



Fort Myers Beach Local Planning Agency

**Council Chambers
2525 Estero Blvd.
Fort Myers Beach, FL 33931**

Agenda

Tuesday, January 12, 2021

9:00 AM

ORDER OF BUSINESS

- I. CALL TO ORDER**
- II. INVOCATION**
- III. PLEDGE OF ALLEGIANCE**
- IV. APPROVAL OF MINUTES**
 - A. Draft minutes - December 1, 2020
- V. PUBLIC HEARINGS**
 - A. Chapter 6 Land Development Code Amendments
- VI. ADMINISTRATIVE AGENDA**
- VII. LPA MEMBERS ITEMS/REPORTS**
- VIII. LPA ATTORNEY ITEMS/REPORTS**
- IX. COMMUNITY DEVELOPMENT ITEMS/REPORTS**
- X. ITEMS FOR NEXT MONTHS AGENDA**
- XI. PUBLIC COMMENT**
- XII. ADJOURNMENT**

NOTE: THIS MEETING IS TELEVISED LIVE ON COMCAST CHANNEL 98.

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 accommodations, please notify the Town Clerk's Office at least 72 hours in advance. (239) 765-0202		Help for the hearing impaired is available through the Assistive Listening System. Receivers can be obtained from the Town Clerk's Office.
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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.



Fort Myers Beach Local Planning Agency

**Council Chambers
2525 Estero Blvd.
Fort Myers Beach, FL 33931**

Minutes

**Tuesday, December 1,
2020**

11:30 AM

ORDER OF BUSINESS

DRAFT

I. CALL TO ORDER

Present: Chair Megan Heil, Forrest Critser, Dan Hughes, Jane Plummer, Scott Safford and Patrick Vanasse.
Excused: Karen Swanbeck

II. INVOCATION

Chair Heil.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF MINUTES

- A. Minutes of October 13, 2020 meeting
LPA Member Hughes moved to approve the minutes; second by LPA Member Critser.
Motion approved; 6-0 with LPA Member Swanbeck excused.

V. PUBLIC HEARINGS

- A. Comprehensive Plan Amendment to Utilities Element
Request the Local Planning Agency make a recommendation to the Town Council to transmit the proposed Utilities Element text amendments along with data and analysis to the Department of Economic Opportunity for review.
Community Development Services Director Jason Green reviewed the background of the topic.
Danny Nelson with Tetra Tech stated that the Utilities Element update was required by the Water Management District. He described changes to the

document.

LPA Member Vanasse moved to recommend approval as presented by staff and the consultant; second by LPA Member Safford.

No public comment.

Motion approved; 6-0 with LPA Member Swanbeck excused.

B. Amendments to LDC Ch 6 and 34

Recommend approval of the proposed amendments removing and adding text to LDC Sec 6-366, Sec 14-11, 34-2441, Sec 34-2, Sec 34-3041 thru Sec 34-3048.

Director Green explained edits and deletions. He indicated the biggest difference was to clarify whether an event was administrative or had to be approved by Town Council. He pointed out that the definition of activity was added to Pages 47-48. Chair Heil questioned whether the time limit section belonged in Chapter 22 rather than Chapter 34. Director Green replied that temporary uses were regulated in Chapter 34. LPA Member Critser suggested that permit fees should be waived for the Chamber of Commerce. Chair Heil responded that they were a private entity. Director Green commented that the fee schedule was in Chapter 22 and not part of their discussion.

LPA Member Vanasse discussed construction projects under temporary uses in Chapter 34-2 and off-site construction staging sites. Director Green stated that blocking or changing the use of a public-right-of-way was not a special event or temporary use issue. LPA Member Vanasse felt that construction projects should be discussed further. Director Green stated that none of the uses were approved to be in the Town's right-of-way or blocking roads and the temporary use went with the site.

LPA Member Vanasse requested clarification regarding banners and garage sales. Director Green replied that banners were included under special events and garage sales were a definition but not formally codified under the permit process. LPA Member Vanasse suggested that garage sales be exempt from a permit. LPA Member Hughes agreed. Town Attorney Herin, Jr. brought up past complaints concerning garage sales impacting the flow of traffic.

LPA Member Plummer questioned how many applied for garage sales and whether they should educate people regarding permits. Director Green replied that there were no permit requests for garage sales while he was with the Town. LPA Member Vanasse expressed concern regarding requiring a permit when one was not required before. LPA Member Hughes questioned how they would enforce situations where garage sales were abused. Chair Heil indicated that garage sales were defined as three days. LPA Member Vanasse noted that enforcement was complaint-based. LPA Member Plummer agreed that they should not be permitted, and if there were no complaints, they would be fine. She brought up creating a notification system instead of a permit. Chair Heil noted that they were looking for a mechanism to enforce garage sales. Town Attorney Herin, Jr. reported that they did have a permit process for garage sales and the proposed revision was to clarify the issue.

LPA Member Safford agreed with leaving the permit requirement and suggested creating an on-line application process. LPA Member Critser and Chair Heil agreed. LPA

Member Vanasse did not think a permit should be required.

Chair Heil questioned why using an RV (recreational vehicle) or mobile home during rehabilitation following a disaster was removed from Page 45. Director Green was not sure, but he noted the difference between mobile homes and RVs. Some LPA Members voiced agreement with striking mobile homes and leaving RVs. Town Attorney Herin noted that it might have been removed since many emergency orders issued from the state allowed RVs and mobile homes after disasters. He referred to Section 6-519 that addressed the temporary placement of RVs. He will verify whether it was removed due to duplication or direct conflict with state or federal law.

LPA Member Safford questioned providing temporary cell towers.

LPA Member Hughes referred to the bottom of Page 43 and questioned who decided what any similar use meant. He requested that it be struck through.

Discussion was held regarding language in the motion.

LPA Member Critser stated that garage sale permits were free and helped to protect neighbors. He supported permits.

No public comment.

LPA Member Vanasse recommended approval of the recommended changes to the LDC with the following changes of removal of Sec. 34-3041(b)(4) and (5), leave remaining 34-346 and 347 or as renumbered, and a request to address right-of-way use; second by LPA Member Plummer.

LPA Member Hughes was not in favor of removing the permit for garage sales. Discussion followed. Town Attorney Herin stated that it was bad form, bad drafting and bad government to have a regulation in a definition. They were moving the regulation out of a definition into the code itself, where it should have been in the first place. There was already a form for people to fill out to track the three-per-year limitation.

Motion approved; 4-2 with LPA Members Hughes and Safford dissenting and LPA Member Swanbeck excused.

VI. ADMINISTRATIVE AGENDA

VII. LPA MEMBERS ITEMS/REPORTS

LPA Member Safford hoped that people could attend the boat parade on Saturday safely.

Chair Heil questioned why the public could no longer access the status of permits online. Director Green replied that Etrakit was not available to the public due to hacking issues and people had to call the Town or make an appointment. Chair Heil questioned whether the system would be fixed. Director Green stated that iWork was available to the public.

No items from other members.

VIII. LPA ATTORNEY ITEMS/REPORTS

No items.

IX. COMMUNITY DEVELOPMENT ITEMS/REPORTS

Director Green reported that one application was received for the Historic

Preservation Advisory Committee. Chair Heil encouraged members of the public to apply for the three vacancies.

Director Green discussed an upcoming survey to gather public input.

X. ITEMS FOR NEXT MONTHS AGENDA

Chair Heil suggested that they come up with three to five priority issues in the LDC.

XI. PUBLIC COMMENT

No public comment.

XII. ADJOURNMENT

LPA Member Plummer moved to adjourn; second LPA Member Vanasse Motion approved; 6-0 with LPA Member Swanbeck excused.

**Town of Fort Myers Beach
Agenda Item Summary**

Blue Sheet Number: **2021-90**

1. Requested Motion:

Meeting Date: January 12, 2021

Chapter 6 Maintenance Codes, Building Codes, and Coastal Regulations of the Land Development Code Amendments

Why the action is necessary:

Changes in the Florida Building Code require updates to Chapter 6. Edits also include provisions and regulations whose purpose has been questioned in past LPA and Town Council discussions.

What the action accomplishes:

Updates Chapter 6 of the Land Development Code.

2. Agenda:

PUBLIC HEARINGS

3. Requirement/Purpose:

Ordinance

5. Background:

The Town of Fort Myers Beach Land Development Code Chapter 6 Maintenance Codes, Building Codes, and Coastal Regulations includes regulations related to local amendments to the Florida Building Code and licensing requirements. This amendment primarily includes updates to the local building code provisions that are outdated by several Code versions and necessary with the most recent implementation of the 2020 Florida Building Code. The amendments are generally located within Section 6-1 thru 6-330.

Additional provisions being eliminated or modified were identified as unnecessary, duplicative, or not appropriate for this chapter of the Land Development Code. One example includes removing the Residential code provision that limits access to enclosed areas by one standard two-car garage door.

Attachments:

1. Edited -

Chapter_6__MAINTENANCE_CODES__BUILDING_CODES_AND_COASTAL_REGULATIONS_rev
1-2021-C3

Financial Impact:

6. Alternative Action

Recommend approval / approval with modifications / denial to the Town Council

7. Staff Recommendations:

8. Recommended Approval:

Date: January 07,
2021

Jason Green, Community Development
Services

Date: January 07,

2021

John R Herin Jr, Town Attorney

Date: January 08,
2021

Amy Baker, Deputy Town Clerk

Date: January 08,
2021

Local Planning Agency,

Chapter 6 - MAINTENANCE CODES, BUILDING CODES AND COASTAL REGULATIONS^[2]

ARTICLE I. - PROPERTY MAINTENANCE CODES

DIVISION 1. - INTERNATIONAL PROPERTY MAINTENANCE CODE

Sec. 6-1. - Adoption of International Property Maintenance Code.

Except as amended or modified in the sections below, the 2009 2018 Edition of the International Property Maintenance Code, published by the International Code Council, is hereby adopted as the Town of Fort Myers Beach Property Maintenance Code and shall be the governing law with respect to all structures and premises in the Town of Fort Myers Beach. A complete copy of this code shall be maintained on file in the office of the town clerk.

Sec. 6-2. - Amendments.

The 2009 2018 Edition of the International Property Maintenance Code is hereby amended as follows:

- (a) Wherever the term "*code official*" appears in the International Property Maintenance Code, that term shall be interpreted to mean the Director of the Department or Community Development or his or her designee. Wherever the term "*department*" appears in this code, it shall be interpreted to mean the Department of Community Development. Wherever the terms "*International Building Code*" or "*International Existing Building Code*" appear in this code, the term "Florida Building Code" shall be substituted for such terms.
- (b) *Section 101.1 Title*, is amended to read as follows:

These regulations shall be known as the International Property Maintenance Code of the Town of Fort Myers Beach, Florida, hereinafter referred to as "this code."
- (c) *Section 102.3 Application of other codes*, is amended to read as follows:

Repairs, additions or alterations to a structure, or changes of occupancy shall be done in accordance with the procedures and provisions of the Florida Building Code, as amended.
- (d) *Section 102.6 Historic Buildings*, is amended to read as follows:

The provisions of this code shall not be mandatory for existing buildings or structures formally or officially designated as historic buildings by either the federal government, the state, or the Town, provided such buildings or structures are judged by the Building Official to be safe and in the public interest of health, safety and welfare.
- (e) *Section 102.7 Referenced codes and standards*, is amended to read as follows:

The codes and standards referenced in this code shall be the Florida Building Code, the Florida Fire Prevention Code, the Life Safety Code and any other code or standard contained in Articles II, III and IV in Chapter 6 of the Land Development Code. Where there are differences between provisions of this code, the Florida Building Code and any other code or standard contained in Articles II, III and IV in Chapter 6 of the Land Development Code, the Florida Building Code, the Florida Fire Prevention Code, the Life Safety Code, and any other code or standard contained in Articles II, III, and IV in Chapter 6 of the Land Development Code shall prevail.
- (f) *Section 103 Department of Property Maintenance Inspection* is hereby deleted in its entirety.
- (g) *Section 104.4 Right of Entry* is hereby deleted in its entirety.
- (h) *Section 106.3 Prosecution of Violation*, is hereby amended to read as follows:

Any person who fails to comply with a notice of violation or order served in accordance with Section 107 shall be adjudicated in accordance with the provisions of Chapter 162 of the Florida Statutes or any other method allowed by Florida law, or as provided in the codes and ordinances of the Town of Fort Myers.

- (i) *Section 107.2 Form*, is hereby amended to read as follows:

The notice prescribed in Section 107.1 shall comply with the requirements of F.S. ch. 162.

- (j) *Section 107.3 Method of Service*, is hereby amended to read as follows:

All notices shall be deemed to have been properly served if the service requirements contained in F.S. ch. 162 have been met.

- (k) *Section 107.5 Penalties*, is hereby amended to read as follows:

Penalties for noncompliance with orders and notices shall be as set forth in F.S. ch. 162, and the codes and ordinances of the Town of Fort Myers Beach.

- (l) *Section 107.6 Transfer of Ownership*, is hereby amended to read as follows:

If the owner of property that is subject to an code enforcement proceeding before the special magistrate, or court transfers ownership of such property between the time the notice of violation was served and the time of the hearing, such owner shall:

- (1) Disclose, in writing, the existence and the nature of the proceeding to the prospective transferee.
- (2) Deliver to the prospective transferee a copy of the pleadings, notices, and other materials relating to the code enforcement proceeding received by the transferor.
- (3) Disclose, in writing, to the prospective transferee that the new owner will be responsible for compliance with the applicable code and with orders issued in the code enforcement proceeding.
- (4) File a notice with the code official of the transfer of the property, with the identity and address of the new owner and copies of the disclosures made to the new owner, within 5 days after the date of the transfer.
- (5) A failure to make the disclosures described in paragraphs (1), (2), and (3) before the transfer creates a rebuttable presumption of fraud. If the property is transferred before the hearing, the proceeding shall not be dismissed, but the new owner shall be provided a reasonable period of time to correct the violation before the hearing is held.

- (m) *Section 108.2 Closing of vacant structures*, is hereby amended to read as follows:

If the structure is vacant and unfit for human habitation and occupancy, and is not in danger of structural collapse, the code official is authorized to post a placard of condemnation on the premises and order the structure closed up so as not to be an attractive nuisance. Upon failure of the owner to close up the premises within the time specified in the order, the code official shall cause the premises to be closed and secured through any available public agency or by contract or arrangement by private persons and the cost thereof shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate for said costs. The lien shall be superior to all other liens and encumbrances, including prior recorded mortgage or judgments and only inferior to liens for taxes. In the event the owner or person creating the need for closing or securing the premises fails and refuses to pay or reimburse the Town for the costs, the Town may foreclose said lien in accordance with the law applicable to the foreclosure of such liens and the Town shall be entitled to recover its reasonable attorney's fees and costs incurred in such foreclosure action.

- (n) *Section 108.7 Record*, is hereby amended to read as follows:

The code official shall prepare a report on an unsafe condition. In addition, a written notice of the unsafe condition shall be recorded in the public records for Lee County. The notice shall state the occupancy of the structure and the nature of the unsafe condition.

- (o) *Section 109.5 Costs of emergency repairs*, is hereby amended to read as follows:

Costs incurred in the performance of emergency work shall be paid by the Town. All costs incurred by the Town in the performance of emergency work shall be a lien upon such real estate for said costs. The lien shall be superior to all other liens and encumbrances, including prior recorded mortgage or judgments and only inferior to liens for taxes. In the event the owner or person creating the need for emergency repairs fails and refuses to pay or reimburse the Town for the costs, the Town may foreclose said lien in accordance with the law applicable to the foreclosure of such liens and the Town shall be entitled to recover its reasonable attorney's fees and costs incurred in such foreclosure action.

- (p) *Section 109.6 Hearing*, is hereby amended to read as follows:

Any person ordered to take emergency measures shall comply with such order forthwith. Any affected person shall thereafter, upon appeal to the Town Council, be afforded a hearing as described in this code.

- (q) *Section 110.1 General*, is hereby amended to read as follows:

The code official shall order the owner of any premises upon which is located any structure, which in the code official's judgment after review is so deteriorated or has become so out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human habitation or occupancy, and such that it is unreasonable to repair the structure, to demolish and remove such structure; or if such structure is capable of being made safe by repairs, to repair and make safe and sanitary, or to board up and hold for future repair or to demolish and remove at the owner's option; or where there has been a cessation of normal construction in accordance with the Florida Building Code, the code official shall order the owner to demolish and remove such structure, or board up until future repair. Boarding the building up for future repair shall not extend beyond one year, unless approved by the Building Official.

- (r) *Section 110.3 Failure to comply*, is hereby amended as follows:

If the owner of a premises fails to comply with a demolition order within the time prescribed, the Town shall cause the structure to be demolished and removed, either through an available public agency or by contract or arrangement with private persons, and the cost of such demolition and removal shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate for said costs. In the event the owner or person creating the need for demolition and removal fails and refuses to pay or reimburse the Town for the costs, the Town may foreclose said lien in accordance with the law applicable to the foreclosure of such liens and the Town shall be entitled to recover its reasonable attorney's fees and costs incurred in such foreclosure action.

- (s) *Section 111.1 Application for appeal*, is hereby amended to read as follows:

Any person directly affected by a decision of the code official or a notice or order issued pursuant to this code shall have the right to appeal to the Town Council, provided that a written application for appeal is filed within 20 days after the day the decision, notice or order was served on the affected person or from the date of posting on the property. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, that the provisions of this code do not fully apply, or the requirements of this code are adequately satisfied by other means. This section shall not apply to orders issued by the Town special magistrate in connection with a code enforcement special magistrate hearing.

- (t) *Sections 111.2 through Section 111.8* are hereby deleted in their entirety.

- (u) *Section 112.4 Failure to comply*, is hereby amended to read as follows:

Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be guilty of a code violation and shall be subject to a fine as determined by the Town special magistrate.

- (v) *Section 302.3 Sidewalks and driveways*, is hereby amended to read as follows:

Section 302.3. Sidewalks, driveways and rights-of-way. All sidewalks, walkways, stairs, driveways, parking spaces, and similar areas shall be kept in a proper state of repair, and maintained free from hazardous conditions. Trees and shrubs shall be maintained to provide for horizontal clearance of at least three (3) feet from and vertical clearance of at least eight (8) feet above any sidewalk, bike path, or street right-of-way. Unpaved areas shall be regularly mowed or otherwise maintained in a neat and attractive condition.

- (w) *Section 302.4 Weeds*, is hereby amended to read as follows:

All premises and exterior property shall be maintained free from weeds or plant growth in excess of 12 inches. Weeds shall be defined as all grasses, annual plants and vegetation, other than trees or shrubs, provided, however, this term shall not include cultivated flowers and gardens and native beach vegetation such as sea oats. Upon failure of the owner or agent having charge of a property to cut and destroy weeds after service of a notice of violation and having been given a reasonable time to cut and destroy the weeds, any duly authorized employee of the Town or contractor hired by the Town shall be authorized to enter upon the property in violation and cut and destroy the weeds growing thereon, and the costs of such removal shall be paid by the owner or agent responsible for the property. All costs incurred by the Town to cut and destroy the weeds shall be a lien upon such real estate for said costs. The lien shall be superior to all other liens and encumbrances, including prior recorded mortgage or judgments and only inferior to liens for taxes. In the event the owner or agent fails and refuses to pay or reimburse the Town for its costs, the Town may foreclose said lien in accordance with the law applicable to the foreclosure of such liens and the Town shall be entitled to recover its reasonable attorney's fees and costs incurred in such foreclosure action.

- (x) *Section 302.8 Motor Vehicles*, is hereby amended to read as follows:

Section 302.8 Motor Vehicles and Boats. Except as provided for in other regulations, no inoperative or unlicensed motor vehicle or boat shall be parked, kept or stored on any premises, and no vehicle or boat shall at any time be in a state of major disassemble, disrepair, or in the process of being stripped or dismantled. Painting of vehicles or boats is prohibited unless conducted inside an approved spray booth.

Exception: A vehicle or boat of any type is permitted to undergo major overhaul, including body or hull work, provided that such work is performed inside a structure or similarly enclosed area designed and approved for such purposes.

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

Section 302.10 Exterior Storage.

1. No temporary or permanent storage of materials or equipment is permitted on any vacant parcel, unless in conjunction with an active building permit or where such storage is specifically permitted by Chapter 34 of the Land Development Code.
2. Equipment, materials, and furnishings not designed for use outdoors, such as automotive parts and tires, building materials, and interior furniture, may not be stored outdoors.

- (z) *Section 303.2 Enclosures*, is hereby amended to read as follows:

Public swimming pools, hot tubs and spas shall include all safety features specified by F.S. § 514.0315, including any subsequent amendments thereto. Residential swimming pools shall be maintained in compliance with the State Residential Swimming Pool Safety Act, as contained in F.S. ch. 515.

(aa) A new *Section 303.3* is hereby added as follows:

Section 303.3 Disposal of swimming pool water. Prior to disposing of any swimming pool water, chlorine and bromine levels must be reduced by not adding chlorine or bromine for a least five (5) days or until levels are below 0.1 mg per liter. One of the following methods of disposal shall be utilized:

1. Discharge of the water into roadside swales to allow for percolation of the water into the ground without any runoff to canals, beaches, wetlands, other tidal waters, or onto adjoining properties. This shall be the preferred method of disposal.
2. Discharge of the water into the sanitary sewer system operated by Lee County Utilities is also permitted, but is not the preferred method.

Under no circumstances shall any swimming pool water be discharged either directly or indirectly onto the beach, or into canals, wetlands, or any other tidal waters.

(bb) *Section 304.3 Premises Identification*, is hereby amended to read as follows:

All buildings shall have address numbers that have been assigned by Lee County placed in a position to be plainly legible and visible by emergency personnel from the street or road fronting the property. All address numbers shall contrast with their background. Address numbers shall be Arabic numerals or alphabet letters. Numbers shall be a minimum of 3 inches high. Numbers on all commercial, institutional, or multifamily buildings that are set back more than 50 feet from the street shall be at least eight inches high.

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

Every window in a residential structure that is capable of being opened and every door, window, and other outside opening required for ventilation of habitable rooms, food preparation areas, food service areas or any areas where products to be included or utilized in food for human consumption are processed, manufactured, packaged, or stored shall be supplied with approved tightly fitting screens of not less than 16 mesh per inch (16 mesh per 25 mm), and every screen door used for insect control shall have a self-closing device in good working condition. Screens shall not, however, be required where other approved means, such as air curtains or insect repellent fans, are employed.

(dd) A new *Section 308.4* is hereby added as follows:

308.4 Additional Regulations for Rubbish and Garbage Containers.

1. Rubbish and Garbage containers shall not be moved to the street more than 24 hours prior to scheduled curbside collection, nor remain there more than 24 hours after scheduled collection.
2. Each refuse container that is not movable shall be opaquely screened from view from streets and adjoining properties and such screening shall be of sufficient height to entirely screen the container. Screening may be achieved by landscaping, wall, or opaque fencing provided the wall or fence does not exceed the maximum height permitted for the property.
3. Any rubbish or garbage container not located within a roofed enclosure must have a cover or lid that renders the interior of the container inaccessible to animals.

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

Every common hall and stairway in residential occupancies, other than in one- and two-family dwellings, shall be lighted at all times with at least a 60-watt standard incandescent light bulb for each 200 square feet (19 m²) of floor area or equivalent illumination, provided that the spacing between lights shall not be greater than 30 feet (9.144 m). In other than residential occupancies, means of egress, including exterior means of egress, stairways shall be illuminated at all times the building space served by the means of egress is occupied with a minimum of 1 footcandle (11 lux) at floors, landings and treads, provided, however, that during Sea turtle nesting season (May 1 through October 31), the provisions of Chapter 14, Article II of the Fort Myers Beach Land Development Code shall supersede the foregoing requirements (correct reference?).

(ff) *Section 507 Storm Drainage*, is hereby amended to read as follows:

Drainage of roofs and paved areas, yards and courts, and other open areas on the premises shall not be discharged in a manner that creates a public nuisance. Point sources of stormwater discharge from private property directly onto the beach are prohibited. This prohibition includes drainage collected from parking lots or other paved surfaces and stormwater from roofs of buildings.

(gg) A new *Section 602.7* is hereby added as follows:

Section 602.7 Screening of Mechanical Equipment. Any new mechanical equipment placed on a roof shall be screened from view from ground level of adjoining properties and public rights-of-way. When mechanical equipment is being replaced on a roof of a building that is not undergoing structural alterations, such equipment shall be screened to the same standard using non-structural materials such as ornamental latticework.

(hh) *Section 701.1 Scope*, is hereby amended to read as follows:

The provisions of this chapter shall govern the minimum conditions and standards for fire safety relating to structures and exterior premises, including fire safety facilities and equipment to be provided. All references to the "International Fire Code" in this Chapter 7 shall be replaced with the "Florida Fire Prevention Code."

Sec. 6-14. - Neighborhood flooding.

(a) Chapter 10 of this code requires stormwater management systems for new development (see § 10-321). Development that is not subject to those requirements, such as single-family and two-family dwellings, detached structures, pools, pool decks, additions, pavers, driveways, patios, etc. on existing lots, can also flood surrounding lots and streets, especially if the lot is raised higher than adjoining properties or if rainfall is concentrated by gutters and downspouts and discharged without an opportunity for infiltration. The placement of fill on vacant properties have the potential to also cause surrounding lots and streets to flood and therefore when no other development permit is being obtained at the time fill is being brought to the site, a site fill permit must be obtained. The fill permit application must show how normal rainfall one inch (interior lot) - 1.6 inch (waterfront lot) will have an opportunity to infiltrate into the ground within the lot.

To minimize neighborhood flooding from normal daily rainfall, no more than 67 percent of the total lot area within a residential zoning district shall be covered with impervious surfaces. The plans must indicate the method used to maintain a one-inch (interior lot) or 1.6 inch (waterfront lot) rainfall on-site when more than 500 square feet of impervious surface is proposed.

(1) Roof areas not served by gutters and downspouts must not drain to impervious surfaces, and must not drain to pervious surfaces that are sloped in excess of five percent. Surfaces not meeting these requirements must be designed to detain or deflect rainfall, for instance through the use of earthen ridges, curbs, or retaining walls that prevent average rainfall from running onto adjoining lots or streets.

DIVISION 2. - HOUSING CODE

Sec. 6-31. - Adoption; amendments.

The following chapters and sections of the 1997 Standard Housing Code, as published by the Southern Building Code Congress International, Inc., 900 Montclair Road, Birmingham, Alabama, 35213-1206, are hereby adopted by reference and made a part of this article, with the exceptions set forth as follows:

Chapter 1, Administration.

Exception: Section 103.2.2(4) is deleted and replaced with new section 103.2.2(4) as follows:

4. State that, if such repairs, reconstruction, alterations, removal or demolition are not voluntarily completed within the stated time as set forth in the notice, the housing official shall institute such legal and/or administrative proceeding as may be appropriate.

Exception: Section 103.4 is deleted and replaced with new section 103.4 as follows:

An officer or employee, or member of any board, charged with the enforcement of this code, in the discharge of his duties, shall not thereby render himself liable personally, and is hereby relieved from all personal liability for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of his duties.

Exception: Section 103.5 is deleted.

Exception: Section 104 is deleted and replaced with new section 104 as follows:

104 Inspections

The housing official shall make, or cause to be made, inspections to determine the condition of residential buildings and premises in the interest of safeguarding the health and safety of the occupants of such buildings and of the general public. For the purpose of making such inspections, the housing official, or his designee, is hereby authorized to enter, examine, and survey, at all reasonable times, any residential building or premises. If the owner, agent, tenant or other person in charge thereof refuses to allow the housing official, or his designee, free access to such building or premises, the housing official may obtain a duly issued search or administrative warrant, pursuant to F.S. ch. 933, as from time to time amended, or any other applicable law which may be in effect at the time such warrant is sought.

Exception: Sections 105, 106, and 107, relating to the housing board of adjustment and appeals, are deleted. Appeals and variances shall be processed and decided in the same manner as for variances under ch. 34 of the Land Development Code ~~this code~~. Enforcement of this code shall be in accordance with ch. 1.

Chapter 2, Definitions.

Exception: Delete the definition of "building" and "housing official" found in section 202 and replace with a new definition of "building" and "housing official" to be used when construing minimum housing provisions, as follows:

Building —Any structure built or used for shelter or enclosure of persons which has enclosing walls sheltering 50 percent or more of its perimeter. The term "building" shall be construed as if followed by the words "or part thereof" and shall include mobile homes, manufactured homes and all recreational vehicles which have been established as units for permanent living by the filing of a declaration of domicile with the clerk of the circuit court on or before October 21, 1985; provided, however, that the foregoing definition specifically excludes hotels and motels.

Housing official —The officer, or his duly authorized representative charged with the administration and enforcement of this code, which shall be the town manager or designee.

Chapter 3, Minimum Standards for Basic Equipment and Facilities.

Exception: Delete section 302.2 and replace with new section 302.2 as follows:

All required plumbing fixtures shall be located within the dwelling unit and be accessible to the occupants of same. The water closet, tub or shower, and lavatory shall be located in a room affording privacy to the user. Bathrooms shall be accessible from habitable rooms, hallways, corridors or other protected or enclosed areas.

Exception: The following language shall be added to section 302.5:

This section and its subsections shall only apply if the Standard Building Code (as published by the Southern Building Code Congress) and any local amendments thereto, required heating facilities at the time the building was constructed.

Exception: Delete section 302.5.3 and replace with new section 302.5.3 as follows:

Unvented fuel burning heaters shall be prohibited except for gas heaters listed for unvented use where the total input rating of the unvented heater is less than 30 BTU per hour per cubic foot of room content and provided that the gas heater is installed pursuant to the Gas Code as adopted herein at section 6-171. Notwithstanding the above, all unvented fuel-burning heaters shall be prohibited in bedrooms and sleeping areas.

DIVISION 3. - UNSAFE BUILDING ABATEMENT CODE

Sec. 6-36. - Adoption; amendments.

The following chapters and sections of the 1985 Standard Unsafe Building Abatement Code, as published by Southern Building Code Congress International, Inc., 900 Montclair Road, Birmingham, Alabama 35213-1206, are hereby adopted by reference and made part of this article, with the exceptions set forth as follows:

Chapter I, Administration.

Section 105, relating to the board of adjustment and appeals, is deleted, and replaced by the procedures set forth for the delegation of authority to Lee County's Construction Board of Adjustment and Appeals found in division 2 of article II of this chapter.

Chapter II, Definitions.

Chapter III, Inspection and Notice of Noncompliance.

Chapter IV, Appeals.

Chapter V, Rules of Procedure for Hearing Appeals.

Chapter VI, Implementation.

Chapter VII, Recovery of Cost of Repair or Demolition.

Exception: If the building official proceeds to demolish the building or structure as set forth herein, the town council shall, by proper resolution, assess the entire cost of such demolition and removal against the real property upon which such cost was incurred, which assessment, when made, shall constitute a lien upon the property superior to all others except taxes. The lien shall be filed in the public land records of the county. The resolution of assessment and lien must indicate the nature of the assessment and lien,

the lien amount, and an accurate description of the property affected. The lien becomes effective on the date of filing such notice of lien and shall bear interest from such date at the rate of ten percent per annum. If the resulting lien is not satisfied within two years after the date it is filed, then the town may:

- (1) File suit to foreclose on the lien property as provided by law in suits to foreclose mortgages;
or
- (2) Follow any other lawful process or procedure available for enforcement of the lien in accordance with any general law of the state relating to the enforcement of municipal liens.

* * *

ARTICLE II. - BUILDING CODES

DIVISION 1. - GENERALLY

Sec. 6-41. - Applicability of article.

This article applies to the incorporated area of the Town of Fort Myers Beach.

Sec. 6-42. - Penalty for violation of article; additional remedies.

Any person, or any agent or representative thereof, who violates any provision of this article shall, ~~upon conviction,~~ be subject to the following penalties ~~set forth in the codes and ordinances of the Town of Fort Myers Beach.~~ The town council may institute in any court, or before any administrative board of competent jurisdiction, action to prevent, restrain, correct or abate any violation of this article or of any order or regulations made in connection with its administration or enforcement, and the court or administrative board shall adjudge such relief by way of injunction, or any other remedy allowed by law, or otherwise, to include mandatory injunction as may be proper under all the facts and circumstances of the case in order to fully effectuate the regulations adopted under this article, or any amendment thereto, and any orders and rulings made pursuant thereto.

- (1) ~~Criminal penalties.~~ Such person shall be subject to punishment as provided in § 1-5 of this LDC.
- (2) ~~Civil penalties.~~ The town council may institute in any court, or before any administrative board of competent jurisdiction, action to prevent, restrain, correct or abate any violation of this article or of any order or regulations made in connection with its administration or enforcement, and the court or administrative board shall adjudge such relief by way of injunction, or any other remedy allowed by law, or otherwise, to include mandatory injunction as may be proper under all the facts and circumstances of the case in order to fully effectuate the regulations adopted under this article, or any amendment thereto, and any orders and rulings made pursuant thereto.

Sec. 6-43. - Conflicting provisions.

Whenever the requirements or provisions of this article are in conflict with the requirements or provisions of any other lawfully adopted ordinance, code or regulation, the provisions providing the greater degree of life safety will apply. Any conflict between the building code and applicable fire safety codes will be resolved by agreement between the building official and the fire official in favor of the requirement of the code which offers the greatest degree of life safety or alternative which would provide an equivalent degree of life safety and an equivalent method of construction.

Sec. 6-44. - Enforcing officers.

Designated officials such as the building official referenced by the codes adopted in this chapter shall be appointed by the town manager. The designated officials shall carry out the duties enumerated in these codes and shall be deemed the responsible officials with respect to enforcement of the provisions of these codes.

Sec. 6-45. - Permit fees.

The Town Council has the power to determine and set reasonable permit fees. Unless a different fee schedule is set, permits fees shall be as referenced in ~~Lee County Administrative Code 3-10, Appendix C (External Fees and Charges Manual)~~Town of Fort Myers Beach Fee Schedule.

DIVISION 2. - LEE COUNTY'S BOARDS OF ADJUSTMENT AND APPEALS

Sec. 6-71. - Applicability of division.

This division shall include, but not be limited to, any contractor, owner, agent, manufacturer or supplier providing construction services or materials regulated by standard codes enforced by the Town of Fort Myers Beach.

Sec. 6-72. - Intent of division.

The town has adopted various standard codes relating to building, plumbing, mechanical, gas, electrical, unsafe buildings, housing and fire. This division is intended to be construed in conjunction with these codes.

Sec. 6-73. - Boards established; jurisdiction.

Lee County has established a construction board of adjustment and appeals known as the Lee County Board of Adjustment and Appeals ~~through chapter 6, article 2, division 2 of the Lee County Land Development Code~~. The purpose of that board is to hear and decide appeals from the decision of the county's building official and fire official or their designees on any of the various standard codes regulated and enforced by the county except the plumbing code and mechanical code. Lee County has also established separate boards of adjustment and appeals to arbitrate matters involving the plumbing code and mechanical code.

Sec. 6-74. - Delegation of authority to Lee County's Boards of Adjustment and Appeals.

- (a) The Town of Fort Myers Beach hereby delegates to each of the three Lee County Boards of Adjustment and Appeals the authority to make decisions on appeals that may be filed in accordance with § 6-80 of this division.
- (b) The town attorney will provide legal advice to each of the three Lee County Boards of Adjustment and Appeals when warranted.

Sec. 6-80. - Right of appeal; notice of appeal.

- (a) Whenever the building official or fire official or their designees shall reject or refuse to approve the mode or manner of construction to be followed or materials to be used, or when it is claimed that the provisions of a code do not apply, or that an equally good or more desirable form of construction can be employed in any specific case, or when it is claimed that the true intent and meaning of a code or any of the regulations thereunder have been misconstrued or wrongly interpreted, the owner of such building or structure, or his duly authorized agent, may appeal from the decision of the building official or fire official or their designees to Lee County's appropriate Board of Adjustment and Appeals. Notice of appeal shall be in writing and filed within 30 days after the decision is rendered by the building official or fire official or their designees. All requests for appeal shall be on forms provided by the building official with payment of the appropriate fee.
- (b) In the case of a building or structure which in the opinion of the building official is unsafe or dangerous, the building official may, in his order, limit the time for such appeal to a shorter period.

Sec. 6-81. - Variations and modifications.

- (a) Lee County's Boards of Adjustment and Appeals, pursuant to an appeal from a decision of the building official or fire official or their designees, may vary the application of a code to any particular case when, in its opinion and based upon sufficient evidence, the enforcement thereof would do manifest injustice and would be contrary to the spirit and purpose of a code or public interest, or when, in its opinion and based upon sufficient evidence to the contrary, the interpretation of the building official or fire official or their designees should be modified or reversed.
- (b) Any decision of Lee County Boards of Adjustment and Appeals to vary the application of any provision of a code or to modify an order of the building official or fire official or their designees shall specify the variation or modification made, the conditions upon which it is made, and the reasons therefor.
- (c) Variances to the floodplain regulations must meet the additional criteria in article IV of this chapter.

Sec. 6-82. - Decisions.

- (a) Every decision of Lee County's Boards of Adjustment and Appeals shall be final; subject, however, to any remedy an aggrieved party might have at law or in equity. Every decision shall be in writing and shall indicate the vote upon the decision. Every decision of Lee County's Boards of Adjustment and Appeals shall be signed and attested to by the chairman of the board.
- (b) Lee County's Boards of Adjustment and Appeals shall, in every case, reach a decision without unreasonable or unnecessary delay.
- (c) If a decision of any of Lee County's Boards of Adjustment and Appeals reverses or modifies a refusal, order or disallowance of the building official or fire official or their designees, or varies the application of any provision of a code, the appropriate official shall immediately take action in accordance with such decision.
- (d) Any aggrieved person may obtain judicial review of the decision of Lee County's Boards of Adjustment and Appeals by filing a petition for writ of certiorari in the circuit court. Such petition must be filed within 30 calendar days after the board of adjustment and appeals' decision, but not thereafter, pursuant to the Florida Rules of Civil Procedure. The original petition for writ of certiorari must be filed with the clerk of the circuit court. Copies of the petition shall be filed with the building official for forwarding to the town attorney.

DIVISION 3. - BUILDING CODE

Sec. 6-111. - Adoption; amendments.

The Florida Building Code is hereby adopted by reference and made a part of this article, including all revisions and amendments approved in accordance with state law, with the exceptions set forth as follows:

Chapter 1, Administration.

Sections 103.1 through 103.6 relating to powers and duties of the building official are added as follows:

103.1 General. The building official is hereby authorized and directed to enforce the provisions of this code and building codes adopted by the state of Florida. The building official has the authority to render interpretations of this code and to adopt policies and procedures in order to clarify the application of its provisions. Such interpretations, policies, and procedures must be in compliance

with the intent and purpose of this code, and may not have the effect of waiving requirements specifically provided for in this code.

103.2 Right of entry.

103.2.1 Whenever necessary to make an inspection to enforce any of the provisions of this code, or whenever the building official has reasonable cause to believe that there exists in any building or upon any premises any condition or code violation which makes such building, structure, premises, electrical, gas, mechanical, or plumbing systems unsafe, dangerous, or hazardous, the building official may enter such building, structure, or premises at all reasonable times to inspect the same or to perform any duty imposed upon the building official by this code. If such building or premises are occupied, he must first present proper credentials and request entry. If such building, structure, or premises are unoccupied, he must first make a reasonable effort to locate the owner or other persons having charge or control of such and request entry. If entry is refused, the building official has recourse to every remedy provided by law to secure entry.

103.2.2 When the building official has obtained a proper inspection warrant or other remedy provided by law to secure entry, no owner or occupant or any other persons having charge, care, or control of any building, structure, or premises may fail or neglect, after proper request is made as herein provided, to promptly permit entry therein by the building official for the purpose of inspection and examination pursuant to this code.

103.3 Stop work orders. Upon notice from the building official, work on any building, structure, electrical, gas, mechanical, or plumbing system that is being done contrary to the provisions of this code, or in a dangerous or unsafe manner, must immediately cease. Such notice must be in writing and posted on the permit board, stating the reasons for the order. Work may only resume after lifting of the stop work order by the building official.

103.4 Revocation of permits. The building official is authorized to suspend or revoke a permit issued under the provisions of this code wherever the permit is issued in error or on the basis of incorrect, inaccurate, or incomplete information, or in violation of any ordinance or regulation or any provision of this any code of the Town of Fort Myers Beach.

103.4.1 Misrepresentation of application. The building official may revoke a permit or approval issued under the provisions of this code if there has been any false statement or misrepresentation as to a material fact in the application or plans on which the permit or approval was based.

103.4.2 Violation of code provisions. The building official may revoke a permit upon determination by the building official that the construction, erection, alteration, repair, moving, demolition, installation, or replacement of the building, structure, electrical, gas, mechanical, or plumbing systems for which the permit was issued is in violation of, or not in conformity with, the provisions of this code.

103.5 Unsafe buildings or systems. All buildings, structures, electrical, gas, mechanical, or plumbing systems which are unsafe, unsanitary, or do not provide adequate egress, or which constitute a fire hazard, or are otherwise dangerous to human life, or which in relation to existing use, constitute a hazard to safety or health, are considered unsafe buildings or service systems. All such unsafe buildings, structures or service systems are hereby declared illegal and must be abated by repair and rehabilitation or by demolition in accordance with the provisions of the Unsafe Building Abatement Code (see article I of this chapter).

103.6 Requirements not covered by code. Any requirements necessary for the strength, stability, or proper operation of an existing or proposed building, structure, electrical, gas, mechanical, or plumbing system, or for the public safety, health, and general welfare, not

specifically covered by this or the other technical codes, will be determined by the building official.

Section 104.1.4 is amended to read as follows:

104.1.4. Minor repairs.

Ordinary minor repairs, routine maintenance, or incidental work of a nonstructural nature may be made without a permit, provided that such repair shall not violate any of the provisions of the technical codes. For purposes of this section, "ordinary minor repairs" include the replacement of damaged or worn materials by similar new materials and any other repairs defined as such by the building official. Ordinary minor repairs under this section may not involve the cutting of any structural beam or supporting member or include any alterations that would increase habitable floor area, change the use of any portion of the building, remove or change any required means of egress or exit access, or affect the structural integrity or fire rating of the building.

Section 104.1.6, relating to time limitations, is amended to add the following:

104.1.6.1 A permit issued shall be construed to be a license to proceed with the work but shall not be construed as authority to violate, cancel, alter or set aside any of the provisions of this code, nor shall such issuance of a permit prevent the building official from thereafter requiring a correction of errors in plans or in construction or of violations of this code. Although a permit issued to an owner is transferable to another owner, actual notice of the transfer of permit shall be given to the building official prior to the transfer. Building permits shall be issued following the approval of site and construction plans. Building permits on multifamily projects shall be issued on each individual building or structure. Multitenant occupancies, including but not limited to shopping malls, may be permitted on an individual building or structure (shell); however, individual permits shall be used separately for tenant spaces.

104.1.6.2 The first inspection required by the permit must be successfully completed within a six-month period of issuance or the permit shall be deemed invalid. All subsequent inspections shall be made within a six-month period of the most recent inspection until completion of work or the permit shall become invalid. For purposes of this section, the foundation inspection will be considered the first inspection.

104.1.6.3 The entire foundation must be completed within the first six months from the issuance of the permit. Partial inspections due to complexity of the foundation may be made with building inspector's approval, and job site plans shall be initialed by the inspector only on that portion of the plans that is inspected, and these inspections are for compliance to plans and specifications and are in no way to be construed as the first inspection. Subsequent inspections may be made until the entire foundation is completed. At that time, the foundation will be signed off as the first inspection. One or more extensions of the building permit for good cause may be granted by the building official on a project for a period not exceeding 90 days each. The request shall be made by written notice to the building official at least 30 days prior to expiration of the building permit. The building official may require compliance with any revised building code, mechanical code, plumbing code, electrical code, gas code, swimming pool code or fire code requirements in effect at the time of granting any extension to the building permit. Any extension request denied may be appealed to the town council by the applicant on a form provided by the building official. The council shall grant or deny the extension upon a finding of good cause or lack thereof. If granted, the extension or extensions shall not exceed a period of 90 days each.

Section 106.1.4 relating to new or changed land uses is added as follows:

106.1.4 New or changed land use. A certificate of occupancy will only be granted for a new or changed use of land if that use is allowable under ch. 34 of this code.

107.6.1 Building permits issued on the basis of an affidavit. Pursuant to the requirements of federal regulation for participation in the National Flood Insurance Program (44 C.F.R. Sections 59 and 60),

the authority granted to the Building Official to issue permits, to rely on inspections, and to accept plans and construction documents on the basis of affidavits and plans submitted pursuant to Section 105.14 and Section 107.6, shall not extend to the flood load and flood resistance construction requirements of the Florida Building Code.

117 VARIANCES IN FLOOD HAZARD AREAS

117.1 Flood hazard areas. Pursuant to F.S. § 553.73(5), the variance procedures adopted in the local floodplain management ordinance shall apply to requests submitted to the Building Official for variances to the provisions of Section 1612.4 of the Florida Building Code, Building or, as applicable, the provisions of R322 of the Florida Building Code, Residential. This section shall not apply to Section 3109 of the Florida Building Code, Building.

Florida Building Code, Building, Section 1612.2.

SUBSTANTIAL DAMAGE. Damage of any origin sustained by a building or structure whereby the cost of restoring the building or structure to its before-damaged condition would equal or exceed 50 percent of the market value of the building or structure before the damage occurred. The term also includes flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the costs of repairs at the time of each such flood event, on average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT. Any repair, reconstruction, rehabilitation, addition or improvement of a building or structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The term does not, however, include either:

1. Any project for improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions.
2. Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

Florida Building Code, Existing Building, Chapter 2.

SUBSTANTIAL IMPROVEMENT. Any repair, reconstruction, rehabilitation, addition or improvement of a building or structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The term does not, however, include either:

1. Any project for improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions.
2. Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

Florida Building Code, Residential, Section R322.

R322.1.11 Enclosed areas below design flood elevation. Enclosed areas, including crawl spaces, that are below the design flood elevation shall:

1. Be permitted to enclose up to 100 percent of the area below an elevated building and shall not extend beyond the perimeter of the building.
2. Have the interior portion of any enclosed area:
 - a. Partitioned only to separate parking areas from building access or storage areas;

- b. The minimum number of interior doors necessary for access to the stairway or elevator to the elevated buildings from areas used for parking or storage;
 - c. Not temperature-controlled.
- 3. Have access to enclosed areas intended for building access or storage by no more than one standard 36-inch exterior door, or one windowless 72-inch double exterior door, in any exterior wall.
- 4. ~~Have access to enclosed areas intended for parking of vehicles by no more than one standard two-car garage door.~~
- 5. Have construction documents include an agreement, signed by the owner, acknowledging the limitations on allowable uses of the enclosed areas and the conditions of the building permit, using a form provided by the Floodplain Administrator. This agreement shall be recorded in the official record books in the office of the clerk of the circuit court to provide additional notice of these limitations to future purchasers.

R322.1.12 Accessory structures. Accessory structures used for parking and storage shall be permitted below the base flood if designed and constructed in compliance with Section R322 and the total cost of an accessory structure does not exceed 10% of the market value of the building or \$17,500 per dwelling unit, whichever is greater. The dollar amount specified may be increased each year beginning in 2014 by the percentage increase of the Consumer Price Index - All Urban Consumers (CUP-U), All Items, U.S. City Average maintained by the federal Bureau of Labor Statistics.

Chapter 33, Site Work, Demolition and Construction.

Section 3311.5 is added, to read as follows:

3311.5 Trash containers.

It shall be unlawful to bury construction debris on the construction site or on any other public or private property not specifically approved for such use. A suitable trash container and adequate collection service shall be provided for each construction site. For purposes of this requirement, a suitable container is any structure, device, receptacle, designated location or combination thereof which holds construction debris on the construction site in a central location long enough for it to be removed from the site by means of whatever collection service the contractor chooses to use or may be required to use pursuant to other applicable laws before such debris is: (1) washed or blown off-site, (2) contaminates subsurface elements, (3) becomes volatile or malodorous, (4) makes an attractive nuisance, or (5) otherwise becomes a threat to the public health, safety and welfare.

Chapter 34, Existing Buildings.

Section 3401.1, relating to scope, is modified to read as follows:

3401.1 Scope. Provisions of this chapter and of division 4 of this article shall govern the application of this code to existing buildings. In interpreting this code, the building official may be guided by the Nationally Applicable Recommended Rehabilitation Provisions, published in 1997 by the U.S. Department of Housing and Urban Development.

Exception: Buildings and structures located within the High Velocity Hurricane Zone shall comply with the provisions of sections 3401.5, 3401.8, and 3401.2.2.1.

Section 3401.2.2.1, relating to change of occupancy, is deleted, and replaced with a new section 3401.2.2.1, to read as follows:

3401.2.2.1 If the occupancy classification or any occupancy subclassifications of any existing building or structure is changed to a more hazardous occupancy, the building, electrical, gas, mechanical, and plumbing systems shall be made to conform to the intent of the technical codes as required by the building official.

Section 3401.5, relating to special historic buildings, is deleted, and replaced with a new section 3401.5, to read as follows:

3401.5 Special historic buildings.

3401.5.1 The provisions of the technical codes relating to the construction, alteration, repair, enlargement, restoration, relocation or moving of buildings or structures shall not be mandatory for an existing building or structure identified and classified by the federal, state, county, or town government as a historic structure, or as a contributing structure in a historic district, when such building or structure is judged by the building official to be safe and in the public interest of health, safety, and welfare regarding any proposed construction, alteration, repair, enlargement, restoration, relocation or moving.

3401.5.2 If it is proposed that a historic building that is undergoing repair, renovation, alternation, reconstruction, or change of occupancy not comply literally with certain technical standards of this code, the building official may require the building to be investigated and evaluated by a registered design professional. Such evaluation shall identify each required feature of the building not in technical compliance and shall demonstrate how the intent of these provisions is to be complied with in providing an equivalent level of safety.

Sec. 6-112. - Wind-borne debris region and basic wind speed map.

The entire incorporated area of the Town of Fort Myers Beach lies within the wind-borne debris region and the ~~130~~ 160 mph basic wind speed zone as established by section 1606.1.6 and figure 1606 of the Florida Building Code.

Sec. 6-113. - Compliance with outdoor lighting standards.

All building permits must comply with the outdoor lighting standards in §§ 34-1831—34-1860 of this code.

Sec. 6-114. - Compliance with NPDES erosion control standards.

Stormwater runoff from construction sites must be managed in compliance with §§ 10-606—10-607 of this land development code.

DIVISION 4. - EXISTING BUILDINGS CODE

Sec. 6-121. - Purpose.

The purpose of this code is to encourage the continued use or reuse of existing buildings. This code is designed to supplement the other codes adopted in this article. In interpreting this code, the building official may be guided by the Nationally Applicable Recommended Rehabilitation Provisions, published in 1997 by the U.S. Department of Housing and Urban Development.

Sec. 6-122. - Adoption; amendments.

The following chapters and sections of the 1997 Standard Existing Buildings Code, as published by the Southern Building Code Congress International, Inc., 900 Montclair Road, Birmingham, Alabama, 35213-1206, are hereby adopted by reference and made a part of this article, with the exceptions set forth as follows:

Chapter 1, Administration.

Section 101.7.1, relating to a change of occupancy, is deleted, and replaced with a new section 101.7.1 to read as follows:

If the occupancy classification or any occupancy subclassifications of any existing building is changed to a more hazardous occupancy, the building shall be made to conform to the intent of the Florida Building Code for new construction as required by the building official.

Section 105, relating to the board of adjustment and appeals, is deleted, and replaced by the procedures set forth for the delegation of authority to Lee County's construction board of adjustment and appeals found in division 2 of this chapter and article.

Chapter 2, Definitions and Abbreviations.

Chapter 3, Historic Structures, is hereby amended to read as follows:

The provisions of this code relating to the construction, alteration, repair, enlargement, restoration, relocation or moving of buildings or structures shall not be mandatory for an existing building or structure identified and classified by the federal, state, county, or town government as a historic structure, or as a contributing structure in a historic district, when such building or structure is judged by the building official to be safe and in the public interest of health, safety, and welfare regarding any proposed construction, alteration, repair, enlargement, restoration, relocation or moving.

If it is proposed that a historic building that is undergoing repair, renovation, alternation, reconstruction, or change of occupancy not comply literally with certain technical standards, the building official may require the building to be investigated and evaluated by a registered design professional. Such evaluation shall identify each required feature of the building not in technical compliance and shall demonstrate how the intent of these provisions is to be complied with in providing an equivalent level of safety.

Chapter 4, Means of Egress.

Chapter 5, Fire Protection.

Chapter 6, Light, Ventilation and Sanitation.

Chapter 7, Building Services.

Chapter 8, Maintenance.

Appendix A, Rehabilitation Guidelines.

DIVISION 5. - CONTRACTOR LICENSING

Sec. 6-231. - Contractor licenses required.

Lee County authorizes the issuance of contractor licenses, as authorized by F.S. ch. 489 and Lee County Ordinance No. 96-20, granting the privilege of engaging in the contracting business within the jurisdiction of Lee County. The Town of Fort Myers Beach desires to restrict those engaging in the contracting business to those holding the same categories of licensure as required by Lee County:

- (1) State-certified contractors holding an active state certificate of competency;
- (2) State-registered contractors holding an active state registration and Lee County certificate of competency. A Lee County certificate of competency alone is not sufficient if state statute requires that the contractor also hold a state certificate or registration;
- (3) Locally licensed contractors holding an active Lee County certificate of competency; or
- (4) Restricted specialty contractors holding an active Lee County restricted certificate of competency.

Sec. 6-232. - Contractors required to be state-certified.

In accordance with F.S. ch. 489, ~~the following types of~~ contractors must hold a valid state certification in order to contract in the Town of Fort Myers Beach:

- ~~(1) — General contractor;~~
- ~~(2) — Building contractor;~~
- ~~(3) — Residential contractor;~~
- ~~(4) — Class A air conditioning contractor;~~
- ~~(5) — Class B air conditioning contractor;~~
- ~~(6) — Commercial pool/spa contractor;~~
- ~~(7) — Residential pool/spa contractor;~~
- ~~(8) — Swimming pool servicing contractor;~~
- ~~(9) — Sheet metal contractor;~~
- ~~(10) — Mechanical contractor;~~
- ~~(11) — Plumbing contractor;~~
- ~~(12) — Residential solar water heating contractor;~~
- ~~(13) — Underground utilities and excavation contractor;~~
- ~~(14) — Asbestos abatement contractor;~~
- ~~(15) — Roofing contractor;~~
- ~~(16) — Pollutant storage system contractor.~~

Sec. 6-233. - Contractor categories licensed by Lee County.

(a) The Town of Fort Myers Beach accepts Lee County certificates of competency in the following specialty categories:

- ~~(1) — Alarm system contractor I;~~
- ~~(2) — Alarm system contractor II;~~
- ~~(3) — Aluminum specialty structures contractor;~~
- ~~(4 1) Aluminum (without concrete) contractor;~~
- ~~(5 2) Aluminum (nonstructural) contractor;~~
- ~~(6) — Asphalt sealing and coating contractor;~~
- ~~(7) — Awning contractor;~~
- ~~(8 3) Cabinet and millwork contractor;~~
- ~~(9 4) Carpentry contractor;~~
- ~~(10 5) Concrete coatings contractor;~~
- ~~(11 6) Concrete forming and placing contractor;~~
- ~~(12 7) Concrete placing and finishing (flatwork) contractor;~~
- ~~(13) — Court (outdoor) contractor;~~
- ~~(14 8) Demolition contractor;~~
- ~~(15) — Dredging contractor;~~
- ~~(16) — Drywall contractor;~~

- (17 9) Excavation contractor;
- (18 10) Fence erection contractor;
- (19 11) Finish carpentry contractor;
- (20 12) Garage door contractor;
- (21 13) Glass and glazing contractor;
- ~~(22) — Guniting contractor;~~
- ~~(23) — Gutter and downspout contractor;~~
- ~~(14)~~
- ~~(24) — Insulation (building) contractor;~~
- (25 15) Insulation (all types) contractor;
- (26 16) Irrigation sprinkler contractor;
- ~~(27) — Journeyman air conditioning;~~
- (28 17) Journeyman electrician;
- ~~(29) — Journeyman mechanical;~~
- (30 18) Journeyman plumber;
- ~~(31) — Marbling contractor;~~
- ~~(32) — Marine contractor;~~
- (33 19) Masonry contractor;
- (34) Master electrical contractor;
- (35 20) Painting contractor;
- (36 21) Paver block contractor;
- (37 22) Paving contractor;
- ~~(38) — Pile driving contractor;~~
- ~~(3923)~~ Plastering/stucco contractor;
- ~~(40) — Reinforcing steel contractor;~~
- ~~(41) — River rock contractor;~~
- ~~(42) — Sandblasting contractor;~~
- ~~(4324)~~ Sign contractor - limited;
- ~~(4425)~~ Sign contractor - restricted;
- ~~(45) — Structural steel erection contractor;~~
- ~~(46) — Terrazzo contractor;~~
- (4726) Tile and marble contractor.

~~(b) — The Town of Fort Myers Beach also accepts certain older Lee County certificates of competency that the county has determined to be vested with respect to the scope of work allowed under the certificate category. These certificates may be in the following categories:~~

- ~~(1) — Air conditioning contractor — Class A;~~
- ~~(2) — Air conditioning contractor — Class B;~~
- ~~(3) — Air conditioning contractor — Class C;~~

- (4) — ~~Alteration and repair (nonstructural) contractor;~~
- (5) — ~~Building contractor;~~
- (6) — ~~Cement, concrete and masonry contractor;~~
- (7) — ~~Cement finishing contractor;~~
- (8) — ~~Demolition contractor;~~
- (9) — ~~Dredging and landfilling contractor;~~
- (10) — ~~Exposed aggregate contractor;~~
- (11) — ~~Flooring contractor;~~
- (12) — ~~General contractor;~~
- (13) — ~~Glazing and window installation contractor;~~
- (14) — ~~Mechanical contractor;~~
- (15) — ~~Mobile home alteration and repair (including aluminum work) contractor;~~
- (16) — ~~Paint and roof painting contractor;~~
- (17) — ~~Paving and sealing contractor;~~
- (18) — ~~Plastering, lathing, stucco, and drywall contractor;~~
- (19) — ~~Plumbing contractor;~~
- (20) — ~~Pool contractor – Class A;~~
- (21) — ~~Pool contractor – Class C;~~
- (22) — ~~Remodeling contractor;~~
- (23) — ~~Residential contractor;~~
- (24) — ~~Roofing contractor;~~
- (25) — ~~Roof painting contractor;~~
- (26) — ~~Roof spraying contractor;~~
- (27) — ~~Seawall and dock contractor;~~
- (28) — ~~Sign contractor – electrical;~~
- (29) — ~~Sign contractor – non-electrical;~~
- (30) — ~~Solar water heating contractor;~~
- (31) — ~~Tile contractor;~~
- (32) — ~~Tile, terrazo, river rock, and marble contractor;~~
- (33) — ~~Waterproofing contractor;~~
- (34) — ~~Underground utility contractor.~~

Sec. 6-234. - Delegation of authority to the Lee County Construction Licensing Board.

- (a) The Town of Fort Myers Beach hereby delegates to Lee County and the Lee County Construction Licensing Board the authority to make decisions regarding:
 - (1) The categories of certificates of competency that Lee County may require or issue;
 - (2) The requirements for obtaining and retaining Lee County certificates of competency;
 - (3) The issuance, revocation, and cancellation of Lee County certificates of competency;

- (4) Disciplinary actions concerning activities within the town by holders of a Lee County certificate of competency or by state-certified or registered contractors; and
- (5) Any other matter within the authority of the Lee County Construction Licensing Board.
- (b) The policies, procedures and safeguards applicable to the Lee County Construction Licensing Board according to Lee County Ordinance No. 96-20, are hereby adopted by the Town of Fort Myers Beach for all actions of the board regarding violations alleged to have occurred within the town.
- (c) The town attorney will provide legal advice to the Lee County Construction Licensing Board when warranted.

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 ~~ordinance~~ 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, partnership or trust and must personally appear and sign the building permit application. The owner must also execute a disclosure statement prepared by the building official acknowledging compliance with all applicable regulations.

Sec. 6-236. - Other exemptions.

The licensing provisions of this article do not apply to:

- (1) Any employee of a duly licensed contractor who is acting within the scope of the employer's license or with the employer's knowledge and permission. However, if the employer is not licensed to perform the type of services the employee is contracting to perform, then the employee is not exempt if the employee:
 - a. Holds himself or his employer out to be licensed or qualified by a licensee to perform services outside the scope of the employer's license;
 - b. Leads the consumer to believe that the employee has an ownership or management interest in the company; or
 - c. Performs any of the acts which constitute contracting for services outside the scope of the employer's license.

The intent of this subsection is to place equal responsibility on the unlicensed business and its employees for the protection of the consumers in contracting transactions.
- (2) An authorized employee of the United States, the state, the county, the town, or any political subdivision of the state, if the employee does not hold himself out for hire or otherwise engage in contracting except in accordance with his employment.

- (3) Contractors and employees working on bridges, roads, streets, highways, or railroads, including services incidental thereto, that are under the responsible charge of a professional engineer, duly licensed general contractor, the county, or the state.
- (4) A registered professional engineer or architect acting within the scope of his practice or any person exempted by the law regulating engineers and architects, including a person doing design work as specified in F.S. § 481.229(1)(b). However, an engineer or architect cannot act as a contractor unless properly licensed in accordance with this article.
- (5) An architect or landscape architect licensed under F.S. ch. 481 or a professional engineer licensed under F.S. ch. 471 who offers or renders design-build services. However, a state-certified general contractor must perform the construction services under the design-build contract.

~~Sec. 6-237. Penalties.~~

~~Penalties for violations of this article shall be as authorized by Lee County through its Ordinance No. 96-20, as may be amended from time to time.~~