cleaning per month	\$ 55.00	\$ 440.00	Estimate Based on \$55/day WEEKENDS ONLY WITH 2 CLEANING PER DAY
5	Temporary Dinghy dockage on canal		\$ -	No Charge
6	Pump-out Boat dockage on canal for one year.		\$ 650.00	
			\$ 2,965.00	Per Month

General Comments

- a. Dinghy dockage on canal for initial 90 days to allow town time to open dinghy
- b. Mooring field bathrooms not open to the general public.
- c. Controlled access required by resort office or electronic keys
- d. One year dockage agreement for Town Pump out boat
- e. Term of agreement begins November 1, 2023 to September 30, 2025 with an option for Town to vacate agreement with 30 days notice.

1. **Requested Motion:**

Meeting Date: October 16, 2023

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING AN AGREEMENT BETWEEN THE TOWN AND COOL-BINZ OF GREATER NAPLES TO LEASE A MOBILE OFFICE FOR A COST OF \$8,305.99; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

The Town Harbormaster is responsible for the enforcement of the rules and regulations for the Matanzas Mooring Field. An office is needed for the Harbormaster to service and regulate the Matanzas Mooring Field.

What the action accomplishes:

The office provides a mobile office and storage space for the Harbormaster to service and regulate the mooring field and store equipment.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

The Town of Fort Myers Beach Harbormaster office was devastated by Hurricane Ian, and is no longer habitable. Harbormaster is responsible for the enforcement of the rules and regulations for the Matanzas Mooring Field. In addition, the Harbormaster is responsible for conducting communications with patrons, registering and inspecting vessels, entering into rental agreements, assigning moorings, and collecting rental fees. An office is needed for the Harbormaster to service and regulate the Matanzas Mooring Field.

Attachments:

1. 23-133 Harbormaster Office
2. Attachment A - Agreement with Cool-Binz

Financial Impact:

The 1st month cost is \$1,117.99 for 1 month rental charge for an 8x20 for mobile office space, \$5,000 in damage insurance, delivery fee for office and storage space, and an 8x8 foot storage bin. The monthly charge thereafter is \$599.

6. **Alternative Action**

Do not approve the agreement with Cool-Binz to provide an office for the Harbormaster.

7. **Management Recommendations:**

Approve agreement with Cool-Binz of Greater Naples.

8. **Recommended Approval:**

- , - 10/10/2023
- , - 10/10/2023
- , - 10/10/2023
- , - 10/11/2023
- , - 10/11/2023

RESOLUTION NUMBER 23-133

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING AN AGREEMENT BETWEEN THE TOWN AND COOL-BINZ OF GREATER NAPLES TO LEASE A MOBILE OFFICE FOR A COST OF \$8,305.99; 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 Harbormaster is responsible for the enforcement of the rules and regulations for the Matanzas Mooring Field, and

WHEREAS, the Town Council has determined it is in the best interest of the Town to approve the requested Agreement.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:

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. The Town Council hereby approves the Agreement between the Town and Cool-Binz of Greater Naples to lease a mobile office for a cost of \$8,305.99. A copy of the Agreement is attached hereto as Attachment "A".

The foregoing Resolution 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:

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John R. King	_____
Bill Veach	_____
Karen Woodson	_____

ADOPTED this 16th day of October 2023 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, 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:**

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this _____ day of _____, 2023.

**COOL-BINZ of
Greater Naples**

5555 Taylor Road
Ste. A
Naples, Florida
34109

📞 (239) 370-2332

✉️
michael.pierro@cool-
binz.com



Bill To:
Chadd Chustz

Estimate No: 42
Estimate Date: 10/5/2023
Due Date: 10/10/2023

Contact Information

📞 (239) 462-8127
✉️ chadd@fmbgov.com

Line Items

DESCRIPTION	QUANTITY	RATE	AMOUNT
8x20 Mobile Office Space Monthly rental charge.	1	\$599.00	\$599.00
\$5,000.00 Damage Insurance Monthly damage insurance for the storage bin at no charge.	2	\$0.00	\$0.00
Delivery and Pick-up Fee There is a fee of \$150.00 for delivery and a fee of \$150.00 for pickup. These charges are one-time only.	1	\$300.00	\$300.00
\$2,000.00 Contents Insurance Monthly charge. \$250.00 deductible. For more information, visit https://www.cool-binz.com/bin-rental-insurance/	1	\$18.99	\$18.99
8x8 Basic Storage Bin Monthly rental charge.	1	\$0.00	\$0.00
Delivery and Pick-up Fee There is a fee of \$100.00 for delivery and a fee of \$100.00 for pickup. These charges are one-time only.	1	\$200.00	\$200.00

Subtotal \$1,117.99
Tax (7.5%) \$83.85
Total \$1,201.84

Terms and Conditions**COOL-BINZ RENTAL AGREEMENT**

Customer acknowledges that he/she/they has(ve) read the Standard Terms and Conditions of this Agreement attached hereto and agrees to comply therewith. No amendment to the terms and conditions of this Agreement shall be effective unless in writing signed by duly authorized representatives of all parties hereto. Customer represents and warrants that the individual signing this Agreement has the authority to execute this Agreement and the Agreement will be legally binding on the Customer.

If Storage Bin Company or its agent is not present at the delivery of the equipment rented above, Customer accepts the signature of the delivery of the equipment in good order and condition. THIS WILL BE A NET LEASE. CUSTOMER AGREES TO RETURN THE EQUIPMENT IN THE SAME CONDITION AS IT WAS RECEIVED, LESS NORMAL WEAR AND TEAR. CUSTOMER SHALL AGREE TO PAY THE COST OF ANY NECESSARY REPAIRS BEYOND NORMAL WEAR AND TEAR. THIS WOULD INCLUDE REMOVAL OF ANY GRAFFITI.

CUSTOMER ACKNOWLEDGES THAT STORAGE BIN COMPANY IS NOT LIABLE FOR DAMAGES TO CONTAINER CONTENTS FOR ANY REASON, INCLUDING, BUT NOT LIMITED TO, TEMPERATURE, HUMIDITY LEVEL FLUCTUATIONS, MOISTURE, MOLD, POWER ISSUES, OR EQUIPMENT FAILURE. Customer understands that the monitoring of the climate-control of their items is the Customer's sole responsibility, whether stored on their property or parked and plugged in at our facility.

CUSTOMER ACKNOWLEDGES THAT \$5,000.00 OF STORAGE PROTECTORS PROGRAM DAMAGE WAIVER INSURANCE CONTAINING A \$250.00 DEDUCTIBLE IS INCLUDED WITH THE RENTAL.

Customer understands that he/she/they is/are not obligated to obtain coverage from the Storage Protectors Program and may use homeowner's insurance or an alternative form of commercial insurance to meet insurance requirements contained in the rental agreement.

STANDARD TERMS AND CONDITIONS OF AGREEMENT

1. DELIVERY AND RETURN OF EQUIPMENT

A) Customer acknowledges receipt of the Equipment listed on the face of this Agreement in good condition as evidenced conclusively by its execution of a clean equipment condition report provided by Storage Bin Company. Customer agrees to redeliver the Equipment to Storage Bin Company in the same condition as received, normal wear and tear accepted, and to execute Storage Bin Company's equipment condition report upon redelivery, identifying and acknowledging any changes in the condition of the Equipment subsequent to its delivery to Customer. Changes that could have been prevented by normal maintenance shall not constitute normal wear and tear.

B) Unless otherwise specified on the face of this Agreement, Storage Bin Company or its agents shall deliver the Equipment to Customer on the date and at the Equipment Location listed on the face of this Agreement, and Customer will redeliver the Equipment to Storage Bin Company at such Equipment Location at the expiration or earlier termination of this Agreement. Unless otherwise specified on the face of the Agreement, Storage Bin Company or its agents will transport the Equipment to and from the Equipment Location. Handling, drayage, and associated charges shall be invoiced to Customer.

2. TERM

The terms and conditions of this Agreement shall become effective upon the date of execution of this Agreement and will continue in effect for each recurring billing cycle set forth on the face of this Agreement unless terminated earlier as provided herein. If Customer retains possession of the Equipment after expiration of the specified term of this Agreement, then at the sole option of Storage Bin Company, the Agreement may continue from billing period-to-billing period on the terms specified herein. Where this Agreement is initially executed with an unspecified term, or at a later date is continued by Storage Bin Company on a billing period-to billing period basis, the Agreement may be terminated by either party upon thirty (30) days written notice to the other party.

3. RENTAL AND OTHER CHARGES

- A. Customer agrees to pay all rental, delivery, and pickup charges, in the amounts set forth on the face of this Agreement and all applicable sales tax for the Equipment from the day the Equipment is delivered to Customer, up to and including the day the Equipment is returned to Storage Bin Company.
- B. All rental charges shall be payable in advance. If the term of the Agreement is for longer than one (1) billing period, rental charges shall be paid each month per the anniversary date. If the rental is not paid when due, Storage Bin Company may, without prejudice to any other available remedy, charge as an additional rental, a late charge in the amount of \$25.00 per unit per billing period for any amount not received within thirty (30) days of the invoice date. Customer is responsible for keeping their payment information and billing address up to date.
- C. There will be no pro-ration or return or prepaid rent in the event that the Equipment is surrendered to Storage Bin Company prior to the expiration or earlier termination.
- D. If any payment is declined or returned for any reason, a charge of \$25 of the invoiced amount, or if less, the maximum amount permitted by law, will be assessed against Customer.
- E. After the expiration of the initial rental agreement term, or where the Agreement is billing period-to-billing period, Storage Bin Company may adjust the rental charges set forth on the face hereof to Storage Bin Company's then prevailing rental rate for such Equipment upon thirty (30) days written notice to Customer. Upon receipt of notice of any such rental rate adjustment, Customer shall have the right to terminate Agreement as of the effective date of the proposed rate adjustment provided Customer gives Storage Bin Company written notice of such termination and redelivers the Equipment prior to the effective date of the proposed rate adjustment. If Customer fails to give timely notice of its intention to terminate this agreement or fails to return the Equipment within the time period specified herein, the Agreement shall continue in full force and effect at the new rental rate set by the Storage Bin Company.

4. SECURITY DEPOSIT

Upon execution of this Agreement, Storage Bin Company, at its sole discretion, may require Customer to pay a security deposit in the amount set forth on the face of the Agreement. If a Security Deposit is required, it will be held by Storage Bin Company as security against property damage, the cost involved in collecting delinquent rent, and to otherwise ensure the full and faithful performance by Customer of all terms and conditions of this Agreement. If Customer defaults or fails to perform any covenant or condition of this Agreement, Storage Bin Company may deduct any and all damages, costs, and charges which Storage Bin Company has incurred as a result of each default. If any amount is deducted by Storage Bin Company from the Security Deposit, upon written request from Storage Bin Company, customer shall immediately replace any amount so deducted to return the Security Deposit to its original amount. Within fourteen (14) business days after the return of the Equipment, Storage Bin Company will mail to Customer the balance, if any, of the Security Deposit which remains after deducting any and all charges which Storage Bin Company may deduct under the terms of this Agreement, which charges shall be itemized by Storage Bin Company in a written statement delivered to Customer with the balance of such Security Deposit. The itemization provided by Storage Bin Company shall be conclusive as to all deductions from such Security Deposits.

5. RISK OF LOSS AND DAMAGE

Customer is liable to Storage Bin Company for all damages to, loss, or destruction of, or changes in the Equipment subsequent to its delivery and prior to its return to Storage Bin Company, except those changes caused by normal wear and tear. Customer shall have sole responsibility to routinely inspect the Equipment for evidence of any damages (including normal wear and tear), or loss or destruction of the Equipment and shall notify Storage Bin Company in writing within two days of discovery of any such damages, describing in reasonable detail to the circumstances surrounding such damage, loss or destruction. Customer shall be liable for all expenses, costs, and losses incurred by Storage Bin Company arising out of Customer's failure to notify of any damage to or loss or destruction of Equipment. Customer is required to obtain insurance covering damage, loss, or destruction of the rented container exclusive of any ancillary components.

- A. MAINTENANCE: Upon being notified of any changes in the condition of the Equipment which Storage Bin

Company, at its sole discretion, shall determine were caused by normal wear and tear, Storage Bin Company shall arrange for the necessary repairs and maintenance to be carried out by a repair facility approved by Storage Bin Company. Customer shall provide and/or procure for Storage Bin Company's agent reasonable access to the Equipment for this purpose. CUSTOMER SHALL BE LIABLE FOR ALL EXPENSES, COSTS AND LOSSES INCURRED BY STORAGE BIN COMPANY ARISING OUT OF CUSTOMER'S FAILURE TO NOTIFY STORAGE BIN COMPANY OF THE NEED FOR MAINTENANCE OR REPAIR OF THE EQUIPMENT.

B. **DAMAGE:** Storage Bin Company shall inspect the Equipment and notify Customer of the estimated cost of repairs to the damaged equipment as estimated by a Storage Bin Company-approved repair facility. Customer shall promptly forward to Storage Bin Company payment in the amount of such estimated repair cost. In the event the actual cost of such repairs, as invoiced to Storage Bin Company by the repairing facility, shall exceed such estimated cost, Customer shall be obligated to pay such difference on receipt of an invoice for the entire cost of such repair.

C. **LOSS OR TOTAL DAMAGE:** If the Equipment is lost or destroyed or sustains damage which, in Storage Bin Company's sole discretion, renders the Equipment a total loss, Storage Bin Company shall issue its invoice to Customer for the Replacement Value of the lost or destroyed Equipment as stipulated on the face hereof. Rental charges for Equipment shall continue unabated until Storage Bin Company receives payment in full of the Replacement Value of the Equipment.

6. USE OF THE EQUIPMENT

Customer shall use the Equipment for on-site storage at the Equipment Location stipulated on the face hereof, and shall not use the Equipment for any illegal purpose or in any other location without prior written approval from Storage Bin Company.

A. Customer acknowledges that equipment is not to be used for the storage of perishable goods, flammable items, stolen property, or the habitation of people and animals whether alive or dead.

B. Customer agrees to protect and preserve the Equipment and will not store within or in near proximity to the Equipment any material or substance that could damage, contaminate or diminish the Equipment value in any way. Under no circumstances shall materials or substances classified as hazardous under the federal Comprehensive Environmental Response & Liability Act (42USC§9601 et seq.) or other applicable state or local statute or regulation be stored in the Equipment, without prior written approval from Storage Bin Company.

C. Customer shall use and operate the Equipment properly, according to safe and prudent procedures and in strict compliance with any special instructions, details or warnings furnished by Storage Bin Company concerning the Equipment.

D. Any act by an agent or employee or independent contractor engaged by Customer shall be deemed to be an act of Customer and shall be binding upon the Customer.

E. Customer shall not apply to the Equipment any markings or signs of any description whatsoever, unless previously agreed to in writing by Storage Bin Company.

F. Customer shall not repair, repaint, remark or modify the Equipment without prior written approval of Storage Bin Company.

G. Customer shall keep the Equipment at all times in its possession, care and control at the Equipment Location.

H. Customer shall not move the Equipment from the Equipment Location without Storage Bin Company prior written consent. If Customer desires to move or relocate the Equipment, Customer shall notify Storage Bin Company, and if Storage Bin Company agrees, Storage Bin Company or its agent shall move the Equipment. In the event of any move or relocation by Storage Bin Company, Customer shall remove any and all contents within the Equipment to allow Storage Bin Company to move and transfer the Equipment without difficulty if required. Storage Bin Company will have no duty to investigate the contents of the Equipment nor will Storage Bin Company have any liability for any

damages or losses caused to the contents of the Equipment which Customer has failed to remove. All relocation and handling charges, and any additional filing fees or other costs incurred to re-document Storage Bin Company's title to the Equipment, are for Customer's account, and shall be invoiced to Customer.

- I. Storage Bin Company disclaims all liability as to the effectiveness of the climate control system, nor is it responsible for damages or losses of container contents for any reason. Customer is responsible for monitoring their stored contents and the operation of the climate control system whether parked on their site or at the Storage Bin Company's plug-in station. Customer must notify the Storage Bin Company of any mechanical issues. Repairs can only be provided by the Storage Bin Company or their agent. Any damages incurred from failure of the system to operate, power outages or surges, or improper packing of contents, are not the responsibility of the Storage Bin Company.

7. PREMISES

- A. Storage Bin Company shall be allowed to enter upon the Equipment Location at any reasonable time to deliver, locate, relocate, inspect, maintain and repair the Equipment. If Customer fails to permit Storage Bin Company access to the Equipment, Customer shall indemnify Storage Bin Company against all loss, damage, costs and expenses which Storage Bin Company may sustain due to Customer's failure to fulfill its obligations under this section, including Storage Bin Company's reasonable attorneys' fees.
- B. Customer warrants that the Equipment Location is suitable for the Equipment and that Storage Bin Company's delivery vehicles and Equipment shall have reasonable access to enter and operate safely to deliver and pick up the Equipment. Customer releases and agrees to hold harmless and defend Storage Bin Company against any and all claims for damages, costs, claims or liabilities, both direct and indirect, to the roadways, grounds, buildings and personal property in or across the site location, for any other claim associated with the on-site delivery or pickup of the Equipment, or for any damages arising from Customer's failure to provide a suitable site for the Equipment. If Storage Bin Company's vehicles and Equipment cannot operate safely to deliver the Equipment, or if at the time of delivery, the site is found to be an unsuitable location for the Equipment, Customer agrees to pay Storage Bin Company all delivery and pickup charges, all additional handling costs, and the equivalent of two (2) billing period's rental charges as liquidated damages with respect to that portion of this Agreement which Customer is unable to perform.
- C. Customer shall punctually pay or shall procure the payment of all registration charges, license fees, rent assessments, taxes and any other fees or charges payable in respect to the premises upon which the Equipment may be placed or kept. Upon demand, Customer will produce to the Storage Bin Company the last receipts for all such payments. If Customer defaults in the foregoing obligations, Storage Bin Company may at its discretion make any or all of such payments and recover the amount thereof from the Customer as additional rent hereunder. If any lien attaches to the Equipment, by virtue of Customer's failure to comply with this provision, Customer is obligated to immediately discharge such lien, and shall indemnify and hold Storage Bin Company harmless from any loss or damage arising out of Customer's failure to promptly discharge such liens.
- D. Customer agrees to comply at its own expense with all state, local, or federal laws, regulations, and ordinances, in connection with the use, occupancy, operation, possession, maintenance, location of premises upon which the Equipment may be situated, including, without limitation, obtaining all necessary planning consents, placards, licenses, permits, fire and building approvals. Any failure by Customer to comply with such laws, regulations or ordinances resulting in Customer's inability to perform under this Agreement will constitute a default by Customer, and will subject Customer to the costs and penalties set forth in Paragraph 12 hereunder, Storage Bin Company shall have no responsibility for compliance with any such laws, regulations, or ordinances on Customer's behalf.
- E. The Customer will promptly notify Storage Bin Company in writing of any change in Customer's electronic or mailing address(es) or telephone number from that specified on the face of this Agreement.

8. AFFIXATION TO REALTY

- A. The Equipment is and shall remain the sole and exclusive personal property of Storage Bin Company, notwithstanding that the Equipment may become affixed or attached to real property or any structure thereon. Customer shall have no right, title or interest in or to the Equipment or any part thereof, except such rights as are

created under this Agreement.

- B. At Storage Bin Company's request, Customer shall execute any and all instruments that Storage Bin Company reasonably deems necessary to protect its ownership interests in the Equipment if, notwithstanding the parties' intention and the provisions of this Agreement, any person claims to have acquired any right of ownership in the Equipment by reason of affixation to real property. Customer shall promptly notify Storage Bin Company in writing of such fact, shall diligently seek to refute such claim or assertion, and shall defend Storage Bin Company's title to the Equipment against any competing assertion of ownership rights. Customer shall also indemnify Storage Bin Company from and against all damages, costs and expenses including attorneys' fees, court costs and other legal expenses required, in Storage Bin Company's reasonable judgment to protect Storage Bin Company's ownership interest in the Equipment.

9. INSURANCE

- A. Storage Bin Company will provide damage waiver insurance in the amount of \$5,000.00 with a \$250.00 deductible, and is included in the monthly rental amount.
- B. Customer will maintain, at its own expense, adequate contents insurance satisfactory to Container Company covering the contents contained within the Equipment in an insured amount equivalent to 100% of the Actual Cash Value of such contents. At the request of Container Company, insurance certificates to this effect shall be furnished to Container Company. Said insurance shall be maintained by Customer until all Equipment rented hereunder is redelivered to Container Company.
- C. CUSTOMER ACKNOWLEDGES AND UNDERSTANDS THAT STORAGE BIN COMPANY DOES NOT AND WILL NOT INSURE OR GUARANTEE AGAINST LOSS OF CUSTOMER'S PROPERTY STORED IN THE EQUIPMENT, AND STORAGE BIN COMPANY HAS NO LIABILITY WHATSOEVER AS TO CLAIMS FOR LOSS OR DAMAGE TO SUCH PROPERTY. CUSTOMER HEREBY WAIVES ANY CLAIMS WHATSOEVER AGAINST STORAGE BIN COMPANY FOR LOSS OF AND DAMAGE TO ANY PROPERTY STORED IN EQUIPMENT LEASED HEREUNDER.
- D. Storage Bin Company does **NOT**, nor is obligated **OR REQUIRED in any way** to provide insurance of any kind for Customer's benefit.

10. ASSIGNMENT, SUBLETTING LIENS

THE CUSTOMER SHALL NOT SELL, ASSIGN, SUBLEASE, PLEDGE, MORTGAGE, CHARGE, LEND, ENCUMBER, OR PART WITH POSSESSION OF THE EQUIPMENT OR CREATE OR ALLOW TO BE CREATED ANY LIEN ON THE EQUIPMENT. In the event of any breach of this provision by Customer, Customer shall take all action necessary to have such charge, encumbrance, or lien immediately removed and discharged. If Customer fails to perform its obligations under this action, Storage Bin Company may, at its discretion, pay to any third party any sum necessary to procure the release of the Equipment from any charge, encumbrance, or lien and to recover such sum from the Customer forthwith without obligation on Storage Bin Company's part to question the reasonableness of the charges assessed against the Equipment.

11. RETURN OF EQUIPMENT

- A. Customer shall redeliver the Equipment to Storage Bin Company empty of all materials and contents, and in good condition, repair, and working order, broom clean and suitable for immediate reuse by another customer, ordinary wear and tear excepted.
- B. Storage Bin Company shall inspect the Equipment upon return by Customer, and shall prepare an equipment condition report describing the condition of the Equipment, which Customer shall execute. Storage Bin Company's equipment condition report shall be conclusive as to any damage noted thereon with respect to redelivered Equipment. If the Equipment is damaged when redelivered to Storage Bin Company, Customer shall pay to Storage Bin Company the cost of all damages noted on the equipment condition report together with additional rental charges for the period necessary to perform related repairs.

- C. If Customer fails to remove its property or to clean the Equipment prior to its return to Storage Bin Company, Storage Bin Company may remove any property left by Customer, dispose of, or sell such property, at Storage Bin Company's sole discretion. All cleaning costs and expenses incurred by Storage Bin Company for the Equipment, will be billed to Customer's account and may be deducted by Storage Bin Company from the Security Deposit, or collected from the Customer.
- D. Any costs or expenses incurred by Storage Bin Company in removing property stored in the Equipment prior to pick up and transfer of possession, including any additional equipment charges and labor, may be deducted by Storage Bin Company from the Security Deposit or collected from Customer.

12. DEFAULT AND REMEDIES

- A. If Customer 1) fails to pay any sum when due hereunder or under any other rental agreement between Storage Bin Company and Customer, 2) fails to perform any other covenant, condition or any other obligation under this Agreement or under any other rental agreement between Storage Bin Company and Customer, 3) suffers any financial distress, execution or other legal process which creates or has the effect of a levy on any of the Equipment rented hereunder, 4) ceases doing business as a going concern, becomes insolvent, files for bankruptcy or becomes the subject of any proceedings under any state or federal legislation for the protection of debtors, or 5) makes an attempt to sell, secret, convert or remove the Equipment from the Equipment Location, Storage Bin Company may, without notice and without relieving Customer of its obligations hereunder, immediately terminates this Agreement, declare the balance of the rental to be due and payable, demand and retake possession of the Equipment free of any claims of Customer, and avail itself of any self-help or other remedies available to it by contract, at law or in equity.
- B. If this Agreement is terminated under this paragraph, Customer shall no longer be in possession of the Equipment with Storage Bin Company's consent, and the rental charges due hereunder shall increase to twice the rental rates charged by Storage Bin Company at the time of the termination. Customer shall immediately provide Storage Bin Company with an Equipment location list detailing the exact location of all Equipment rented under this Agreement. Storage Bin Company may, without notice repossess the Equipment, and for that purpose, Storage Bin Company, its agents or employees may, without previous notice, enter the premises on which the Equipment is believed by the Storage Bin Company to be situated and retake possession of the Equipment rented under this Agreement. CUSTOMER HEREBY WAIVES ANY AND ALL RIGHTS TO A JUDICIAL HEARING PRIOR TO STORAGE BIN COMPANY'S REPOSSESSION OF THE EQUIPMENT.
- C. Customer shall continue to pay rental charges for the Equipment until (1) the Equipment is redelivered in the same condition as received, normal wear and tear accepted, or (2) the Equipment is repaired and fit for subsequent rental, or (3) settlement of any outstanding balance owed for the Equipment is made. If Storage Bin Company retakes possession of the Equipment, Customer authorizes Storage Bin Company to take possession of any property in, on or attached to such Equipment which is not the property of Storage Bin Company, and Storage Bin Company may, at Storage Bin Company's sole option, without liability for its care or safekeeping, place such property in storage at the risk and expense of Customer, or sell the property to a third party and use the proceeds to satisfy all outstanding charges owed by Customer. If the latter option is taken by Storage Bin Company and the proceeds of sale exceed the outstanding balance owed by Customer, Storage Bin Company shall promptly remit the difference back to the Customer.
- D. Termination shall not relieve Customer of any liabilities or obligations incurred prior to such return, repair or settlement and Customer shall at all times remain fully liable for reasonable damages as provided by law, and for all costs and expenses incurred by Storage Bin Company on account of such default, including all costs to recover the Equipment, legal costs and reasonable attorneys' fees. Nothing in this paragraph shall be construed to waive any legal, contractual or equitable remedy or relief available to Storage Bin Company.
- E. Without in any way limiting the obligations of Customer under this Agreement, Customer hereby irrevocably appoints Storage Bin Company as the agent and attorney in fact of Customer, with full power and authority, at any time when Customer is obligated to deliver possession of any rented Equipment to Storage Bin Company, to demand and take possession of such Equipment in the name and on behalf of Storage Bin Company, from whomever shall be at the time in possession of such Equipment.

13. LIMITATION OF WARRANTIES AND LIABILITY

- A. THE EQUIPMENT IS LEASED AS IS. AS LONG AS CUSTOMER IS NOT IN DEFAULT OF THIS AGREEMENT, CUSTOMER SHALL HAVE THE RIGHT TO QUIET POSSESSION OF THE EQUIPMENT, BUT ACKNOWLEDGES AND AGREES THAT STORAGE BIN COMPANY GIVES NO WARRANTIES OF ANY KIND WHATSOEVER WITH RESPECT TO THE EQUIPMENT, ITS CONDITION OR PERFORMANCE, ITS MERCHANTABILITY OR ITS FITNESS FOR A PARTICULAR PURPOSE.
- B. CUSTOMER'S OBLIGATIONS UNDER THIS LEASE AGREEMENT ARE ABSOLUTE AND SHALL NOT BE AFFECTED BY ANY CIRCUMSTANCE OR EVENT BEYOND CUSTOMER'S CONTROL OF WHATEVER NATURE.
- C. UNDER NO CIRCUMSTANCES SHALL STORAGE BIN COMPANY BE LIABLE, IN CONTRACT, TORT, OR OTHERWISE, FOR ANY DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL LOSS OR DAMAGE ARISING FROM BREACH OR NON-PERFORMANCE OF ANY OF ITS OBLIGATIONS UNDER THIS LEASE AGREEMENT, OR FROM THE SUPPLY OR USE OF THE EQUIPMENT.
- D. STORAGE BIN COMPANY SHALL UNDER NO CIRCUMSTANCES BE LIABLE FOR LOSS OR DAMAGE OF ANY KIND TO CUSTOMER'S PROPERTY STORED WITHIN THE EQUIPMENT WHILE IN THE CARE, CUSTODY, AND CONTROL OF CUSTOMER OR WHILE STORED AND PLUGGED-IN AT OUR FACILITY.

14. INDEMNITY

Customer hereby agrees to indemnify, defend and hold harmless Storage Bin Company from and against all liability, damage, costs, lawsuits, judgments, or expenses (including without limitation, expenses in defending any claim or suit such as attorneys' fees, court costs and other expenses) arising out of (i) any failure of Customer to comply with its obligations under this Agreement, (2) any claim by Customer or any third party for personal injury or death, or for loss or damage to person or property of Customer or any third party arising out of or incidental to the possession, leasing, operation, control, storage, loading or use of the Equipment by Customer, or arising out of incidental to the exercise by Storage Bin Company of any of its rights under this Agreement including but not limited to the repossession of the Equipment, or (3) any claim arising out of any forfeiture, seizure, or impounding of, or charge on lien on the Equipment. Customer hereby waives any claims against Storage Bin Company with respect to loss of or damage to Customer's property stored within the Equipment.

15. NOTICES

All billings, payments and written notices from either party to the other shall be given in writing to the addresses on the face hereof, or to such other address as either party shall designate in writing to the other.

16. TAXES, FEES AND FINES

- A. Customer shall pay all taxes (other than taxes on Storage Bin Company's income) and charges levied or imposed in connection with the Equipment during the term of the Agreement including, without limitation, property, sales, use and excise taxes, duties, customs charges, and all levies, fees or other charges imposed by any federal, estate, or local government.
- B. Customer is not entitled to claim any investment tax credits or depreciation deduction or any other tax benefits normally associated with ownership with respect to any of the Equipment. Customer hereby warrants to Storage Bin Company that it will not attempt to claim any such investment tax credit, depreciation, deduction, or other such tax benefit.

17. GENERAL

- A. This rental agreement is binding upon the parties, their successors and assigns and shall be construed and interpreted with the laws of the State of Florida. Any dispute, arising under or in connection with this rental agreement will be

exclusively decided by the competent court of Collier County, Florida.

- B. The paragraph headings in this rental agreement are for convenience only and shall not be deemed to alter or affect any provision of the Agreement.
- C. Customer waives the exercise of any and all existing and future rights of set-off or counterclaims against the rental charges or other payments due to Storage Bin Company under this Agreement, regardless of the rights and claims which the Customer may have against the Storage Bin Company or any other party, which rights Customer agrees to assert in separate proceedings.
- D. If any part or provision of this Agreement is found to be invalid or unenforceable, the invalidity or unenforceability of such part or provision shall not affect the remaining parts or provisions of this Agreement, which shall continue in full force and effect.
- E. Any forbearance by Storage Bin Company to enforce its rights under the Agreement in the event of a default by Customer hereunder shall not constitute a waiver of Storage Bin Company's rights, nor shall such forbearance waive Storage Bin Company's rights with respect to any other failure by Customer to comply strictly with the terms of this Agreement.
- F. THIS AGREEMENT CONTAINS THE ENTIRE AGREEMENT BETWEEN THE PARTIES, AND MAY ONLY BE AMENDED, MODIFIED OR CHANGED BY WRITTEN AGREEMENT, SPECIFICALLY PURPORTING TO AMEND THIS AGREEMENT EXECUTED BY DULY AUTHORIZED REPRESENTATIVES OF THE PARTIES HERETO.

STORAGE PROTECTORS DAMAGE WAIVER AND CONTAINER CONTENTS INSURANCE PROGRAM is underwritten by Lloyds of London covernote B0429BA2300106 and B0429BA2300105, and, administered by Carstin Insurance Partners, a Licensed Agent

Container Damage Waiver and Contents Insurance Enrollment Form

\$5,000.00 OF STORAGE PROTECTORS CONTAINER DAMAGE WAIVER INSURANCE WITH A \$250.00 DEDUCTIBLE IS INCLUDED WITH THE MONTHLY COST OF YOUR RENTAL. CONTAINER DAMAGE WAIVER INSURANCE COVERS THE STRUCTURAL INTEGRITY OF THE CONTAINER ITSELF. COSMETIC DAMAGE IS NOT COVERED.

CONTENTS INSURANCE COVERAGE MAY BE OBTAINED FROM STORAGE PROTECTORS AS SET FORTH BELOW. CONTENTS INSURANCE COVERS GOODS CONTAINED WITHIN THE CONTAINER. RENTER IS NOT OBLIGATED TO OBTAIN COVERAGE(S) FROM STORAGE PROTECTORS AND MAY ELECT TO USE HOMEOWNERS INSURANCE OR AN ALTERNATIVE FORM OF COMMERCIAL INSURANCE COVERAGE TO MEET ANY CONTENTS INSURANCE REQUIREMENTS CONTAINED IN THE RENTAL AGREEMENT.

Tenant acknowledges that Owner is not responsible for any loss of, or damage to any of Renters property stored in the Container(s) and waives all claims against Owner for such. **Customer participation in the Storage Protectors Container Contents and Damage Insurance Program is underwritten by Lloyds of London covernote B0429BA2300106 and B0429BA2300105 and administered by Carstin Insurance Partners, a licensed agent, AZ Licenses No. 1800003983 satisfies such conditions.** Neither COOL-BINZ, nor its employees are an insurance agent.

Type of Goods Stored:

- ☐ Household Goods/Personal Property
- ☐ Business/Trade Property

Container Damage Waiver Insurance Program coverage underwritten by Chaucer Insurance Company DAC, is for damage, destruction, and perils to owner's Containers. **Flood coverage is not provided.** The policy contains exclusions, limitations, definitions, and conditions.

Coverage is in effect only in the event you pay the monthly cost listed below and you continue to pay monthly through the duration of your agreement. I understand a portion of the cost I pay is applicable to the Container Company's expense in collecting, accounting, and remitting payment to the Insurance Company.

Equipment Type: Portable Storage Container

Damage Coverage: \$5,000.00

Deductible: \$250.00

Monthly Cost: Included in Monthly Rental Price

STORAGE PROTECTORS DAMAGE WAIVER AND CONTAINER CONTENTS INSURANCE PROGRAM is underwritten by Lloyds of London covernote B0429BA2300106 and B0429BA2300105, and, administered by Carstin Insurance Partners, a Licensed Agent

COVERAGE SELECTION

☐ I OPT TO PARTICIPATE IN THE STORAGE PROTECTORS CONTENTS INSURANCE PROGRAM, underwritten by Lloyds of London covernote B0429BA2300106 and B0429BA2300105, and administered by Carstin Insurance Partners, AZ License No. 1800003983. The coverage is for goods contained in the rented Container(s). Covered causes and losses include burglary, fire or lightning, sonic boom, explosion, windstorm or hail, smoke, aircraft or vehicles, riot or civil commotion, vandalism, sinkhole collapse, falling objects, weights of snow, ice, or sleet, and water damage. Flood coverage is not provided. The policy contains exclusions, limitations, definitions, and conditions. Coverage is in effect only in the event you pay the monthly cost listed below and you continue to pay monthly through the duration of your agreement. I understand a portion of the cost I pay is applicable to the container company's expense in collecting, accounting, and remitting payment to the Insurance Company.

Deductible: \$250.00 for coverages up to \$10,000; \$500.00 for coverages exceeding \$10,000.

Coverage:

\$2,000.00 - \$18.99

\$5,000.00 - \$24.99

\$10,000.00 - \$44.99

\$15,000.00 - \$59.99

\$20,000.00 - \$74.99

All Insurance related questions and requests should be directed to:

Carstin Insurance Partners / Airpark Insurance, 16009 N 81st St., Ste 130, Scottsdale, AZ, 85260 (office) 833-659-7867

Email: sp-questions@carstin.com

To file a claim go to: <https://www.storageprotectors.com/file-a-claim/>

We're so happy you chose COOL-BINZ of Greater Naples for your storage needs! We're thrilled to have you as a valued customer. If you need any assistance please call our office at 239.370.2332.