



Fort Myers Beach Town Council

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

Agenda

Tuesday, January 19, 2021

10:00 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 AND REPORTS**
- VIII. PRESENTATION**
 - A. Southwest Florida Regional Resiliency Compact
Southwest Florida Regional Resiliency Compact
- IX. APPROVAL OF MINUTES**
- X. CONSENT AGENDA**
- XI. PUBLIC HEARINGS**
 - A. Ordinance 20-17 Special Events
AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 6, 14, AND 34 OF THE FORT MYERS BEACH LAND DEVELOPMENT CODE regarding Special Events, REVISING CHAPTER 22 OF THE FORT MYERS BEACH CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND PROVIDING FOR AN EFFECTIVE DATE. Second reading and final adoption.
 - B. Ordinance 20-19; Height and Setback Requirements
AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING THE DEFINITIONS IN THE FORT MYERS BEACH LAND

DEVELOPMENT CODE AND AMENDING DIVISION 3 OF ARTICLE III OF CHAPTER 34, OF THE FORT MYERS BEACH LAND DEVELOPMENT CODE, ENTITLED “EXPLANATION OF PROPERTY DEVELOPMENT REGULATIONS FOR ALL ZONING DISTRICTS” REVISING HEIGHT AND SETBACK REQUIREMENTS; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER’S ERRORS; CONFLICTS OF LAW AND PROVIDING FOR AN EFFECTIVE DATE. *Second reading and final adoption.*

XII. ADMINISTRATIVE AGENDA

- A. Adopt Resolution 21-01 for an Interlocal agreement
Adopt Resolution 21-01 for an Interlocal agreement with the School Board of Lee County for the use of Bay Oaks Recreational Campus facilities for a collaborative shared use agreement for the students of Fort Myers Beach Elementary School throughout the school year.
- B. Bay Oaks Campus Redevelopment
Determinations regarding the Bay Oaks Campus Redevelopment
- C. Land & Water Conservation Grant Application
Authorize the Town Manager to apply for for the Land and Water Conservation Fund Program Grant for Bay Oaks Park Redevelopment.
- D. RFP-21-03-PW; Lighting Consultant
Review rankings of the design-bid-build process in response to RFP-21-03-PW-Lighting Consultant, and discussion of next steps.
- E. FMB Little League Agreement
Authorization to enter into an agreement for Facility Use with FMB Little League

XIII. FINAL PUBLIC COMMENT

XIV. TOWN MANAGER'S ITEMS

XV. TOWN ATTORNEY'S ITEMS

- A. COVID-19 Emergency Declarations

XVI. COUNCILMEMBERS ITEMS AND REPORTS

XVII. 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.

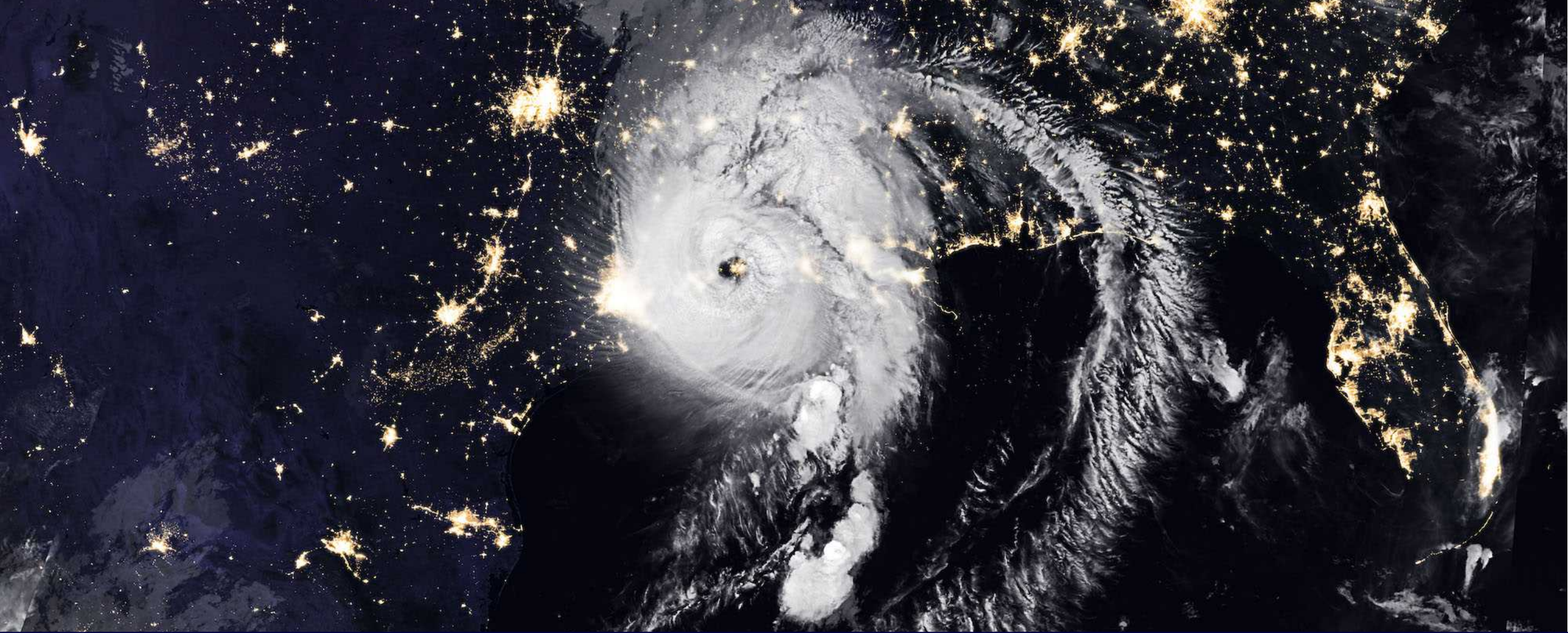


For special accommodations, please notify the Town Clerk's Office at least 72 hours in advance. (239) 765-0202



Help for the hearing impaired is available through the Assistive Listening System. Receivers can be obtained from the Town Clerk's Office.

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.



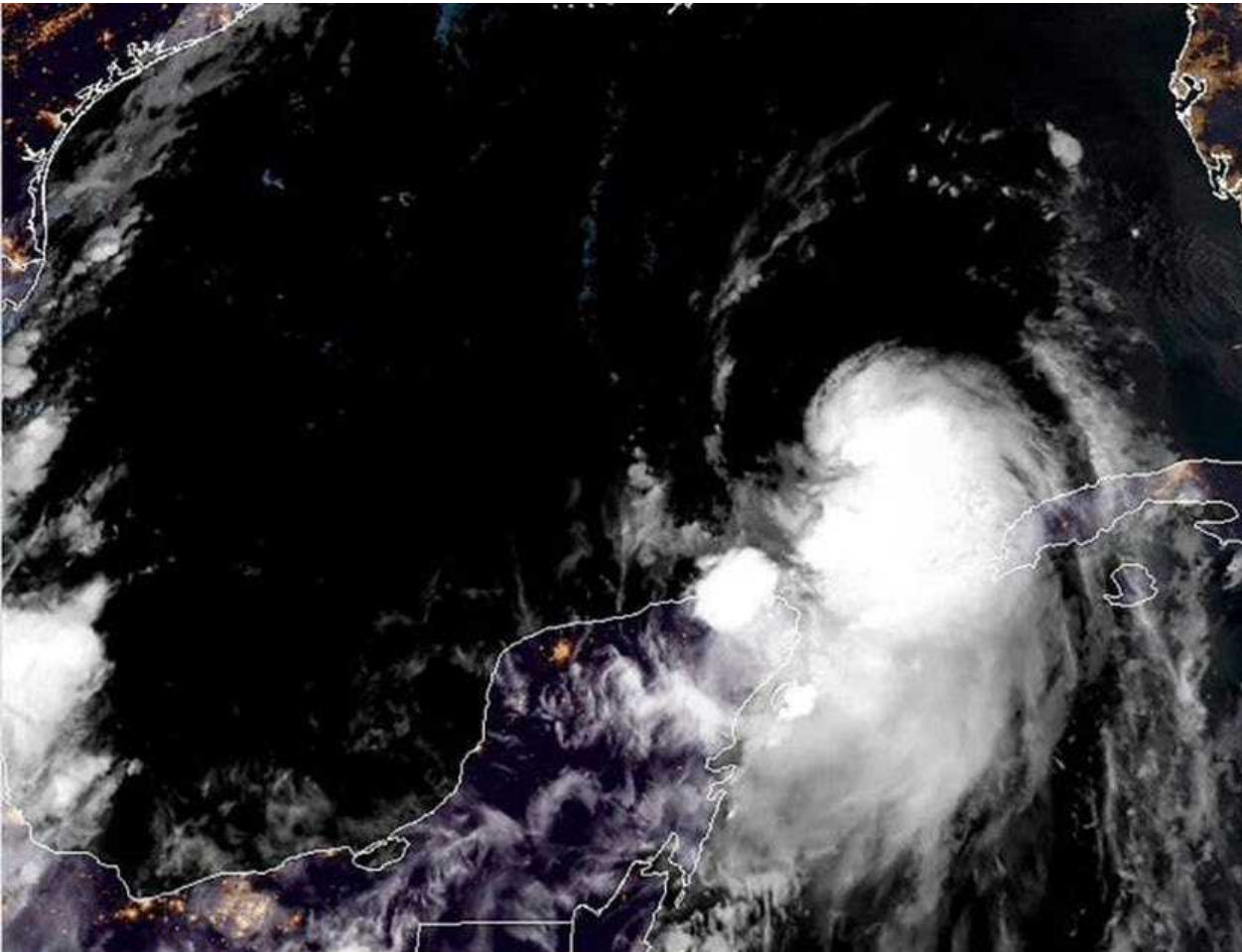
Southwest Florida Regional Resiliency Compact

Fort Myers Beach Town Council
January 19, 2021

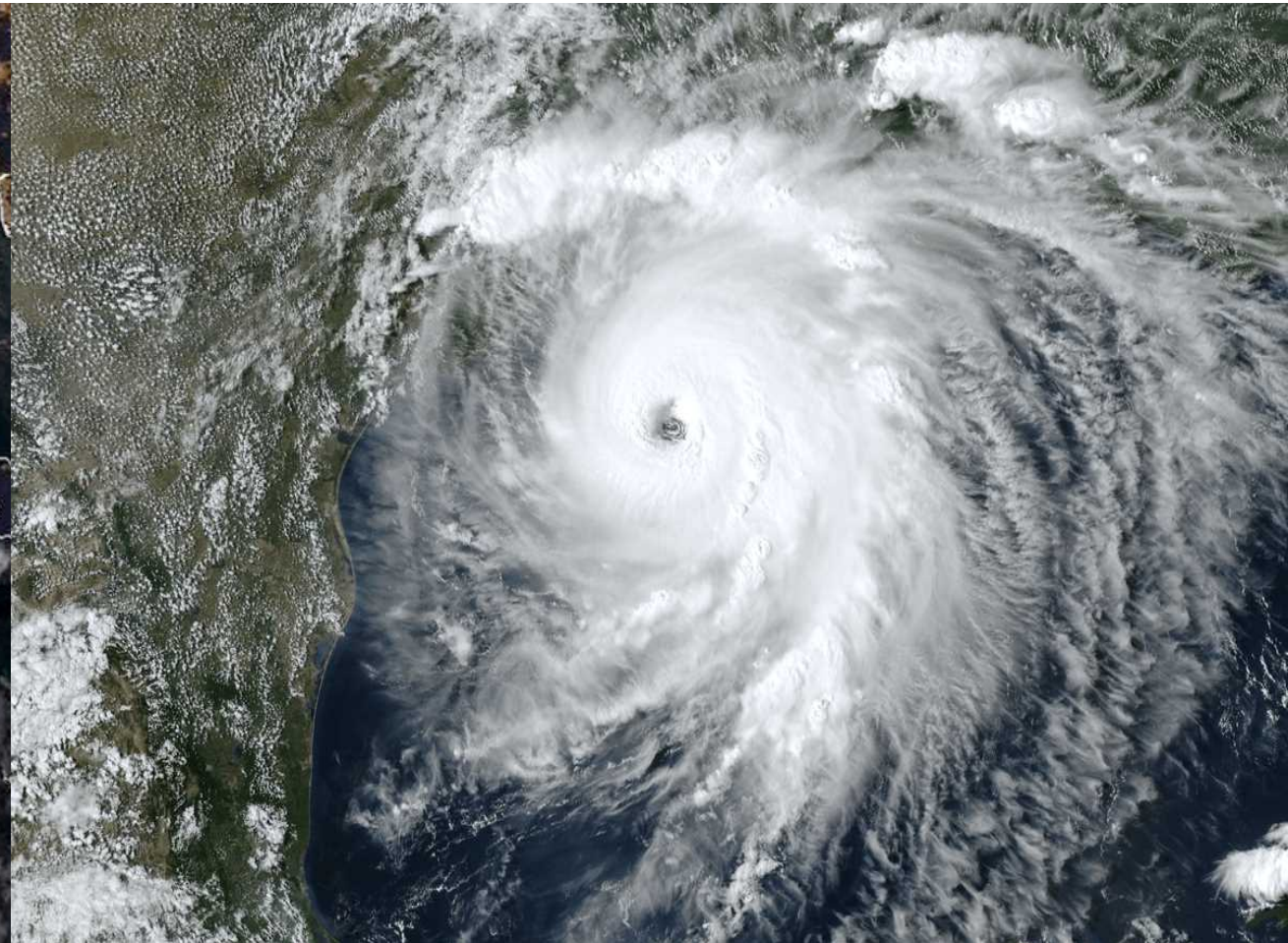


Warmer oceans lead to more intense storms that are larger, wetter, develop quickly and move slower.

Hurricane Laura from Cat 1 to Cat 4 in less than 1 day.



August 25, 2020



August 26, 2020

Sea-level Rise & Nuisance Flooding



Exacerbated by Storms Major Hurricane Strikes 1900 - 2010



What is a Regional Resiliency Compact?

Lee Collier Charlotte

Biogeographic and Economic Similarities

Potable Water Aquifers
Similar Regulatory Services
Storm Management

Tourism, Eco-based Economy
Shoreline Protection
Comparable Demographics

SEA LEVEL RISE

HIGH
TEMPERATURES

MAJOR
STORMS

HIGH
PRECIPITATION

What is a Regional Resiliency Compact?

Lee Collier Charlotte

Biogeographic and Economic Similarities

‘We are stronger together’

Common Goal: Improve Resilience

Anticipate, Plan, Protect against Stressors

What is a Regional Resilience Compact?

Lee Collier Charlotte

Biogeographic and Economic Similarities

‘We are stronger together’

ADAPT



How Can a Regional Compact Operate?



FL Gulf Coast University Water School: Neutral Facilitator of Discussions Among Members

Main Regional Compact Objectives



Share knowledge
Build regional tools
Best Management Practices



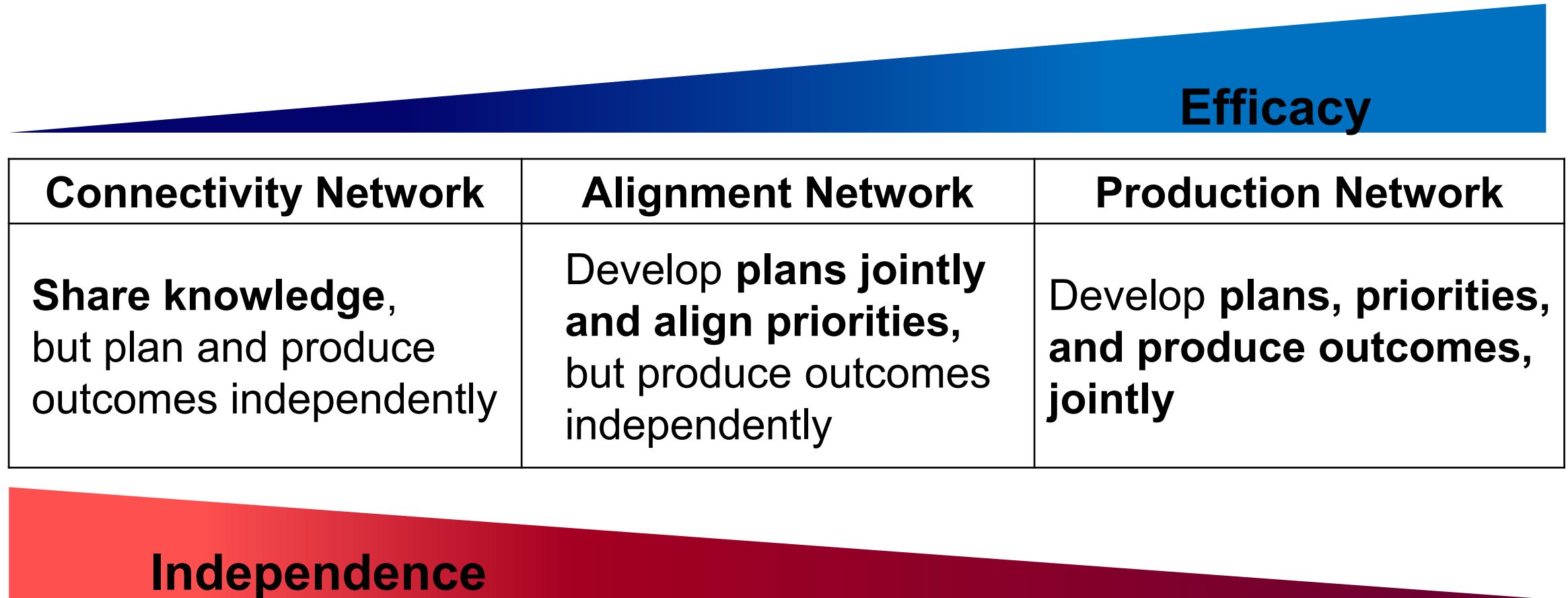
Increase Public Support
and
Political will for Resilience



Coordinate
action across
jurisdictions

Adapted from Institute for Sustainable Communities (<https://sustain.org>)

Different levels of Collaboration to achieve different Objectives



Adapted from Study Conducted by the Institute for Sustainable Communities (<https://sustain.org>)

Possible benefits of a SWFL Resilience Compact for FMB

- Share and enhance collective expertise, scientific data & planning tools (groundwater, facilities, large infrastructure, shoreline, etc.).
- Develop unified Regional Resiliency Action Plan.
- Develop unified legislative strategy.
- Provide stronger voice for allocation of federal, state and private funds for infrastructure projects.
- Coordinate compliance for “peril of flood” mandate.

Emerging Florida Collaboratives



Greater Jacksonville Metro Region
P2R2: Public/Private
Regional Resiliency



Greater Orlando Metro Region
East Central Regional Planning
Council Collaborative



Greater Tampa Metro Region
Tamp Bay Regional Resiliency Coalition

These emergent regional
collaboratives represent 15.5m of
Florida's 20.8m people

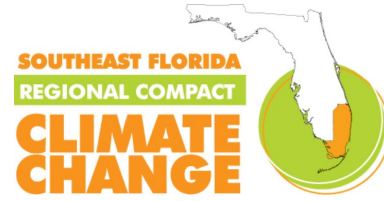
Southwest Florida Collaborative

**SOUTHEAST FLORIDA
REGIONAL COMPACT
CLIMATE
CHANGE**



- 4 counties
- 100 cities
- 11 years of operation

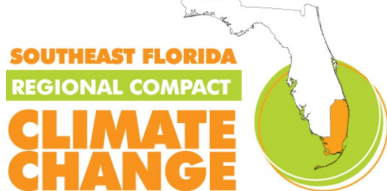
Major Accomplishments of the SE FL Compact



- 2011 to present: Annual Unified Federal and State **Legislative Programs**
 - State enables local comprehensive plans to consider sea-level rise
 - State created **Adaptation Action Areas**, flood-prone, development
- 2011 and 2015: **Unified Sea-Level Rise Projection.**
- 2012: **Regional Vulnerability Assessment** (1-, 2-, and 3-foot sea-level rise).
- 2012: **Regional Climate Action Plan**, voluntary steps to reduce emissions and adapt.
- Workgroup for **Regional Economic Resilience.**
- Incremental funding from in-kind contributions of staff time, philanthropic grant funding, to large infrastructure improvement through Federal Grants, now considering long-term Funding Strategies.

Example of Resilient Action: A1A Improvements

FL Dept. of Transportation, Broward County, City of Fort Lauderdale



Constructed:	Size:	Cost:	Funding:
2014	0.99 miles	\$20.1 million	State FDOT

Repairs necessary after 2012 Hurricane Sandy:

Incorporated additional resilience to existing structure and added infrastructure.

Added 40 ft deep sheet piles to withstand 15 ft of scour.

Raised road 2 ft, 1 ft-higher wall, new backwalls.

Backwalls now multi-purpose:
Prevent sand and water on road.
Prevent wildlife on road.
Reduce light pollution.



Progress to Date

1. Representatives from the 3 counties and 10 municipal governments compose a steering committee (~50 members).
2. The 13 jurisdictions have agreed on a purpose and set of objectives.
3. The group has composed and finalized an MOU.
4. The MOU explicitly states that participation does not require financial investment.
5. The concept of the SWFL Compact has been presented to most jurisdictions.
6. The MOU is being considered for ratification by remaining jurisdictions this winter.
7. 8 jurisdictions have ratified: Charlotte County, Punta Gorda, Captiva Erosion Prevention District, Sanibel, Estero, Marco Island, Everglades City, & Naples have ratified the MOU.

After Ratification . . .

1. The Steering Committee will be reconstituted to represent all jurisdictions wishing to participate. Other non-governmental stewards / organizations will be included.
2. Pursue outside funding for a 3-year period.
3. Enter an “operationalization” phase, a 1-year period to develop an action plan and operational structure. Consultant and administrative assistant hired.
4. Years 2 & 3, hire a “Regional Resilience Coordinator” to facilitate and administer the group and its activities.
5. FGCU’s Water School will provide space and an operation budget.
6. After 3 years . . . Sustainable funding? Compact productivity? Possibilities.

Fort Myers Beach Town Council Action Items

- Ratification of the MOU for a Vote during Town Council Meeting.
- Decide who the Town Council would like to appoint as representative (Councilmember and/or staff).

THANK YOU

Any questions?

1. Requested Motion:

Meeting Date: January 19, 2021

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 6, 14, AND 34 OF THE FORT MYERS BEACH LAND DEVELOPMENT CODE regarding Special Events, REVISING CHAPTER 22 OF THE FORT MYERS BEACH CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND PROVIDING FOR AN EFFECTIVE DATE. Second reading and final adoption.

Why the action is necessary:

Town Council instructed staff to make edits to the proposed amendments. The garage sale permit section has been removed.

What the action accomplishes:

Approval of the Ordinance will amend Ch 6, 14, and 34 of the Land Development Code; along with Ch 22 of the Code of Ordinances.

2. Agenda:

PUBLIC HEARINGS

3. Requirement/Purpose:

Ordinance, 2nd Reading

4. Submitter of Information:

5. Background:

The Town Council has reviewed proposed language related to Special Events. Suggested edits to the Land Development Code were presented to the Local Planning Agency (LPA) and are focused on removing conflicting language from the LDC in order to develop a more consistent Code of Ordinances Ch 22 Special Events.

On December 1st, 2020, the LPA recommended approval (4-2) of the proposed edits to the Land Development Code Ch 6, 14, and 34, with the exception of the addition of Sec 34-3041 (b)(4) and (b)(5); and removal of Sec 34-3046 and Sec 34-3047. The dissenting members stated support for the proposed edits with the exception of the removal of Sec 34-3041 subsections.

The LPA also requested the Town Council consider alternative language to allow for flexibility in construction operations (Sec 34-3041 (b)(6)).

On December 7, 2020, the Town Council held the first reading of the Ordinance and instructed staff to remove the garage sale permit language from the Land Development Code edits. This edit has been incorporated into both the Ordinance and Summary.

Attachments:

1. 116888496_1_Ordinance No. 20-17 re Special Events - 2nd Reading_Final-C1
2. LDC and Code of Ord Special Event and Temp Use Changes Summary rev1-4-21

Financial Impact:

6. Alternative Action

7. Management Recommendations:

Approval

8. **Recommended Approval:**

Carl Bengé, Assistant Community Development Director
Jason Green, Community Development Services
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Roger Hernstadt, Town Manager

Created/Initiated - 1/12/2021
Approved - 1/4/2021
Approved - 1/6/2021
Approved - 1/6/2021
Final Approval - 1/6/2021

ORDINANCE NO. 20-17

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 22 OF THE FORT MYERS BEACH CODE OF ORDINANCES ENTITLED “SPECIAL EVENTS”; AND AMENDING PROVISIONS OF CHAPTERS 6, 14, AND 34 OF THE FORT MYERS BEACH LAND DEVELOPMENT CODE, PERTAINING TO SPECIAL EVENTS; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER’S ERRORS; CONFLICTS OF LAW 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 Council desires to update the Chapters of the Town of Fort Myers Beach Code of Ordinances and Fort Myers Beach Land Development Code regulating special events to clarify, improve, simplify, and create consistency among sections of the Code of Ordinances and Land Development Code; and

WHEREAS, the Town also recognizes that both its economy and the quality of life of its residents are enriched by the proper regulation of special events and temporary uses; and

WHEREAS, on December 1, 2020 the Local Planning Agency, after giving consideration to the staff recommendation, public testimony, and consistency with the Comprehensive Plan, recommended approval of the proposed amendment ; and

WHEREAS, on December 7, 2020 the Town Council held a first reading of the proposed Ordinance; and.

WHEREAS, on January 11, 2020 the Town Council held a second reading of the proposed Ordinance; and.

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

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.

^{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 ~~striketrough~~.

Section 2. Chapter 22 of the Town of Fort Myers Beach Code of Ordinances entitled “Special Events” is hereby amended to read as follows:

Chapter 22 - Special Events

Sec. 22-1. - Definitions.

Political demonstration. A public gathering, procession or parade, the primary purpose of which is the exercise of the rights of assembly and free speech as guaranteed by the First Amendment to the Constitution of the United States.

Special event. ~~Any activity conducted on public or private property that will or has the potential to substantially affect the ordinary and customary use of beaches, public streets, rights-of-way, sidewalks, and other public forums, including any temporary activity conducted on private property that is not authorized by the certificate of use or certificate of occupancy issued for any business operating on the property where the activity is planned, or any temporary activity conducted on private property where the area of the activity coincides with parking spaces required for the operation of any business~~ An activity within the boundaries of the town of Fort Myers Beach which would inhibit the usual flow of pedestrian or vehicular travel or which occupies any public area or building so as to preempt use of said area by the general public or which deviates from the established use of said area of building, but such term does not include the following:

- (1) Any usual and customary noncommercial accessory use of a residential dwelling unit;
- (2) Any use or activity specifically approved by a development permit issued by the city; or
- (3) Private gatherings that will make no use of a public property other than for lawful parking;
- (4) Any garage sale conducted in compliance with the requirements of this chapter.

Sec. 22-2. - Permit required.

No person or entity ~~can initiate, sponsor, organize, promote,~~ may conduct ~~or advertise~~ a special event unless a permit has been obtained from the town.

Sec. 22-3. - Exemptions from permit requirement.

The following do not require a special event permit:

- (1) Private events that will make no use of a public property other than for lawful parking.
- (2) Events conducted solely for the purpose of exercising a group's first amendment right of free speech and/or assembly. If an event has any commercial aspect, or is a political demonstration as defined in section 22-1, or requires the closure of roadways, sidewalks or the use of Town or County staff, then this exemption will not apply.

Sec. 22-4. - Fees.

All fees that relate to special events and special events permits will be as stated in the current Town of Fort Myers Beach Fee Schedule.

Sec. 22-5. - Permit fee exemption for special events conducted by the town.

The town is exempt from all permit fees relating to special events conducted by the town.

Sec. 22-6. – Types of events requiring a special event permit.

The following types of events will require a special event permit. Events, other than these specifically listed, may also require a special event permit.

- (1) Carnivals, Fairs, Festivals and Circuses;
- (2) Farmer's Markets and Flea Markets;
- (3) Art Shows;
- (4) Running, Walking or Bicycling Events;
- (5) Concerts;
- (6) Fireworks;
- (7) Parades;

- (8) Similar events requiring off-site parking, street or sidewalk closures, sound amplification or use of public property or Town staff.

Sec. 22-67. - General criteria and limitations.

The following general criteria and limitations apply to special event permits:

- (1) The activity proposed must be compatible with the surrounding land uses.
- (2) An individual applicant may not receive a special event permit more than six times within a calendar year, provided, however, that the town council may grant businesses or entities approval for a recurring event permit that is not subject to this limitation (see section 22-7) and provided further that the town council has the authority to permit an individual applicant to exceed the six event annual limitation in its discretion.
- (3) ~~For any special event that will include a temporary use regulated by LDC chapter 34 (see LDC sections 34-3041 through 34-3051) a temporary use permit may also be required.~~ For any special event that will take place all or in part upon the beach will be subject to all requirements contained in ~~LDC section 14-11~~ this chapter and any requirements of state or federal agencies relating to activities that take place on the beach.
- (4) For any special event where alcoholic beverages will be sold, the applicant ~~must~~ may need to obtain a temporary one-day permit as ~~prescribed~~ described in LDC section 34-1264, as applicable. Applicants must obtain any required permits from the Florida Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco.
- (5) The following types of special events must be approved by the town council:
 - a. Special events with a duration of four days or more where alcohol will be served;
 - b. Special events with an anticipated attendance of more than 500 people;

c. Recurring special events (see section 22-~~7~~6);

d. Any special event that includes a waiver of the town's open container regulations (see Code chapter 4, article IV);

e. Special events held annually, once initially approved by town council, may be administratively approved by the town manager (i.e., without formal action by town council) for subsequent years, so long as they do not include a noise ordinance waiver request (~~see subsection (6)g~~) of this section, or a material change in the nature of the annual special event. Material changes include an anticipated increase in attendance of ten percent or more, an increase of the area of the special event of ten percent or more; changes or additions to the parking plan for the special event; or other changes as determined in the sole discretion of the town manager;

f. Special events for which a waiver of ~~parking or other town~~ fees is requested. If the waiver was previously approved by the town council in conjunction with approval of a recurring special event or annual event and special event is subject to administrative approval, then the related waiver may also be administratively approved; and

g. Special events for which a waiver of the ~~Fort Myers Beach Noise Ordinance~~ noise regulations is requested.

h. Special events, which require the closure of streets or sidewalks.

(6) Special events that occur on or near the beach or dune.

a. Due to the potential for adverse impacts, certain special event activities may not be compatible with sea turtle nesting areas. In some cases, this is due to the type of activity where permit conditions alone cannot provide adequate protection. In other cases, the density of sea turtle nesting prevents certain activities from being conducted safely.

b. Special events that occur on or near the beach or dune, or where lighting from the special events directly or indirectly illuminates sea turtle habitat, may contain special conditions for protection of the beach, dune and sea turtles. These conditions are in addition to the basic requirements of the town's special events permit provisions, which must still be met in full.

1. Along with the regular application for an event permit, a site plan must be submitted depicting the property corners and the dimensions of the area where the event is proposed to occur, the location of existing vegetation, structures, and any existing sea turtle nests, and a summary of the activities proposed. A lighting plan that includes the location, number, type, wattage, orientation, and shielding for all proposed artificial light sources that will be used must also be submitted. All lighting must be in compliance with §14-75 of the Fort Myers Beach Code of Ordinances.

2. Prior to the granting or denying of the application, an on-site inspection will be conducted to determine if the proposed event conforms to the requirements of this section and if any native vegetation or sea turtle nests exist to be protected.

3. Based upon the information contained in the application and the site inspection, the application shall be approved or denied.

4. Site-specific conditions may be attached to the permit relating to identifying, designating, and protecting any existing vegetation and sea turtle nests in accordance with this code. These conditions are in addition to the following standard permit conditions for all special events on the beach:

i. During the sea turtle season (May 1 through October 31), special

event activities including construction shall be confined to daylight hours and shall not begin before 8:00 a.m. or before completion of daily monitoring for turtle nesting activity by a FWC-authorized marine turtle permit holder, whichever occurs first. However, no activity shall take place until after a daily sea turtle nest survey is conducted as indicated below.

ii. During sea turtle nesting season (May 1 through October 31), the permittee is responsible for ensuring that a daily sea turtle nest survey, protection, and monitoring program is conducted throughout the permitted special events area. Such surveys and associated conservation measures shall be completed after sunrise and prior to the commencement of any activity. The sea turtle survey, protection, and monitoring program shall be conducted only by individuals possessing appropriate expertise in the protocol being followed and a valid F.A.C. Rule 68-E permit issued by the FWC. To identify those individuals available to conduct marine turtle nesting surveys within the permitted area, please contact the FWC, Bureau of Imperiled Species Management, at (850) 922-4330.

iii. All turtle nests will be marked with wooden stakes, flagging tape, and a FWC sea turtle nest sign. No activities (including the placement of equipment or the storage of materials) are allowed within 30 feet of the marked nest. The permittee shall ensure that all personnel are briefed on the types of marking utilized and be able to easily contact the

individual responsible for the nest survey to verify any questionable areas.

5. A violation of the special or standard conditions will automatically invalidate the permit. Periodic compliance inspections will be conducted to insure compliance with the permit conditions and this article.

6. The release of balloons is prohibited in accordance with F.S. § 372.995, except as permitted by that statute.

Sec. 22-78. - Recurring special events.

To qualify as a recurring event, the event must be the same type of event and must be held in the same location. Examples of a recurring event include, but are not limited to, farmers' markets, "sunset celebrations," and music or art themed events. Recurring special events are subject to the following requirements:

- (1) Each event must be held at the same location at the same time of day.
- (2) All dates for the recurring event must be listed on the original application.
- (3) Each individual event must be of the same genre with similar anticipated attendance.
- (4) A recurring special event may not occur more often than weekly over a period of one year based upon a single application.

Sec. 22-89. - Application requirements.

- (a) Any person or entity seeking issuance of a special event permit must file a written application with the town manager on forms provided by the town.
- (b) If any town council actions are required in connection with a planned special event, the application for the permit must be filed at least 60 days prior to the date of the planned event.

(c) Applications for special event permits that do not require town council action must be filed at least 15 days prior to date of the planned event.

(d) Incomplete applications will not be processed for approval.

(e) Applications received less than the specified days before the date of the planned event, may be accepted at the discretion of the town manager. If the late application is accepted, the town manager has the discretion to impose additional permit fees, as per the Town of Fort Myers Beach Fee Schedule, to facilitate timely review and approval.

(f) A complete permit application must include, but may not be limited to, the following:

(1) The name of the special event and its purpose in general terms.

(2) The name(s) of the person(s) or organization(s) sponsoring the special event, together with the addresses and telephone numbers of all such persons or organizations.

(3) The proposed date or dates of the special event.

(4) The expected number of persons who will attend the event.

a. Events with an anticipated attendance exceeding 500 people requires approval by the Town Council.

(5) The specific location(s) within the town where the special event is to be held. The applicant must submit a general site plan that identifies the area(s) of the property used for the event activities, any and all tents, canopies, recreational vehicles, or accessory structures that are to be utilized in connection with the special event activity. A parking plan must be included as part of the special event permit application. The location of any parking and accessory structures may not obstruct traffic or violate any applicable town, county or state laws.

(6) In instances where a proposed special event will be held within 500 feet of residential property and will include any amplified sound, the applicant shall provide notice to

such owners and advise them of the nature of the event and the dates and times when the event will be held. The 500 feet shall be measured from the perimeter of the site where the event will take place and for condominium properties, a single written notification to the condominium association will be sufficient. The notification shall advise the owner of their right to submit a letter of objection to the town manager, and shall include the date by which any such letter of objection must be submitted.

(7) Whether any street closings are requested and, if so, which streets and the times when they will be closed.

a. A request to close any streets requires approval by the Town Council.

(8) Whether any alcoholic beverages will be sold or served. If alcoholic beverages will be sold the applicant must obtain all necessary permits as described in section 22-67.

a. A request to waive the Town's open container regulations requires approval by the Town Council.

b. Any event four days or longer and where alcohol will be served requires approval by the Town Council.

(9) If any entertainment will be included, details as to the type of entertainment, times and location must be provided.

(10) Whether utility services such as electrical power or water will be required.

~~(11) Whether the applicant is requesting have a banner hung in association with the event, see section 22-15. A proof of the proposed banner is required~~ All proposed signage shall be in compliance with Chapter 30 Signs of the Land Development Code. The applicant shall provide application for signs or shall propose signs exempt from the ordinance per LDC Sec 30-6.

(12) Proof indicating approval of the event from all applicable outside state and local agencies.

(13) In instances when the sound emanating from a proposed special event is anticipated to exceed the limits

established in ~~Code~~ Section 14-23 of the Fort Myers Beach Code of Ordinances, the applicant must provide proof of application for a waiver for relief from the maximum allowable noise levels in accordance with section 14-25 of the Fort Myers Beach Code of Ordinances. As part of the waiver application process, the applicant is required to provide notice to all property owners within 500 feet of the location of the proposed special event, advising them of the nature of the event and the dates and times when the event will be held. The 500 feet is measured from the perimeter of the site where the special event will take place; and for condominium properties, a single written notification to the condominium association is sufficient.

a. A request to waive the noise regulations requires approval by the Town Council.

~~(14) Proof of application for approval of any temporary use permits required in conjunction with the special event, see sections 34-3041—34-3051 of the Fort Myers Beach Land Development Code.~~

~~(15) An affidavit, signed by the applicant, that all the information provided in the application is a complete and accurate description of the proposed event and that permission has been obtained from the owner of any land upon which the special event is to be held, unless the event is to be held exclusively on public property.~~

~~(16) An affidavit, signed by the applicant, that permission has been obtained from the owner of any land upon which the special event is to be held, unless the event is to be held exclusively on public property.~~

~~(17) The town manager has the authority to require any reasonable additional information from the applicant that the town manager deems necessary.~~

Sec. 22-~~9~~10. - Review of application.

Upon receipt of an application that contains all of the items listed in section 22-~~8~~9 and required application fees, the town manager will forward copies of the application to all affected town departments for their review.

(1) If the special event permit can be approved by the town manager administratively, the town manager will grant or deny an application for a special event permit within ten days of receipt of a complete application.

(2) Special event permits requiring town council action will be scheduled for consideration at the next regularly scheduled town council meeting.

(3) The town manager and town council have the right to place conditions on a special event permit to mitigate any anticipated adverse effects on nearby properties.

Sec. 22-1011. - Grounds for denial.

(a) The town manager or town council may deny an application for a special event permit if the applicant, or the person on whose behalf the application for a permit was made, has on a prior occasion made a material misrepresentation regarding the nature or scope of an event or activity previously permitted by a special event permit, or, who has previously violated the terms of a prior special event permit, issued to or on behalf of the applicant. An application for a special event permit may also be denied for any of the following reasons:

(1) The application for a special event permit (including any required attachments and submissions) is not fully completed and properly executed;

(2) The applicant has not tendered the required application fee, if any, with the application or has not tendered any other required fees, indemnification agreement, insurance certificate, or security deposit, if any, within the times prescribed by the town manager;

(3) The application contains a material falsehood or misrepresentation;

(4) The applicant or the person on whose behalf the application for the special event permit has been made has on prior occasions damaged town property and has not paid in full for such damage, or has other outstanding and unpaid debts to the town;

(5) A fully executed prior application for a special event permit for the same time and place has been received, and a

special event permit has or will be granted to the prior applicant, authorizing uses or activities which do not reasonably permit multiple occupancy of the area where the event is proposed to be held;

(6) The use or activity intended by the applicant will conflict with previously planned programs organized or conducted by a governmental agency and previously scheduled for the same time and place;

(7) The use or activity intended by the applicant would present an unreasonable danger to the health or safety of the public;

(8) The applicant has not complied or cannot comply with applicable licensure requirements, laws, ordinances or regulation of the state, the county or the town concerning the sale or offering for sale of any goods or services; or

(9) The use or activity intended by the applicant is prohibited by state or federal law or by ordinances or regulations of the county or the town.

(b) If the special event application is denied, the applicant is not be entitled to receive any reimbursement from the town for any costs incurred during the application process, including the application fee.

Sec. 22-~~11~~12. - Notification of denial and right of appeal.

(a) Any applicant who is denied a special event permit by the town manager will be notified in writing. Said notification will state the reasons for the denial and the right of appeal to the town council, and will be sent by registered mail to the applicant.

(b) The applicant will have ten days from receipt of the written notification of permit denial to request an appeal hearing before the town council. If the appeal cannot be heard by the town council prior to the date when the event is scheduled to be held, the filing of an appeal will not entitle the applicant to conduct the event on that date but, if the appeal is successful, the applicant may hold the event on a rescheduled date that is after the town council meeting at which the appeal was heard.

(c) An appeal of the decision of the town council may be made to the circuit court by filing a petition for writ of certiorari as

provided for under the Florida Rules of Appellate Procedure. A decision of the town council will be deemed to have been rendered on the date the town council votes to either grant or deny the appeal.

Sec. 22-~~12~~13. - Litter.

(a) Special event permit holders are responsible for ensuring that the area where the event is held is free of all litter and debris within 24 hours of the time the special event ends. Events that span more than a 24-hour period are responsible for removing all garbage and litter at the end of each day.

(b) In the event this section is not complied with, the town manager has the authority to contract with a cleaning service and the cost of the cleanup will be the responsibility of the permit holder and, if not promptly paid, may be deducted from any required security deposit (~~see section 22-14~~).

Sec. 22-~~13~~14. - Security for unpaid expenses.

The town manager may require the posting of a security deposit, or other form of security acceptable to the town, to ensure that any unpaid expenses or damages incurred as a result of the event are satisfied.

Sec. 22-~~14~~15. - Indemnification and liability insurance.

(a) Prior to the issuance of the special event permit, the applicant is required to execute an indemnification and hold harmless agreement in a form acceptable to the town attorney.

(b) Prior to the issuance of the special event permit, the applicant is required to obtain, at its sole expense, public liability insurance, with minimum limits as required by the town, that includes coverage for any town property utilized and naming the town as an additional insured.

Sec. 22-~~15~~. - Signage.

(a) ~~All signage relating to special events must comply with LDC chapter 30.~~

(b) ~~Banners across Town of Fort Myers Beach rights-of-way. Special event permit applicants may request to hang a banner advertising the special event across the Town of Fort Myers Beach right-of-way at the base of the Sky Bridge. All banners must be~~

~~approved by town manager. Banners may not contain any commercial information for the purpose of advertising anything other than the special event. Banners will not be approved until approval has been obtained for the associated special event. Banners are hung on a on a first come first served basis. Banners may hang for a period of two weeks prior to the event; provided, however, that the town manager may permit a banner to be hung for a period of up to four weeks if availability allows. All banners must have grommets that are no less than two feet apart on the top and bottom. Banners can be no larger than 16 feet in width and three feet high.~~
(c) ~~For any special event where a requested road closure has the potential to affect a sizeable segment of the community, notice of such closure must be provided to the public at least five days prior to event if variable message signs are utilized or 14 days prior to an event if static signs are utilized. Type and placement of signs will be determined by public works director. The applicant is responsible for any fees associated with the static signs or variable message boards.~~

Sec. 22-16. - Revocation.

The town manager has the authority to revoke a special event permit issued pursuant to this chapter upon violation of any of the requirements contained in the permit or in this Code or the LDC.

Section 3. Section 6-366 of Chapter 6 of the Town of Fort Myers Beach Land Development Code is hereby amended to read as follows:

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, 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.

(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 ~~permit held on the beach~~, in accordance with ~~§ 14-11 of this LDC Ch. 22 of the Code~~.

c. 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.

Section 4. Section 14-11 of Chapter 14 of the Town of Fort Myers Beach Land Development Code is hereby repealed:

~~Sec. 14-11. Special events on the beach.~~

~~(a) Special events on the beach are any social, commercial, or fraternal gathering for the purpose of being entertained, instructed, viewing a competition, or any other reason that would bring them together in one location that normally would not include such a concentration of people on or near the beach.~~

~~(b) Special events on the beach are temporary, short-term activities, which may include the construction of temporary structures; temporary excavation, operation, transportation, or storage of equipment or materials; and/or nighttime lighting that is visible seaward of the coastal construction control line (CCCL). Generally, activities within this category include, but are not limited to: sporting events (e.g., volleyball, personal watercraft races, offshore powerboat races), festivals, competitions, organized parties (e.g., weddings), promotional activities, concerts, film events, balloon releases, and gatherings under tents.~~

~~(c) Due to the potential for adverse impacts, certain special event activities may not be compatible with sea turtle nesting areas. In some cases this is due to the type of activity where permit conditions alone cannot provide adequate protection. In other cases the density of sea turtle nesting prevents certain activities from being conducted safely.~~

~~(d) Special events that occur on or near the beach or dune, or where lighting from the special events directly or indirectly illuminates sea turtle habitat, may contain special conditions for protection of the beach, dune and sea turtles. These conditions are in addition to the basic requirements of the town's special events permit provisions, which must still be met in full.~~

~~(1) Along with the regular application for an event permit, a site plan must be submitted depicting the property corners and the dimensions of the area where the event is proposed to occur, the location of existing vegetation, structures, and any existing sea turtle nests, and a summary of the activities proposed. A lighting plan that includes the location, number, type, wattage, orientation, and shielding for all proposed artificial light sources that will be used must also be submitted. All lighting must be in compliance with § 14-75.~~

~~(2) Prior to the granting or denying of the application, an on-site inspection will be conducted to determine if the proposed event conforms to the requirements of this section and if any native vegetation or sea turtle nests exist to be protected.~~

~~(3) Based upon the information contained in the application and the site inspection, the application shall be approved or denied. approve or deny the application.~~

~~(4) Site-specific conditions may be attached to the permit relating to identifying, designating, and protecting any existing vegetation and sea turtle nests in accordance with this code. These conditions are in addition to the following standard permit conditions for all special events on the beach:~~

~~a. During the sea turtle season (May 1 through October 31), special event activities including construction shall be confined to daylight hours and shall not begin before 8:00 a.m. or before completion~~

~~of daily monitoring for turtle nesting activity by a FWC authorized marine turtle permit holder, whichever occurs first. However, no activity shall take place until after a daily sea turtle nest survey is conducted as indicated below.~~

~~b. During sea turtle nesting season (May 1 through October 31), the permittee is responsible for ensuring that a daily sea turtle nest survey, protection, and monitoring program is conducted throughout the permitted special events area. Such surveys and associated conservation measures shall be completed after sunrise and prior to the commencement of any activity. The sea turtle survey, protection, and monitoring program shall be conducted only by individuals possessing appropriate expertise in the protocol being followed and a valid F.A.C. Rule 68-E permit issued by the FWC. To identify those individuals available to conduct marine turtle nesting surveys within the permitted area, please contact the FWC, Bureau of Imperiled Species Management, at (850) 922-4330.~~

~~c. All turtle nests will be marked with wooden stakes, flagging tape, and a FWC sea turtle nest sign. No activities (including the placement of equipment or the storage of materials) are allowed within 30 feet of the marked nest. The permittee shall ensure that all personnel are briefed on the types of marking utilized and be able to easily contact the individual responsible for the nest survey to verify any questionable areas.~~

~~(5) A violation of the special or standard conditions will automatically invalidate the permit. Periodic compliance inspections will be conducted to insure compliance with the permit conditions and this article.~~

~~(6) The release of balloons is prohibited in accordance with F.S. § 372.995, except as permitted by that statute.~~

Section 5. Section 34-2 of Chapter 34 of the Town of Fort Myers Beach Land Development Code is hereby amended to read as follows:

Sec. 34-2. - Definitions

Garage sale or *yard sale* mean an informal sale of used household or personal articles, such as furniture, tools, or clothing, held on the seller's own premises, or conducted by several people on one of the sellers' own premises. ~~Garage and yard sales are limited to not more than one week in duration, with sales limited to two garage or yard sales per year.~~ See *Residential accessory use*.

Use, temporary means a use or activity ~~which~~ that is permitted only for a limited time, which will not inhibit the usual flow of pedestrian or vehicular travel on public rights-of-way, subject to specific regulations and permitting procedures. See article IV, division 37 of this chapter.

Section 6. Section 34-2441 of Chapter 34 of the Town of Fort Myers Beach Land Development Code is hereby repealed:

Sec. 34-2441. – Special events defined.

~~A special event is any social, commercial, or fraternal gathering for the purpose of entertaining, instructing, viewing a competition, or for any other reason that would assemble an unusual concentration of people in one location. Specifically excluded from this definition are any gatherings formed and/or sponsored by any recognized religion or religious society. Sec. 34-2442. – Permits for special events.~~

~~(a) The Town of Fort Myers has established a permitting process for special events through Ordinances Nos. 98-01 and 00-16 and any future amendments.~~

~~(b) No person, corporation, partnership, or other entity shall advertise or sell or furnish tickets for a special event within the boundaries of the town, and no such event shall be conducted or maintained, unless and until that person or entity has obtained a permit from the town to conduct such event.~~

~~(c) Special events on the beach shall also comply with § 14-11 of this code.~~

Section 7. Section 34-3041 of Chapter 34 of the Town of Fort Myers Beach Land Development Code is hereby amended to read as follows:

Sec. 34-3041. - Generally.

(a) *Purpose.* The purpose of this subdivision is to specify regulations applicable to certain temporary uses which, because of their impact on surrounding land uses, require a temporary use permit.

(b) *Permit required.* No temporary use shall be established until a temporary use permit has been obtained from the director in accordance with the requirements of ~~§ 34-3050~~ this chapter. ~~Some temporary uses may qualify as special events that are regulated by Ordinance No. 98-01 as amended, or may qualify as special events on or near the beach, which are further regulated by § 14-11 of this code. Ch. 22.~~ A temporary use permit must be obtained for the following uses in compliance with these requirements:

(1) Christmas tree sales lots for up to 45 days prior to the holiday;

(2) Holiday, seasonal or annual sales lots for up to 30 days;

(3) Temporary promotional activities involving the sale and promotion of goods and services available at a business on the premises, subject to the following:

a. Activities that obstruct private parking or are held on the adjacent public sidewalk may be held for up to three consecutive days up to three times per calendar year.

b. Activities that do not obstruct parking and are held on private property may be held for up to ten consecutive days up to three times per calendar year.

c. Outdoor display of merchandise, not associated with a temporary promotional activity shall be in compliance with LDC Sec 34-678 Outdoor display and sales of merchandise and food.

~~(4) — Garage sales or yard sales, with a maximum of two permits per parcel per year for a maximum of three consecutive days. Garage sale permits will be free of charge.~~

(5) Construction projects which require storage, parking areas, construction trailers, site screening and/or any other temporary activities during construction of the project and which terminate upon completion of the project.

(6) Temporary wireless communications facilities, as are necessary to meet demand, for up to six (6) months.

(7) One-day permits for consumption of alcohol on-premises associated with a temporary event.

(8) Other similar uses of a temporary nature.

(c) *Lighting.* No permanent or temporary lighting shall be installed without an electrical permit and inspection.

(d) *Time limit.*

(1) All temporary uses shall be confined to the dates specified by the director, on the temporary use permit; provided, however, that:

a. ~~Except as provided for seasonal parking lots in §§ 34-2022 of this chapter and for other uses where specifically provided in §§ 34-3043 through 34-3048 of this chapter, the director may not authorize a temporary use for more than 30 days; and If no time period is specified on the temporary use permit, then the temporary use permit will expire and the use must be abated within 30 days from the date of issuance.~~

b. ~~If no time period is specified on the temporary use permit, then the temporary use permit will expire and the use must be abated within 30 days from the date of issuance.~~

(2) A temporary use permit may not be renewed or reissued to the same applicant or on the same premises for a similar use more than three (3) times per year. ~~for a period of six months from the date of expiration of the previous temporary use permit.~~

(e) *Hours of operation.* Hours of operation shall be confined to those specified in the permit.

(f) *Cleanup.* The site shall be cleared of all debris at the end of the temporary use and all temporary structures shall be removed within 48 hours after termination of the use. A cash bond of a minimum of \$25.00 and not to exceed \$5,000.00 or a signed contract with a disposal firm may be required as a part of the application for a temporary use permit to ensure that the premises will be cleared of all debris during and after the event.

(g) ~~*Traffic control.* Traffic control as may be required by the county sheriff's department and the county department of transportation shall be arranged and paid for by the applicant.~~ *Signs.* A sign permit may be required for any proposed signs.

(h) ~~*Damage to public right-of-way.* A cash bond of a minimum of \$25.00 and not to exceed \$5,000.00 may be required to ensure the repair of any damage resulting to any public right-of-way as a result of the event.~~ *In lieu of.* Any proposed use, which exceeds the criteria or regulations of this code subdivision, may apply for a Special Event permit.

Section 8. Sections 34-3042, 34-3043, 34-3044, 34-3045, 34-3046, 34-3047, 34-3048, and 34-3055 of Chapter 34 of the Town of Fort Myers Beach Land Development Code are hereby repealed:

~~Sec. 34-3042. -- Carnivals, fairs, circuses and amusement devices.~~

(a) ~~Location of amusement devices and other structures. Refer to §§ 34-2142(a) and (b) above, for setback requirements.~~

(b) ~~Off-street parking. Refer to § 34-2020(d)(3)g. of this chapter for off-street parking requirements.~~

(c) ~~Hours of operation. The hours of operation shall be limited to 10:00 a.m. to 10:00 p.m., unless otherwise extended by the director in writing.~~

(d) ~~Special event permit. In addition to a temporary use permit, a carnival, fair, circus, or amusement device, or other event may be subject to the provisions of the town's Special Events Ordinance No. 98-01, as amended (see also division 34 of this article). Ch. 22.~~

~~Sec. 34-3043. -- Christmas tree sales.~~

(a) ~~Christmas tree sales may be permitted in any commercial district, provided that:~~

(1) No parking lot required for another use shall be used for display of trees; and

(2) Temporary off-street parking for at least five vehicles shall be provided utilizing an existing or approved parking lot entrance or driveway.

(b) The maximum length of time for display and open lot sales shall be 45 days.

~~Sec. 34-3044. -- Temporary contractor's office and equipment storage shed.~~

~~A contractor's office or construction equipment shed may be permitted in any district where use is incidental to an ongoing construction project with an active building permit or development order. Such office or shed shall not contain sleeping or cooking accommodations. The contractor's office and construction shed shall be removed within 30 days of the date of final inspection for the project.~~

~~Sec. 34-3045. -- Alcoholic beverages.~~

~~Temporary one-day permits for the service of alcoholic beverages may be permitted in accordance with § 34-1264(d) of this chapter.~~

~~Sec. 34-3046. -- Temporary use of mobile home.~~

(a) ~~Rehabilitation or construction of residence following disaster.~~

(1) ~~When fire or disaster has rendered a single-family residence unfit for human habitation, the temporary use of a mobile home or recreational vehicle located on the single-family lot during rehabilitation of the original residence or construction of a new residence may be permitted subject to the regulations set out in this section.~~

(2) ~~The maximum duration of the use shall be 18 months after the date the President of the United States issues a disaster declaration. If no disaster declaration is issued, the maximum duration of the use is six months. The director may extend the permit once for a period not to exceed 60 days in the event of circumstances beyond the control of the owner. Application for an extension shall be made prior to expiration of the original permit.~~

~~(b) Rehabilitation or construction of damaged business or commercial uses following disaster.~~

~~(1) Business or commercial uses damaged by a major or catastrophic disaster that are necessary for the public health and safety or that will aid in restoring the community's economic base may be permitted to use a mobile home or similar type structure to carry out their activities until the damaged structure(s) is rebuilt or replaced according to applicable development or redevelopment regulations.~~

~~(2) The maximum duration of the temporary use is nine months after the date the President of the United States issues a disaster declaration. If no disaster declaration is issued, the maximum duration of the use is six months. The director may extend the permit once for a period not to exceed 60 days in the event of circumstances beyond the control of the owner. Application for an extension shall be made prior to expiration of the original permit.~~

~~(c) Conditions for use.~~

~~(1) Required water and sanitary facilities must be provided.~~

~~(2) The mobile home or recreational vehicle shall be removed from the property within ten days after the certificate of occupancy is issued for the new or rehabilitated residence, business, or commercial use, or upon expiration of the temporary use permit, whichever occurs first.~~

~~Sec. 34-3047. -- Temporary telephone distribution equipment.~~

~~Telephone distribution equipment may be granted a temporary use permit during planning and construction of permanent facilities, provided that:~~

~~(1) The equipment is less than six feet in height and 300 cubic feet in volume; and~~

~~(2) The maximum length of the use shall be six months, but the director may extend the permit once for a period not to exceed six additional months in the event of circumstances beyond the control of the telephone company.~~

~~Application for an extension shall be made at least 15 days prior to expiration of the original permit.~~

~~Sec. 34-3048. Ancillary temporary uses in parking lots.~~

~~(a) The following ancillary temporary uses may be permitted in parking lots upon application and issuance of a temporary use permit (see § 34-3050 of this chapter):~~

- ~~(1) Seasonal promotions.~~
- ~~(2) Sidewalk or parking lot sales.~~
- ~~(3) Fairs and carnivals (see § 34-3042 of this chapter).~~
- ~~(4) Tent sales.~~
- ~~(5) Flea markets by nonprofit organizations.~~
- ~~(6) Welcome stations in accordance with § 34-3051 of this chapter.~~

~~(b) In approving a temporary use permit, the director shall require that the area of the lot to be used is clearly defined and that the use will not obstruct pedestrian and vehicular movements to portions of the lot not so used.~~

~~Sec. 34-3055. Special events.~~

~~(a) A special event is any social, commercial, or fraternal gathering for the purpose of entertaining, instructing, viewing a competition, or for any other reason that would assemble an unusual concentration of people in one location.~~

~~(b) See division 34 of this chapter for a summary of permitting rules for special events.~~

Section 9. 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 10. 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 11. 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 12. 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 _____ and seconded by _____ and upon being put to a roll call vote, the result was as follows:

Raymond P. Murphy, Mayor	_____
Rexann Hosafros, Vice Mayor	_____
Dan Allers, Council Member	_____
Jim Atterholt, Council Member	_____
Bill Veach, Council Member	_____

ADOPTED this ____ day of _____, 2021 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Raymond P. Murphy, Mayor

ATTEST:

Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH SOLELY:**

John R. Herin, Jr., Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this ____ day of _____, 2021.

Land Development Code Amendments

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, 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.
- (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 permit held on the beach, in accordance with ~~§ 14-11 of this LDC~~ Ch. 22.
- c. 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.

Explanation- We are consolidating all info regarding special events into one place.

~~Sec. 14-11. - Special events on the beach.~~

- ~~(a) Special events on the beach are any social, commercial, or fraternal gathering for the purpose of being entertained, instructed, viewing a competition, or any other reason that would bring them together in one location that normally would not include such a concentration of people on or near the beach.~~
- ~~(b) Special events on the beach are temporary, short-term activities, which may include the construction of temporary structures; temporary excavation, operation, transportation, or storage of equipment or materials; and/or nighttime lighting that is visible seaward of the coastal construction control line (CCCL). Generally, activities within this category include, but are not limited to: sporting events (e.g., volleyball, personal watercraft races, offshore powerboat races), festivals, competitions, organized parties (e.g., weddings), promotional activities, concerts, film events, balloon releases, and gatherings under tents.~~
- ~~(c) Due to the potential for adverse impacts, certain special event activities may not be compatible with sea turtle nesting areas. In some cases this is due to the type of activity where permit conditions alone~~

~~cannot provide adequate protection. In other cases the density of sea turtle nesting prevents certain activities from being conducted safely.~~

- ~~(d) Special events that occur on or near the beach or dune, or where lighting from the special events directly or indirectly illuminates sea turtle habitat, may contain special conditions for protection of the beach, dune and sea turtles. These conditions are in addition to the basic requirements of the town's special events permit provisions, which must still be met in full.~~
- ~~(1) Along with the regular application for an event permit, a site plan must be submitted depicting the property corners and the dimensions of the area where the event is proposed to occur, the location of existing vegetation, structures, and any existing sea turtle nests, and a summary of the activities proposed. A lighting plan that includes the location, number, type, wattage, orientation, and shielding for all proposed artificial light sources that will be used must also be submitted. All lighting must be in compliance with § 14-75.~~
 - ~~(2) Prior to the granting or denying of the application, an on-site inspection will be conducted to determine if the proposed event conforms to the requirements of this section and if any native vegetation or sea turtle nests exist to be protected.~~
 - ~~(3) Based upon the information contained in the application and the site inspection, the application shall be approved or denied. approve or deny the application.~~
 - ~~(4) Site-specific conditions may be attached to the permit relating to identifying, designating, and protecting any existing vegetation and sea turtle nests in accordance with this code. These conditions are in addition to the following standard permit conditions for all special events on the beach:
 - ~~a. During the sea turtle season (May 1 through October 31), special event activities including construction shall be confined to daylight hours and shall not begin before 8:00 a.m. or before completion of daily monitoring for turtle nesting activity by a FWC-authorized marine turtle permit holder, whichever occurs first. However, no activity shall take place until after a daily sea turtle nest survey is conducted as indicated below.~~
 - ~~b. During sea turtle nesting season (May 1 through October 31), the permittee is responsible for ensuring that a daily sea turtle nest survey, protection, and monitoring program is conducted throughout the permitted special events area. Such surveys and associated conservation measures shall be completed after sunrise and prior to the commencement of any activity. The sea turtle survey, protection, and monitoring program shall be conducted only by individuals possessing appropriate expertise in the protocol being followed and a valid F.A.C. Rule 68-E permit issued by the FWC. To identify those individuals available to conduct marine turtle nesting surveys within the permitted area, please contact the FWC, Bureau of Imperiled Species Management, at (850) 922-4330.~~
 - ~~c. All turtle nests will be marked with wooden stakes, flagging tape, and a FWC sea turtle nest sign. No activities (including the placement of equipment or the storage of materials) are allowed within 30 feet of the marked nest. The permittee shall ensure that all personnel are briefed on the types of marking utilized and be able to easily contact the individual responsible for the nest survey to verify any questionable areas.~~~~
 - ~~(5) A violation of the special or standard conditions will automatically invalidate the permit. Periodic compliance inspections will be conducted to insure compliance with the permit conditions and this article.~~
 - ~~(6) The release of balloons is prohibited in accordance with F.S. § 372.995, except as permitted by that statute.~~

~~(Ord. No. 15-12, § 1, 1-19-2016)~~

Explanation – The above section will be added to Ch 22

~~Sec. 34-2441. Special events defined.~~

~~A special event is any social, commercial, or fraternal gathering for the purpose of entertaining, instructing, viewing a competition, or for any other reason that would assemble an unusual concentration of people in one location. Specifically excluded from this definition are any gatherings formed and/or sponsored by any recognized religion or religious society. Sec. 34-2442. Permits for special events.~~

- ~~(a) The Town of Fort Myers has established a permitting process for special events through Ordinances Nos. 98-01 and 00-16 and any future amendments.~~
- ~~(b) No person, corporation, partnership, or other entity shall advertise or sell or furnish tickets for a special event within the boundaries of the town, and no such event shall be conducted or maintained, unless and until that person or entity has obtained a permit from the town to conduct such event.~~
- ~~(c) Special events on the beach shall also comply with § 14-11 of this code.~~

Explanation – deleting and consolidating

Definition Sec. 34-2: *Use, temporary* means a use or activity which is permitted only for a limited time, which will not inhibit the usual flow of pedestrian or vehicular travel on public rights-of-way, subject to specific regulations and permitting procedures. See article IV, division 37 of this chapter. In Sec 30-3041(b)

Sec. 34-3041. - Generally.

- (a) *Purpose.* The purpose of this subdivision is to specify regulations applicable to certain temporary uses which, because of their impact on surrounding land uses, require a temporary use permit.
- (b) *Permit required.* No temporary use shall be established until a temporary use permit has been obtained from the director in accordance with the requirements of § 34-3050 of this chapter. Some temporary uses may qualify as special events that are regulated by Ordinance No. 98-01 as amended, or may qualify as special events on or near the beach, which are further regulated by § 14-11 of this code. Ch. 22: A temporary use permit must be obtained for the following uses in compliance with these requirements:
 - (1) Christmas tree sales lots for up to 45 days prior to the holiday;
 - (2) Holiday, seasonal or annual sales lots for up to 30 days;
 - (3) Temporary promotional activities involving the sale and promotion of goods and services available at a business on the premises, subject to the following:
 - a. Activities that obstruct private parking or are held on the adjacent public sidewalk may be held for up to three consecutive days up to three times per calendar year.
 - b. Activities that do not obstruct parking and are held on private property may be held for up to ten consecutive days up to three times per calendar year.
 - c. Outdoor display of merchandise, not associated with a temporary promotional activity shall be in compliance with LDC Sec 34-678 Outdoor display and sales of merchandise and food.
 - (4) Garage sales or yard sales, with a maximum of two permits per parcel per year for a maximum of three consecutive days. Garage sale permits will be free of charge.
 - (5) Other similar uses of a temporary nature.

(65) Construction projects which require storage, parking areas, construction trailers, site screening and/or any other temporary activities during construction of the project and which terminate upon completion of the project.

(76) Temporary wireless communications facilities, as are necessary to meet demand, up to six (6) months.

(87) One-day permits for consumption on-premises associated with a temporary event.

(c) *Lighting.* No permanent or temporary lighting shall be installed without an electrical permit and inspection.

(d) *Time limit.*

(1) All uses shall be confined to the dates specified by the director, on the temporary use permit; provided, however, that:

a. ~~Except as provided for seasonal parking lots in §§ 34-2022 of this chapter and for other uses where specifically provided in §§ 34-3043 through 34-3048 of this chapter, the director may not authorize a temporary use for more than 30 days; and~~

b. If no time period is specified on the temporary use permit, then the temporary use permit will expire and the use must be abated within 30 days from the date of issuance.

(2) A temporary use permit may not be renewed or reissued to the same applicant or on the same premises for a similar use more than three (3) times per year. ~~for a period of six months from the date of expiration of the previous temporary use permit.~~

(e) *Hours of operation.* Hours of operation shall be confined to those specified in the permit.

(f) *Cleanup.* The site shall be cleared of all debris at the end of the temporary use and all temporary structures shall be removed within 48 hours after termination of the use. A cash bond of a minimum of \$25.00 and not to exceed \$5,000.00 or a signed contract with a disposal firm may be required as a part of the application for a temporary use permit to ensure that the premises will be cleared of all debris during and after the event.

~~(g) *Traffic control.* Traffic control as may be required by the county sheriff's department and the county department of transportation shall be arranged and paid for by the applicant.~~

(g) *Signs.* A sign permit may be required for any proposed signs.

~~(h) *Damage to public right-of-way.* A cash bond of a minimum of \$25.00 and not to exceed \$5,000.00 may be required to ensure the repair of any damage resulting to any public right-of-way as a result of the event.~~

(g) Any proposed use which exceeds the criteria or regulations of this code subdivision may apply for a Special Event permit.

~~Sec. 34-3042. Carnivals, fairs, circuses and amusement devices.~~

~~(a) *Location of amusement devices and other structures.* Refer to §§ 34-2142(a) and (b) above, for setback requirements.~~

~~(b) *Off-street parking.* Refer to § 34-2020(d)(3)g. of this chapter for off-street parking requirements.~~

~~(c) *Hours of operation.* The hours of operation shall be limited to 10:00 a.m. to 10:00 p.m., unless otherwise extended by the director in writing.~~

~~(d) *Special event permit.* In addition to a temporary use permit, a carnival, fair, circus, or amusement device, or other event may be subject to the provisions of the town's Special Events Ordinance No. 98-01, as amended (see also division 34 of this article). Ch. 22.~~

~~Sec. 34-3043.— Christmas tree sales.~~

~~(a) Christmas tree sales may be permitted in any commercial district, provided that:~~

- ~~(1) No parking lot required for another use shall be used for display of trees; and~~
- ~~(2) Temporary off-street parking for at least five vehicles shall be provided utilizing an existing or approved parking lot entrance or driveway.~~

~~(b) The maximum length of time for display and open-lot sales shall be 45 days.~~

~~Sec. 34-3044.— Temporary contractor's office and equipment storage shed.~~

~~A contractor's office or construction equipment shed may be permitted in any district where use is incidental to an ongoing construction project with an active building permit or development order. Such office or shed shall not contain sleeping or cooking accommodations. The contractor's office and construction shed shall be removed within 30 days of the date of final inspection for the project.~~

~~Sec. 34-3045.— Alcoholic beverages.~~

~~Temporary one-day permits for the service of alcoholic beverages may be permitted in accordance with § 34-1264(d) of this chapter.~~

~~Sec. 34-3046.— Temporary use of mobile home.~~

~~(a) *Rehabilitation or construction of residence following disaster.*~~

- ~~(1) When fire or disaster has rendered a single-family residence unfit for human habitation, the temporary use of a mobile home or recreational vehicle located on the single-family lot during rehabilitation of the original residence or construction of a new residence may be permitted subject to the regulations set out in this section.~~
- ~~(2) The maximum duration of the use shall be 18 months after the date the President of the United States issues a disaster declaration. If no disaster declaration is issued, the maximum duration of the use is six months. The director may extend the permit once for a period not to exceed 60 days in the event of circumstances beyond the control of the owner. Application for an extension shall be made prior to expiration of the original permit.~~

~~(b) *Rehabilitation or construction of damaged business or commercial uses following disaster.*~~

- ~~(1) Business or commercial uses damaged by a major or catastrophic disaster that are necessary for the public health and safety or that will aid in restoring the community's economic base may be permitted to use a mobile home or similar type structure to carry out their activities until the damaged structure(s) is rebuilt or replaced according to applicable development or redevelopment regulations.~~
- ~~(2) The maximum duration of the temporary use is nine months after the date the President of the United States issues a disaster declaration. If no disaster declaration is issued, the maximum duration of the use is six months. The director may extend the permit once for a period not to exceed 60 days in the event of circumstances beyond the control of the owner. Application for an extension shall be made prior to expiration of the original permit.~~

~~(c) *Conditions for use.*~~

- ~~(1) Required water and sanitary facilities must be provided.~~
- ~~(2) The mobile home or recreational vehicle shall be removed from the property within ten days after the certificate of occupancy is issued for the new or rehabilitated residence, business, or commercial use, or upon expiration of the temporary use permit, whichever occurs first.~~

~~Sec. 34-3047.—Temporary telephone distribution equipment.~~

~~Telephone distribution equipment may be granted a temporary use permit during planning and construction of permanent facilities, provided that:~~

- ~~(1) The equipment is less than six feet in height and 300 cubic feet in volume; and~~
- ~~(2) The maximum length of the use shall be six months, but the director may extend the permit once for a period not to exceed six additional months in the event of circumstances beyond the control of the telephone company. Application for an extension shall be made at least 15 days prior to expiration of the original permit.~~

~~Sec. 34-3048.—Ancillary temporary uses in parking lots.~~

~~(a) The following ancillary temporary uses may be permitted in parking lots upon application and issuance of a temporary use permit (see § 34-3050 of this chapter):~~

- ~~(1) Seasonal promotions.~~
- ~~(2) Sidewalk or parking lot sales.~~
- ~~(3) Fairs and carnivals (see § 34-3042 of this chapter).~~
- ~~(4) Tent sales.~~
- ~~(5) Flea markets by nonprofit organizations.~~
- ~~(6) Welcome stations in accordance with § 34-3051 of this chapter.~~

~~(b) In approving a temporary use permit, the director shall require that the area of the lot to be used is clearly defined and that the use will not obstruct pedestrian and vehicular movements to portions of the lot not so used.~~

~~Subdivision III.—Special Events~~

~~Sec. 34-3055.—Special events.~~

- ~~(a) A special event is any social, commercial, or fraternal gathering for the purpose of entertaining, instructing, viewing a competition, or for any other reason that would assemble an unusual concentration of people in one location.~~
- ~~(b) See division 34 of this chapter for a summary of permitting rules for special events.~~

Explanation – deleting and consolidating

Non-LDC Code of Ordinances

Chapter 22 - SPECIAL EVENTS⁽¹⁾

Sec. 22-1. - Definitions.

Political demonstration. A public gathering, procession or parade, the primary purpose of which is the exercise of the rights of assembly and free speech as guaranteed by the First Amendment to the Constitution of the United States.

Special event. ~~Any activity conducted on public or private property that will or has the potential to substantially affect the ordinary and customary use of beaches, public streets, rights-of-way, sidewalks, and other public forums, including any temporary activity conducted on private property that is not authorized by the certificate of use or certificate of occupancy issued for any business operating on the property where the activity is planned, or any temporary activity conducted on private property where the area of the activity coincides with parking spaces required for the operation of any business.~~

An activity within the boundaries of the town of Fort Myers Beach which would inhibit the usual flow of pedestrian or vehicular travel or which occupies any public area or building so as to preempt use of said area by the general public or which deviates from the established use of said area of building, but such term does not include the following:

- (1) Any usual and customary noncommercial accessory use of a residential dwelling unit;
- (2) Any use or activity specifically approved by a development permit issued by the city; or
- (3) Private gatherings that will make no use of a public property other than for lawful parking;
- ~~(4) Any garage sale conducted in compliance with the requirements of this chapter.~~

Sec. 22-2. - Permit required.

No person or entity ~~can initiate, sponsor, organize, promote,~~ **may** conduct or advertise a special event unless a permit has been obtained from the town.

(Ord. No. 16-03, § 1, 8-22-2016)

Sec. 22-3. - Exemptions from permit requirement.

The following do not require a special event permit:

- (1) Private events that will make no use of a public property other than for lawful parking.
- (2) Events conducted solely for the purpose of exercising a group's first amendment right of free speech and/or assembly. If an event has any commercial aspect, ~~or~~ is a political demonstration as defined in section 22-1, or requires the closure of roadways, sidewalks or the use of Town or County staff then this exemption will not apply.

(Ord. No. 16-03, § 1, 8-22-2016)

Sec. 22-4. - Fees.

All fees that relate to special events and special events permits will be as stated in the current Town of Fort Myers Beach Fee Schedule.

(Ord. No. 16-03, § 1, 8-22-2016)

Sec. 22-5. - Permit fee exemption for special events conducted by the town.

The town is exempt from all permit fees relating to special events conducted by the town.

(Ord. No. 16-03, § 1, 8-22-2016)

Sec. 22-6. – Types of events requiring a special event permit.

The following types of events will require a special event permit. Events, other than these specifically listed, may also require a special event permit.

- (1) Carnivals, Fairs, Festivals and Circuses;
- (2) Farmer's Markets and Flea Markets;
- (3) Art Shows;
- (4) Running, Walking or Bicycling Events;
- (5) Concerts;
- (6) Fireworks;
- (7) Parades;
- (8) Similar events requiring off-site parking, street or sidewalk closures, sound amplification or use of public property or Town staff.

Sec. 22-6.7. - General criteria and limitations.

The following general criteria and limitations apply to special event permits:

- (1) The activity proposed must be compatible with the surrounding land uses.
- (2) An individual applicant may not receive a special event permit more than six times within a calendar year, provided, however, that the town council may grant businesses or entities approval for a recurring event permit that is not subject to this limitation (see section 22-7) and provided further that the town council has the authority to permit an individual applicant to exceed the six event annual limitation in its discretion.
- ~~(3) For any special event that will include a temporary use regulated by LDC chapter 34 (see LDC sections 34-3041 through 34-3051) a temporary use permit may also be required.~~
- ~~(43)~~ For any special event that will take place all or in part upon the beach will be subject to all requirements contained in ~~LDC section 14-11~~ this chapter and any requirements of state or federal agencies relating to activities that take place on the beach.
- ~~(54)~~ For any special event where alcoholic beverages will be sold, the applicant ~~must~~ **may need to** obtain a temporary one-day permit as ~~proscribed~~ **described** in LDC section 34-1264, as applicable. Applicants must obtain any required permits from the Florida Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco.
- ~~(65)~~ The following types of special events must be approved by the town council:
 - a. Special events with a duration of four days or more where alcohol will be served;
 - b. Special events with an anticipated attendance of more than 500 people;
 - c. Recurring special events (see section 22-7);

- d. Any special event that includes a waiver of the town's open container regulations (see Code chapter 4, article IV);
- e. Special events held annually, once initially approved by town council, may be administratively approved by the town manager (i.e., without formal action by town council) for subsequent years, so long as they do not include a noise ordinance waiver request (see subsection (6)g). of this section, or a material change in the nature of the annual special event. Material changes include an anticipated increase in attendance of ten percent or more, an increase of the area of the special event of ten percent or more; changes or additions to the parking plan for the special event; or other changes as determined in the sole discretion of the town manager;
- f. Special events for which a waiver of parking or other town fees is requested. If the waiver was previously approved by the town council in conjunction with approval of a recurring special event or annual event and special event is subject to administrative approval, then the related waiver may also be administratively approved; and
- g. Special events for which a waiver of the Fort Myers Beach Noise Ordinance is requested.

h. Special events which require the closure of streets or sidewalks.

(76) Special events that occur on or near the beach or dune

- a. Due to the potential for adverse impacts, certain special event activities may not be compatible with sea turtle nesting areas. In some cases this is due to the type of activity where permit conditions alone cannot provide adequate protection. In other cases the density of sea turtle nesting prevents certain activities from being conducted safely.
- b. Special events that occur on or near the beach or dune, or where lighting from the special events directly or indirectly illuminates sea turtle habitat, may contain special conditions for protection of the beach, dune and sea turtles. These conditions are in addition to the basic requirements of the town's special events permit provisions, which must still be met in full.
 - 1. Along with the regular application for an event permit, a site plan must be submitted depicting the property corners and the dimensions of the area where the event is proposed to occur, the location of existing vegetation, structures, and any existing sea turtle nests, and a summary of the activities proposed. A lighting plan that includes the location, number, type, wattage, orientation, and shielding for all proposed artificial light sources that will be used must also be submitted. All lighting must be in compliance with §-section 14-75 of the Fort Myers Beach Code of Ordinances.
 - 2. Prior to the granting or denying of the application, an on-site inspection will be conducted to determine if the proposed event conforms to the requirements of this section and if any native vegetation or sea turtle nests exist to be protected.
 - 3. Based upon the information contained in the application and the site inspection, the application shall be approved or denied. approve or deny the application.
 - 4. Site-specific conditions may be attached to the permit relating to identifying, designating, and protecting any existing vegetation and sea turtle nests in accordance with this code. These conditions are in addition to the following standard permit conditions for all special events on the beach:
 - i. During the sea turtle season (May 1 through October 31), special event activities including construction shall be confined to daylight hours and shall not begin before 8:00 a.m. or before completion of daily monitoring for turtle nesting activity by a FWC-authorized marine turtle permit holder, whichever occurs first. However, no activity shall take place until after a daily sea turtle nest survey is conducted as indicated below.

ii. During sea turtle nesting season (May 1 through October 31), the permittee is responsible for ensuring that a daily sea turtle nest survey, protection, and monitoring program is conducted throughout the permitted special events area. Such surveys and associated conservation measures shall be completed after sunrise and prior to the commencement of any activity. The sea turtle survey, protection, and monitoring program shall be conducted only by individuals possessing appropriate expertise in the protocol being followed and a valid F.A.C. Rule 68-E permit issued by the FWC. To identify those individuals available to conduct marine turtle nesting surveys within the permitted area, please contact the FWC, Bureau of Imperiled Species Management, at (850) 922-4330.

iii. All turtle nests will be marked with wooden stakes, flagging tape, and a FWC sea turtle nest sign. No activities (including the placement of equipment or the storage of materials) are allowed within 30 feet of the marked nest. The permittee shall ensure that all personnel are briefed on the types of marking utilized and be able to easily contact the individual responsible for the nest survey to verify any questionable areas.

5. A violation of the special or standard conditions will automatically invalidate the permit. Periodic compliance inspections will be conducted to insure compliance with the permit conditions and this article.

6. The release of balloons is prohibited in accordance with F.S. § 372.995, except as permitted by that statute.

(Ord. No. 16-03, § 1, 8-22-2016)

Sec. 22-~~7~~.8. - Recurring special events.

To qualify as a recurring event, the event must be the same type of event and must be held in the same location. Examples of a recurring event include, but are not limited to, farmers' markets, "sunset celebrations," and music or art themed events. Recurring special events are subject to the following requirements:

- (1) Each event must be held at the same location at the same time of day.
- (2) All dates for the recurring event must be listed on the original application.
- (3) Each individual event must be of the same genre with similar anticipated attendance.
- (4) A recurring special event may not occur more often than weekly over a period of one year based upon a single application.

(Ord. No. 16-03, § 1, 8-22-2016)

Sec. 22-~~8~~.9. - Application requirements.

- (a) Any person or entity seeking issuance of a special event permit must file a written application with the town manager on forms provided by the town.
- (b) If any town council actions are required in connection with a planned special event, the application for the permit must be filed at least 60 days prior to the date of the planned event.
- (c) Applications for special event permits that do not require town council action must be filed at least 15 days prior to date of the planned event.
- (d) Incomplete applications will not be processed for approval.

(e) Applications received less than the specified days before the date of the planned event, may be accepted at the discretion of the town manager. If the late application is accepted, the town manager has the discretion to impose additional permit fees, as per the Town of Fort Myers Beach Fee Schedule, to facilitate timely review and approval.

(f) A complete permit application must include, but may not be limited to, the following:

- (1) The name of the special event and its purpose in general terms.
- (2) The name(s) of the person(s) or organization(s) sponsoring the special event, together with the addresses and telephone numbers of all such persons or organizations.
- (3) The proposed date or dates of the special event.
- (4) The expected number of persons who will attend the event.

[a. Events with an anticipated attendance exceeding 500 people requires approval by the Town Council.](#)

(5) The specific location(s) within the town where the special event is to be held. The applicant must submit a general site plan that identifies the area(s) of the property used for the event activities, any and all tents, canopies, recreational vehicles, or accessory structures that are to be utilized in connection with the special event activity. A parking plan must be included as part of the special event permit application. The location of any parking and accessory structures may not obstruct traffic or violate any applicable town, county or state laws.

(6) In instances where a proposed special event will be held within 500 feet of residential property and will include any amplified sound, the applicant shall provide notice to such owners and advise them of the nature of the event and the dates and times when the event will be held. The 500 feet shall be measured from the perimeter of the site where the event will take place and for condominium properties, a single written notification to the condominium association will be sufficient. The notification shall advise the owner of their right to submit a letter of objection to the town manager, and shall include the date by which any such letter of objection must be submitted.

(7) Whether any street closings are requested and, if so, which streets and the times when they will be closed.

[a. A request to close any streets requires approval by the Town Council.](#)

(8) Whether any alcoholic beverages will be sold or served. If alcoholic beverages will be sold the applicant must obtain all necessary permits as described in section 22-6.

[a. A request to waive the Town's open container regulations requires approval by the Town Council.](#)

[b. Any event which is four days or longer and where alcohol will be served, requires approval by the Town Council.](#)

(9) If any entertainment will be included, details as to the type of entertainment, times and location must be provided.

(10) Whether utility services such as electrical power or water will be required.

(11) ~~Whether the applicant is requesting have a banner hung in association with the event, see section 22-15. A proof of the proposed banner is required. All proposed signage shall be in compliance with Chapter 30 Signs of the Land Development Code. The applicant shall provide application for signs or shall propose signs exempt from the ordinance per LDC Sec 30-6.~~

(12) Proof indicating approval of the event from all applicable outside state and local agencies.

- (13) In instances when the sound emanating from a proposed special event is anticipated to exceed the limits established in Code section 14-23 of the Fort Myers Beach Code of Ordinances, the applicant must provide proof of application for a waiver for relief from the maximum allowable noise levels in accordance with section 14-25 of the Fort Myers Beach Code of Ordinances. As part of the waiver application process, the applicant is required to provide notice to all property owners within 500 feet of the location of the proposed special event, advising them of the nature of the event and the dates and times when the event will be held. The 500 feet is measured from the perimeter of the site where the special event will take place; and for condominium properties, a single written notification to the condominium association is sufficient.

a. A request to waive the noise ordinance requires approval by the Town Council.

- ~~(14) — Proof of application for approval of any temporary use permits required in conjunction with the special event, see sections 34-3041—34-3051 of the Fort Myers Beach Land Development Code.~~
- (15) An affidavit, signed by the applicant, that all the information provided in the application is a complete and accurate description of the proposed event **and that permission has been obtained from the owner of any land upon which the special event is to be held, unless the event is to be held exclusively on public property.**
- ~~(16) An affidavit, signed by the applicant, that permission has been obtained from the owner of any land upon which the special event is to be held, unless the event is to be held exclusively on public property.~~
- (17~~6~~) The town manager has the authority to require any **reasonable** additional information from the applicant that the town manager deems necessary.

(Ord. No. 16-03, § 1, 8-22-2016)

Sec. 22-~~9~~.10. - Review of application.

Upon receipt of an application that contains all of the items listed in section 22-8 and required application fees, the town manager will forward copies of the application to all affected town departments for their review.

- (1) If the special event permit can be approved by the town manager administratively, the town manager will grant or deny an application for a special event permit within ten days of receipt of a complete application.
- (2) Special event permits requiring town council action will be scheduled for consideration at the next regularly scheduled town council meeting.
- (3) The town manager and town council have the right to place conditions on a special event permit to mitigate any anticipated adverse effects on nearby properties.

(Ord. No. 16-03, § 1, 8-22-2016)

Sec. 22-~~10~~.11. - Grounds for denial.

- (a) The town manager or town council may deny an application for a special event permit if the applicant, or the person on whose behalf the application for a permit was made, has on a prior occasion made a material misrepresentation regarding the nature or scope of an event or activity previously permitted by a special event permit, or, who has previously violated the terms of a prior special event permit, issued to or on behalf of the applicant. An application for a special event permit may also be denied for any of the following reasons:
- (1) The application for a special event permit (including any required attachments and submissions) is not fully completed and properly executed;

- (2) The applicant has not tendered the required application fee, if any, with the application or has not tendered any other required fees, indemnification agreement, insurance certificate, or security deposit, if any, within the times prescribed by the town manager;
 - (3) The application contains a material falsehood or misrepresentation;
 - (4) The applicant or the person on whose behalf the application for the special event permit has been made has on prior occasions damaged town property and has not paid in full for such damage, or has other outstanding and unpaid debts to the town;
 - (5) A fully executed prior application for a special event permit for the same time and place has been received, and a special event permit has or will be granted to the prior applicant, authorizing uses or activities which do not reasonably permit multiple occupancy of the area where the event is proposed to be held;
 - (6) The use or activity intended by the applicant will conflict with previously planned programs organized or conducted by a governmental agency and previously scheduled for the same time and place;
 - (7) The use or activity intended by the applicant would present an unreasonable danger to the health or safety of the public;
 - (8) The applicant has not complied or cannot comply with applicable licensure requirements, laws, ordinances or regulation of the state, the county or the town concerning the sale or offering for sale of any goods or services; or
 - (9) The use or activity intended by the applicant is prohibited by state or federal law or by ordinances or regulations of the county or the town.
- (b) If the special event application is denied, the applicant is not be entitled to receive any reimbursement from the town for any costs incurred during the application process, including the application fee.

(Ord. No. 16-03, § 1, 8-22-2016)

Sec. 22-~~11~~.12. - Notification of denial and right of appeal.

- (a) Any applicant who is denied a special event permit by the town manager will be notified in writing. Said notification will state the reasons for the denial and the right of appeal to the town council, and will be sent by registered mail to the applicant.
- (b) The applicant will have ten days from receipt of the written notification of permit denial to request an appeal hearing before the town council. If the appeal cannot be heard by the town council prior to the date when the event is scheduled to be held, the filing of an appeal will not entitle the applicant to conduct the event on that date but, if the appeal is successful, the applicant may hold the event on a rescheduled date that is after the town council meeting at which the appeal was heard.
- (c) An appeal of the decision of the town council may be made to the circuit court by filing a petition for writ of certiorari as provided for under the Florida Rules of Appellate Procedure. A decision of the town council will be deemed to have been rendered on the date the town council votes to either grant or deny the appeal.

(Ord. No. 16-03, § 1, 8-22-2016)

Sec. 22-~~12~~.13. - Litter.

- (a) Special event permit holders are responsible for ensuring that the area where the event is held is free of all litter and debris within 24 hours of the time the special event ends. Events that span more than a 24-hour period are responsible for removing all garbage and litter at the end of each day.

- (b) In the event this section is not complied with, the town manager has the authority to contract with a cleaning service and the cost of the cleanup will be the responsibility of the permit holder and, if not promptly paid, may be deducted from any required security deposit (see section 22-14).

(Ord. No. 16-03, § 1, 8-22-2016)

Sec. 22-~~13~~.14. - Security for unpaid expenses.

The town manager may require the posting of a security deposit, or other form of security acceptable to the town, to ensure that any unpaid expenses or damages incurred as a result of the event are satisfied.

(Ord. No. 16-03, § 1, 8-22-2016)

Sec. 22-~~14~~.15. - Indemnification and liability insurance.

- (a) Prior to the issuance of the special event permit, the applicant is required to execute an indemnification and hold harmless agreement in a form acceptable to the town attorney.
- (b) Prior to the issuance of the special event permit, the applicant is required to obtain, at its sole expense, public liability insurance, with minimum limits as required by the town, that includes coverage for any town property utilized and naming the town as an additional insured.

(Ord. No. 16-03, § 1, 8-22-2016)

Sec. 22-~~15~~. - ~~Signage.~~

- ~~(a) All signage relating to special events must comply with LDC chapter 30.~~
- ~~(b) *Banners across Town of Fort Myers Beach rights-of-way.* Special event permit applicants may request to hang a banner advertising the special event across the Town of Fort Myers Beach right-of-way at the base of the Sky Bridge. All banners must be approved by town manager. Banners may not contain any commercial information for the purpose of advertising anything other than the special event. Banners will not be approved until approval has been obtained for the associated special event. Banners are hung on a on a first-come first-served basis. Banners may hang for a period of two weeks prior to the event; provided, however, that the town manager may permit a banner to be hung for a period of up to four weeks if availability allows. All banners must have grommets that are no less than two feet apart on the top and bottom. Banners can be no larger than 16 feet in width and three feet high.~~
- ~~(c) For any special event where a requested road closure has the potential to affect a sizeable segment of the community, notice of such closure must be provided to the public at least five days prior to event if variable message signs are utilized or 14 days prior to an event if static signs are utilized. Type and placement of signs will be determined by public works director. The applicant is responsible for any fees associated with the static signs or variable message boards.~~

~~(Ord. No. 16-03, § 1, 8-22-2016)~~

Sec. 22-16. - Revocation.

The town manager has the authority to revoke a special event permit issued pursuant to this chapter upon violation of any of the requirements contained in the permit or in this Code.

(Ord. No. 16-03, § 1, 8-22-2016)

Explanation – Sec. 22 now becomes the place to go for most info regarding special events. It contains a new definition and other additions which we agree are beneficial. Necessary portions of Sec. 14-11 Special events on the beach, (which was deleted in its entirety) are added to Sec. 22-6 as item 7

1. Requested Motion:

Meeting Date: January 19, 2021

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING THE DEFINITIONS IN THE FORT MYERS BEACH LAND DEVELOPMENT CODE AND AMENDING DIVISION 3 OF ARTICLE III OF CHAPTER 34, OF THE FORT MYERS BEACH LAND DEVELOPMENT CODE, ENTITLED "EXPLANATION OF PROPERTY DEVELOPMENT REGULATIONS FOR ALL ZONING DISTRICTS" REVISING HEIGHT AND SETBACK REQUIREMENTS; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND PROVIDING FOR AN EFFECTIVE DATE. Second reading and final adoption.

Why the action is necessary:

Town Council has directed staff to complete the draft of the Ordinance. Updates per Council's discussion on December 7, 2020 were incorporated.

What the action accomplishes:

The proposed edits incorporates the Town Council's direction on how to address height and setback related issues with new development. It provides options for property owners to gain flexibility in design with height and setbacks.

2. Agenda:

PUBLIC HEARINGS

3. Requirement/Purpose:

Ordinance to amend the Land
Development Code

4. Submitter of Information:

5. Background:

The Town Council has discussed options to address height and setback issues with new development since September of 2019. In February and March of 2020, the Town Council directed staff to make edits to staff prepared and proposed language for various sections addressing height and setbacks. The updated Staff Report provides a summary of the changes incorporated per the Council's direction. The Council's direction included providing a "carrot and stick" method to encourage greater setbacks for new development. Some minor edits were completed for the 2nd reading. A reduced impervious surface percentage was added as part of the "carrot" method as an additional option to property owners.

Attachments:

1. 20-19, LDC Amendment Ch 34 Height and Setbacks - Second Reading_revised 1-4-21
2. 20-19 Height and Setbacks Exhibit A - Second Reading
3. Height and Setbacks LDC Memo Town Council Jan 11 Second Reading

Financial Impact:

N/A

6. Alternative Action

Direct staff to make changes and set an additional final reading.

7. Management Recommendations:

8. Recommended Approval:

Carl Benge, Assistant Community Development Director
Jason Green, Community Development Services
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Roger Hernstadt, Town Manager

Created/Initiated - 1/12/2021
Approved - 1/4/2021
Approved - 1/6/2021
Approved - 1/6/2021
Final Approval - 1/6/2021

ORDINANCE NO. 20-19

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING THE DEFINITIONS IN THE FORT MYERS BEACH LAND DEVELOPMENT CODE AND AMENDING DIVISION 3 OF ARTICLE III OF CHAPTER 34, OF THE FORT MYERS BEACH LAND DEVELOPMENT CODE, ENTITLED “EXPLANATION OF PROPERTY DEVELOPMENT REGULATIONS FOR ALL ZONING DISTRICTS” REVISING HEIGHT AND SETBACK REQUIREMENTS; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER’S ERRORS; CONFLICTS OF LAW 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 Council desires to update the Fort Myers Beach Land Development Code to clarify, improve, and create consistency among sections regarding building heights and setbacks; and

WHEREAS, on December 1, 2020 the Local Planning Agency, after giving consideration to the staff recommendation, public testimony, and consistency with the Comprehensive Plan, recommended approval of the proposed amendments; and

WHEREAS, on December 7, 2020 the Town Council held a first reading of the proposed Ordinance; and.

WHEREAS, on January 11, 2020 the Town Council held a second reading of the proposed Ordinance; and.

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

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 34-2 of the Fort Myers Beach Land Development Code is hereby amended to read as follows:

^{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 ~~striketrough~~.

Sec. 34-2. - Definitions

Balcony means a cantilevered, open, unroofed portion of an upper floor extending beyond (or indented into) a building's exterior wall.

Porch is a single-story wooden or concrete structure that is elevated off of the ground and has a railing at least 42 inches tall. A porch must be covered with an awning or roof ~~or umbrellas. Wood must be painted or stained.~~

Section 3. Section 34-933 of the Fort Myers Beach Land Development Code is hereby amended to read as follows:

Sec. 34-933 – Definitions

Balcony means ~~an~~ a cantilevered, open, unroofed portion of an upper floor extending beyond (or indented into) a building's exterior wall.

Section 4. Division 3, of Article III, of Chapter 34 of the Town of Fort Myers Beach Land Development Code entitled “Explanation of Property Development Regulations for All Zoning Districts” is hereby amended to read as follows (edits to Table 34-3 “Dimensional Regulations in Conventional Zoning Districts” are included as Exhibit “A” attached hereto and incorporated herein):

Sec. 34-631 – Building Height

(a) *Methods of measurement.* Maximum building heights specified in this code are measured in two ways, as shown in Figure 34-1-a. Both measurement methods apply to each building.

(1) *Measured in stories,* the height includes enclosed or unenclosed space at ground level as the first story, provided it is six feet or more in height.

a. Space within a roofline that is entirely non-habitable shall not be considered to be a separate story, for example overhead space enclosed by a cathedral ceiling, cupola, or similar roof enclosure.

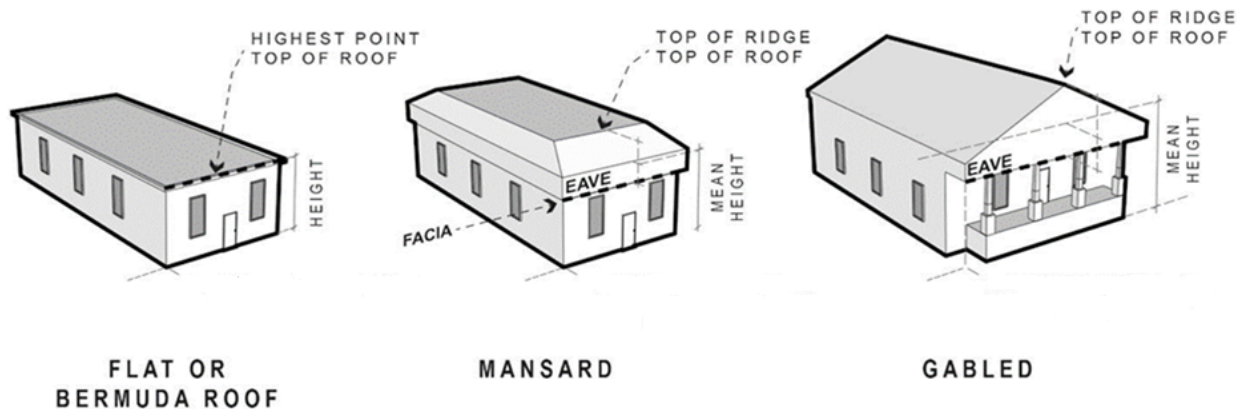
b. ~~Any single story cannot exceed 16 feet in height, including structural members, except that the first story may be taller if required to comply with any regulation in this code.~~

(2) Measured in feet, the height of a building shall be the vertical distance measured from one foot above the base flood elevation (BFE), (up to three feet above the BFE if the developer chooses to elevate the first living level more than the required minimum) to the following point on each roof type:

a. Flat or Bermuda Roof, the high point is the highest point on the roof, the roof itself or parapet walls;

b. Mansard Roof, the high point is the mean height between the eave and highest part of the roof;

c. Gable, Hip and Gambrel Roof, the high point is the mean height between eaves and ridge and the top of the structural members that serve as the ceiling for the highest habitable story of the building.



a. ~~Where ceilings are sloped, height is measured to the highest vertical point on a wall of the highest habitable story of the building.~~

b. ~~For parking garages, height is measured to the top of the structural members of the highest ceiling, or if parking is allowed on the roof level, to the highest point on the rooftop parking level.~~

~~e. When determining maximum building heights only, base flood elevation (BFE) means the minimum required elevation for a property as established by the floodplain maps described in § 6-408 of this chapter, or the minimum 100-year storm elevation as established by the Florida Department of Environmental Protection for structures seaward of the 1991 coastal construction control line, whichever is higher for a particular property.~~

~~d. On July 31, 2006, FEMA released maps showing preliminary BFE increases that could become mandatory in 2007. Landowners who voluntarily meet the higher elevations shown on the preliminary FEMA maps may measure their building's height in feet from the higher elevation.~~

~~e. Landowners who to choose to elevate up to three feet above the heights in subsections c. or d. above, may increase their maximum building height by the same number of feet.~~

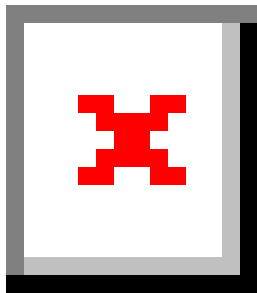
(3) *Specific height regulations* are provided for each zoning district.

a. For conventional zoning districts, see Table 34-3 in division 4 of this chapter.

b. For redevelopment zoning districts, see individual districts in division 5 of this chapter.

c. For planned development zoning districts, see division 6 of this chapter.

(b) *Exceptions to height regulations.*



Roofed towers, Figure 34-1-b

(1) ~~Roof structures and parapet walls may exceed the height limit defined in any zoning district provided there is no habitable space inside the roof structure~~ For structures to receive an additional 5 feet of height above the current building height regulations:

a. The third story (second story above BFE) must be set back an additional 5 feet from the required property line setback; and

b. The third story must not begin more than 15 feet above base flood elevation; and

c. Roof overhangs may not protrude more than 3 feet into the additional required setback. Balconies may not encroach the additional setback; and

d. Vegetation in side yards will be limited to trees and low shrubs, which will not block the view corridor above six feet along beach and bay front properties.

(2) ~~Non-habitable architectural appurtenances such as cupolas, clerestories, and steeples may also extend above the height limit if they do not exceed an area of 250 square feet. A habitable roofed tower up to 150 square feet, whether open-sided or enclosed, may also qualify as an acceptable architectural appurtenance and extend above the height limit provided it is roofed in a manner consistent with the design of the building. Decks do not qualify as architectural~~

appurtenances for the purposes of this subsection. Any proposed appurtenance taller than an additional 15 feet or larger than the specified sizes would require a variance from this code. For structures to receive an additional story. The overall height shall not exceed 5 feet of height above the current building height regulations and the following requirements shall apply:

a. The primary structure setbacks for the building shall be increased by 5 feet on all sides or the first floor; and one or more of the following:

1. Below flood must be unenclosed other than a maximum 300 square feet enclosure for parking, storage, or upper level access;

i. Including a signed Declaration of Restrictive Covenant in a form acceptable to the Town shall be recorded in the Lee County Public Records prior to issuance of the Certificate of Occupancy stating the ground floor, below flood, may never be enclosed.

2. All requirements for the 5-foot increase in height shall apply.

4. The fourth story (third story above BFE) must be set back 10 feet from all of the required property line setbacks.

5. Roof overhangs may not protrude into the additional required setback.

6. Vegetation in side yards will be limited to trees and low shrubs, which will not block the view corridor above six feet along beach and bay front property.

7. Limit to the impervious surface area to no more than 60% of the site by signed Declaration of Restrictive Covenant in a form

acceptable to the Town shall be recorded in the Lee County Public Records prior to issuance of the Certificate of Occupancy.

Sec 34-638 – Minimum Setbacks

(d) *Exceptions to setback dimensions.* In addition to the following general exceptions to minimum setbacks, commercial buildings that are subject to the commercial design standards may encroach into certain setbacks as provided in §§ 34-991—34-1010 of this chapter.

(2.) *Exceptions to street setbacks.* Certain structures are exempt from the street setback requirements as follows. See also § 34-1174 of this chapter.

a. *Build-to lines.* Some zoning districts do not have any street setback requirements but instead have build-to lines, as described in § 34-662 of this chapter. Awnings, canopies, balconies, bay windows, porches, stoops, arcades, and colonnades may extend forward of the build-to line provided that they comply with the commercial design standards (see § 34-995(e) of this chapter).

b. *Porches, balconies and stoops.* Porches, balconies and stoops may extend up to ten feet into the 25-foot street setback on the first living level ~~zone~~ of residential buildings, provided that:

1. Any walls, screened areas, or railings in the setback zone extend no higher than 42 inches above the floor of the porch, balcony or stoop; and
2. No portion of a porch or balcony and no walls or screened areas may be closer than ten feet to the edge of any street right-of-way or street easement.

(4) *Exceptions for certain nonconforming lots.*

~~a. Certain nonconforming residential lots are subject to the modified side and rear setback requirements that are found in § 34-3273 of this chapter.~~

~~ab.~~ Certain nonconforming mobile home lots in the village zoning district are subject to the modified side and rear setback requirements that are found in § 34-694 of this chapter.

~~be.~~ Certain nonconforming commercial lots are subject to the modified side and rear setback requirements that are found in § 34-3277 of this chapter.

Section 5. The Town Council intends that the provisions of this ordinance be made a part of the Fort Myers Beach Code of Ordinances, and that sections herein may be renumbered or re-lettered and the words or phrases herein may be changed to accomplish codification; regardless, typographical errors that do not affect intent may be corrected with notice to and authorization of the Town Manager without further process.

Section 6. 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 7. 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 8. 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 _____ and seconded by _____ and upon being put to a roll call vote, the result was as follows:

Raymond P. Murphy, Mayor	_____
Rexann Hosafros, Vice Mayor	_____
Dan Allers, Council Member	_____
Jim Atterholt, Council Member	_____
Bill Veach, Council Member	_____

ADOPTED this ____ day of _____, 2021 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Raymond P. Murphy, Mayor

ATTEST:

Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH SOLELY:**

John R. Herin, Jr., Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this __ day of _____, 2021.

Secs. 34-653—34-660. - Reserved.

Table 34-3— Dimensional Regulations in Conventional Zoning Districts

	street	side - waterfront lot	side - non- waterfront	rear	water body (1)	Gulf of Mexico (2)	area	width	depth	ratio	percentage		feet	stories
ZONING DISTRICT	Setbacks (see § 34-638 for explanation and exceptions)						Lot size (see § 34-637 for explanations and exceptions)			F.A.R. §34- 633	Building Coverage § 34-634	Density § 34- 632	Height (see § 34- 631)	
<i>RS Residential Single-family</i>	25	7.5 (8)(9)/ 10 (9)	7.5 (8)(9)/ 10 (9)	20	25	50	7,500	75	100	-	40%	(3), (4)	2530	3
<i>RC Residential Conservation</i>	25	7.5 (8)(9)/ 10 (9)	7.5 (9)/ 10 (9)	20	25	50	4,000	45	80	-	40%	(3), (4), (5)	2530	3
<i>RM Residential Multifamily</i>	25	20 (6)	20 (6)	20	25	50	7,500	75	100	1.2	-	(3), (4), (5)	3035	3
<i>CR Commercial Resort</i>	10	20	15	20	25	50	20,000	100	100	1.2	-	(3)	30	3
<i>CM Commercial Marina</i>	20	20	20	20	0	50	20,000	100	100	1.0	-	-	35	3
<i>CO Commercial</i>	10	10	7	20	25	50	7,500	75	100	1.2	-	(3), (4),	30	3

<i>Office</i>												(5)		
<i>Santos</i>	10	7	5	20	25	50	5,000	50	100	0.6	-	(3), (4), (5)	25	3
<i>IN Institutional</i>	20	10	7	20	25	50	7,500	75	100	0.8	-	(3)	35	3
<i>CF Community Facilities</i>	20	15	10	20	25	50	N/A	N/A	N/A	0.1	-	(3)	35	3
<i>BB Bay Beach</i>	— see § 34-651(b) —													
<i>EC Environmentally Critical</i>	20	25	-	25	20	50	(7)	N/A	N/A	.01	-	(3), (7)	25	2

Note (1): An additional wetland buffer is required for new development; see § 34-638(c).

Note (2): See § 34-638(d)(3)a.

Note (3): Maximum densities are established by the Fort Myers Beach Comprehensive Plan; see § 34-632.

Note (4): Accessory apartments are allowed in owner-occupied homes under certain conditions; see §34-1178.

Note (5): A second dwelling unit or accessory apartment may be allowed on larger lots; for details, see §§ 34-632, 34-1177, and 34-1178.

Note (6): Single-family and two-family homes on waterfront lots in the RM zoning district must maintain only a 7.5-foot side setback for lots less than 70 feet in width and 10 feet for lots 70 feet or greater in width.

Note (7): See § 34-652(e)(3).

Note (8): For all RS lots fronting on Matanzas Street and Matanzas Court, all side setbacks shall be at least 10 feet.

Note (9): Side yard setbacks for all RS and RC lots less than 70 feet in width shall be 7.5 feet; lots 70 feet or greater in width shall be 10 feet.



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

STAFF REPORT

TYPE OF CASE: Text Amendment to Chapter 34 Land Development Code, Including but not limited to Table 34-3; LDC Section 34-638 Minimum Setbacks; LDC Sect 34-631 Building Height; Figure 34-1-a.

STAFF RECOMMENDATION: Requesting approval of recommended edits to staff proposed changes

SUBMITTED BY: Carl Bengé
Jason W. Green, AICP, CFM

BACKGROUND

Staff has been directed to propose options that may resolve or improve some of the negative impacts from new development which is currently occurring on Ft. Myers Beach. Very tall homes are being constructed with little change in wall planes or articulation to break up the massing. In some cases this leads to flat walls up to 40 feet above grade only 7.5 feet from the property line. These structures cause adjacent properties to be overshadowed. The following are requested as amendments to LDC Sections as applicable.

The following alternative options have been provided based on feedback from multiple meetings with the LPA.

RECOMMENDATION

Original Discussion Item 1: Side Setbacks and Porch Setbacks

Side Yard:

At the LPA hearings the discussion centered around increasing side yard setbacks from 7.5 ft. to 10 ft. for lots that are 55 feet wide or more. This lot width cutoff may not be correct, staff has gotten feedback from some architects regarding this provision that a more appropriate lot width may be 65 feet.

Revision:

Revise Table 34-3 to remove RS and RC zoning district specific setbacks and add note **<5570 ft lot: 7.5 ft setback; ≥5570 ft lot or any lots on water: 10 ft setback.**

Original Discussion Porch:

Currently the code allows porches to extend up to 10 feet into the right-of-way setback. This has led to double decker porches that create a front façade only 15 feet from the right-of-way. Several

photos which opted for the two story porches are attached as exhibit A.

The LPA members voiced support for allowing a porch to encroach into the right-of-way setback up to 10 feet only on the first living level. Staff proposes the following changes to definitions, in the strikethrough/underline format, to accomplish the goal of clarifying which types of structures are permitted to encroach.

Revisions

Porch Definition: Porch is a single-story wooden or concrete structure that is elevated off of the ground and has a railing at least 42 inches tall. A porch must be covered with an awning or roof ~~or umbrellas~~. ~~Wood must be painted or stained.~~

Balcony Definition: Balcony means an cantilevered, open, unroofed portion of an upper floor extending beyond (or indented into) a building's exterior wall.

Stoop Definition: Stoop means a small elevated entrance platform or staircase leading to the entrance of a building.

Below is the strikethrough/underlined edits that implement the side setback and porch option recommended by the LPA at the December 10th 2019 hearing for LDC 34-638 Minimum Setbacks. *No changes since discussion.*

(d) *Exceptions to setback dimensions.* In addition to the following general exceptions to minimum setbacks, commercial buildings that are subject to the commercial design standards may encroach into certain setbacks as provided in §§ 34-991—34-1010 of this chapter.

(1) *Exceptions to all setbacks.*

a. *Administrative setback variances.* Under certain limited circumstances, administrative variances can be granted to minimum setbacks as provided in § 34-268 of this chapter.

b. *Overhangs.* An overhang which is part of a building may be permitted to encroach into any setback as long as the overhang does not extend more than three feet into the setback and does not permit any balcony, porch, or living space located above the overhang to extend into the setback.

c. *Shutters.* A shutter which is attached to a building may be permitted to encroach one foot into the setbacks.

d. *Awnings and canopies.*

1. Awnings and canopies which are attached to a building may be permitted to encroach three feet into the setbacks, as long as their location does not interfere with traffic, ingress and egress, or life safety equipment.

2. For purposes of this section, awnings and canopies may be attached to a nonconforming building and shall not be considered an extension or enlargement of a nonconformity, as long as the building is properly zoned for its use and the conditions as set forth in this section are met.

e. *Essential services.* Essential services and essential service equipment shall not be required to meet the minimum setbacks for the district wherein located (see § 34-1617 of this chapter).

f. *Two-family dwelling units.* If a two-family dwelling unit is on a lot of sufficient size to allow it to be subdivided into a separate lot under each dwelling unit (see Table 34-3), the side setback regulations in this section shall not be interpreted to forbid such subdivision. Existing two-family

buildings that are being subdivided must be separated by not less than one-hour fire resistance.

g. *Mechanical equipment.* Mechanical equipment such as air conditioners may encroach up to three feet into rear and waterbody setbacks but must meet the same street and side setbacks as the building it serves. These requirements apply to new buildings and to new mechanical equipment but will not apply to replacement of mechanical equipment on existing buildings if the equipment was installed in conformance with prior regulations.

(2) *Exceptions to street setbacks.* Certain structures are exempt from the street setback requirements as follows. See also § 34-1174 of this chapter.

a. *Build-to lines.* ~~Some~~ zoning districts do not have any street setback requirements but instead have build-to lines, as described in § 34-662 of this chapter. Awnings, canopies, balconies, bay windows, porches, stoops, arcades, and colonnades may extend forward of the build-to line provided that they comply with the commercial design standards (see § 34-995(e) of this chapter).

b. *Porches, balconies and stoops.* Porches, balconies and stoops may extend up to ten feet into the 25-foot street setback on the first living level zone of residential buildings, provided that:

1. Any walls, screened areas, or railings in the setback zone extend no higher than 42 inches above the floor of the porch, balcony or stoop; and
2. No portion of a porch or balcony and no walls or screened areas may be closer than ten feet to the edge of any street right-of-way or street easement.

(4) *Exceptions for certain nonconforming lots.*

a. ~~Certain nonconforming residential lots are subject to the modified side and rear setback requirements that are found in § 34-3273 of this chapter.~~

ab. Certain nonconforming mobile home lots in the village zoning district are subject to the modified side and rear setback requirements that are found in § 34-694 of this chapter.

be. Certain nonconforming commercial lots are subject to the modified side and rear setback requirements that are found in § 34-3277 of this chapter.

Discussion Item 2: Height

Proposed “Sticks and Carrots” Option:

This option was selected by the LPA as the preferred method of accomplishing a change to the height of buildings. This option includes additional regulations which permit opportunities to exceed current requirements for height and number of stories if additional setbacks are provided. The recommended trade-offs would include limitations on vegetation, increases in setbacks for the ground floor and additional stories, keeping area below flood unenclosed in exchange for additional height and additional stories.

One way this could be structured is as follows:

Revisions to be added to 34-631:

1. *For structures to receive an additional 5 feet of height above the current building height regulations:*

- a. *The third story (second story above BFE) must be set back an additional 5 feet from the required property line setback; and*
- b. *The third story must not begin more than 15 feet above base flood elevation; and*
- c. *Roof overhangs may not protrude more than 3 feet into the additional required setback. Balconies may not encroach the additional setback; and*

d. *Vegetation in side yards will be limited to trees and low shrubs which will not block the view corridor above six feet along beach and bay front properties.*

2. *For structures to receive an additional story. The overall height shall not exceed 5 feet of height above the current building height regulations and the following requirements shall apply:*

a. *The primary structure setbacks for the building shall be increased by 5 feet on all sides or the first floor; and one or more of the following:*

b. *below flood must be unenclosed other than a maximum 300 square feet enclosure for upper level access;*

i. *A signed Declaration of Land Restriction (Nonconversion Agreement) shall be recorded on the property deed prior to issuance of the Certificate of Occupancy. This agreement shall state that the ground floor, below flood, may never be enclosed.*

c. *All requirements for the 5-foot increase in height shall apply ((d)(2)a. b. and c.);*

d. *The fourth story (third story above BFE) must be set back 10 feet from all of the required property line setbacks;*

e. *Roof overhangs may not protrude into the additional required setback;*

f. *Vegetation in side yards will be limited to trees and low shrubs which will not block the view corridor above six feet along beach and bay front property.*

Discussion Item 3: How Height is Measured

Staff is proposing a new way of measuring height. Height is currently measured to the highest vertical point on a wall of the highest habitable story of the building. Staff proposes that building height be measured to the mean height of the roof, between the eve and the peak. This change will require that architects consider the height of the overall roof when complying with the building height requirements. This will result in roofs that are thoughtful in size, rather than as large and spacious as some are currently be constructed.

This change could be coupled with an increase in allowable height in RS and RC districts, from 25 ft. to 30 ft. This would allow substantially similar height structures as are currently permitted with the roof height considered as part of that measurement. This is similar to many surrounding communities. The LPA recommended increasing the height from 25 ft. to 30 ft.

Below is the ~~strikethrough~~/underlined edits that implement the recommended change to implement the proposed way of measuring building height and if an increase to buildable height is desirable, this change would be implemented through changes in Table 34-3 and Sec 34-631:

Sec. 34-631. - Building heights.

(a) *Methods of measurement.* Maximum building heights specified in this code are measured in two ways, as shown in Figure 34-1-a. Both measurement methods apply to each building.

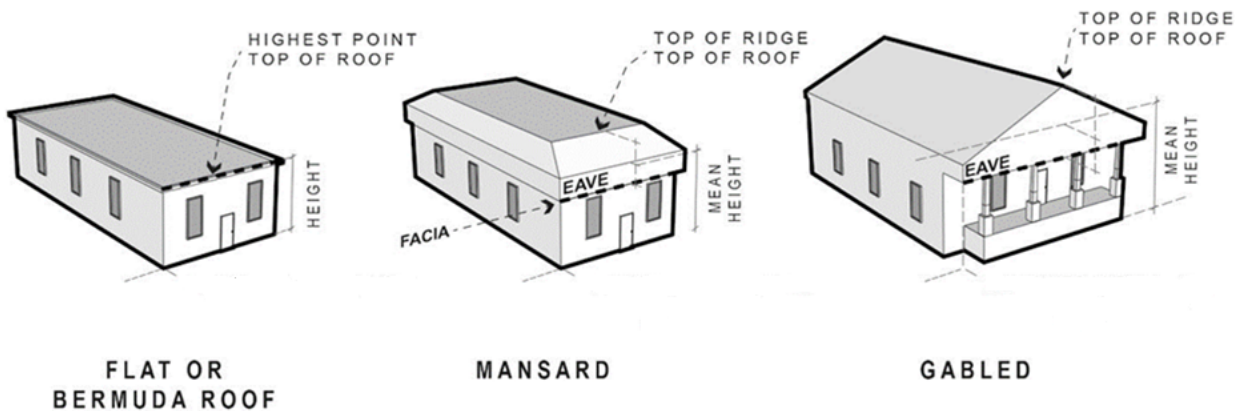
(1) *Measured in stories,* the height includes enclosed or unenclosed space at ground level as the first story, provided it is six feet or more in height.

a. Space within a roofline that is entirely non-habitable shall not be considered to be a separate story, for example overhead space enclosed by a cathedral ceiling, cupola, or similar roof enclosure.

b. ~~Any single story cannot exceed 16 feet in height, including structural members, except that the first story may be taller if required to comply with any regulation in this code.~~

(2) Measured in feet, the height of a building shall be the vertical distance measured from is the vertical distance between one foot above the base flood elevation (BFE), (up to three feet above the BFE if the developer chooses to elevate the first living level more than the required minimum) to the following point on each roof type:

- Flat or Bermuda Roof, the high point is the highest point on the roof, the roof itself or parapet walls;
- Mansard Roof, the high point is the mean height between the eave and highest part of the roof;
- Gable, Hip and Gambrel Roof, the high point is the mean height between eaves and ridge.



and the top of the structural members that serve as the ceiling for the highest habitable story of the building.

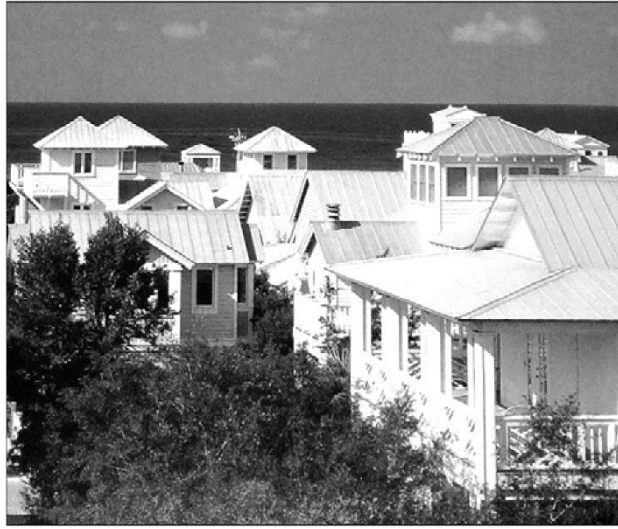
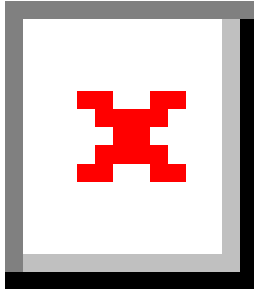
- a. ~~Where ceilings are sloped, height is measured to the highest vertical point on a wall of the highest habitable story of the building.~~
- b. ~~For parking garages, height is measured to the top of the structural members of the highest ceiling, or if parking is allowed on the roof level, to the highest point on the rooftop parking level.~~
- c. ~~When determining maximum building heights only, base flood elevation (BFE). means the minimum required elevation for a property as established by the floodplain maps described in § 6-408 of this chapter, or the minimum 100-year storm elevation as established by the Florida Department of Environmental Protection for structures seaward of the 1991 coastal construction control line, whichever is higher for a particular property.~~
- d. ~~On July 31, 2006, FEMA released maps showing preliminary BFE increases that could become mandatory in 2007. Landowners who voluntarily meet the higher elevations shown on the preliminary FEMA maps may measure their building's height in feet from the higher elevation.~~
- e. ~~Landowners who to choose to elevate up to three feet above the heights in subsections c. or d. above, may increase their maximum building height by the same number of feet.~~

(3) *Specific height regulations* are provided for each zoning district.

- a. For conventional zoning districts, see Table 34-3 in division 4 of this chapter.

- b. For redevelopment zoning districts, see individual districts in division 5 of this chapter.
- c. For planned development zoning districts, see division 6 of this chapter.

(b) *Exceptions to height regulations.*



Roofed towers, Figure 34-1-b

~~(1)—Roof structures and parapet walls may exceed the height limit defined in any zoning district provided there is no habitable space inside the roof structure. For structures to receive an additional 5 feet of height above the current building height regulations:~~

- ~~c. The third story (second story above BFE) must be set back an additional 5 feet from the required property line setback; and~~
- ~~d. The third story must not begin more than 15 feet above base flood elevation; and~~
- ~~e. Roof overhangs may not protrude more than 3 feet into the additional required setback. Balconies may not encroach the additional setback; and~~
- ~~f. Vegetation in side yards will be limited to trees and low shrubs which will not block the view corridor above six feet along beach and bay front properties.~~

~~(2)—Non-habitable architectural appurtenances such as cupolas, clerestories, and steeples may also extend above the height limit if they do not exceed an area of 250 square feet. A habitable roofed tower up to 150 square feet, whether open-sided or enclosed, may also qualify as an acceptable architectural appurtenance and extend above the height limit provided it is roofed in a manner consistent with the design of the building. Decks do not qualify as architectural appurtenances for the purposes of this subsection. Any proposed appurtenance taller than an additional 15 feet or larger than the specified sizes would require a variance from this code. For structures to receive an additional story. The overall height shall not exceed 5 feet of height above the current building height regulations and the following requirements shall apply:~~

- ~~a. The primary structure setbacks for the building shall be increased by 5 feet on all sides or the first floor; and one or more of the following:~~
- ~~b. below flood must be unenclosed other than a maximum 300 square feet enclosure for upper level access;~~
- ~~ii. A signed Declaration of Land Restriction (Nonconversion Agreement) shall be recorded on the property deed prior to issuance of the Certificate of Occupancy. This agreement shall state that the ground floor, below flood, may never be enclosed.~~
- ~~g. All requirements for the 5-foot increase in height shall apply ((d)(2)a. b. and c.);~~
- ~~h. The fourth story (third story above BFE) must be set back 10 feet from all of the required~~

property line setbacks;

- i. Roof overhangs may not protrude into the additional required setback;*
- j. Vegetation in side yards will be limited to trees and low shrubs which will not block the view corridor above six feet along beach and bay front property; or*
- k. Limit the site impervious surface to a total reduced amount of 60% by restrictive covenant.*

- (3) Mechanical or structural appurtenances such as elevator and stairwell enclosures, air conditioning equipment, and antennas may also extend above the height limit provided these appurtenances:
 - a. Do not exceed 250 square feet per type; and
 - b. Screening is provided as required by this code (see, for example, § 6-2(f) of this LDC for rooftop mechanical equipment).
 - (4) When properties are being rebuilt pursuant to the buildback regulations in § 34-3237 and 34-3238 of this chapter, specific height regulations in those sections may supersede the height regulations established for that property's zoning district.
 - (5) In those few cases where individual parcels of land are so surrounded by tall buildings on lots that are contiguous (or directly across a street) that the height regulations in this chapter would be unreasonable, landowners may seek relief through the planned development rezoning process, which requires a public hearing and notification of adjacent property owners. The town will approve, modify, or deny such requests after evaluating the level of unfairness that would result from the specific circumstances and the degree the specific proposal conforms with all aspects of this comprehensive plan, including its land use and design policies, pedestrian orientation, and natural resource criteria. Particular attention would be paid to any permanent view corridors to gulf or bay waters that could be provided in exchange for allowing a building to be taller than the height limits in this chapter. In each case, the town shall balance the public benefits of the standard height limit against other public benefits that would result from the specific proposal.
 - (6) For amateur radio antennas/towers, see § 34-1175 of this chapter. For communication towers and commercial antennas, see §§ 34-1441—34-1550 of this chapter).
- (c) *Space at ground level.*
- (1) Commercial space below the base flood elevation (at ground level) requires dry-floodproofing of the building (see §§ 6-401—6-474 of this LDC).
 - (2) Space below the base flood elevation in new residential buildings may be used only for parking and limited storage (see §§ 6-401—6-474 of this LDC).

REQUEST

Staff requests that Council approve the revisions to Chapter 34 of the Land Development Code regarding the topics included in this staff report.

1. Requested Motion:

Meeting Date: January 19, 2021

Adopt Resolution 21-01 for an Interlocal agreement with the School Board of Lee County for the use of Bay Oaks Recreational Campus facilities for a collaborative shared use agreement for the students of Fort Myers Beach Elementary School throughout the school year.

Why the action is necessary:

As a condition to the property transfer for Bay Oaks, The parties agreed to provide a Shared-Use Agreement as dictated in the previously adopted Interlocal between the Lee County School Board and the Town for the use of Bay Oaks Recreational Campus once it is redeveloped.

What the action accomplishes:

Provides an agreement with the Lee County School District for the use of Town's formal Bay Oaks facilities.

2. Agenda:

ADMINISTRATIVE AGENDA

3. Requirement/Purpose:

Resolution

4. Submitter of Information:

Chelsea O'Riley, Public Works
Director

5. Background:

This proposed agreement provides for the method for providing the Town's facilities for a shared-use agreement for Fort Myers Beach Elementary to use throughout the school year.

This item is part of the previous Interlocal Agreement that was approved by both Town Council and the Lee County School Board for the Redevelopment of Bay Oaks. This Agreement is the final step by the Council to approve the property exchange and utilization of Town Properties once Bay Oaks is redeveloped. If approved, this item will go to Lee County School Board for their approval and adoption on December 8th, 2020. Upon both boards approving, staff will finalize required documents.

Attachments:

1. Bay Oaks Interlocal Shared Use Agreement -LCSB
2. 21-01, LCSB and Bay Oaks Shared Use Agreement

Financial Impact:

6. Alternative Action

Do not approve.

7. Management Recommendations:

Adopt the Resolution and the Interlocal Agreement.

8. Recommended Approval:

Randy Paniaqua, Administrative Officer
Chelsea O'Riley, Public Works Director
John R Herin Jr, Town Attorney

Created/Initiated - 1/12/2021

Approved - 1/12/2021

Approved - 1/13/2021

Amy Baker, Town Clerk
Roger Hernstadt, Town Manager

Approved - 1/13/2021
Final Approval - 1/13/2021

**INTERLOCAL AGREEMENT RELATING TO
SHARED USE OF PROPERTY AND FACILITIES
BETWEEN
THE TOWN OF FORT MYERS BEACH AND
THE SCHOOL BOARD OF LEE COUNTY**

THIS INTERLOCAL AGREEMENT ("**Agreement**") is made and entered into this _____ day of _____, 2021, by and between the TOWN OF FORT MYERS BEACH ("**Town**"), a Florida Municipal Corporation, acting by and through its Town Council, the governing body thereof, and the SCHOOL BOARD OF LEE COUNTY, FLORIDA ("**School Board**"); collectively referred to herein as the "**Parties**".

WITNESSETH:

WHEREAS, the School Board and the Town Council both serve the residents of the Town of Fort Myers Beach; and

WHEREAS, both the School Board and the Town are duly empowered pursuant to Section 163.01, Florida Statutes, to enter into interlocal agreements for the sharing of certain governmental powers and obligations; and

WHEREAS, the School Board and the Town each constitute a "public agency" within the meaning of the Florida Interlocal Cooperation Act of 1969 (the "**Interlocal Act**"), and each is authorized under the Interlocal Act to enter into interlocal agreements providing for them to jointly exercise any power, privilege, or authority that each of them could exercise separately; and

WHEREAS, the School Board and the Town previously entered into that certain Interlocal Agreement Relating to Exchange of Real Property and Improvements, dated effective October 7, 2020 (the "**Exchange Agreement**");

WHEREAS, upon consummation of the Exchange Agreement (the "**Exchange Closing**"), the School Board shall be the owner of that certain real property more particularly described in Exhibit "A" attached hereto and incorporated herein by reference ("**School Board Property**"); and

WHEREAS, the School Board Property contains Fort Myers Beach Elementary School and certain related parking facilities and other improvements;

WHEREAS, upon the Exchange Closing, the Town shall be the owner of that certain real property commonly known as Bay Oaks Recreational Facility, located adjacent to the School Board Property and more particular described in Exhibit "B" attached hereto and incorporated herein by reference (the "**Town Property**"); and

WHEREAS, the Town Property contains tennis courts, a playground, a baseball field, a multi-sport field, basketball courts and recreation center building; and

WHEREAS, the School Board and the Town have determined that it is in the best interest of the owners, residents, business persons, and visitors of the Town of Fort Myers Beach for the Town and the School Board to share the use of the recreational facilities and other improvements located upon the School Board Property and the Town Property(collectively, the “**Shared Facilities**”); and

WHEREAS, the Exchange Agreement requires the Parties to execute an interlocal agreement at the time of the Exchange Closing which addresses the rights and obligations of the Parties relating to shared use, operation and maintenance of the Shared Facilities.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the School Board and the Town do hereby agree as follows:

SECTION I. PURPOSE AND EFFECTIVE

1.1 Purpose. It is the purpose and intent of this Agreement to set forth the rights and obligations of the School Board and the Town relating to the use, operation and maintenance of the Shared Facilities.

1.2 Recitals. The Recitals set forth above are incorporated into the terms of this Agreements as if set of herein at length.

1.3 Effective Date. The “Effective Date” of this Agreement shall be the date on which the later of the School Board or the Town executes this Agreement and delivers a copy thereof to other party.

SECTION II: OPERATION AND USE OF THE SHARED FACILTIES

2.1 Shared Use. The Town and the School Board shall share the use of the Shared Facilities located, subject to such terms, limitations and conditions set forth in this Section.

2.2 Exclusive and Priority Use. The School Board shall have exclusive use of the playground during regular school hours on days school is in session, as determined by the academic calendar adopted annually by the School Board. The School Board shall be given priority use of the other Shared Facilities at such times and on such dates as set forth in a separate use schedule to be mutually agreed upon and adopted by the School Board and the Town prior to the 1st of July each year (the “**Use Schedule**”). A copy of the initial Use Schedule is attached hereto as Exhibit “C”, which shall be effective as of the Effective Date of this Agreement and remain in effect until an updated schedule is adopted as provided herein.

2.3 Clubs and Programming Activities. The Town and the School Board shall work together to develop a fee-based afterschool program for the benefit of School Board's students, which shall be implemented and operated by the Town at the recreational center building on Monday through Friday of each week during the academic year.. Programming shall include time set aside each day for completion of homework, structured play time, and free play. Clubs and activities may vary from time, and may include things such as swim club, community involvement club, soccer, art, and cooking. The after school program shall be open to any student enrolled in kindergarten through fifth grade at Fort Myers Beach Elementary School, and there shall be no limit on the number of students that may enroll in the after school program. All students/participants shall adhere to the operational, health and safety guidelines established by the Town Manager/Parks and Recreation Director.

2.4 Hours of Operation; Opening and Closing of Shared Facilities. The Town shall be responsible for opening and closing of the Shared Facilities consistent with the posted hours of the Shared Facilities as promulgated by the Town for use by property owners, residents, business persons, and other visitors of the Town, and the use rights of the School Board as set forth in Section II. Notwithstanding the foregoing, the School Board shall be responsible for opening the playground in the mornings when school is in session.

SECTION III: MAINTENANCE, REPAIR AND IMPROVEMENT

3.1 The Town shall, at the Town's sole cost and expense, maintain the Shared Facilities in a clean and safe condition, in good repair, and in compliance with any applicable laws or governmental regulations applicable to the Shared Facilities. The Town's obligations as provided herein shall include, but not be limited to: (i) repair or replacement of any , equipment, or parts of equipment which have excessive wear, become structurally unstable, or otherwise become unsafe, (ii) replacement and replenishment of mulch or such other fall surface utilized on the playground, (iii) landscape maintenance and pest/rodent control, (iv) cleaning and resurfacing of sports courts, and (v) cleaning and repainting of equipment and structures.

3.2 The Town shall inspect the Shared Facilities on a routine basis in order to assess the need for maintenance and repairs in connection with its obligations herein. The School Board shall have the right to inspect the Shared Facilities from time to time, as it deems necessary, to confirm the Shared Facilities are being maintained in the condition as required in this Section. In the event the School Board becomes aware that any portion of the Shared Facilities has fallen in disrepair, is unsafe, or any such other condition requiring maintenance or repair, the School Board shall promptly notify the Town of same.

SECTION IV: DEFAULT

If either party fails to materially fulfill its obligations under this Agreement that party will be considered to be in default. The other party to the Agreement shall provide written

notice of the default and an opportunity to cure the default within 30 days of receipt of said notice. If the defaulting party fails to cure the default within said time period, the other party may terminate this Agreement for cause or breach by providing written notice of termination. Failure of either party to exercise its rights in the event of any breach shall not constitute a waiver of such rights. Neither the Town nor the School Board is deemed to have waived any failure to perform by the other party unless such waiver is in writing and signed by the waiving party.

SECTION V: NOTICE:

All notices or demands permitted or required under this Agreement are deemed to have been given or made when delivered in person or delivered by certified or registered mail, return receipt requested, postage prepaid, United States mail, and addressed to the respective parties as follows:

Town: Town of Fort Myers Beach, a Florida municipal corporation
Attn: Town Manager
2525 Estero Boulevard
Fort Myers Beach, Florida 33931

School Board: Lee County School Board
Kathy Dupuy-Bruno, Esq.
2855 Colonial Blvd.
Fort Myers, Florida 33966

The address to which any notice or demand may be given to either party may be changed by written notice.

SECTION V: LIABILITY AND INDEMNIFICATION

5.1 Subject to the limitations as set out in Florida Statutes §768.28 and §252.51, the Town shall defend, hold harmless and indemnify the School Board from and against any and all claims, actions, damages, liability, cost and expense, including those arising from bodily injury, death and/or property damage or any other lawful expense, including, but not limited to, attorney's fees and court costs, brought by third parties arising from the act or omission of the Town, its agents, employees, or contractors in connection with the exercise of the Town's rights or fulfillment of the Town's obligations under this Agreement. The provisions of this paragraph are not intended to abrogate the sovereign immunity of the Town beyond that set forth in Section 768.28, Florida Statutes.

5.2 Subject to the limitations as set forth in Florida Statutes, §768.28, the School Board shall defend, hold harmless and indemnify the Town from and against any and all claims, actions, damages, liability, cost and expense, including those arising from bodily injury, death and/or property damage or any other lawful expense, including, but not limited to, attorney's fees and court costs, brought by third parties arising from the act

or omission of the School Board, its agents, employees, and contractors in connection with the exercise of the School Board's rights or fulfillment of the School Board's obligations under this Agreement. The provisions of this paragraph are not intended to abrogate the sovereign immunity of the School Board beyond that set forth in Section 768.28, Florida Statutes.

SECTION VI: MISCELLANEOUS:

The Parties represent and warrant that they have full authority to enter into and sign the Agreement. This Agreement contains the entire agreement between the Town and School Board, any verbal understanding, statements or prior writings or agreements to the contrary notwithstanding. The drafting of this Agreement has been a joint endeavor between the Parties and shall not, solely as a matter of judicial construction, be interpreted more strictly against one Party than the other. The prevailing Party in any action or proceeding in court to enforce any term of this Agreement shall be entitled to receive its reasonable attorney's fees and other reasonable enforcement costs and expenses from the non-prevailing Party. The invalidity of any provision hereof shall in no way affect or invalidate the remainder of the Agreement. All disputes arising under this Agreement shall be governed by the laws of the State of Florida. Any dispute arising hereunder shall be subject to, and all rights contained herein may be enforced through, an appropriate action in law or at equity brought in a court of competent jurisdiction located in Lee County, Florida. This Agreement constitutes the entire understanding between the Parties with regard to the subject matter hereof. No modification or amendment of this Agreement shall be valid and binding on the School Board or the Town unless it is in writing and executed by or on behalf of the School Board and the Town. The terms and conditions of this Agreement shall extend to and bind any successor entity of the Parties hereto.

SECTION VII: DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the Parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both Parties. The existence of a dispute shall not excuse the Parties from performance pursuant to this Agreement. This remedy is supplemental to any other remedies available at law. In the event of any dispute hereunder, the prevailing party shall be entitled to recover all costs and expenses incurred by it in connection with the enforcement of this Agreement, including all attorneys' fees and costs in connection therewith.

SECTION VIII: ASSIGNMENT

No assignment, delegation, transfer, or novation of this Interlocal Agreement or part thereof, shall be made by either Party unless approved by both the School Board and the Town.

SECTION IX: EXECUTION IN COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Town and the School Board have executed this Agreement on the day, month and year first written above.

The School Board of Lee County, Florida

Town of Fort Myers Beach, a Florida
Municipal Corporation

By: _____

By: _____

Its: _____

Its: _____

RATIFIED AND APPROVED:

ATTESTED:

By: _____

By: _____

Its: _____

Its: _____

APPROVED AS TO FORM

APPROVED AS TO FORM:

By: _____

By: _____

School Board Attorney

Town Attorney

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was signed and acknowledged before me by means of ☐ physical presence or ☐ online notarization this _____ day of _____ 2021, by _____, as _____ of The School Board of Lee County, Florida, who produced the following as identification _____ or is personally known to me and who did/did not take an oath.

[Signature of Notary]

STATE OF FLORIDA
COUNTY OF LEE

[Typed or Printed Name]

The foregoing instrument was signed and acknowledged before me by means of
☐ physical presence or ☐ online notarization this _____ day of _____
2021, by _____, as _____ of The Town of Fort Myers Beach,
a Florida municipal corporation, who produced the following as identification
_____ or is personally known to me and who
did/did not take an oath.

[Signature of Notary]

[Typed or Printed Name]

EXHIBIT A

(Legal Description of School Board Property)

Description of a Parcel of Land
Lying in
Section 19, Township 46 South, Range 24 East
Town of Fort Myers Beach, Lee County, Florida
(Lee County District School Board Site)

A parcel of land situated in the State of Florida, County of Lee, Town of Fort Myers Beach, Section 19, Township 46 South, Range 24 East, being a portion of Block J and a portion of an Unnamed Street, as shown on the plat of Winkler Subdivision, recorded in Plat Book 8 at Page 45, Public Records of Lee County, Florida, and further described as follows:

Commencing at the northwesterly most corner of Lot 48 of said Block J of said Winkler Subdivision; thence S25°45'12"W along the easterly line of Lots 1 through 4 of said Block J for 100.00 feet to the northwesterly most corner of Lot 44 of said Block J and to the Point of Beginning; thence N49°28'17"W along the southwesterly line of a parcel of land described in Official Record Book 2599 at page 781 within said Block J, for 155.13 feet to the northwest corner of said parcel also being the easterly line of an unnamed street as shown on said plat; thence S25°45'12"W along the westerly line of said Block J, also being the easterly line of said unnamed street as shown on said plat of Winkler Subdivision, for 164.56 feet to the northwest corner of Lot 10 of said Block J; thence N64°14'48"W along the westerly extension of the northerly line of Lot 10 of said Block J for 50.00 feet to the northeast corner of Lot 17 of said Block I, as shown on said plat; thence S25°45'12"W along the easterly line of said Block I, also being the westerly line of said unnamed street for 246.60 feet to the beginning of a tangent curve to the right having a radius of 25.00 feet; thence continue southwesterly and northwesterly along said curve and along the southerly line of said Block I through a central angle of 129°45'10" (chord bearing N89°22'13"W) for an arc distance of 56.62 feet; thence S25°45'12"W, departing said block line and extending across said unnamed street for 114.87 feet to a point on a tangent curve to the right having a radius of 25.00 feet and also lying on the southerly line of Block D as shown on said plat; thence continue southwesterly along said curve and along the southerly portion of said Block D, through a central angle of 85°43'00" (chord bearing S68°36'42"W) for an arc distance of 37.40 feet to a point of cusp lying on the northerly line of Oak Street (50 feet wide) as shown on said plat; thence S68°31'48"E along the northerly line of said Oak Street and the southerly line of said Block J for 392.27 feet to the beginning of a tangent curve to the left having a radius of 25.00 feet; thence continue easterly along said curve and along the southerly line of said Block J through a central angle of 85°43'00" (chord bearing N68°36'42"E) for an arc distance of 37.40 feet to a point of tangency on the westerly line of Bay Road (50 feet wide) as shown on said plat; thence N25°45'12"E along the easterly line of said Block J and the westerly line of said Bay Road for 321.38 feet to the southwesterly most corner of a parcel of land described in Official Record Book 2599 at page 784, said point lying 5.00 feet southwesterly from the northeast corner of Lot 38 of said Block J; thence N10°14'48"W, departing said westerly line of Bay Street, along the

westerly line of said parcel for 50.00 feet to the beginning of a tangent curve to the left having a radius of 65.00 feet; thence continue northwesterly along said westerly line and along said curve through a central angle of $46^{\circ}44'28''$ (chord bearing $N33^{\circ}37'02''W$) for an arc distance of 53.03 feet; thence $N14^{\circ}45'12''E$ along the westerly line of said parcel for 66.02 feet; thence $N26^{\circ}28'11''W$ along the westerly line of said parcel for 30.15 feet to the northwest corner of said parcel as described in Official Record Book 2599 at page 784; thence $N57^{\circ}07'18''W$ along the southwesterly line of said parcel as described in Official Record Book 2599 at page 781 for 40.31 feet to the Point of Beginning.

Containing 172,362 square feet (3.96 acres), more or less.

Subject to easements, restrictions, reservations and rights-of-way (recorded and unrecorded, written and unwritten).

Bearings are state plane grid for the Florida West Zone (North American datum of 1983/1990 adjustment) with the westerly line of Bay Road (the easterly line of said Block J) as bearing $N25^{\circ}45'12''E$.

CES, Inc. (LB8267)



Scott C. Whitaker, P.S.M. 4324
Professional Surveyor and Mapper
State of Florida

SKETCH TO ACCOMPANY DESCRIPTION

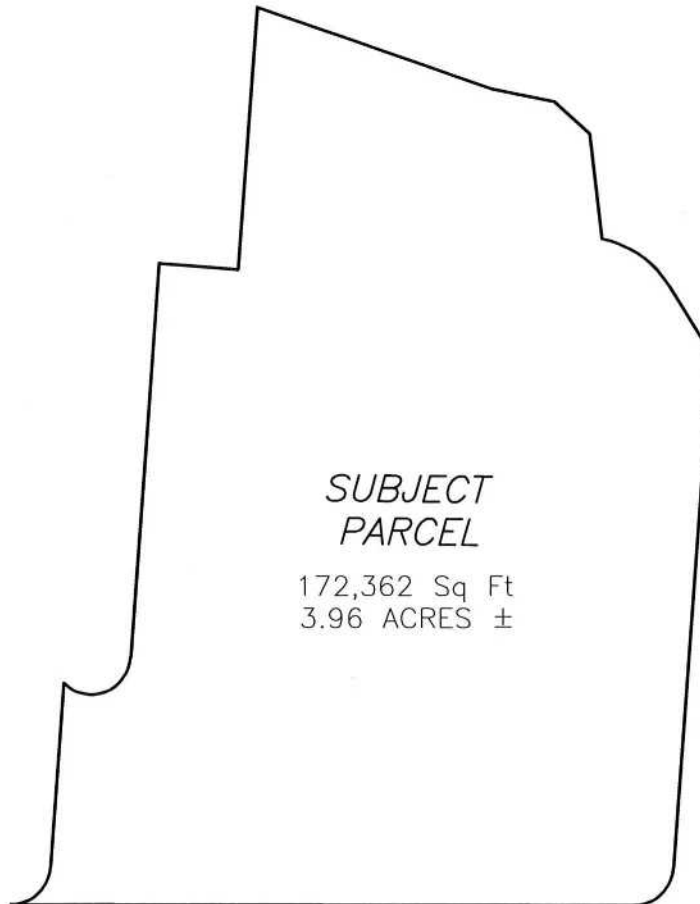
OF

A PARCEL OF LAND LYING IN

SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST,

TOWN OF FORT MYERS BEACH,

LEE COUNTY, FLORIDA.



BEARINGS ARE SPC GRID

NOTES:

DESCRIPTION AND SKETCH ARE BASED ON THE RIGHT-OF-WAY CONTROL SURVEY MAPS OF ESTERO BOULEVARD DATED APRIL 16, 2010, RECORD DEEDS, THE RECORD PLAT OF WINKLER SUBDIVISION AND FIELD LOCATED MONUMENTATION.

BEARINGS ARE STATE PLANE GRID FOR THE FLORIDA WEST ZONE (NORTH AMERICAN DATUM OF 1983/1990 ADJUSTMENT) BASED ON GLOBAL POSITIONING SYSTEM (GPS) TIES TO THE FLORIDA HIGH PRECISION GEODETIC NETWORK HOLDING NATIONAL GEODETIC SURVEY CONTROL MONUMENT "BOOB-2".

DIMENSIONS ARE IN FEET AND DECIMAL PARTS THEREOF.

PARCEL SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS- OF-WAY (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN).

THE PROPERTY IS SUBJECT TO ANY CLAIM THAT ANY PART OF SAID LAND IS OWNED BY THE STATE OF FLORIDA BY RIGHT OF SOVEREIGNTY, RIPARIAN RIGHTS AND THE TITLE TO FILLED-IN LANDS, IF ANY.

SKETCH OF DESCRIPTION
*** THIS IS NOT A SURVEY ***
CES, INC.

SCOTT C. WHITAKER, P.S.M.
FLORIDA CERTIFICATION NO. 4324

D.B. = DEED BOOK

O.R. = OFFICIAL RECORD BOOK

P.B. = PLAT BOOK

P.C. = POINT OF CURVE

PG. = PAGE

P.T. = POINT OF TANGENCY

R/W = RIGHT-OF-WAY

SPC = STATE PLANE CO-ORDINATE

LEE COUNTY DISTRICT SCHOOL BOARD SITE

CES INC

Engineers • Environmental Scientists • Surveyors

13041 MCGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919

PH (239) 481-1331

2010596.002SK_SCHOOL DISTRICT BOUNDARY.dwg

FLORIDA CERTIFICATE OF AUTHORIZATION NUMBERS EB32664 & LB8267

DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-R)
10-21-20	596.002	SCW	1" = 120'	3 OF 4	19-46-24

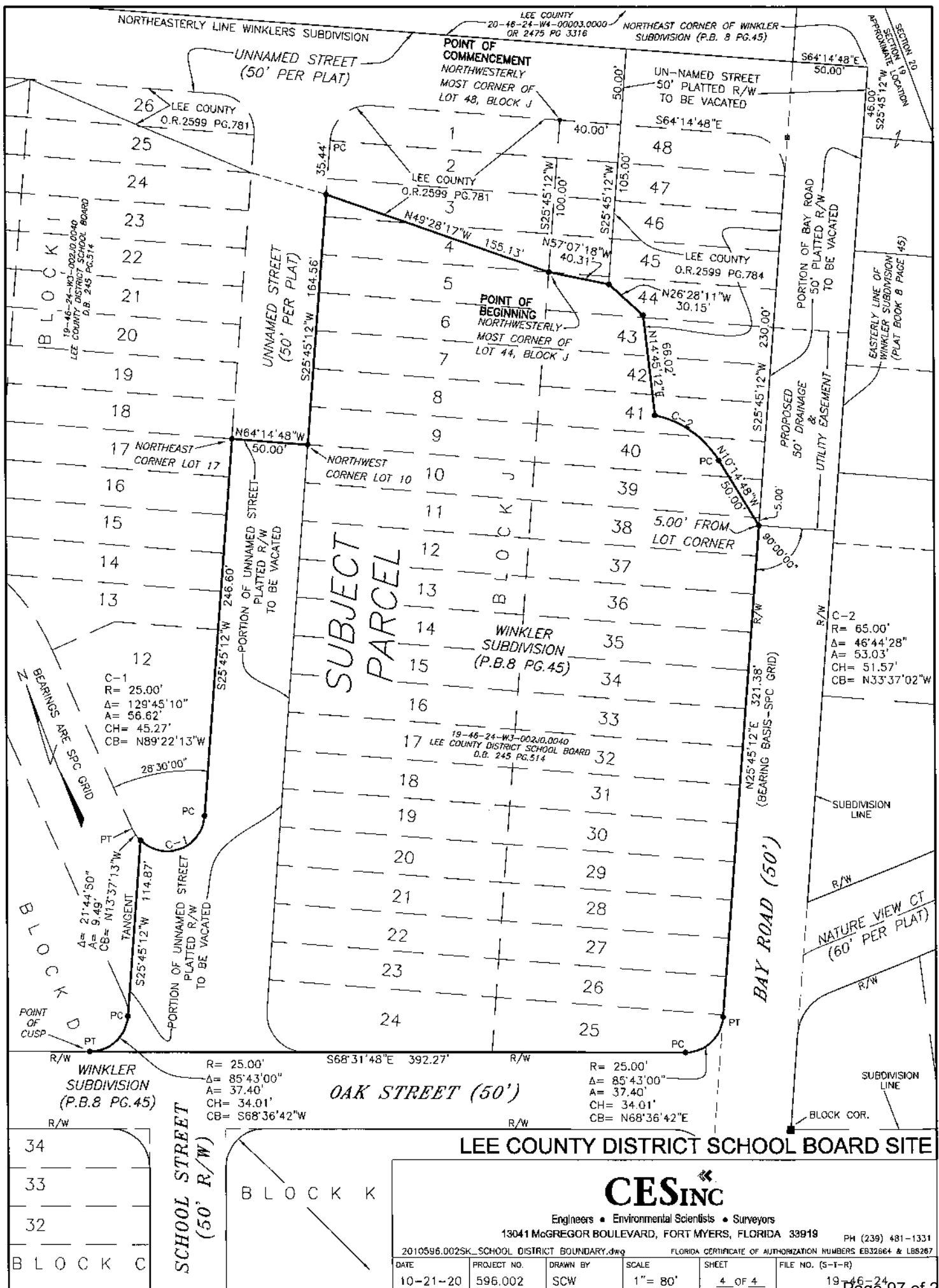


EXHIBIT B

(Legal Description of Town Property)

Description of Parcels of Land

Lying in

Section 19, Township 46 South, Range 24 East
Town of Fort Myers Beach, Lee County, Florida
(Conveyance Parcels to Town of Fort Myers Beach)

North Parcel:

A parcel of land situated in the State of Florida, County of Lee, Town of Fort Myers Beach, Section 19, Township 46 South, Range 24 East, being Lots 1 through 26, Block I, Winkler Subdivision, as recorded in Plat Book 8 at Page 45, Public Records of Lee County, Florida, less and except those parcels of land lying within Block I of said subdivision as described in Official Records Book 2599 at Page 781, Public Records of Lee County, Florida and further described as follows:

Commencing at the northwesterly most corner of Lot 48, Block J of said Winkler Subdivision; thence $N64^{\circ}14'48''W$ along the northeasterly line of Lot 1, Block J, across an unnamed street and along the northeasterly line of Lot 26, Block I of said subdivision for 350.00 feet to the northeasterly corner of Lot 1, Block I of said subdivision and the Point of Beginning; thence $S45^{\circ}48'43''E$ along the southwesterly line of said parcel of land described in Official Record Book 2599 at page 781 within said Block I, for 158.11 feet to the southwesterly corner of Lot 25 of said Block I, also being the westerly line of an unnamed street (50' wide) as shown on said plat; thence $S25^{\circ}45'12''W$ along the easterly line of said Block I, also being the westerly line of said unnamed street as shown on said plat of Winkler Subdivision, for 421.60 feet to the beginning of a tangent curve to the right having a radius of 25.00 feet; thence continue southwesterly and northwesterly along said curve and along the southerly line of said Block I through a central angle of $151^{\circ}30'00''$ (chord bearing $N78^{\circ}29'48''W$) for an arc distance of 66.10 feet to a point of tangency; thence $N02^{\circ}44'48''W$, along the westerly line of Block I, also being the easterly line of an unnamed street (50' wide) as shown on said plat, for 127.34 feet to the beginning of a tangent curve to the left having a radius of 150.00 feet; thence continue northwesterly along said curve and along the westerly line of said Block I through a central angle of $65^{\circ}47'00''$ (chord bearing $N35^{\circ}38'18''W$) for an arc distance of 172.22 feet to a point of tangency; thence $N68^{\circ}31'48''W$ along the westerly line of said Block I and the easterly line of said unnamed street for 22.44 to the beginning of a tangent curve to the right having a radius of 25.00 feet; thence continue northwesterly along the westerly line of said Block I and said unnamed street through a central angle of $94^{\circ}17'00''$ (chord bearing $N21^{\circ}23'18''W$) for an arc distance of 41.14 feet to a point of tangency; thence $N25^{\circ}45'12''E$ along the northwesterly line of said Block I and the easterly line of said unnamed street for 95.36 feet to the southwesterly most corner of Lot 7, Block I of said subdivision, being the southwesterly most corner of said parcel as described in Official Record Book 2599 at page 781; thence $N37^{\circ}42'07''E$ along the southwesterly line of said parcel for 102.22 feet; thence $N57^{\circ}33'01''E$ along the

southwesterly line of said parcel for 29.41 feet; thence S88°03'05"E along the southerly line of said parcel for 123.88 feet to the Point of Beginning.

Containing 98,197 square feet (2.25 acres), more or less.

And also:

South Parcel:

A parcel of land situated in the State of Florida, County of Lee, Town of Fort Myers Beach, Section 19, Township 46 South, Range 24 East, being all of Lots 10 through 24, Block D, Winkler Subdivision, as recorded in Plat Book 8 at Page 45, Public Records of Lee County, Florida, and further described as follows:

Beginning at the southwest corner of Lot 24, Block D of said Winkler Subdivision; thence N21°28'12"E along the northwesterly line of Lot 24 and Lot 10 of said Block D for 300.00 feet to the northwest corner of said Lot 10; also being the southerly line of said unnamed street (50' wide) as shown on said plat; thence S68°31'48"E along the northeasterly line of said Block D, also being the southwesterly line of said unnamed street as shown on said plat of Winkler Subdivision, for 75.00 feet to the beginning of a tangent curve to the right having a radius of 100.00 feet; thence continue southeasterly along said curve and said unnamed street and along the northeasterly line of said Block D through a central angle of 65°47'00" (chord bearing S35°38'18"E) for an arc distance of 114.81 feet to a point of tangency; thence S02°44'48"E, along the easterly line of said Block D, also being the westerly line of said unnamed street as shown on said plat for 225.62 feet to the beginning of a tangent curve to the right having a radius of 25.00 feet; thence continue southwesterly along said curve and along the westerly line of said unnamed street through a central angle of 114°13'00" (chord bearing S54°21'42"W) for an arc distance of 49.84 feet to a point of tangency on the northerly right of way line of Oak Street (50' wide) as shown on said plat; thence N68°31'48"W along the southwesterly line of said Block D, and along the northerly line of said Oak Street for 235.95 feet to the Point of Beginning.

Containing 61,071 square feet (1.40 acres), more or less.

Subject to easements, restrictions, reservations and rights-of-way (recorded and unrecorded, written and unwritten).

Bearings are state plane grid for the Florida West Zone (North American datum of 1983/1990 adjustment) with the westerly line of Bay Road (the easterly line of said Block J) as bearing N25°45'12"E.

CES, Inc. (LB8267) Date: 10-23-2020



Scott C. Whitaker, P.S.M. 4324

Professional Surveyor and Mapper Page 2 of 4

2010596.002DESC_CONVEYANCE PARCELS TO TOWN OF FORT MYERS BEACH.docx

SKETCH TO ACCOMPANY DESCRIPTION

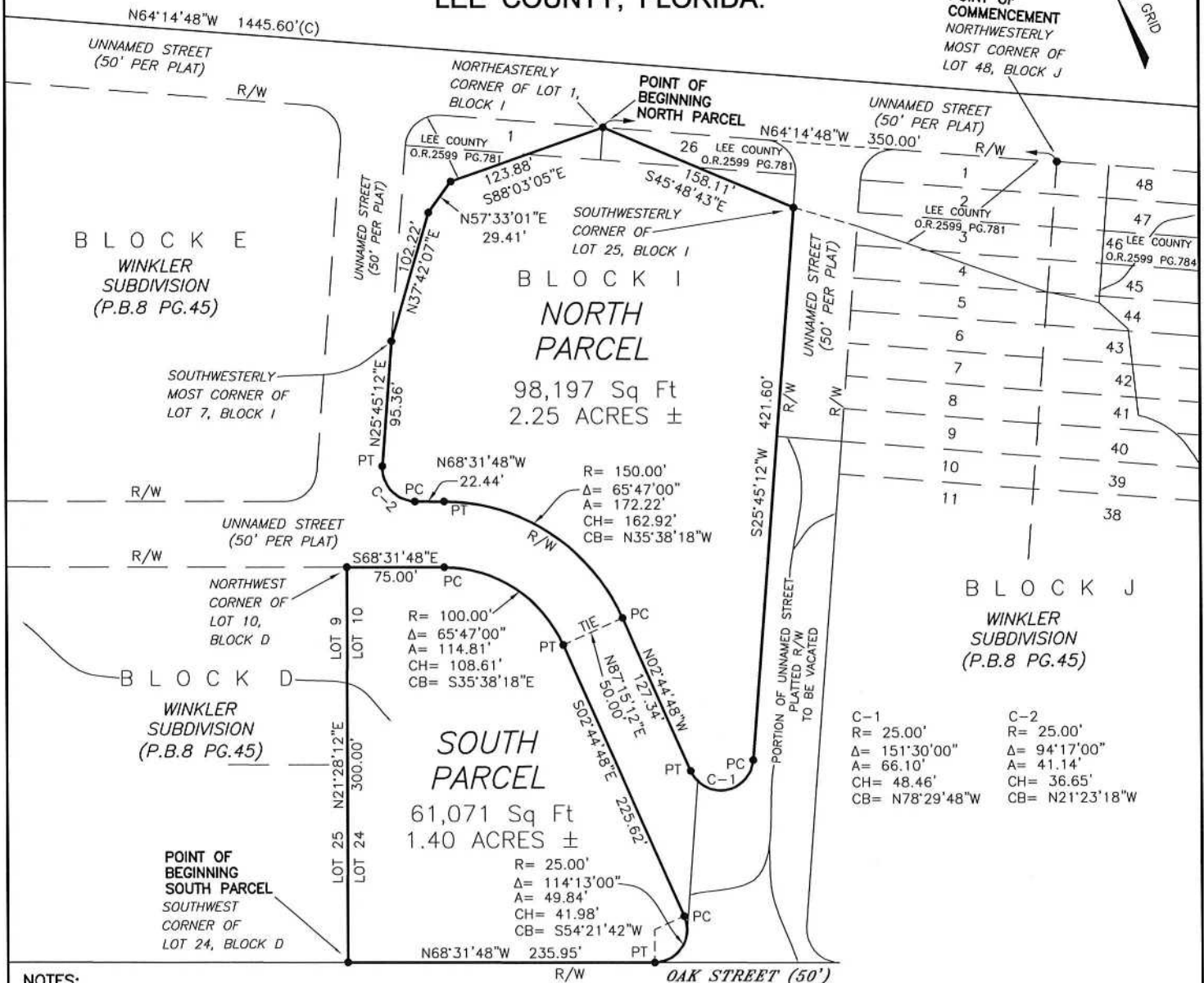
OF

A PARCEL OF LAND LYING IN

SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST,

TOWN OF FORT MYERS BEACH,

LEE COUNTY, FLORIDA.



NOTES:

DESCRIPTION AND SKETCH ARE BASED ON THE RIGHT-OF-WAY CONTROL SURVEY MAPS OF ESTERO BOULEVARD DATED APRIL 16, 2010, RECORD DEEDS, THE RECORD PLAT OF WINKLER SUBDIVISION AND FIELD LOCATED MONUMENTATION.

BEARINGS ARE STATE PLANE GRID FOR THE FLORIDA WEST ZONE (NORTH AMERICAN DATUM OF 1983/1990 ADJUSTMENT) BASED ON GLOBAL POSITIONING SYSTEM (GPS) TIES TO THE FLORIDA HIGH PRECISION GEODETIC NETWORK HOLDING NATIONAL GEODETIC SURVEY CONTROL MONUMENT "BOOB-2".

DIMENSIONS ARE IN FEET AND DECIMAL PARTS THEREOF.

PARCEL SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS- OF-WAY (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN).

THE PROPERTY IS SUBJECT TO ANY CLAIM THAT ANY PART OF SAID LAND IS OWNED BY THE STATE OF FLORIDA BY RIGHT OF SOVEREIGNTY, RIPARIAN RIGHTS AND THE TITLE TO FILLED-IN LANDS, IF ANY.

SKETCH OF DESCRIPTION
*** THIS IS NOT A SURVEY ***
CES, INC.

Scott C. Whitaker
SCOTT C. WHITAKER, P.S.M.
FLORIDA CERTIFICATION NO. 4324

CONVEYANCE PARCELS TO TOWN OF FORT MYERS BEACH

D.B. = DEED BOOK

O.R. = OFFICIAL RECORD BOOK

P.B. = PLAT BOOK

P.C. = POINT OF CURVE PG. = PAGE

R/W = RIGHT-OF-WAY P.T. = POINT OF TANGENCY

SPC = STATE PLANE CO-ORDINATE

CES Inc

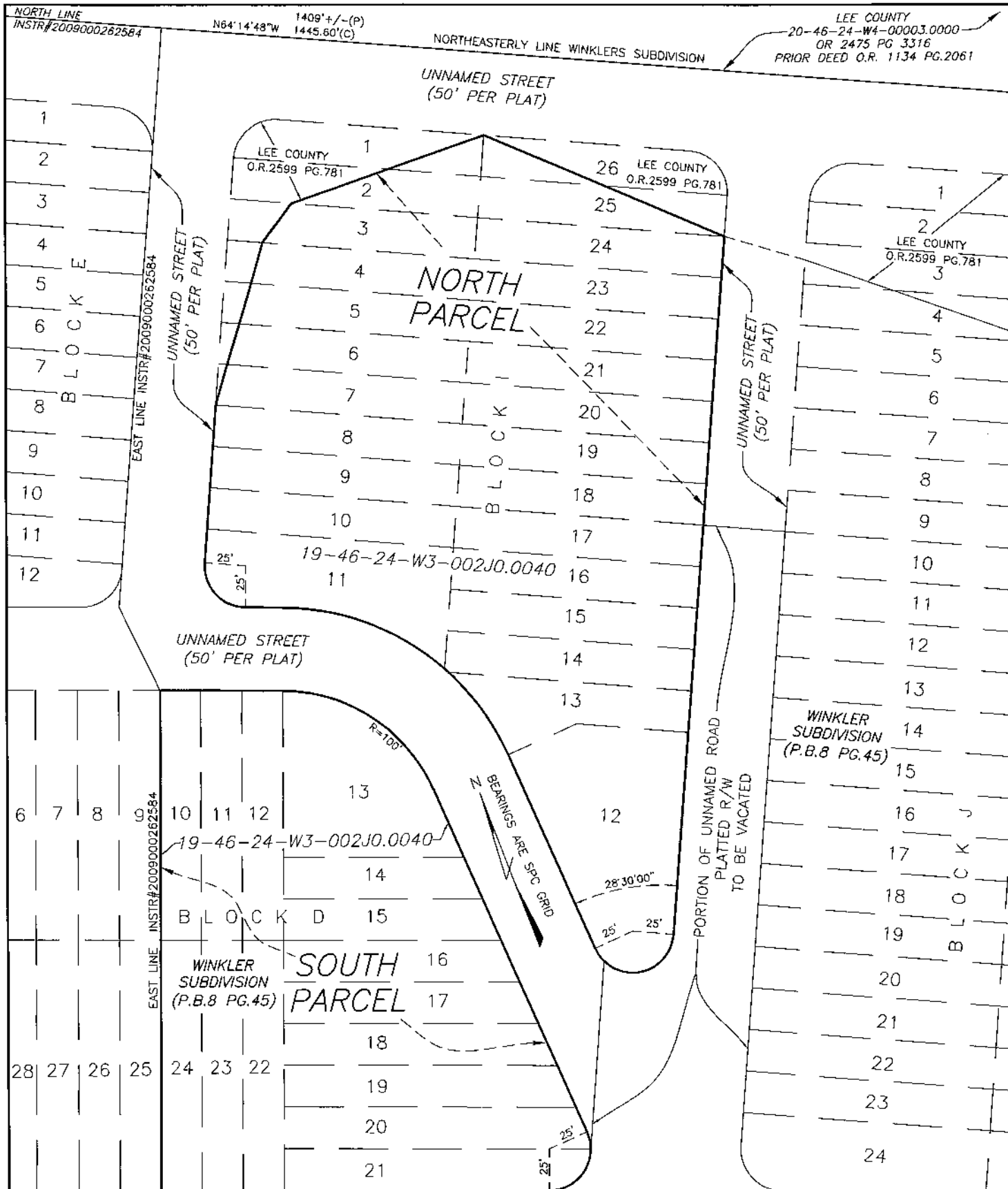
Engineers • Environmental Scientists • Surveyors

13041 MCGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919

PH (239) 481-1331

2010596.0025K_SCHOOL DISTRICT CONVEYANCE PARCELS TO TOWN_BOUNDARY.dwg FLORIDA CERTIFICATE OF AUTHORIZATION NUMBERS EB32664 & LB8267

DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-R)
10-23-20	596.002	SCW	1" = 120'	3 OF 4	10-23-20



CES INC

Engineers • Environmental Scientists • Surveyors

13041 MCGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919

PH (239) 481-1331

2010596.002SK_SCHOOL DISTRICT CONVEYANCE PARCELS TO TOWN_BOUNDARY.dwg FLORIDA CERTIFICATE OF AUTHORIZATION NUMBERS EB32664 & LB8267

DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-R)
10-23-20	596.002	SCW	1" = 80'	4 OF 4	19-46-24

EXHIBIT C
(Shared Use Schedule)

Facility: Gym

Reserve for Ft. Myers Beach Elementary students for basketball and other indoor activities during the following dates/times:

August, September, October, November, and December	Every Wednesday from 8 am to 2 pm
May, June	Every Wednesday from 8 am to 2 pm

Facility: Soccer Field

Reserve for Ft. Myers Beach Elementary students for soccer and other activities on the field during the following dates/times:

January and February	Every Wednesday from 8 am to 2 pm
1st Friday in December (Field Day)	8am to 2pm
Last Full Day of each School Year - date TBD (End of Year "Family Day")	7am to 2pm

Facility: Softball Field

Reserve for Ft. Myers Beach Elementary students for softball and other activities on the field during the following dates/times:

March	Every Wednesday from 8 am to 2 pm
-------	-----------------------------------

Facility: Tennis Courts

Reserve for Ft. Myers Beach Elementary students for tennis and other activities on the courts during the following dates/times:

April	Every Wednesday from 8 am to 2 pm
-------	-----------------------------------

RESOLUTION NUMBER 21-01

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE SCHOOL BOARD OF LEE COUNTY AND THE TOWN OF FORT MYERS BEACH REGARDING THE SHARED USE AGREEMENT RELATED TO THE REDEVELOPMENT AND USE OF BAY OAKS RECREATIONAL FACILITY; AUTHORIZING THE EXECUTION OF THE AGREEMENT BY THE MAYOR AND AUTHORIZING ALL APPROPRIATE TOWN OFFICIALS TO TAKE ALL NECESSARY STEPS TO IMPLEMENT THE INTERLOCAL AGREEMENT; AND PROVIDING 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, both the School Board and the Town are duly empowered pursuant to Section 163.01, Florida Statutes, to enter into interlocal agreements for the sharing of certain governmental powers and obligations; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach (“Town”) 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 School Board and the Town each constitute a “public agency” within the meaning of the Florida Interlocal Cooperation Act of 1969 (the “**Interlocal Act**”), and each is authorized under the Interlocal Act to enter into interlocal agreements providing for them to jointly exercise any power, privilege, or authority that each of them could exercise separately; and

WHEREAS, the School Board and the Town both serve the people of the Town of Fort Myers Beach; and

WHEREAS, the School Board and the Town previously entered into that certain Interlocal Agreement Relating to Exchange of Real Property and Improvements, dated October 7, 2020 the “Exchange Agreement”);

WHEREAS, upon consummation of the Exchange Agreement (the “Exchange Closing”), the School Board shall be the owner of that certain real property more particularly described in Exhibit “A” attached hereto and incorporated herein by reference (“School Board Property”); and

WHEREAS, the School Board is the owner of certain real property upon which is located the Fort Myers Beach Elementary School and certain related parking facilities and other improvements (“School Board Property”); and

WHEREAS, upon the Exchange Closing, the Town shall be the owner of that certain real property commonly known as Bay Oaks Recreational Facility, located adjacent to the School Board Property and more particular described in **Exhibit “B”** attached hereto and incorporated herein by reference (the “Town Property”); and

WHEREAS, the Town is the owner of that certain real property commonly known as Bay Oaks Recreational Facility, located adjacent to the School Board Property (“**Town Property**”); and

WHEREAS, the School Board Property contains tennis courts, a playground, a portion of a multi-sport field (the other portion of which is located on the Town Property), and certain other recreational facilities; and

WHEREAS, the Town Property contains a playground, baseball field, tennis courts, basketball court, portion of a multi-sport field (the other portion of which is located on the School Board Property), and a recreational center; and

WHEREAS, the School Board and the Town have each determined the need for improvement to its existing facilities and/or for additional facilities; and

WHEREAS, the School Board and the Town have determined that it is in the best interest of the owners, residents, business persons, and other citizens of the Town of Fort Myers Beach for the Town and the School Board to share the use of the recreational facilities and other improvements located upon the School Board Property and the Town Property(collectively, the “**Shared Facilities**”); and

WHEREAS, the Exchange Agreement requires the Parties to execute an interlocal agreement at the time of the Exchange Closing which addresses the rights and obligations of the Parties relating to shared use, operation and maintenance of the Shared Facilities.

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

Section 1. The above recitals are true and correct and are hereby incorporated by reference as though fully set forth herein and are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. The Agreement attached hereto as **Exhibit “A”**, between the School Board and Town, regarding the use of School Board Property and Town Property is approved. The Mayor is authorized to execute the Agreement on behalf of the Town and all appropriate Town officials are authorized to take all necessary steps to implement the Agreement.

Section 3. This resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

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:

Raymond P. Murphy, Mayor
Rexann Hosafros, Vice Mayor
Dan Allers, Council Member
Bill Veach, Council Member
Jim Atterholt, Council Member

ADOPTED this ____ day of January, 2021 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Raymond P. Murphy, Mayor

ATTEST:

Amy Baker, Deputy Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH SOLELY:

John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of _____ 2020.

1. **Requested Motion:**

Meeting Date: January 19, 2021

Determinations regarding the Bay Oaks Campus Redevelopment

Why the action is necessary:

To provide the staff direction on how to proceed with the consultant on the redesign of Bay Oaks Recreational Campus.

What the action accomplishes:

Provides staff direction.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

5. **Background:**

Item A: Budget

Phase 1: Currently \$5.5 million (includes permitting, planning, design, construction and construction inspection)

Phase 2: TBD

Phase 3: TBD

Item B: Priorities:

1. Lee County School Board (LCSB) improvements
2. National Fitness Campaign improvements
3. Other Improvements and Amenities

- Access control
- Amphitheater
- Ball Fields (large and small)
- Ball Field lighting
- Multiuse space
- Floor exercise space
- Improved ingress and egress (pedestrians and vehicles)
- New gym and weight room
- Outdoor Basketball
- Passive Recreation
- Pickleball courts
- Senior space
- Tennis courts
- Youth space
- Welcome center

Attachments:

1. Bay Oaks Project Progression landscape 2021-01-04 (1)
2. Bay Oaks Amphitheater 1

3. Bay Oaks Amphitheater 2

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Jason Freeman, Contracts Manager
Chelsea O'Riley, Public Works Director
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Roger Hernstadt, Town Manager

Created/Initiated - 1/13/2021
Approved - 1/13/2021
Approved - 1/13/2021
Approved - 1/13/2021
Final Approval - 1/13/2021

Presented at Stakeholders meeting on 10/30/2019

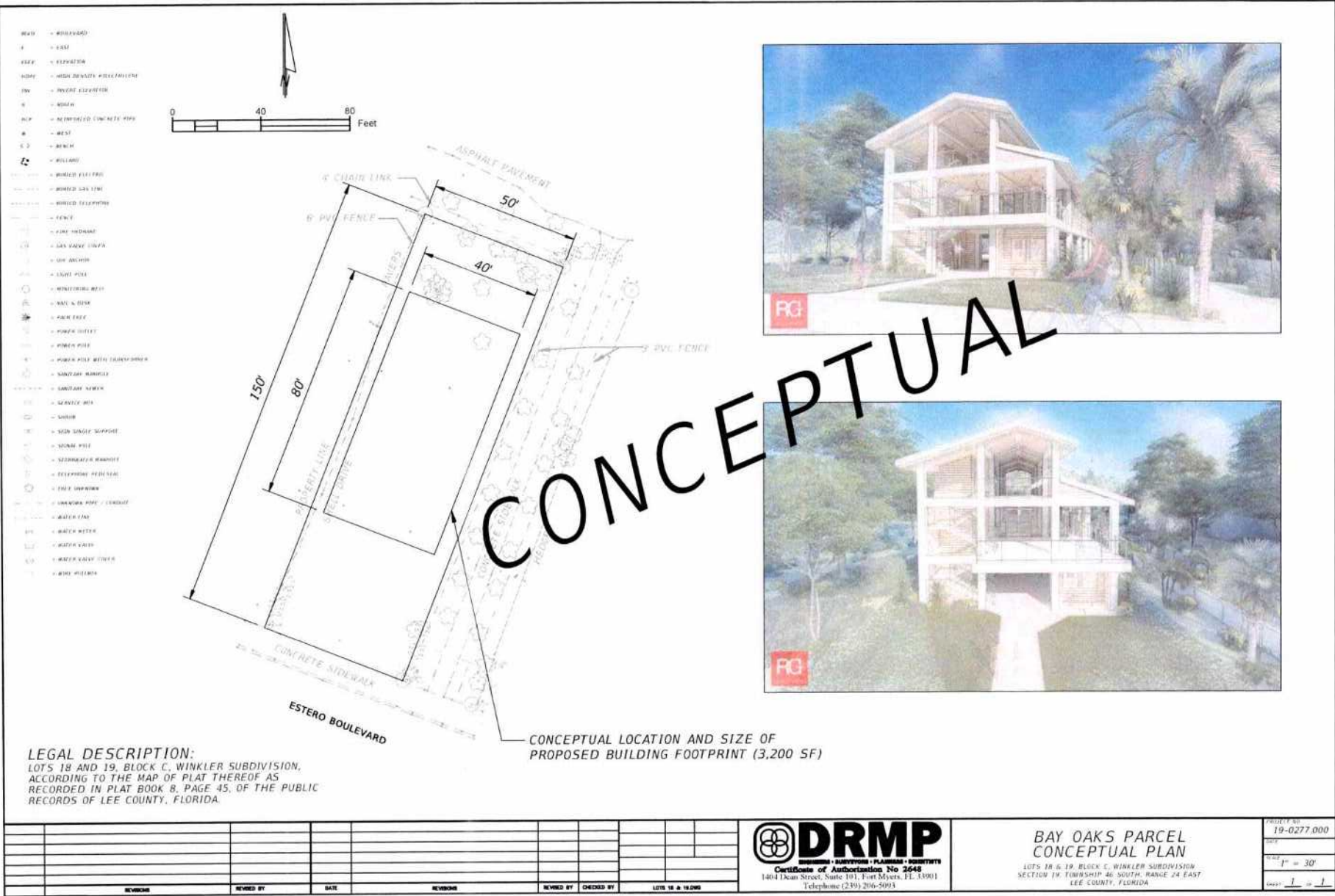


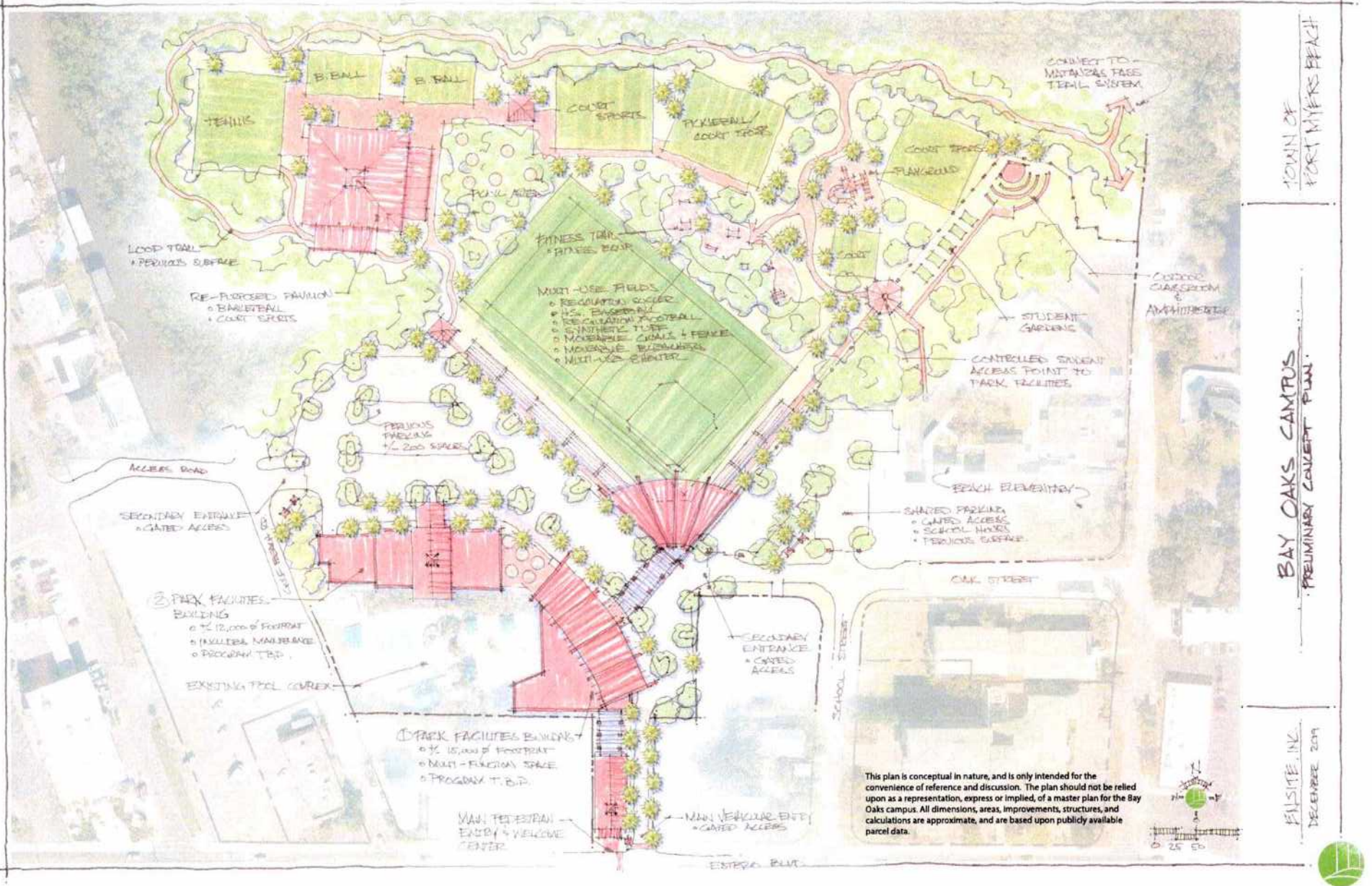
FOR SALE
TOWN OF

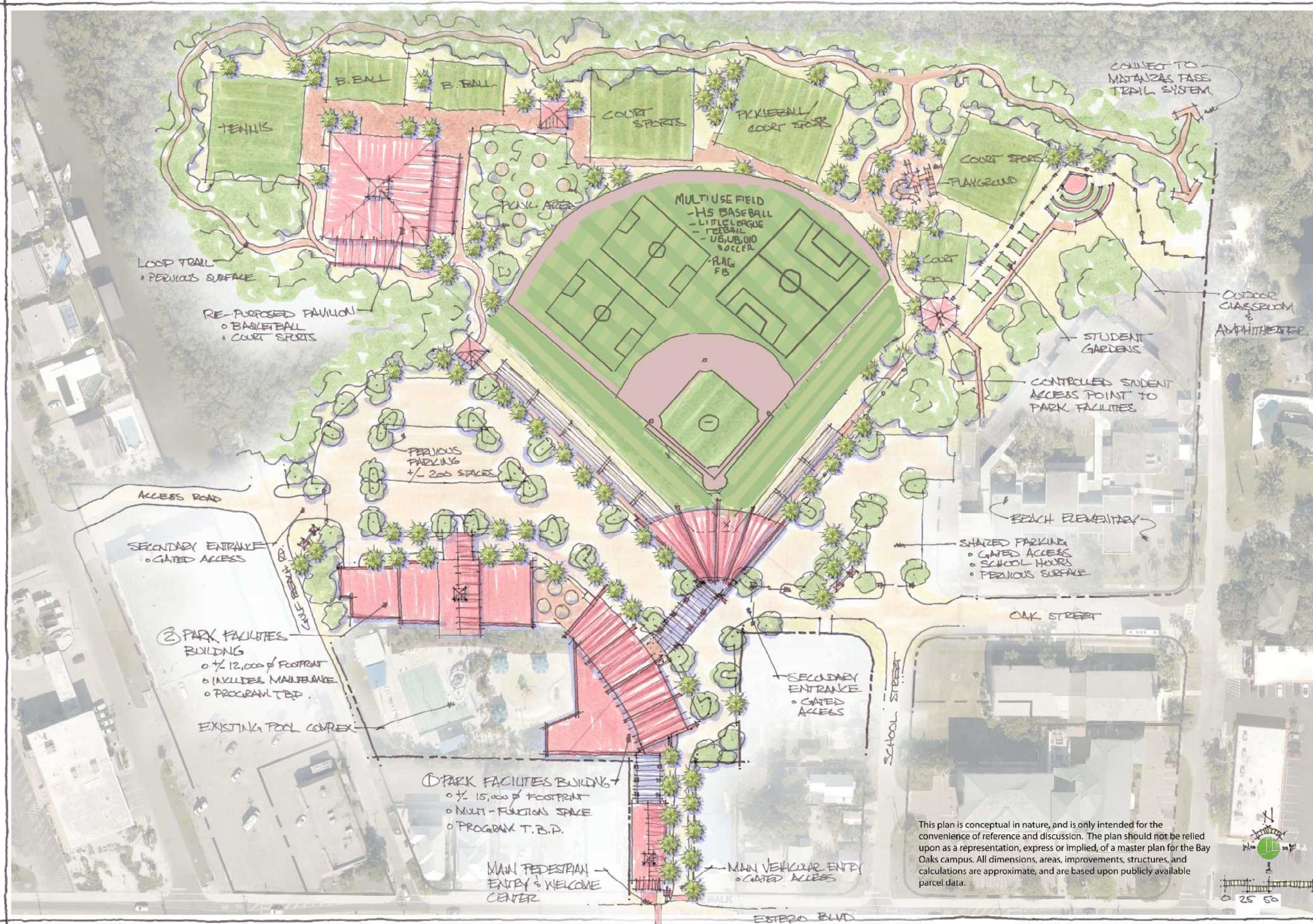
BAY CARS

ELSITE, INC.
OCT. 2019

Meeting with Staff on 12/11/2019







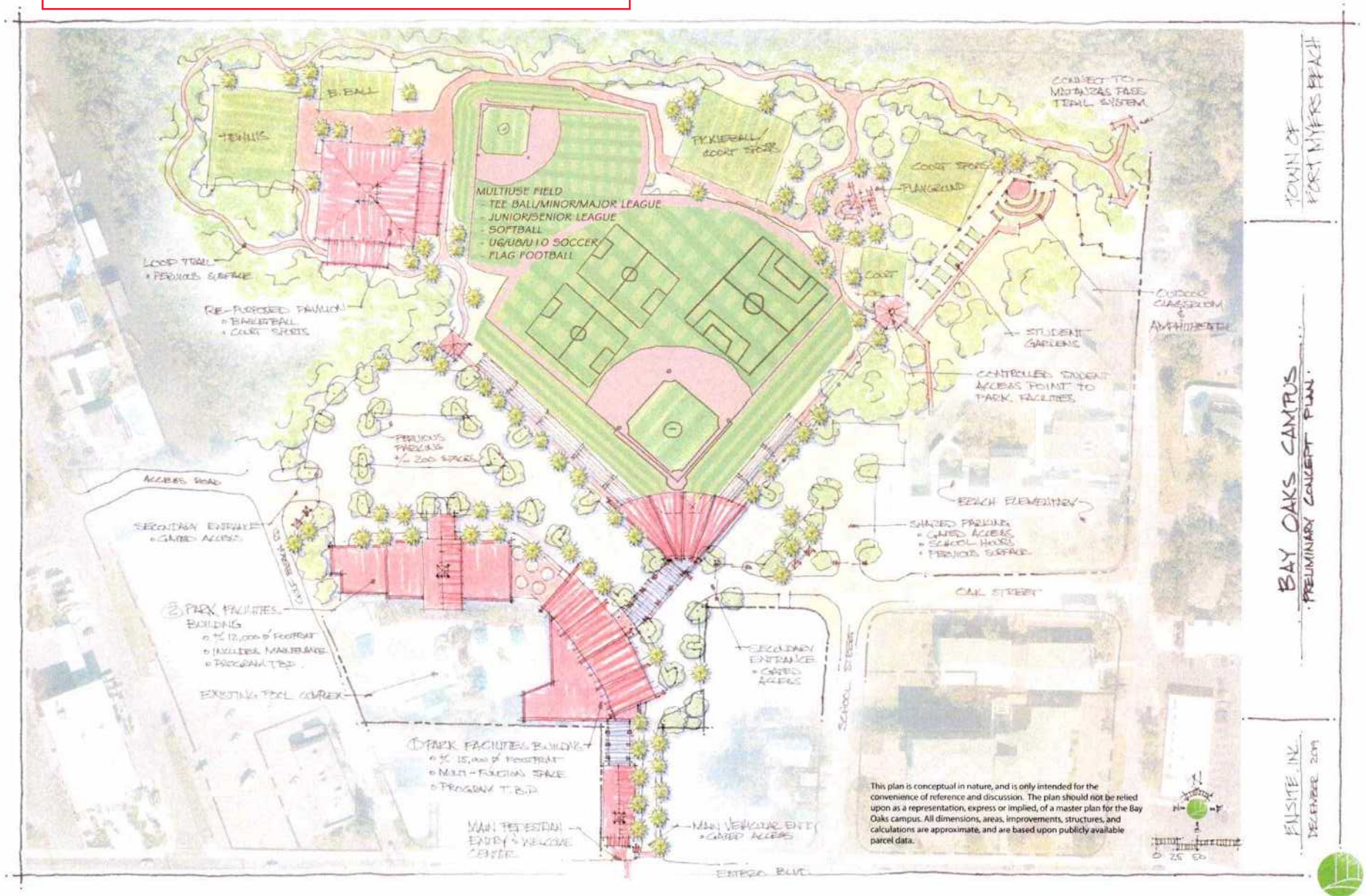
TOWN OF
FORT MYERS BEACH

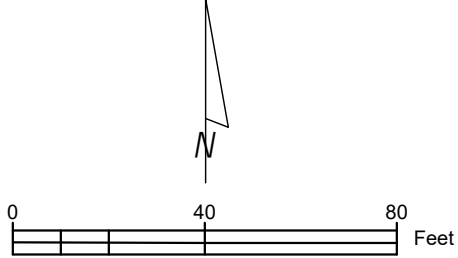
BAY OAKS CAMPUS
PRELIMINARY CONCEPT PLAN

ENSITE, INC.
DECEMBER 2019

This plan is conceptual in nature, and is only intended for the convenience of reference and discussion. The plan should not be relied upon as a representation, express or implied, of a master plan for the Bay Oaks campus. All dimensions, areas, improvements, structures, and calculations are approximate, and are based upon publicly available parcel data.

Option Shown at LCSD Zoom Meeting on 4/30/2020

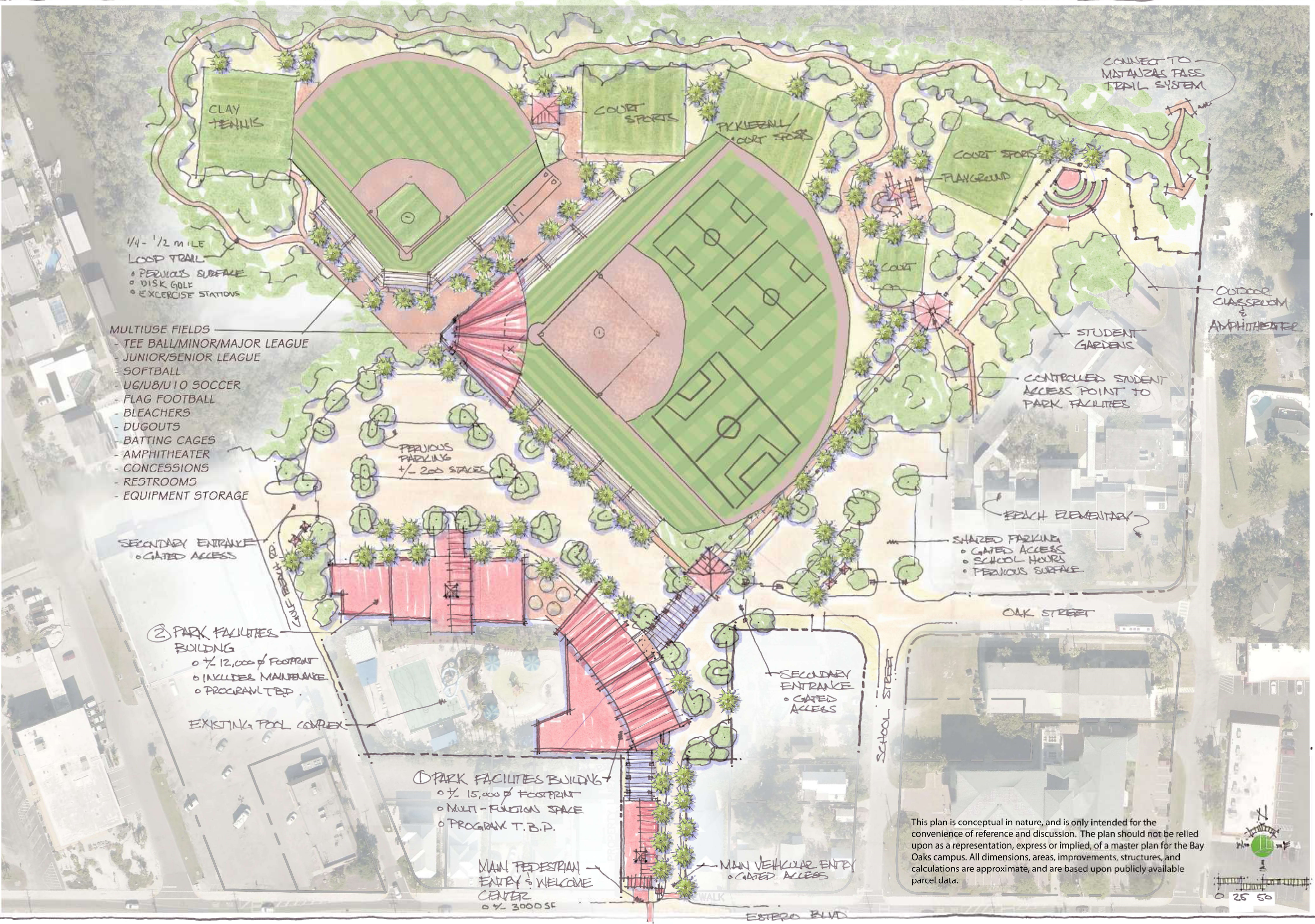


[illegible]

BAY OAKS CONCEPTUAL
SITE PLAN - AERIAL

LOTS 18 & 19, BLOCK C, WINKLER SUBDIVISION
SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST
LEE COUNTY, FLORIDA

PROJECT NO.	19-0277.000
DATE	
SCALE	1" = 200'
SHEET	1 OF 2

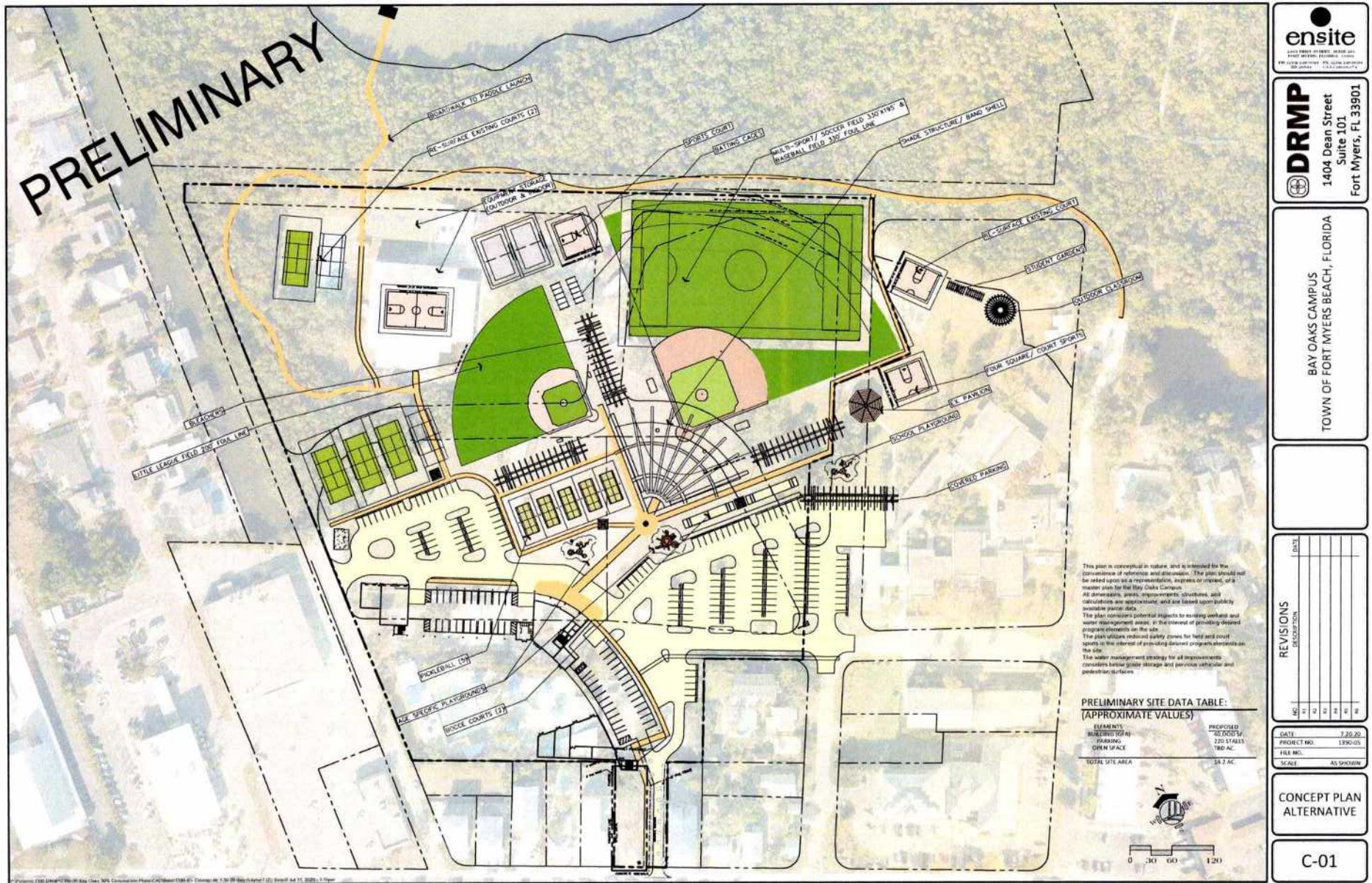


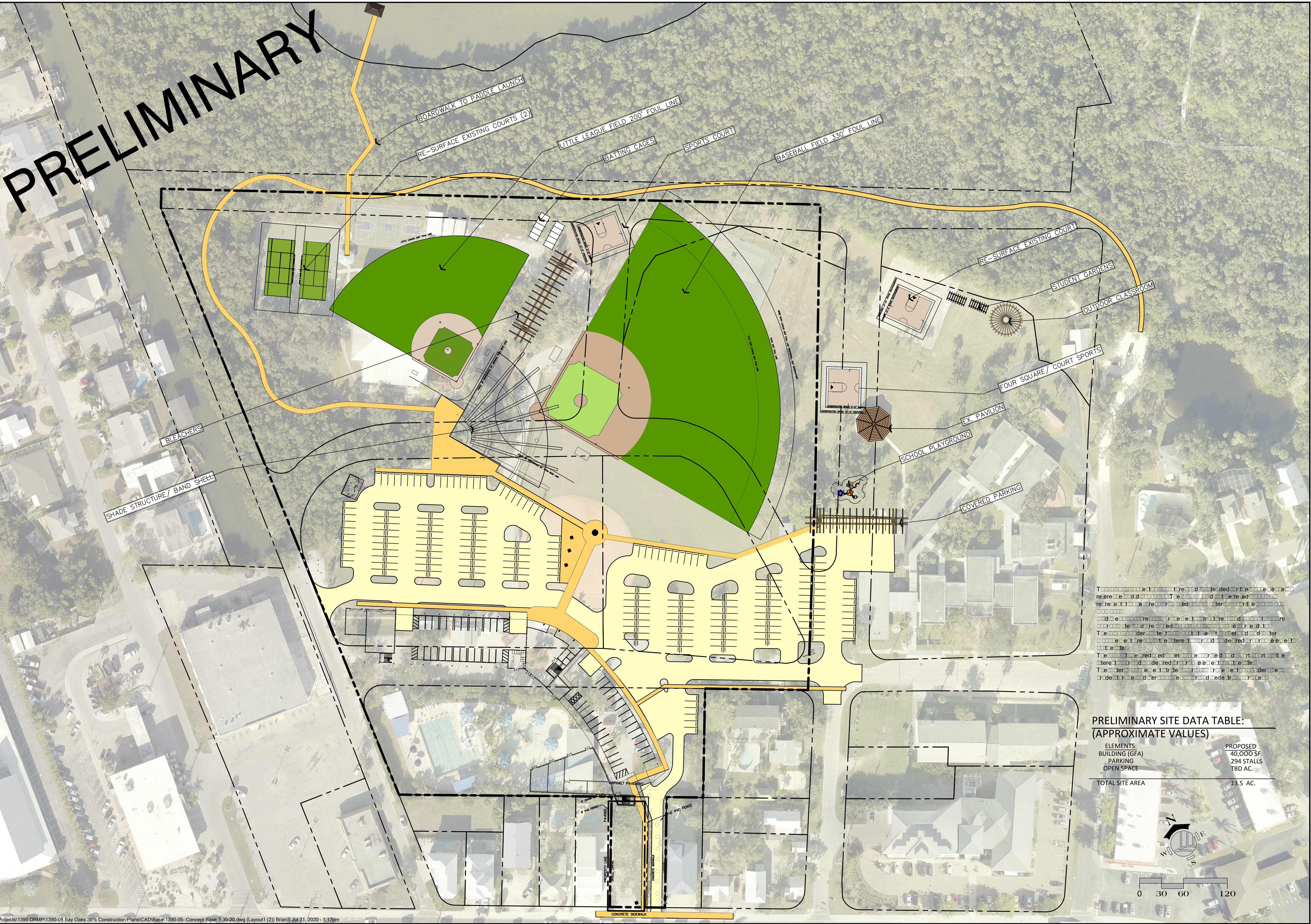
TOWN OF
FORT MYERS BEACH

BAY OAKS CAMPUS
PRELIMINARY CONCEPT PLAN

DRMP, INC
ENSITE, INC.
June 2020

This plan is conceptual in nature, and is only intended for the convenience of reference and discussion. The plan should not be relied upon as a representation, express or implied, of a master plan for the Bay Oaks campus. All dimensions, areas, improvements, structures, and calculations are approximate, and are based upon publicly available parcel data.





P:\Projects\1390 DRMP\1390-05 Bay Oaks 30% Construction Plans\CAD\Bases\1390-05- Concept Base 7-30-20.dwg (Layout1 (2)) BrianS Jul 31, 2020 - 1:17pm



2401 FIRST STREET, SUITE 201
FORT MYERS, FLORIDA 33901
PH: (239) 226-0024 - FX: (239) 226-0094
139-20544 CALIC20000074



Suite 101
1404 Dean Str
Fort Mye

BAY OAKS CAMPUS
TOWN OF FORT MYERS BEACH, FLORIDA

--

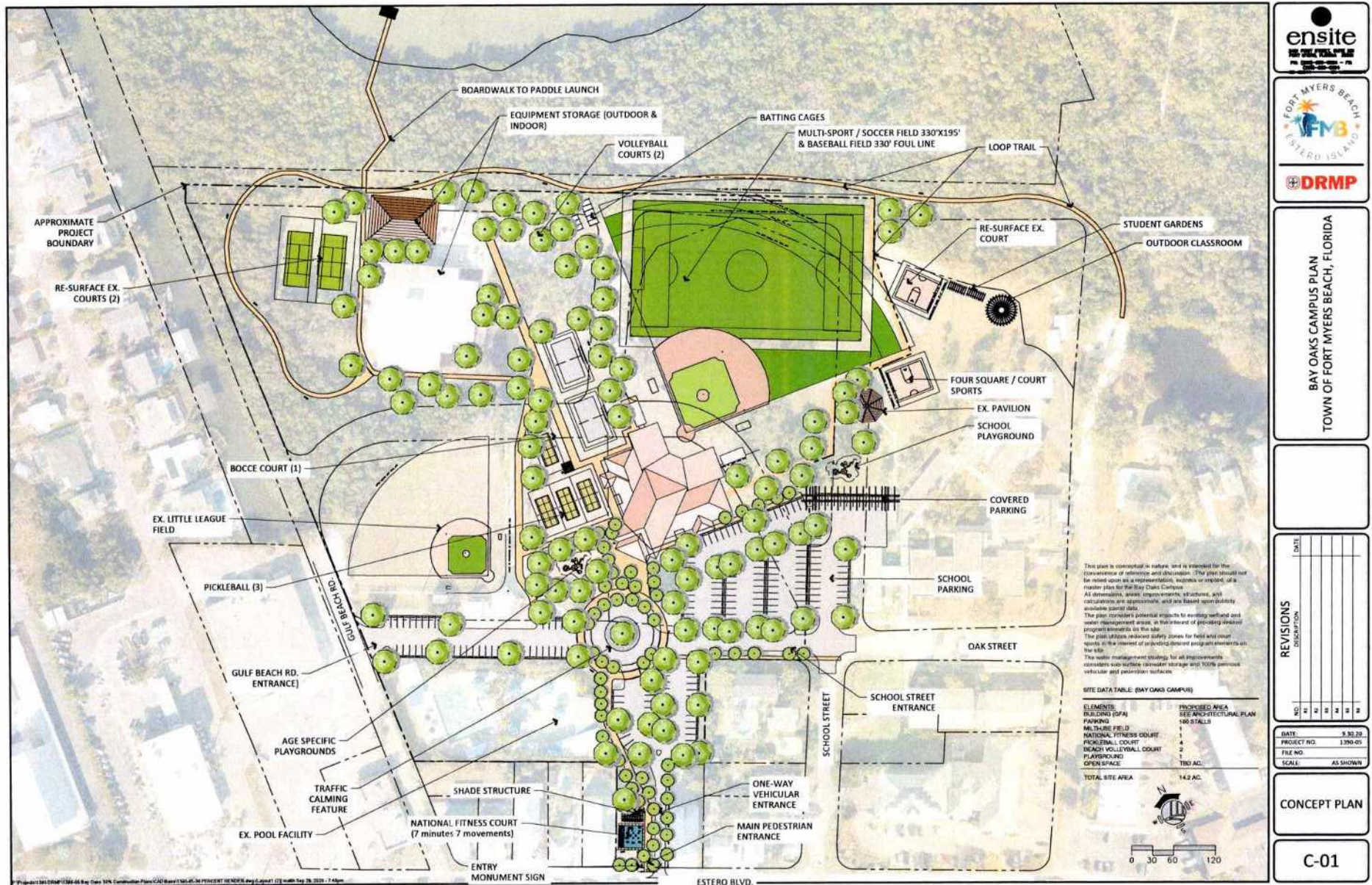
REVISIONS		DATE
NO.	DESCRIPTION	
R1		
R2		
R3		
R4		
R5		
R6		

DATE:	7.20.20
PROJECT NO.	1390-05
FILE NO.	
SCALE:	AS SHOWN

CONCEPT PLAN

C-01

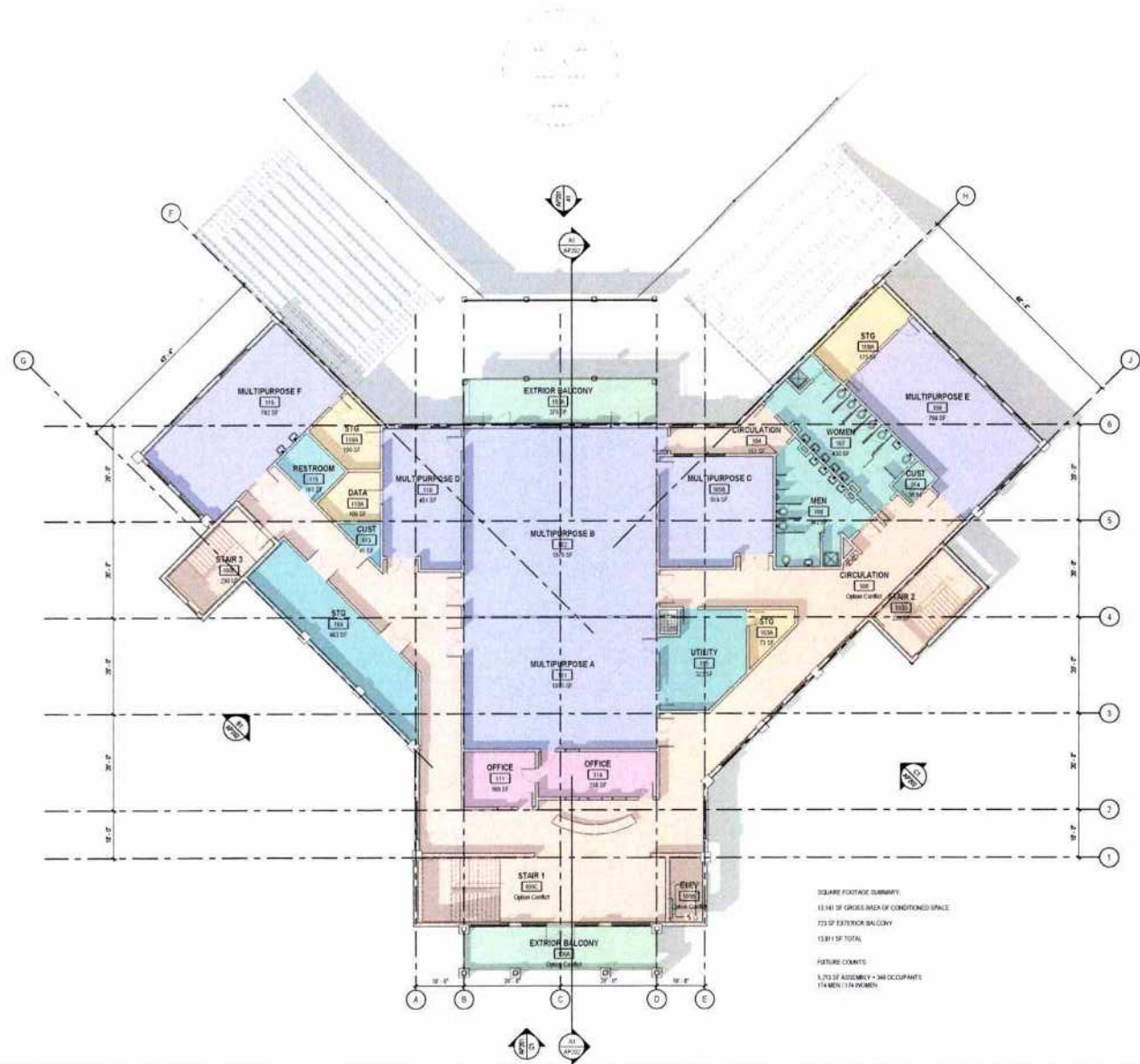
30% submittal 9/30/2020
Presented to Town Council 10/19/2020



Architectural floor plan of the first floor of a building. The plan shows a central yellow area labeled 'COVERED WALKWAY' (1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1036, 1037, 1038, 1039, 1040, 1041, 1042, 1043, 1044, 1045, 1046, 1047, 1048, 1049, 1050, 1051, 1052, 1053, 1054, 1055, 1056, 1057, 1058, 1059, 1060, 1061, 1062, 1063, 1064, 1065, 1066, 1067, 1068, 1069, 1070, 1071, 1072, 1073, 1074, 1075, 1076, 1077, 1078, 1079, 1080, 1081, 1082, 1083, 1084, 1085, 1086, 1087, 1088, 1089, 1090, 1091, 1092, 1093, 1094, 1095, 1096, 1097, 1098, 1099, 1100, 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1133, 1134, 1135, 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1146, 1147, 1148, 1149, 1150, 1151, 1152, 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1161, 1162, 1163, 1164, 1165, 1166, 1167, 1168, 1169, 1170, 1171, 1172, 1173, 1174, 1175, 1176, 1177, 1178, 1179, 1180, 1181, 1182, 1183, 1184, 1185, 1186, 1187, 1188, 1189, 1190, 1191, 1192, 1193, 1194, 1195, 1196, 1197, 1198, 1199, 1200, 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227, 1228, 1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236, 1237, 1238, 1239, 1240, 1241, 1242, 1243, 1244, 1245, 1246, 1247, 1248, 1249, 1250, 1251, 1252, 1253, 1254, 1255, 1256, 1257, 1258, 1259, 1260, 1261, 1262, 1263, 1264, 1265, 1266, 1267, 1268, 1269, 1270, 1271, 1272, 1273, 1274, 1275, 1276, 1277, 1278, 1279, 1280, 1281, 1282, 1283, 1284, 1285, 1286, 1287, 1288, 1289, 1290, 1291, 1292, 1293, 1294, 1295, 1296, 1297, 1298, 1299, 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, 1312, 1313, 1314, 1315, 1316, 1317, 1318, 1319, 1320, 1321, 1322, 1323, 1324, 1325, 1326, 1327, 1328, 1329, 1330, 1331, 1332, 1333, 1334, 1335, 1336, 1337, 1338, 1339, 1340, 1341, 1342, 1343, 1344, 1345, 1346, 1347, 1348, 1349, 1350, 1351, 1352, 1353, 1354, 1355, 1356, 1357, 1358, 1359, 1360, 1361, 1362, 1363, 1364, 1365, 1366, 1367, 1368, 1369, 1370, 1371, 1372, 1373, 1374, 1375, 1376, 1377, 1378, 1379, 1380, 1381, 1382, 1383, 1384, 1385, 1386, 1387, 1388, 1389, 1390, 1391, 1392, 1393, 1394, 1395, 1396, 1397, 1398, 1399, 1400, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1410, 1411, 1412, 1413, 1414, 1415, 1416, 1417, 1418, 1419, 1420, 1421, 1422, 1423, 1424, 1425, 1426, 1427, 1428, 1429, 1430, 1431, 1432, 1433, 1434, 1435, 1436, 1437, 1438, 1439, 1440, 1441, 1442, 1443, 1444, 1445, 1446, 1447, 1448, 1449, 1450, 1451, 1452, 1453, 1454, 1455, 1456, 1457, 1458, 1459, 1460, 1461, 1462, 1463, 1464, 1465, 1466, 1467, 1468, 1469, 1470, 1471, 1472, 1473, 1474, 1475, 1476, 1477, 1478, 1479, 1480, 1481, 1482, 1483, 1484, 1485, 1486, 1487, 1488, 1489, 1490, 1491, 1492, 1493, 1494, 1495, 1496, 1497, 1498, 1499, 1500, 1501, 1502, 1503, 1504, 1505, 1506, 1507, 1508, 1509, 1510, 1511, 1512, 1513, 1514, 1515, 1516, 1517, 1518, 1519, 1520, 1521, 1522, 1523, 1524, 1525, 1526, 1527, 1528, 1529, 1530, 1531, 1532, 1533, 1534, 1535, 1536, 1537, 1538, 1539, 1540, 1541, 1542, 1543, 1544, 1545, 1546, 1547, 1548, 1549, 1550, 1551, 1552, 1553, 1554, 1555, 1556, 1557, 1558, 1559, 1560, 1561, 1562, 1563, 1564, 1565, 1566, 1567, 1568, 1569, 1570, 1571, 1572, 1573, 1574, 1575, 1576, 1577, 1578, 1579, 1580, 1581, 1582, 1583, 1584, 1585, 1586, 1587, 1588, 1589, 1590, 1591, 1592, 1593, 1594, 1595, 1596, 1597, 1598, 1599, 1600, 1601, 1602, 1603, 1604, 1605, 1606, 1607, 1608, 1609, 1610, 1611, 1612, 1613, 1614, 1615, 1616, 1617, 1618, 1619, 1620, 1621, 1622, 1623, 1624, 1625, 1626, 1627, 1628, 1629, 1630, 1631, 1632, 1633, 1634, 1635, 1636, 1637, 1638, 1639, 1640, 1641, 1642, 1643, 1644, 1645, 1646, 1647, 1648, 1649, 1650, 1651, 1652, 1653, 1654, 1655, 1656, 1657, 1658, 1659, 1660, 1661, 1662, 1663, 1664, 1665, 1666, 1667, 1668, 1669,

PROJECT STATUS

MAIN FLOOR ROOM SCHEDULE			
Number	Name	Area	Comments
100	CIRCULATOR	3405 SF	
100A	EXTERIOR BALCONY	363 SF	
100B	ELEV	40 SF	
100C	STAIR 1	Pendant Room	
100D	STAIR 2	738 SF	
100E	STAIR 3	230 SF	
101	MULTIPURPOSE A	930 SF	28 x 40
102	MULTIPURPOSE B	1575 SF	40 x 40
102A	EXTERIOR BALCONY	328 SF	
103A	STG	73 SF	
104	CIRCULATOR	151 SF	
105	UTILITY	222 SF	
105A	PREP ROOM	Info Passed	
105B	MULTIPURPOSE C	216 SF	22 x 28
106	MEN	243 SF	
107	WOMEN	430 SF	
108	MULTIPURPOSE E	788 SF	35 x 40
108A	STG	175 SF	
109	STG	483 SF	
110	MULTIPURPOSE D	401 SF	16 x 38
110A	DATA	106 SF	
111	OFFICE	169 SF	
113	CLUST	41 SF	
114	OFFICE	280 SF	
115	RESTROOM	121 SF	
116	MULTIPURPOSE F	762 SF	40 x 40
116A	STG	160 SF	



(A1) SECOND FLOOR PLAN
SCALE: 3/32" = 1'-0"

RG ARCHITECTS P.A.
2010 McGehee Boulevard, Suite 1
Fort Myers, FL 33601
P (239) 332-0540
F (239) 332-0540
www.rgarchitects.com

CIVIL ENGINEER
CRMP

100

11

[illegible]

PROVECT

FORT MYERS BEACH

PROJECT ADD

REVW

[illegible]

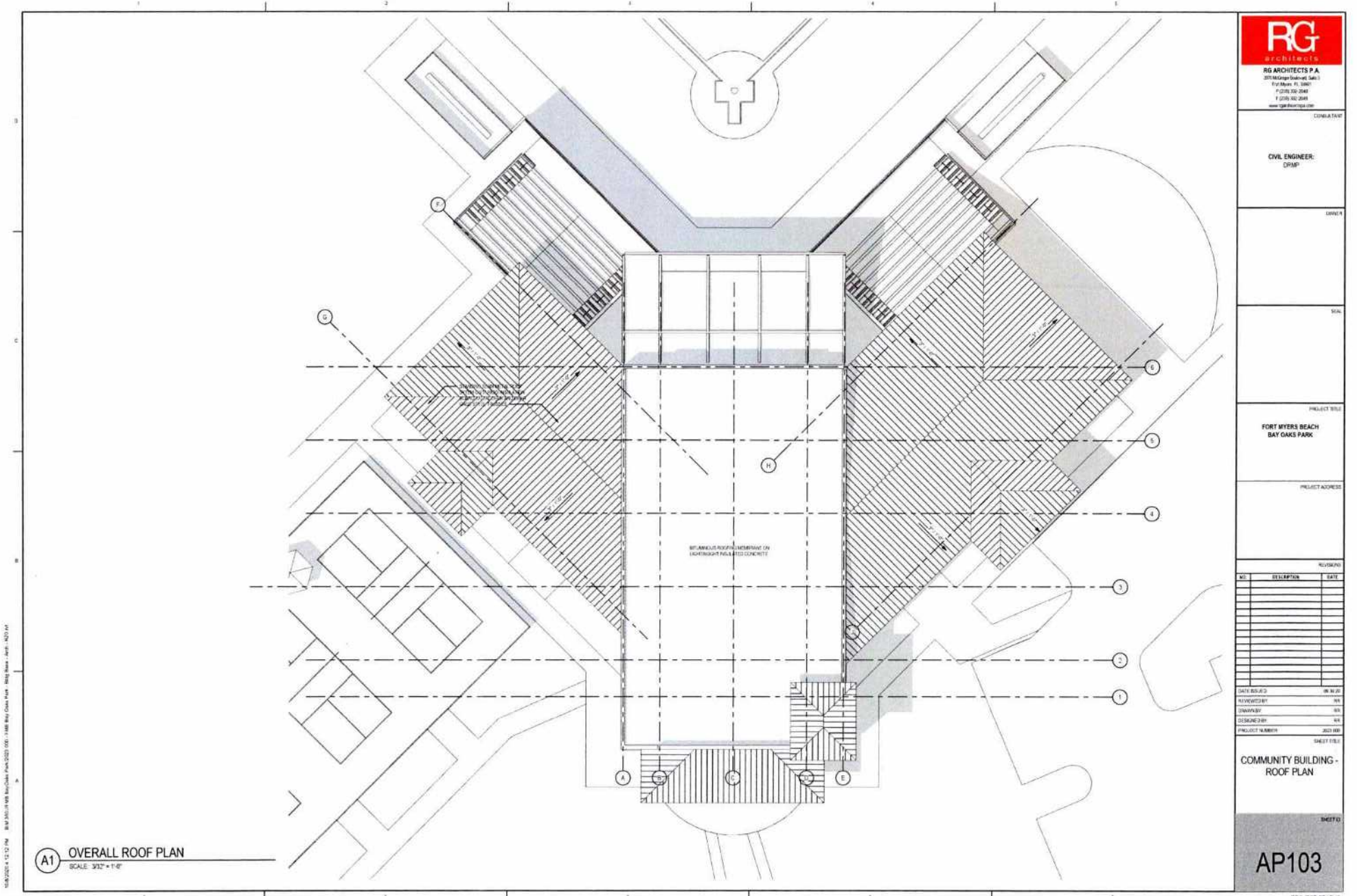
SHEET TOTAL

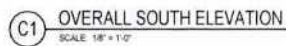
COMMUNITY BUILDING -
MAIN FLOOR PLAN

SHEET 13

AP102

PROJECT STATUS:





Option preferred by Council 10/19/2020



CONGLA TA

CIVIL ENGINEER
CRMP

PROJECT TOPIC:

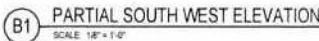
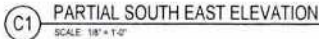
FORT MYERS BEACH
BAY OAKS PARK

RESEARCH NOTES

COMMUNITY BUILDING
ELEVATIONS AND
SECTION

AP202

PROJECT STATUS





Amphitheater



Amphitheater



1. **Requested Motion:**

Meeting Date: January 19, 2021

Authorize the Town Manager to apply for for the Land and Water Conservation Fund Program Grant for Bay Oaks Park Redevelopment.

Why the action is necessary:

This action allows the Town to apply for a grant opportunity for the the Bay Oaks Park Redevelopment Project if the Town has authorized 100% design and "buildable" plans.

What the action accomplishes:

Authorizes the Town Manager to apply for the grant based on the draft application packaged by the grant submitted deadline of **Wednesday, February 3, 2021**.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Chelsea O'Riley, Public Works
Director

5. **Background:**

The Land and Water Conservation Fund (LWCF) assistance is provided on a 50 percent matching basis. The LWCF is a federal competitive program that provides grants for acquisition or development of land for public **outdoor recreation**. The assistance will be used in the Bay Oaks redevelopment project's outdoor recreation with the proposed budget of \$5,500,000 for the project. The maximum grant request may not exceed \$1,000,000 per the grant's policy.

The draft grant application is attached.

WHAT MAY LWCF FUNDS BE USED FOR?

Development: Outdoor recreation areas and facilities such as beaches, picnic areas, trails, ball fields, tennis and basketball courts and playgrounds, along with associated support facilities such as lighting, parking, restrooms and landscaping. Enclosed buildings and structures (except restrooms, restroom/concession buildings and bathhouses) are ineligible.

Attachments:

1. Draft Application
2. Portfolio Preliminary Exhibits

Financial Impact:

50 percent match not to exceed \$1,000,000.

6. **Alternative Action**

Do not approve.

7. **Management Recommendations:**

Approved application submittal.

8. **Recommended Approval:**

Randy Paniaqua, Administrative Officer

Created/Initiated - 1/13/2021

Chelsea O'Riley, Public Works Director
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Roger Hernstadt, Town Manager

Approved - 1/13/2021
Approved - 1/13/2021
Approved - 1/13/2021
Final Approval - 1/13/2021



Florida Department of Environmental Protection
LAND AND WATER CONSERVATION FUND PROGRAM
GRANT APPLICATION PACKAGE

Required Signatures: **Adobe Signature**

(DEP USE ONLY)

Received: _____
Postmarked: _____
Application Number: _____

PART I - GENERAL INFORMATION

A. APPLICANT INFORMATION

1. Name of Applicant: Town of Fort Myers Beach
2. Federal Employer Identification Number: 65-0632342
(This number must be registered at **My Florida Market Place with the address the warrant will be forwarded)
3. DUNS Number: _____
(Dunn and Bradstreet Data Universal Numbering System)
4. Population: 7,102 (2018)
5. Current Operating budget: \$23,913,535
6. (This is the operating budget for the city, county or other legally constituted governmental entity, not just the department budget.)
6. Contact Person: Chelsea O'Riley Title: Public Works Director
(The contact person should be someone who will be in direct contact with DEP and is responsible for administering the grant if awarded.)

Address: Street/PO Box: 2525 Estero Boulevard
(Needs to be address registered in **My Florida Market Place** where warrant will be sent. If contact is different please specify.)

City/State: Fort Myers Beach, FL Zip Code: 33931

Telephone: (239) 765-0202 FAX: (239) 765-0909

E-mail: Cheslea@fmbgov.com

I hereby certify that the information provided in this application is true and accurate. I further certify that I possess the authority to apply for this grant on behalf of the applicant.

Signature of City or County Manager

Title

Date



Florida Department of Environmental Protection
LAND AND WATER CONSERVATION FUND PROGRAM
GRANT APPLICATION PACKAGE

B. PROJECT INFORMATION

1. Name of Project: Bay Oaks Recreational Campus Redevelopment
 - a. List all previous projects name(s), phase(s) and grant number(s) funded at this specific project site location and reference funding source(s) (LWCF, FRDAP, RTP and FCT grant programs).

1) _____
2) _____
3) _____
4) _____
2. Acreage of Project: _____
3. Project Type (Check One): Project cannot be a combination of acquisition and development
Acquisition: _____
Development: ☒ On land owned by applicant
 _____ On land leased to applicant by another public agency
 Date lease expires: _____

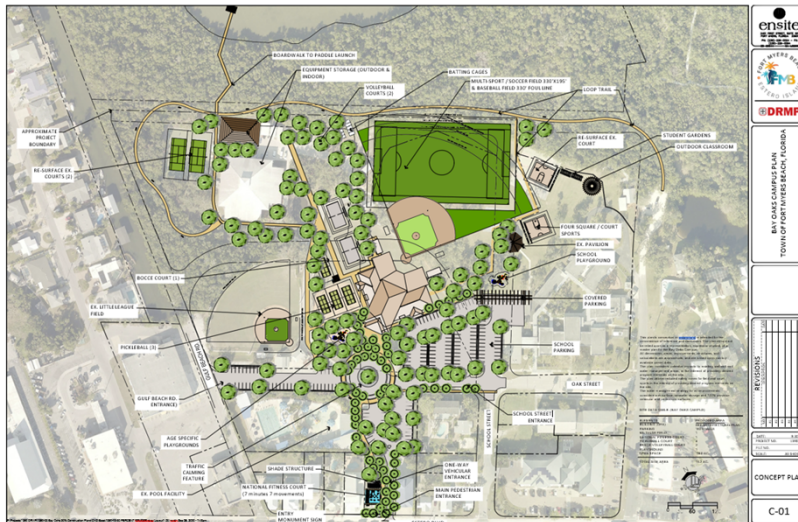
Development projects must be under site control (owned by deed or leased from another public agency for a minimum of 25 years from application and renewable in perpetuity. Also, if property is owned by deed or leased from any state agency, provide a letter with permission to develop on the property) by the close of the submission period, February 3, 2021 . School board property is ineligible. Include a copy of the site control documents (e.g., deed, lease, etc.).

(Please Tab as Exhibit "L")



Florida Department of Environmental Protection
LAND AND WATER CONSERVATION FUND PROGRAM
GRANT APPLICATION PACKAGE

4. Project Location: Street Address: 2731 Oak Street
City Fort Myers Beach County: Lee Zip Code: 33931
(If the project is not located in a city, list the city nearest to the project site.) (zip code + 4)
5. GIS Coordinates: Latitude: _____ Longitude: _____
- a) Submit a boundary map of the project area providing a description and sketch of the project area boundaries, display known easements and be legally sufficient to identify the project area. Also, depict where and how the public will access the site, parking, etc. Plat maps may be accepted if the above criteria are identified. Use either an 8 ½ x 11 or 11x17 map. **Aerial photographs are accepted as boundary maps, as long as the boundaries are identified.**
(Tab as Exhibit "I")
- b) Submit color, on-site photographs for **all three copies** of your application, sufficient to depict the physical characteristics of the project area.
(Tab as Exhibit "J")



- c) Location map and directions: Submit a detailed road map precisely locating the project site along with clear written driving instructions from the nearest federal or state highway. **NOTE:** Please confirm that street names listed are the same as those posted on street signs in the area. Please do not use Map Quest or any other computer mapping program for this.
(Tab as Exhibit "K")



Florida Department of Environmental Protection
LAND AND WATER CONSERVATION FUND PROGRAM
GRANT APPLICATION PACKAGE

6. Legislative Districts in which the Project Site is located: These should be the districts in which the proposed project site is located. If you are not sure of the districts, contact your local office of the Supervisor of Elections.

State Senator Ray Wesley Rodrigues Senate District Number 27

State Representative Adam Botana House District Number 76

7. Congressional District in which the project is located:

U.S. Congressman Francis Rooney Congressional District Number 19



Florida Department of Environmental Protection
LAND AND WATER CONSERVATION FUND PROGRAM
GRANT APPLICATION PACKAGE

8. Describe the physical characteristics of the project.

1) For Development Projects:

- (a) Provide a three (3) paragraph Project Narrative of the proposed project which includes existing and future uses, existing and proposed physical improvements, natural and historical resources, any proposed resource protection/conservation and any existing buildings on site.

(Tab as Exhibit "M")

(b) Please indicate if a natural spring is located on project site: ☐ Yes ☒ No

(c) Please indicate if there is public access to the park either through an existing street or easement:
 ☒ Yes ☐ No

Please describe access:

2) For Acquisition Projects: (in addition to the above information)

- (a) If proposed project consists of acquiring multiple parcels or from multiple owners, identify specific order in which the parcels will be acquired to ensure that in the event that all parcels cannot be acquired, the purposes of the project can be achieved. Also, submit an estimated value of the property being acquired. (Ex. Tax assessed value)

(Tab as Exhibit "M")



Florida Department of Environmental Protection
LAND AND WATER CONSERVATION FUND PROGRAM
GRANT APPLICATION PACKAGE

C. FINANCIAL INFORMATION

Refer to Chapter 62D-5.070(6), F.A.C. for complete information on match requirements and match types. LWCF assistance is provided on a 50% matching basis. **Total Project Cost (Line F) must equal the grant request (Line A) plus the total local funds available (Line E). This figure (Line F) should not total more than \$2,000,000 for the purpose of this application.**

- | | | |
|----|------------------------|-----------------|
| 1. | LWCF Funds Requested: | Line A \$ _____ |
| 2. | Local Funds Available: | |
| | a. Cash: | Line B \$ _____ |
| | b. In-Kind | Line C \$ _____ |
| | c. Land Value | Line D \$ _____ |

(Only the value of **donated** real property is eligible as match **and applicant must NOT have taken title yet unless a waiver of retroactivity has been granted by DEP**)

- | | | |
|----|--------------------------------|--|
| | Total Local Funds Available | Line E \$ _____
Sum of lines B, C, and D |
| 3. | Total Cost of Proposed Project | Line F \$ _____
Sum of lines A and E
(Should not total more than \$2,000,000) |



Florida Department of Environmental Protection
LAND AND WATER CONSERVATION FUND PROGRAM
GRANT APPLICATION PACKAGE

D. PROJECT ELEMENTS (COMPLETE FOR ALL PROJECTS, DEVELOPMENT AND ACQUISITION):

On page 7 & 8, list the Project Elements for this application. The Project Elements are listed with the related tasks and deliverables. Primary facilities and support facilities should be listed separately. Use as many project elements and tasks needed to complete the project.

Remember to include each element in your conceptual site plan. Submit a conceptual site plan displaying the areas and facilities to be developed as proposed on page 7 & 8 of this application. The site plan must correlate with the project boundary map and project elements. The site plan must CLEARLY DELINEATE using color codes between facilities/opportunities currently existing, facilities proposed for funding (page 7 & 8) in this application and facilities planned for future development. If project is an acquisition project, be sure to submit on the site plan the proposed elements to be developed as listed on page 18 of this application. Also identify different LWCF phases on the site plan and any FRDAP phases.

DEVELOPMENT PROJECTS:

PRIMARY RECREATION AREAS AND FACILITIES: Primary facilities include all recreation facilities and opportunities. **Primary cost must be equal to or greater than fifty percent (50%) of the total cost.** Primary examples are: beach access, picnic facilities, fishing piers, ball fields, tennis courts, trails, trailheads, shade structures for recreational facilities, etc. Enclosed structures are not eligible costs. Costs of planning and site preparation should be included within the cost of each element. If land value is used as match, it should be included under primary cost. If this is a trail project, list the uses or types of trails. If developing one trail for multi-purposes state multi-purpose trail, but if doing several different trails list separately with each use (example: walking trail or bike trail).

SUPPORT FACILITIES AND IMPROVEMENTS: Support facilities are facilities which cannot stand alone, or which would have little or no public outdoor recreational value without the primary facility. No enclosed structures are eligible except restrooms, bathhouses or restroom/concession stands. Other support examples are: parking, landscaping, and security lighting. Amenities such as benches, or bike racks will receive no points when being scored. The enclosed structures listed above cannot be phased and must be completed with one grant.

ACQUISITION PROJECTS:

If acquisition project, on page 7 & 8, list the Project Elements for the acquisition phase of the project.

(Tab as Exhibit "H")



Florida Department of Environmental Protection
LAND AND WATER CONSERVATION FUND PROGRAM
GRANT APPLICATION PACKAGE

Project Name: Bay Oaks Recreational Campus Redevelopment

Grantee Name: _____

The project reimbursement is limited to one (1) invoice upon completion of all Project Elements listed below and submittal of all Deliverables and required documentation identified in the table below. Completion Documentation required prior to Reimbursement Request.

Project Tasks, Deliverables and Required Documentation

Task #1: Development of: _____	Amount of Costs to be Paid with Grant Funds	Amount of Costs to be Paid with Grantee Match	Deliverables and Documentation to Be Submitted Upon Completion and Before Reimbursement Can Be Approved
<u>(List each Primary facilities)</u>	Provide Budget Detail	Provide Budget Detail	Project Completion Certification Final as-built site plan Florida Recreation and Parks Inventory Form Color Photographs of Project Notice of Limitation of Use Boundary Survey



Florida Department of Environmental Protection
LAND AND WATER CONSERVATION FUND PROGRAM
GRANT APPLICATION PACKAGE

<u>(List each Support facilities)</u> *All work will be completed in accordance with the approved plans.			
TOTALS:	\$	\$	

Performance Standard: Approval of deliverables is based upon review for compliance with the requirements for funding under the Land and Water Conservation Fund Program (LWCF); approved plans and application approved for funding.



Florida Department of Environmental Protection
LAND AND WATER CONSERVATION FUND PROGRAM
GRANT APPLICATION PACKAGE

INSTRUCTIONS FOR COMPLETING PROJECT WORK PLAN:

DELIVERABLES/ELEMENTS/WORK TO BE COMPLETED: Identify ALL elements that will be completed under this Agreement.

DELIVERABLE/ELEMENT BUDGET AMOUNT FOR REIMBURSEMENT: Must provide a budget for each element and identify the expense category and budget detail. Provide description of the costs as follows: **Salaries:** identify the position title, hourly rate and number of hours to complete the deliverable; **Fringe benefits:** identify the percentage used to calculate the fringe benefits; **Contractual Services:** identify what service will be paid for under the contract for services; **Equipment:** the purchase of equipment is not allowed under this Agreement, the rental of equipment is the only costs allowed that are associated with equipment; **Supplies and Materials:** identify what supplies/materials will be purchased; **Other costs:** identify what other costs are being requested (such as printing costs, other costs that do not fit into the other established cost categories (salaries, fringe benefits, equipment, supplies, indirect, contractual services); **Indirect Costs:** identify the percentage that is used for the indirect being claimed for reimbursement (cannot exceed 15% unless prior approval has been obtained by the Department)..

MATCH AMOUNT TO BE CLAIMED: The same level of detail must be provided for match as for reimbursement.

DOCUMENTATION/DELIVERABLES TO BE SUBMITTED UPON COMPLETION: All of these deliverables must be submitted before final reimbursement can be processed.

Completion Documentation required prior to Reimbursement



Florida Department of Environmental Protection
LAND AND WATER CONSERVATION FUND PROGRAM
GRANT APPLICATION PACKAGE

PART II – EVALUATION CRITERIA

A. GENERAL CRITERIA

1. CAPITAL IMPROVEMENT PLAN

- A. Is the proposed project identified, in whole or in part, in the applicant’s Capital Improvement Plan (CIP) or Schedule during the current or next three (3) fiscal years?

Provide:

- 1) A letter from the agency’s city or county manager certifying the five-year capital improvement schedule is **officially adopted and date adopted**. **Project will not receive points if letter is not submitted and does not state the date CIP was adopted.**

-AND-

- 2) A copy of the five-year Capital Improvement Schedule included in the applicant’s adopted Local Comprehensive Plan, stating project by name, amount and year (County or City budgets are not the same as Capital Improvement Schedules) **Highlight project name, amount and year.**

(Tab as Exhibit “A”) (20 points)

_____ Yes _____ No

-OR-

- B. Is the proposed project identified as part of the plan through an adopted resolution committing the applicant to amend their Capital Improvement Plan or Schedule and complete the project should it receive program funds?

Provide:

- 1) A copy of a fully executed resolution amending the existing schedule to include the development of the proposed project. The resolution must **clearly indicate the development of the proposed project by name, year and amount, and cannot be older than 3 years.**

(Tab as Exhibit “A”) (10 points)

_____ Yes _____ No



Florida Department of Environmental Protection
LAND AND WATER CONSERVATION FUND PROGRAM
GRANT APPLICATION PACKAGE

2. STATE COMPREHENSIVE OUTDOOR RECREATION PLAN

- A. Explain how the proposed project would address one or more of the issues, recommendations or goals identified in the State Comprehensive Outdoor Recreation Plan. **Use the OUTDOOR RECREATION IN FLORIDA - 2008 (Chapter 7 & 8). Provide quotations or other appropriate references with explanations to justify the correlation. To receive points, must give a detailed explanation as to how the project meets the goals, cannot only list the goals.**

(Tab as Exhibit "B") (4 points)

B. 2008 RELATIVE NEED INDEX BY REGION

Locate the applicant's region and circle each priority resource/facility need as **proposed in the project** cost on page 7 & 8 of this application which is included in the applicant's planning region:

(7 points)

- ___I Saltwater Beach Activities * Baseball or Softball * Picnicking * Football
Outdoor Swimming Pool Use * Saltwater Non-Boat Fishing * Golf
RV / Trailer Camping * Freshwater Boat Ramp Use * Soccer or Rugby
- ___II Saltwater Beach Activities * Nature Study * Historical or Archeological Sites
Baseball or Softball * Picnicking * Freshwater Boat Ramp Use * Football
Hunting * Horseback Riding * Outdoor Swimming Pool Use
- ___III Football * Picnicking * Nature Study * Soccer or Rugby * Baseball or Softball
Horseback Riding * Outdoor Basketball * RV / Trailer Camping
Freshwater Boat Ramp Use * Bicycle Riding – Unpaved Trails
- ___IV Historical or Archeological Sites * Baseball or Softball * Football
Saltwater Beach Activities * Picnicking * Outdoor Swimming Pool Use * Outdoor
Basketball * Nature Study * Golf * Soccer or Rugby
- ___V Picnicking * Football * RV / Trailer Camping * Nature Study * Baseball or Softball
Bicycle Riding - Unpaved Trails * Outdoor Basketball * Soccer or Rugby
Horseback Riding * Outdoor Swimming Pool Use
- ___VI Picnicking * RV / Trailer Camping * Football * Baseball or Softball
Outdoor Swimming Pool Use * Nature Study * Historical or Archeological Sites
Outdoor Basketball * Saltwater Beach Activities * Soccer or Rugby
- ___VII RV / Trailer Camping * Picnicking * Baseball or Softball * Outdoor Swimming Pool Use
Nature Study * Freshwater Boat Ramp Use * Football * Golf * Horseback Riding
Outdoor Basketball

Commented [RP1]:

<https://floridadep.gov/sites/default/files/OutdoorRecreationInFlorida2008.pdf>

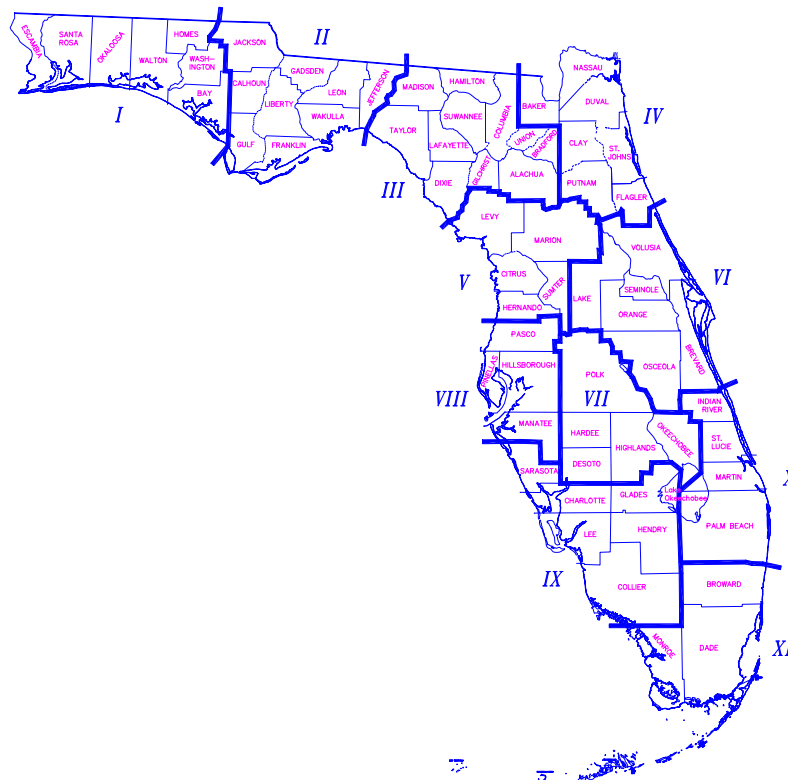
219-220



Florida Department of Environmental Protection

LAND AND WATER CONSERVATION FUND PROGRAM GRANT APPLICATION PACKAGE

- ☐ VIII Picnicking * RV / Trailer Camping * Baseball or Softball * Football * Outdoor Swimming Pool Use * Saltwater Beach Activities * Golf * Outdoor Basketball * Outdoor Tennis * Soccer or Rugby
- ☒ IX Picnicking * RV / Trailer Camping * Saltwater Beach Activities * Outdoor Swimming Pool Use * Golf * Football * Nature Study * Baseball or Softball * Outdoor Tennis * Historical or Archeological Sites
- ☐ X Football * Golf * Baseball or Softball * Outdoor Swimming Pool Use * Picnicking * Outdoor Tennis * Saltwater Beach Activities * Outdoor Basketball * RV / Trailer Camping * Soccer or Rugby
- ☐ XI Outdoor Swimming Pool Use * Picnicking * Football * Baseball or Softball * Saltwater Beach Activities * Outdoor Tennis * Golf * Outdoor Basketball * Saltwater Non-Boat Fishing * RV / Trailer Camping





Florida Department of Environmental Protection
LAND AND WATER CONSERVATION FUND PROGRAM
GRANT APPLICATION PACKAGE

3. PUBLIC PARTICIPATION

Indicate which of the following apply (**Check ALL that apply**):

(To receive points for this section any meetings, presentations, or surveys must be held in the current year or within the **previous 3 years** of application and each of **the three meetings must be held separately to receive each set of points. (Meetings also must be held prior to the application submittal.)**

- _____ A. A pre-advertised public meeting was held **solely** for the purpose of discussing the proposed project. Attach a copy of the ad **and** proof of publication for the advertisement. Advertisement needs to state where and when advertised. **If not advertised in a newspaper, a written explanation as to how, when and where advertised, along with a copy of notice/advertisement.**

(Tab as Exhibit "C-1") (10 points)

- _____ B. The project was discussed at a **regularly** scheduled meeting of the applicant's advisory board responsible for park, recreation and leisure service activities. Provide **a copy of the minutes** of the advisory board meeting(s) where **this project** was discussed. The board must be an appointed group of citizens, such as a parks and recreation advisory board, who would normally review projects similar to the proposed grant application. Planning and Zoning or similar boards may be used if a parks and recreation advisory board does not exist. **CITY OR COUNTY COMMISSIONS ARE NOT CONSIDERED ADVISORY BOARDS.**

(Tab as Exhibit "C-2") (7 points)

- _____ C. Public input on the proposed project was obtained through presentations to community organizations, neighborhood associations and/or a written opinion survey. Provide documentation (**dated minutes from the meeting** where the project was discussed, or a **thank-you letter** from an organization, association, etc.) showing that presentations **regarding this project** were made to community organizations or groups **OR** provide a **copy of the survey, who surveyed, AND a summary of the results.** Letters of support are not acceptable to receive points.

(Tab as Exhibit "C-3") (4 points)

4. LINEAR PARK

The proposed project is for linear park purposes. A linear park is defined as an active or passive outdoor recreation area of linear design that provides or connects recreation, park land, or open-space areas.

_____ Yes ☒ No ☐ (13 points)

Commented [RP2]:

<https://www.fortmyersbeachfl.gov/DocumentCenter/View/14809/Final-BORCAB-Minutes-011520>

<https://www.fortmyersbeachfl.gov/DocumentCenter/View/15148/Final-BORCAB-Minutes-060220>

Commented [RP3]:

<https://www.fortmyersbeachfl.gov/DocumentCenter/View/14427/Final-BORCAB-minutes-080619>



Florida Department of Environmental Protection
LAND AND WATER CONSERVATION FUND PROGRAM
GRANT APPLICATION PACKAGE

5. PRESERVATION PURPOSES

The proposed project is also for preservation purposes (e.g. historical, archaeological, cultural etc.). This question addresses preservation of historic, archaeological and/or cultural sites. Contact the Department of State at (850) 245-6333 if this applies to the proposed project. A letter from the Department of State is required to verify a “yes” response to this question.

(Tab as Exhibit “D”) (7 points)

_____ Yes ☒ No

6. OPERATION AND MAINTENANCE

Capability to develop, operate and maintain the project site. Provide a brief description of how development, programming and maintenance will be provided **AND** an agency organizational chart (**Must provide both to receive points**):

(Check ONLY one)

☒ The applicant has a full-time recreation or park department staffed to provide facility development, programming and maintenance.

(Tab as Exhibit “E”) (8 points)

_____ The applicant has demonstrated the existence of a full-time ability to provide facility development, programming and maintenance.

(Tab as Exhibit “E”) (4 points)

B. DEVELOPMENT CRITERIA (COMPLETE ONLY FOR DEVELOPMENT PROJECTS)

1. NEW DEVELOPMENT

List the existing facilities/improvements on the project site. Include improvements such as baseball fields, basketball courts, trails, boat ramps, etc. (Bullet lists are encouraged. If undeveloped, state none).

- Baseball fields
- Basketball courts
- Passive recreation
- Welcome center
- Weight room
- Amphitheater
- Outdoor fitness
- Community pool
- Outdoor play structures
- Disc Golf course
- Tennis courts
- Multipurpose field (little league, soccer)
- Picnic area
- Covered seating
- Trails?



Florida Department of Environmental Protection
LAND AND WATER CONSERVATION FUND PROGRAM
GRANT APPLICATION PACKAGE

-
- | | |
|---|---|
| <ul style="list-style-type: none">• Indoor and outdoor Pickleball• Outdoor basketball• Bocce ball court• Outdoor restrooms• Youth game room | <ul style="list-style-type: none">• Senior game room• Multipurpose room• Equipment storage• Media room |
|---|---|

(5 points, if undeveloped)

2. NEW FACILITIES OR OPPORTUNITIES (Check only one)

The project provides for new or additional development of recreational facilities and opportunities:

- | | |
|---|-------------|
| _____ 3 or more facilities or opportunities | (15 points) |
| _____ 2 facilities or opportunities | (10 points) |
| ___x___ 1 facility or opportunity | (5 points) |

3. RENOVATION OF EXISTING FACILITIES (Check only one)

The project provides renovation of existing recreational facilities for:

- | | |
|----------------------------|-------------|
| _____ 3 or more facilities | (13 points) |
| _____ 2 facilities | (9 points) |
| _____ 1 facility | (4 points) |

4. SUPPORT FACILITIES

The project provides new or renovated support facilities (i.e. parking, restrooms, utilities).

(15 points)

___X___ **Yes** _____ No

5. ACCESS TO WATER RESOURCES



Florida Department of Environmental Protection
LAND AND WATER CONSERVATION FUND PROGRAM
GRANT APPLICATION PACKAGE

The project provides developed pedestrian access to or along water resources (i.e. trails, boardwalks, dune walkovers, etc.)

(7 points)

☒ **Yes** ☐ No



Florida Department of Environmental Protection
LAND AND WATER CONSERVATION FUND PROGRAM
GRANT APPLICATION PACKAGE

6. USE OF WATER RESOURCES

The project provides facilities for recreational use of water resources (boat ramps, swimming docks, fishing piers, etc.).

(12 points)

☐ Yes ☐ No

7. INFRASTRUCTURE ASSESSMENT OF LOCAL GOVERNMENT RECREATION AND PARK DEPARTMENT FACILITY NEEDS IN THE STATE OF FLORIDA

- A. List the facilities provided by the project which are identified in the priority ranked index clusters of outdoor facilities needs for renovation and/or new construction identified within the applicant's population density as set forth in the Department's study. The study entitled **"Infrastructure Assessment of Local Government Recreation and Park Department Facility Needs in the State of Florida"** has an effective date of December 1995. (See attached pages 21-25 for Priority Ranked Index Clusters.

(12 points)



Florida Department of Environmental Protection
LAND AND WATER CONSERVATION FUND PROGRAM
GRANT APPLICATION PACKAGE

- B. The proposed project, in whole or in part, addresses the highest priority of infrastructure funding needs for the applicant's population density as set forth in the study titled **"Infrastructure Assessment of Local Government Recreation and Park Department Facility Needs in the State of Florida"** has an effective date of December 1995. Use the table below to determine in which priority funding need ranking the project falls. (**Check ONLY one**):

_____ Highest Priority Funding Need (13 points)

_____ Second Highest Priority Funding Need (8 points)

Population Density 1 - Population Under 10,000	
Rank	Funding
1	Construction
2	Renovation
Population Density 2 - Population 10,000 to 24,999	
Rank	Funding
1	Renovation
2	Construction
Population Density 3 - Population 25,000 to 49,999	
Rank	Funding
1	Construction
2	Renovation
Population Density 4 - Population 50,000 to 99,999	
Rank	Funding
1	Construction
2	Renovation
Population Density 5 - Population 100,000 and Over	
Rank	Funding
1	Renovation
2	Construction

Source: The 1995 Infrastructure Assessment of Local Government Recreation and Park Department Facility Needs in the State of Florida



Florida Department of Environmental Protection
LAND AND WATER CONSERVATION FUND PROGRAM
GRANT APPLICATION PACKAGE

C. ACQUISITION CRITERIA (COMPLETE ONLY FOR ACQUISITION PROJECTS)

1. FLORIDA NATURAL AREAS INVENTORY

The project provides protection of any resources in the Florida Natural Areas Inventory. List the protected resources below and provide a letter from the Florida Natural Areas Inventory (FNAI). (850) 224-8207
(Tab as Exhibit "F") (13 points)

_____ Yes _____ No

2. WATER FRONTAGE

The project provides frontage on wetlands or water bodies such as rivers, lakes or oceans.

_____ Yes _____ No **(6 points)**

3. INFRASTRUCTURE ASSESSMENT OF LOCAL GOVERNMENT RECREATION AND PARK DEPARTMENT FACILITY NEEDS IN THE STATE OF FLORIDA

List all the facilities which will be developed for this project. Only facilities identified in the top three priority ranked index clusters of outdoor facilities needs for new construction identified within the applicant's population density as set forth in the Department's study entitled "Infrastructure Assessment of Local Government Recreation and Park Department Facility Needs in the State of Florida", effective December 1995, will receive these points. (Priority ranked index clusters are attached as pages 19-23).
Along with the site plan submitted in Exhibit H, submit a timeline for the planned development of the acquisition project.

Commented [RP4]: Cluster 3?

(Tab as Exhibit "H") (15 points)



Florida Department of Environmental Protection
LAND AND WATER CONSERVATION FUND PROGRAM
GRANT APPLICATION PACKAGE

4. NEEDED RECREATIONAL ACREAGE: (Provide excerpts from your local comprehensive plan. Include data on current park acreage, standards and identified needs.)

A. Describe how the project provides for identified need(s) for additional park acreage pursuant to the applicant's adopted local comprehensive plan. Provide the needed amount of acreage as listed in the local comprehensive plan and the total acreage the local government already has under its control.

_____ Needed acres/Person and _____ Total Acreage Under Local Control
Provide a copy of the applicant's local comprehensive plan as supporting back-up documentation and **highlight** the information that pertains to this section.

(Tab as Exhibit "G") (15 points)

B. Describe how the project provides for needed distribution of park acreage pursuant to the applicant's adopted local comprehensive plan.

(8 points)



Florida Department of Environmental Protection
LAND AND WATER CONSERVATION FUND PROGRAM
GRANT APPLICATION PACKAGE

5. CAPITAL IMPROVEMENT PLAN

- A. Is the proposed **development** of the property identified in the applicant's Capital Improvement Plan (CIP) or Schedule during the current or next three (3) fiscal years?

Provide:

- 1) A letter from the agency's city or county manager certifying the five-year Capital Improvement Schedule is officially adopted and date adopted. **Project will not receive points if letter is not submitted and does not state the date CIP was adopted.**

-AND-

- 2) A copy of the five-year Capital Improvement Schedule included in the applicant's adopted Local Comprehensive Plan, stating project by name, amount and year (County or City budgets are not the same as Capital Improvement Schedules) **Highlight project name, amount and year.**

(Tab as Exhibit "A") (6 points)

_____ Yes _____ No

-OR-

- B. Is the proposed **development** of the property included as part of the plan through an adopted resolution committing the applicant to amend their CIP and develop the property should it receive program funds?

Provide: A copy of a fully executed resolution amending the existing schedule to include the development of the proposed project. The resolution must **clearly indicate the development of the proposed project by name, year, and amount and cannot be older than 3 years.**

_____ Yes _____ No

(Tab as Exhibit "A") (3 points)

Commented [RP5]:
<https://www.fortmyersbeachfl.gov/DocumentCenter/View/15612/20-32-Authority-to-Secure-Loan-Commitment-First-Florida-Integrity-Bank->



Florida Department of Environmental Protection
LAND AND WATER CONSERVATION FUND PROGRAM
GRANT APPLICATION PACKAGE

Outdoor Facility Needs Ranked by Priority Index: Population Density 1

Rank	Renovation	Construction	
	<u>Facility</u>	<u>Facility</u>	
1	Playgrounds	Baseball Fields	Cluster I
2	Support Facilities	Softball Fields	Cluster II
3	Tennis Courts	Playgrounds	
4	Rest Rooms	Rest Rooms	
5	Picnic Facilities	Support Facilities	Cluster III
6	Baseball Fields	Soccer Fields	
7	Basketball Courts	Basketball Courts	
8	Softball Fields	Bike Trails	
9	Swimming Pools	Swimming Pools	
10	Boating Facilities	Tennis Courts	
11	Fishing Piers	Picnic Facilities	Cluster IV
12	Camping	Handball Courts	
13	Handball Courts	Fishing Piers	
14	Football Fields	Football Fields	
15	Soccer Fields	Boating Facilities	
16	Beach Access	Exercise Trails	Cluster V
17	Historical Facilities	Camping	
18	Shuffleboard Courts	Beach Access	
19	Nature Trails	Historical Facilities	
20	Other	Shuffleboard Courts	
21	Golf Courses	Nature Trails	
22	Bike Trails	Golf Courses	Cluster VI
23	Exercise Trails	Hiking Trails	
24	Hiking Trails	Horse Trails	
25	Horse Trails	Other	

Population Density 1 - Population for under 10,000



Florida Department of Environmental Protection
LAND AND WATER CONSERVATION FUND PROGRAM
GRANT APPLICATION PACKAGE

Outdoor Facility Needs Ranked by Priority Index: Population Density 2

Rank	Renovation	Construction	
	<u>Facility</u>	<u>Facility</u>	
1	Rest Rooms	Support Facilities	Cluster I
2	Support Facilities	Rest Rooms	
3	Playgrounds	Playgrounds	
4	Baseball Fields	Softball Fields	Cluster II
5	Tennis Courts	Soccer Fields	
6	Softball Fields	Baseball Fields	
7	Basketball Courts	Basketball Courts	Cluster III
8	Boating Facilities	Picnic Facilities	
9	Swimming Pools	Swimming Pools	
10	Picnic Facilities	Football Fields	
11	Soccer Fields	Tennis Courts	
12	Exercise Trails	Handball Courts	Cluster IV
13	Football Fields	Nature Trails	
14	Shuffleboard Courts	Bike Trails	
15	Handball Courts	Boating Facilities	Cluster V
16	Beach Access	Other	
17	Fishing Piers	Exercise Trails	
18	Camping	Golf Courses	
19	Bike Trails	Hiking Trails	
20	Nature Trails	Fishing Piers	
21	Other	Camping	
22	Golf Courses	Beach Access	Cluster VI
23	Hiking Trails	Historical Facilities	
24	Historical Facilities	Horse Trails	
25	Horse Trails	Shuffleboard Courts	

Population Density 2 – Population from 10,000 to 24,999



Florida Department of Environmental Protection
LAND AND WATER CONSERVATION FUND PROGRAM
GRANT APPLICATION PACKAGE

Outdoor Facility Needs Ranked by Priority Index: Population Density 3

Rank	Renovation	Construction	
	<u>Facility</u>	<u>Facility</u>	
1	Rest Rooms	Baseball Fields	Cluster I
2	Playgrounds	Soccer Fields	
3	Support Facilities	Support Facilities	Cluster II
4	Tennis Courts	Softball Fields	
5	Baseball Fields	Playgrounds	
6	Basketball Courts	Boating Facilities	
7	Beach Access	Football Fields	Cluster III
8	Swimming Pools	Tennis Courts	
9	Soccer Fields	Rest Rooms	
10	Picnic Facilities	Picnic Facilities	
11	Football Fields	Basketball Courts	Cluster IV
12	Softball Fields	Other	
13	Boating Facilities	Exercise Trails	
14	Exercise Trails	Bike Trails	Cluster V
15	Handball Courts	Nature Trails	
16	Other	Camping	
17	Golf Courses	Handball Courts	
18	Shuffleboard Courts	Historical Facilities	
19	Fishing Piers	Swimming Pools	
20	Bike Trails	Hiking Trails	
21	Hiking Trails	Golf Courses	
22	Nature Trails	Beach Access	
23	Camping	Fishing Piers	
24	Historical Facilities	Horse Trails	Cluster VI
25	Horse Trails	Shuffleboard Courts	

Population Density 3 - Population from 25,000 to 49,999



Florida Department of Environmental Protection
LAND AND WATER CONSERVATION FUND PROGRAM
GRANT APPLICATION PACKAGE

Outdoor Facility Needs Ranked by Priority Index: Population Density 4

Rank	Renovation	Construction	
	<u>Facility</u>	<u>Facility</u>	
1	Playgrounds	Soccer Fields	Cluster I
2	Rest Rooms	Playgrounds	Cluster II
3	Support Facilities	Picnic Facilities	
4	Tennis Courts	Baseball Fields	
5	Soccer Fields	Support Facilities	
6	Baseball Fields	Swimming Pools	Cluster III
7	Swimming Pools	Softball Fields	
8	Exercise Trails	Basketball Courts	
9	Softball Fields	Rest Rooms	
10	Basketball Courts	Other	Cluster IV
11	Handball Courts	Exercise Trails	
12	Picnic Facilities	Golf Courses	Cluster V
13	Boating Facilities	Tennis Courts	
14	Beach Access	Boating Facilities	
15	Fishing Piers	Fishing Piers	
16	Shuffleboard Courts	Football Fields	
17	Football Fields	Handball Courts	
18	Golf Courses	Bike Trails	
19	Nature Trails	Nature Trails	
20	Other	Hiking Trails	
21	Bike Trails	Horse Trails	
22	Camping	Beach Access	
23	Hiking Trails	Camping	Cluster VI
24	Historical Facilities	Historical Facilities	
25	Horse Trails	Shuffleboard Courts	

Population Density 4 - Population from 50,000 to 99,999



Florida Department of Environmental Protection
LAND AND WATER CONSERVATION FUND PROGRAM
GRANT APPLICATION PACKAGE

Outdoor Facility Needs Ranked by Priority Index: Population Density 5

Rank	Renovation	Construction	
	<u>Facility</u>	<u>Facility</u>	
1	Support Facilities	Support Facilities	Cluster I
2	Rest Rooms	Baseball Fields	Cluster II
3	Playgrounds	Playgrounds	
4	Tennis Courts	Softball Fields	
5	Swimming Pools	Rest Rooms	Cluster III
6	Boating Facilities	Soccer Fields	
7	Basketball Courts	Picnic Facilities	
8	Golf Courses	Bike Trails	
9	Softball Fields	Swimming Pools	
10	Picnic Facilities	Exercise Trails	
11	Historical Facilities	Hiking Trails	Cluster IV
12	Baseball Fields	Other	
13	Fishing Piers	Golf Courses	
14	Exercise Trails	Camping	
15	Soccer Fields	Beach Access	
16	Handball Courts	Historical Facilities	
17	Camping	Tennis Courts	
18	Football Fields	Basketball Courts	Cluster V
19	Nature Trails	Boating Facilities	
20	Beach Access	Fishing Piers	
21	Bike Trails	Football Fields	
22	Other	Nature Trails	
23	Hiking Trails	Handball Courts	
24	Horse Trails	Horse Trails	Cluster VI
25	Shuffleboard Courts	Shuffleboard Courts	

Population Density 5 - Population for 100,000 & Over



Florida Department of Environmental Protection
LAND AND WATER CONSERVATION FUND PROGRAM
GRANT APPLICATION PACKAGE



Note: Please fill out the forms, save, print and attach to the application, if not attached the project will be deemed ineligible, this is required information provided by the National Park Service to proceed with federal funding.

NEW FEDERAL WEBSITE ADDRESS

DO NOT PROCEED to the federal website:

<https://www.nps.gov/subjects/lwcf/lwcf-forms.htm>

to Complete the LWCF Proposal Description and Environmental Screening Form (PD/ESF)
without reading these INSTRUCTIONS FIRST:

Complete the listed information only for the PD/ESF form:

1. Cover Page
2. Step 1
3. Step 2 (DO NOT Complete Section C)
4. Step 2 (Complete all of Section D)
5. Proceed to Steps 5 – 7*
6. Fill out Federal form 424A for Acquisition Projects Reference Instructions, if needed
7. Fill out Federal form 424C for Construction Projects Reference Instructions, if needed

*If on Step 7 you check CE, you must provide # and an explanation.

(Tab as Exhibit "N")



Florida Department of Environmental Protection
LAND AND WATER CONSERVATION FUND PROGRAM
GRANT APPLICATION PACKAGE

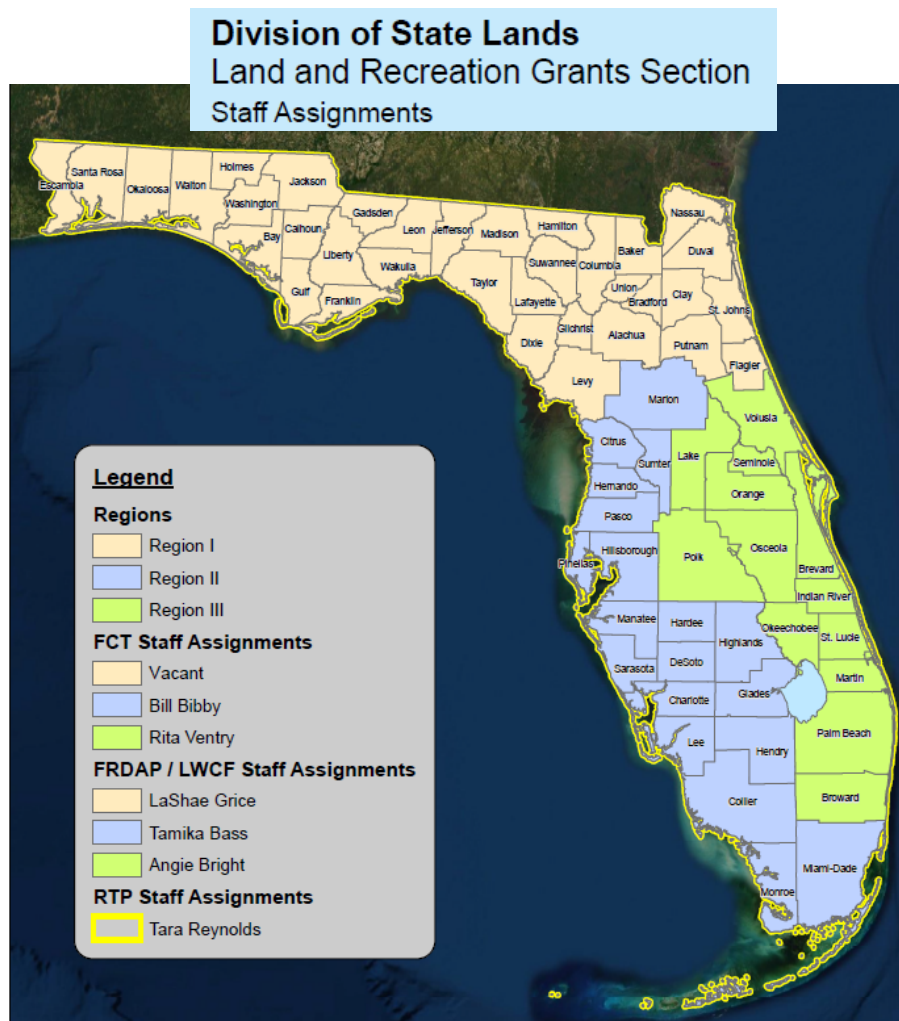
CONTACT FOR ADDITIONAL INFORMATION:

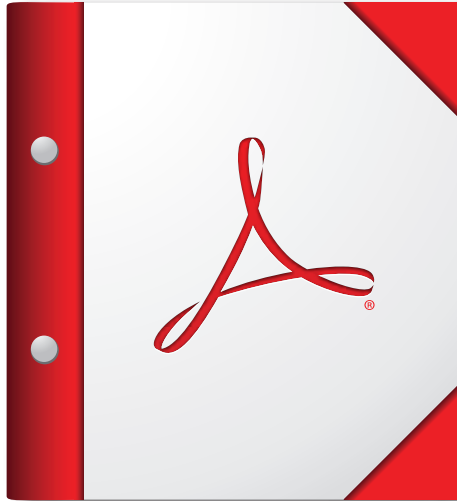
Contact	Phone
A. LWCF Application Information & Help	850/245-2501
B. LWCF Administrative Rule https://floridadep.gov/Lands/Land-And-Recreation-Grants	850/245-2501
C. Statewide Comprehensive Outdoor Recreation Plan (SCORP) https://floridadep.gov/parks/florida-scorp-outdoor-recreation-florida	850/245-3051
D. State Lands, Bureau of Appraisal	850/245-2555
E. Recreation Accessibility and Safety Program Manager, Florida Park Service	850/245-3031
F. Office of Greenways & Trails and the Florida Statewide Greenways & Trails Plan	850/245-2052



Florida Department of Environmental Protection
LAND AND WATER CONSERVATION FUND PROGRAM
GRANT APPLICATION PACKAGE

ATTACHMENT
LAND AND WATER CONSERVATION FUND PROGRAM (LWCF)
GRANT APPLICATION PACKET





**For the best experience, open this PDF portfolio in
Acrobat X or Adobe Reader X, or later.**

Get Adobe Reader Now!

1. **Requested Motion:**

Meeting Date: January 19, 2021

Review rankings of the design-bid-build process in response to RFP-21-03-PW-Lighting Consultant, and discussion of next steps.

Why the action is necessary:

Provides for framework for a design-bid-build contract for streetlighting consultant.

What the action accomplishes:

Provides staff with direction on how to proceed with the design-bid-build contract.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Chelsea O'Riley, Public Works
Director

5. **Background:**

The Town received three qualified responses to this solicitation. There were no local (Town of Fort Myers Beach) respondents. The following firms were the contenders: Trebilcock Consulting Solutions, PA, REDD Inc, DBA Town Lighting Engineers and A.D.A. Engineering, Inc. Staff scheduled interviews on January 8, 2021. A Selection Committee comprised of the Public Works Director, Environmental Project Manager, Public Safety Committee member and a Marine Resources Task Force member met to review and rank the firms. Currently this project is unbudgeted.

Lighting Consultant recommendation rankings:

- 1. REDD Inc, DBA Town Lighting Engineers (317 points)
- 2. Trebilcock Consulting Solutions (288 points)
- 3. A.D.A Engineering, Inc.(276 points)

Submitted proposals are available for review upon request.

Attachments:

1. RFP-21-03-PW SAC Minutes 12.20.20 FINAL
2. SAC RFP-21-03-PW Phone Interviews DRAFT minutes

Financial Impact:

6. **Alternative Action**

Do not approve.

7. **Management Recommendations:**

Determine a funding source and amount if Town Council wish to design and build its own lighting system.

8. **Recommended Approval:**

Chelsea O'Riley, Public Works Director

Created/Initiated - 1/13/2021

Chelsea O'Riley, Public Works Director
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Roger Hernstadt, Town Manager

Approved - 1/13/2021
Approved - 1/13/2021
Approved - 1/13/2021
Final Approval - 1/13/2021

MINUTES
FORT MYERS BEACH
Selection Advisory Committee
Town Hall – Council Chambers
2525 Estero Boulevard
Fort Myers Beach, FL 33931

Thursday, December 10, 2020

I. CALL TO ORDER

Meeting was called to order at 1:33 p.m. by Contracts Manager Jason Freeman.

Other members present:

Public Safety Committee Member Mike Childs
Environmental Project Manager Chadd Chustz
Chair of Marine Resources Task Force Steve Johnson
Public Works Director Chelsea O’Riley

II. RFP-21-03-PW – Lighting Consultant

Manager Freeman noted that the first bid did not result in proposals. The second request was sent out on October 21, 2020, and proposals were due November 20, 2020, which was extended to December 2, 2020, at 2:00 p.m. Three proposals were received on time: Trebilcock Consulting, Town Lighting Engineers and ADA Engineering. All proposals were complete.

The combined rankings (100 points per company per member) were: Trebilcock Consulting with 317 points; Town Lighting Engineers had 288 points and ADA Engineering received 276 points. Director O’Riley commented that Trebilcock Consulting did previous work for the Town and they were close by. She rated ADA Engineering second and noted that she was concerned since they had a lot of projects that were on-going. Town Lighting Engineers were ranked third because their office was located in central Florida.

Manager Chustz ranked Trebilcock Consulting first due to their previous experience with similar-sized municipalities. He felt all three were comparable regarding technical experience and project understanding and approach.

Mr. Childs rated Town Lighting Engineers first due to a former FP&L member on staff. He noted the person was in Juno and was familiar with the current system. The other two were ranked the same.

Chair Johnson ranked Town Lighting Engineers first because they had a more customized approach and they had key technical expertise. He felt they understood the science of lighting better than the other two, they had solar experience, they commented on the shortfalls of the MPO study and they understood different scenarios. He rated Trebilcock second. ~~since their main office was in Arizona~~. He noted that they were familiar with the Town but there were a lot of different organizations involved. ADA was ranked last because they only had one on-going lighting project to reference. He noted they were somewhat local but he was not impressed with their template bid. He commented that a lot of their work was retrofitting LEDs.

amended at 01.08.21 meeting

Manager Chustz remarked that he was not impressed with FP&L's offerings for sea turtle-friendly lighting.

MOTION: Director O'Riley moved to recommend to the Town Manager to enter into negotiations with (1) Trebilcock Consulting, (2) Town Lighting Engineers and (3) ADA Engineering; second by Manager Chustz.

Mr. Childs stated that FP&L would not allow another company to hang lights on their poles. Chair Johnson noted that FP&L was why there were there today. He agreed that they would have to replace poles if they chose another company. He suggested that an ex-FP&L employee could help them fast-track lighting. Director O'Riley felt that Trebilcock would be a good intermediary.

VOTE: Motion failed; 2-2.

MOTION: Chair Johnson moved to recommend that the SAC interview Town Lighting Engineers and Trebilcock Consulting over the most expedient method; second by Mr. Childs.

Director O'Riley stated that they needed to send questions to Manager Freeman to provide to the firms before interviews. She noted the firms could call in for the interviews. She suggested they rank them number one and number two or have a discussion after the interviews.

VOTE: Motion passed unanimously.

Manager Freeman reminded members that they were under the cone of silence.

III. ADJOURNMENT

Manager Freeman adjourned the meeting at 1:57 p.m.

Adopted 01/08/2021 with/without changes. Motion by STEVE JOHNSON
(DATE)

Vote 4-0 Signature 

- End of document

MINUTES
FORT MYERS BEACH
Selection Advisory Committee
Town Hall – Council Chambers
2525 Estero Boulevard
Fort Myers Beach, FL 33931

Friday, January 8, 2021

I. CALL TO ORDER

Meeting was called to order at 10:03 a.m. by Contracts Manager Jason Freeman.

Other members present:

Public Safety Committee Member Mike Childs
Environmental Project Manager Chadd Chustz
Chair of Marine Resources Task Force Steve Johnson
Public Works Director Chelsea O’Riley (via phone)

Consensus was reached to permit Director O’Riley to participate via phone.

II. APPROVAL OF MINUTES – December 10, 2020

Mr. Johnson did not state that the main offices of Trebilcock were in Arizona.

MOTION: Mr. Johnson moved to approve the minutes as amended; second by Mr. Childs.

VOTE: Motion passed unanimously.

III. FIRM PHONE INTERVIEWS FOR RFP-21-03-PW – Lighting Consultant

REDD Inc. DBA Town Lighting Engineers

1. What experience do you have with FPL? Have you done any projects using amber lighting through FPL and did they have the correct lighting in their stock?

Suzanne answered but the microphone did not pick up her comments. Joe noted that they validated the frequency of the lights and tested them in their lab and outside. Microphone cut out.

2. What experience do you have with FWC turtle guidelines, list your experience and/or case studies that are comparable to the Fort Myers Beach Estero Blvd. lighting project. The lighting projects that have accommodated sea turtle nesting areas, what were the design practices you employed and the processes you followed to implement them and what lessons did you learn?

Suzanne described turtle-friendly lighting experiences in Stuart, Juno Beach, Pensacola, and Bradenton Beach. She added that she and another member taught effective roadway lighting at

the University of Wisconsin. She mentioned wavelengths, color and keeping the light-shielded from the beach or long, low and shielded. She discussed the process they followed in selecting appropriate lighting with glare reduction and shielding. Public safety was their top priority and they learned they had to be creative to work within the FWC guidelines to meet the public safety needs.

3. What does sea turtle-friendly lighting mean to you and does it compromise public safety and are there any lighting principles you specifically employ with respect to the overall health of the citizenry?

Suzanne replied that turtle-friendly lighting meant that no lights would be visible from the beach during nesting season. They do not compromise public safety and both needs could be met. She discussed lighting options to maintain the health of the citizenry.

4. What types of long-wavelength amber luminaires have you worked with, what is your approach to selecting them for coastal wildlife lighting, what has been your experience with skyglow, eliminating glare, supporting dark skies principles and the effects of blue rich white light?

Suzanne indicated she worked with Cree, American Electric and Philips Cobra style lights. She described different design units and stated that they were selected depending on whether they met the lighting criteria for the project. She noted they used white glare ratings and IS files to come up with a range of appropriate luminaires. She discussed ambient light scattering in relation to skyglow and studies concerning the correction between exposure to blue light and sleep disruption.

5. From your initial research what lighting are you looking at? Will you or a member of your team be conducting the photometric study and will that person be responsible for the lighting design? Is that person the lead in your past projects involving sea turtle lighting?

Suzanne responded that they were looking at the Cree 590 nanometer amber lights plus special design options outside the FPL program. The lighting specialist listed in their proposal would be responsible for the study and lighting design. She described her experience as an electrical engineer and noted that her team had overlapping capabilities. Suzanne stated that they had a local presence in the area who would be available and Zoom was another option.

Ed Kramer was in attendance and left before the second firm was interviewed.

Trebilcock Consulting Solutions, PA

1. What experience do you have with FPL? Have you done any projects using amber lighting through FPL and did they have the correct lighting in stock?

Norm replied that they worked with FPL and supplied their lighting on many projects over the last 13 years. They did not use amber lights through FPL but they discussed available options for the beach that may be feasible. He noted they had good success with FPL in the past.

2. What experience do you have with FWC turtle guidelines, list your experience and/or case studies that are comparable to the Fort Myers Beach Estero Blvd. lighting project. The lighting projects that have accommodated sea turtle nesting areas, what were the design practices you employed and the processes you followed to implement them and what lessons did you learn?

Norm replied that they used FWC turtle guidelines in the last few years and the projects were highlighted on their proposal. He stated they used a turtle-friendly dark sky compliant fixture for a subdivision street lighting. Examples were included in their proposal. He indicated that they followed the FWC rules of low, shielded and long. He stated that they learned to keep current with the FWC guidelines and the certified light fixture list in addition to municipality guidelines. He revealed that they constructed prototype light fixtures to verify that the design met the needs of the community before mass ordering.

3. What does sea turtle-friendly lighting mean to you and does it compromise public safety and are there any lighting principles you specifically employ with respect to the overall health of the citizenry?

Norm responded that turtle-friendly lighting followed FWC guidelines where warranted, but the general guidelines were useful for all areas. Good lighting at crossings had to meet standards by the FDOT and the Illuminating Engineering Society (IES). Enhanced safety at all crossings would benefit pedestrians and drivers.

4. What types of long-wavelength amber luminaires have you worked with, what is your approach to selecting them for coastal wildlife lighting, what has been your experience with skyglow, eliminating glare, supporting dark skies principles and the effects of blue rich white light?

Norm described a Gulf side project that used a 1500 kelvin amber LED and 580 nanometer amber bollards and a 595 nanometer LED amber pool light. Their approach was to use FWC approved fixtures and follow their guidelines. He noted they assisted communities with following model lighting guidelines with the IES which included BUG rates (backlight, up light and glare criteria). He stated that they tended to recommend a lower color temperature in residential areas to provide the appropriate task lighting to enhance safety.

5. From your initial research what lighting are you looking at? Will you or a member of your team be conducting the photometric study and will that person be responsible for the lighting design? Is that person the lead in your past projects involving sea turtle lighting?

Norm replied that they were open to available lighting options and would target FWC approved fixtures, but they could accommodate FPL fixtures or a mix. He noted that they were able to provide a leasing option to cover construction and maintenance costs. A member of their team would conduct a photometric evaluation and design the project. He believed that their local presence allowed them to conduct studies efficiently. Norm was the engineer of record for sea turtle lighting projects and a team member would conduct the photometric study.

Norm stated that the project at 6240 Estero was private and the fixtures were designed and permitted through FWC guidelines.

IV. DISCUSSION

Ed Kramer was invited back into the meeting.

Mr. Childs leaned toward Town Lighting due to the number of people on the call and an ex-FPL employee, Joe Hancock, was on their team.

Director O'Riley felt that Town Lighting was comprehensive in their responses and they had a background with finding the middle ground with FPL. She was concerned that they were not local. She stated that Trebilcock mentioned local light ordinances, but she leaned toward Town Lighting due to their experience across the board.

Mr. Johnson felt that Town Lighting was more academic in their approach and they were comprehensive in their proposal. He agreed it would be harder to communicate with them, but he questioned whether that should exclude them. He noted that Norm from Trebilcock knew how to navigate local issues. He leaned toward Town Lighting and wondered about their transportation costs. Director O'Riley commented that travel costs would be included in their price. She explained that the Town Manager would negotiate with the firm they picked and if negotiations were not successful, they would go to the second firm.

Manager Chustz felt that both firms could do the job, but he preferred the local experience of Trebilcock.

Director O'Riley, Mr. Johnson, and Mr. Childs ranked Town Lighting Engineers first and Manager Chustz ranked Trebilcock Consulting Solutions first of the two.

MOTION: Director O'Riley moved to recommend to the Town Manager to recommend to Town Council to enter into negotiations with Town Lighting Engineers for lighting consultant services and if they do not come to a consensus then follow up with Trebilcock Consulting Solutions; second by Mr. Childs.

VOTE: Motion passed, 3-1 with Manager Chustz dissenting.

V. ADJOURNMENT

Manager Freeman adjourned the meeting at 11:00 a.m.

Signature_____

- End of document

1. Requested Motion:

Meeting Date: January 19, 2021

Authorization to enter into an agreement for Facility Use with FMB Little League

Why the action is necessary:

To provide staff direction on the final agreement for 2021.

What the action accomplishes:

2. Agenda:

ADMINISTRATIVE AGENDA

3. Requirement/Purpose:

4. Submitter of Information:

5. Background:

Fort Myers Beach Little League is requesting changes to the Facility Use Agreement for 2021. The agreement is the same as they have signed for the past several years with the only addition to the agreement referring to the COVID-19 pandemic. See (1) attached agreement from 2020, (2) the proposed 2021 Town agreement, and (3) the FMB Little League newly proposed agreement.

Attachments:

1. FMB Little League 2020 Agreement - EXECUTED
2. 116112413_1_Facility Use Agreement for Youth Sports -2021-C2
3. FMBLL Town Agreement FMBLL Edits 12072020

Financial Impact:

6. Alternative Action

7. Management Recommendations:

Authorize execution of Attachment 2.

8. Recommended Approval:

Alison Giesen, Director of Cultural, Parks & Recreation
Alison Giesen, Director of Cultural, Parks & Recreation
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Roger Hernstadt, Town Manager

Created/Initiated - 1/14/2021
Approved - 1/14/2021
Approved - 1/14/2021
Approved - 1/15/2021
Final Approval - 1/15/2021

FACILITY USE AGREEMENT FOR YOUTH SPORTS PROVIDER

THIS FACILITY USE AGREEMENT ("Agreement") made and entered into on this 15th day of January, 2020, by and between the Town of Fort Myers Beach, a Florida municipal corporation ("Town"), whose address is 2525 Estero Boulevard, Fort Myers Beach, FL 33931, and the Fort Myers Beach Little League, Inc., a Florida not for profit corporation ("League"), whose address is P.O. Box 2326, Fort Myers Beach, FL 33931.

Whereas, the Town and League recognize the need for public recreational facilities and programs, which contribute to a better quality of life for all of the Town's residents and visitors; and,

Whereas, the League and the Town are mutually interested in promoting youth sports and are aware of the beneficial effect on the youth, their families and the community; and,

Whereas, in the interest of providing the best possible youth sports program at the least cost to participants and users of the Town facilities, full cooperation between the Town and the League is necessary, and it is in the best interest of the parties to outline the details of such cooperation.

WITNESSETH:

ARTICLE 1 - PREMISES

- 1.1 Premises: For and in consideration of the mutual terms and conditions hereinafter set forth the Town grants the League, the non-exclusive right to use the baseball and softball fields, batting cage, community room/press box, concession stand, restrooms, three storage containers and authorization to post banners from sponsors of the League, within: Bay Oaks Recreation Campus, located at 2731 Oak Street, Town of Fort Myers Beach, Florida, 33931 ("Facility"), subject to the terms and conditions of this Agreement and to the rules and regulations for its use.
- 1.2 Use of Facility:
 - (a) The League shall use the Facility for the purpose of player registration, concession activities, conducting League business meetings for baseball/softball, baseball/softball games and practices during the primary season, from January 8th, 2020 to June 1, 2020 with the possibility to extend further if League growth requires a longer season.
 - (b) Fundraising activities may be conducted by the League during the primary season, provided that any fundraising activity by another group or organization on behalf of, or the benefit of the League, shall be approved in writing by the Town's Director of Parks and Recreation or designee ("Director") after submission of required documentation.
 - (c) No other use is authorized without the written approval of the Director.

(d) The League is and shall, at all times, be an independent contractor responsible to all parties for all of its acts or omissions related to the use of the Facility.

1.3 Required Documentation: No later than March 1st, 2020, the League shall provide the Director or designee with the following:

(a) Names and contact information for the League Board of Directors, including names, addresses, email address and contact phone number, as well as the name and contact information for the League representative appointed by the Board of Directors.

(b) Confirmation of continued active status as a nonprofit corporation in the State of Florida.

(c) Confirmation of continued membership in a national youth organization.

(d.) Proof of insurance as identified in Article 10.

(e) A notarized statement regarding background screening of coaches and assistant coaches as identified in Article 5.

(f) A schedule of League events including fundraising activities, practices and games for purposes of scheduling field maintenance. Changes to the schedule shall be submitted to the Director at least 48 hours in advance and the Town will make its best effort to accommodate any changes made to the schedule by League.

1.4 Control of Facility: While conducting games, practices and events, the Town shall provide the League access and keys to the Facility. However, the Town shall access to the Facility at all times and may require the League to pay for the cost of a law enforcement officer of the Lee County Sheriff's Office to enforce applicable Town ordinances, rules and regulations if deemed necessary by the Town.

1.5 Contact Person: The Town's contact person is the Director with a phone number of (239) 765-4222 and email address of Alison@fmbgov.com. The contact person for the League is Shannon Orlandini with a phone number of (239) 285-5015 and email address of shannon.orlandini@gmail.com. The parties shall direct all matters arising in connection with the performance of this Agreement to the attention of the contact person for attempted resolution or action. The League will advise the Town of changes in the League's contact person and league president within ten (10) days of any change. The Town will advise League of any outside requests for Facility usage within ten (10) days of receiving any such request, or as soon as practicable.

ARTICLE 2 - COST SHARING

2.1 Capital Improvement Projects and In -Kind –Services:

(a) Currently budgeted project requests will only be considered for approval upon successful performance of this Agreement.

(b) The Director will consider all infrastructure and/or facility improvement requests submitted in writing by the League, and must be submitted to the Director by April 1 of each year to be considered in developing the Department's budget.

(c) Facility additions, structures or construction of any kind will not be permitted on Town property without prior written request and written approval by the Director. It is the policy of the Town not to construct or authorize any improvements to the Facility that negatively impacts the limited resources of the Department.

(d) Any authorized improvement to the Facility by the League will be viewed as a donation to the Town and will become property of the Town. All such improvements, changes, alterations, or additions shall be performed by a licensed and insured contractor and all costs (including any required permits) shall be borne by the League.

(e) Necessary maintenance functions not performed by the League in a timely fashion may be performed by the Town, or at the Town's discretion a Town authorized vendor. The cost of maintenance will be billed directly to the League, and shall be paid by the League within thirty (30) days of receipt of the invoice.

2.2 In Kind Services: The League agrees to provide the following in - kind -services:

(a) Support of community based programs.

(b) Improvement of dug-out benches.

(c) Replace/make improvements to dug-outs on large field

(d) Replace/repair fencing sections as mutually agreed to by the League and the Director.

(e) Continue efforts to develop additional shared storage space

ARTICLE 3 - TERM OF USE

3.1 Term: The term of this Agreement shall commence on January 15th, 2020, and shall end (unless terminated sooner as hereinafter provided) on June 1, 2020, with the possibility to extend further if League growth requires a longer season.

3.2 Termination: The Town shall have the right to terminate this Agreement with or without cause, and thereby end any and all obligations created by this Agreement upon sixty (60) calendar days' written notice (any termination will be effective after the season unless public safety requires immediate termination).

3.3 Right of Entry: The Town and/or its designated agents, and third parties with whom it has contractual relationships, shall have the right to enter and inspect the Facility at any time during the term of this Agreement. The Town shall have the keys to all buildings at the Facility, and shall use reasonable efforts to minimize interference with League events. The Town will provide the League 24-hour verbal notice of any need to utilize the concession and/or office. Town use of concession stand would require a separate agreement to use League equipment.

- 3.4 Licenses, Permits and Fees: The League shall be responsible for obtaining any licenses or permits required for the operation of the concession or for placing signs at the facility. The League shall also be responsible for any and all fees related to the operation licensing and/or permits of their programs.
- 3.5 Assignment, Leasing and Successors in Interest: The Town reserves the right to freely assign this Agreement; the League, however, shall not assign this Agreement to any other persons or organization without first obtaining the Town's written approval. In addition, the League shall not have the right to assign any and all of its rights and interests under this Agreement to any subsidiary or parent company, or any successor to its business through merger, consolidation, voluntary sale, or transfer of substantially all of its assets without the express written consent of the Town. The League shall not lease or allow any other organization or persons to utilize the Facility, but shall direct all inquiries to the Town. Any attempt to effect an assignment without the Town's prior written consent shall be deemed a default, subject to the remedies provided herein.

ARTICLE 4 - TOWN OBLIGATIONS

- 4.1 Town's Maintenance Responsibilities: The Town will, based on available staff and budget limitations:
- (a) Be responsible of the mowing of the athletic fields and common areas.
 - (b) Be responsible for coordinating the irrigation and lighting of the fields.
 - (c) Be responsible for coordination of the fertilization, herbicide treatment, pesticide treatment and fungicide treatment of the fields.
 - (d) Be responsible for the maintenance of the public restrooms.
 - (e) Be responsible for the maintenance of building and field infrastructure.
 - (f) Provide trash bags and receptacles, and the removal of trash from receptacles and place into dumpsters.
 - (g) Be responsible to infield preparation prior to the first game scheduled each day. Any games after that, on the same day, will be the responsibility of the League to prepare.
 - (h) Paint the initial games lines prior to the first game scheduled each day. Any games after that, on the same day, will be the responsibility of the League to chalk the game lines.
 - (i) Over-seed the fields annually, or as needed at the Town's discretion.

ARTICLE 5 - LEAGUE OBLIGATIONS

- 5.1 League's Obligations: The League agrees to the following obligations:
- (a) Responsible for all the trash and litter pick up from areas that will be used by the League (Ball fields, dug outs, stands, concession area and parking lot) at the end of practices and games and place them in the proper receptacles.
 - (b) Responsible for any equipment loaned to the League by the Town.

- (c) Responsible for all utility charges for use of concession, storage rooms, meeting rooms and press box.
- (d) Ensure that all equipment in the concession stand, whether owned by the League or the Town, is in good working condition, and turned off following the completion of the season unless other arrangements have been made by the League and the Town.
- (e) Not charge admission to any game or activity under this Agreement.
- (f) Not sell, give, permit or otherwise distribute any alcohol beverages or tobacco products at the Facility.
- (g) Leave the Facility free of litter, personal items, materials and equipment upon leaving the Facility after each day of use.
- (h) In the event of a default in performance of any covenant, condition, or provision herein contained, the Town may serve written notice of such default on the League; and if the League shall not cure the same within thirty (30) calendar days, the Town may immediately terminate this Agreement and repossess the Facility.
- (i) The League, under the terms of the Agreement, is and shall at all times shall be an independent operator, responsible to all parties for all of its acts or omissions.
- (j) At the League's expense, and without obligation or liability on the part of the Town, maintain and replace all items or equipment owned by the League, including but not limited to concession equipment, freezers, warmers, steamers, etc.
- (k) Supply the Town with a complete game and practice schedule with dates and times at least 2 weeks prior to the beginning of the season.
- (l) Any changes to the League schedule will be notified to the Town as follows:
 - Non-weather related cancellations of games and practices: 24 hours.
 - Addition of practice: 2 days.
 - Addition of games: 5 days.

- 5.2 Background Screening: As set forth in Section 943.0438, Fla. Stat. (as same may be amended from time-to-time), no person shall be authorized to act as an athletic coach or assistant coach for the League, unless a background screening has been conducted which did not result in disqualification. Prior to March 1 of each year, the annual screening shall be conducted for each athletic coach and assistant coach, for sexual offenders and sexual predators; including criminal history. The League will be responsible for verifying that all coaches have had background screening prior to the beginning of their respective seasons. One week prior to the start of the season of each year, the League shall provide the Director a notarized statement which provides the names of all coaches and assistant coaches for the League and attests to the fact that they have all been screened in accordance with Section 943.0438, Fla. Stat. The statement shall also attest that there are no other coaches or assistant coaches for the League who are not on the list and that any new coaches or assistant coaches will first be the subject of the background screening required in Section 943.0438, Fla. Stat., and if approved, the names will be submitted in an addendum to the list and submitted to the Director within 5 days of the approval of the background screening. The League further agrees to timely comply with any additional requirements for background screening that may be imposed during the term of the Agreement by the Town.

ARTICLE 6 – IMPOSSIBILITY OF PERFORMANCE

- 6.1 Force Majeure: If the Facility or any part is destroyed or damaged by fire or any other cause or if any other casualty or unforeseen occurrence renders the fulfillment of this Agreement by the Town impossible, then this Agreement shall be terminated. The League hereby waives any claim for damages or compensation from the Town on account of such termination.

ARTICLE 7 - INDEMNIFICATION

- 7.1 Indemnification: The League will indemnify, defend, and hold the Town harmless from any and all liability, loss damage, costs expenses, including, without limitation, attorneys' fees, on account of injury or damage to persons, firms or corporations or to property directly or indirectly arising out of or relating to this Agreement, the performance or breach thereof, or the use or occupancy of the Facility, the parking area or other areas of the Facility by the League or its agents, servants, employees, exhibitors, independent contractors, patrons, guests or invitees; and in the event that suit shall be brought against the Town, either independently or jointly with the League on account thereof, the League will defend any such suit or suits – including appellate proceedings- at the sole cost of the League; and in the event of final judgment being obtained against Town, either independently or jointly with the League, then the League will pay such judgment immediately, with all interest and costs thereon, and shall hold the Town harmless therefrom. In the event the League shall fail to defend any such action on behalf of the Town to the satisfaction of the Town, Town may, but shall not be obligated to, defend the same by counsel of its choice, the cost of which defense to be borne exclusively by the League and paid by the League in such intervals and in such amounts as the Town shall demand. Nothing in this Agreement shall be construed to affect in any way the Town's rights, privileges, and immunities, including sovereign immunity as provided by law and set forth in Section 768.28 Fla. Stat. This provision shall survive the termination of this Agreement.

ARTICLE 8 - LIABILITY

- 8.1 Liability for Damage or Injury: The Town shall not be liable for any loss, damage or injury which may be sustained by any party or persons at the Facility other than the damage or injury caused solely by the negligence of the Town.
- 8.2 Alcoholic Beverages: The League shall not sell, give, permit or otherwise distribute any alcoholic beverages or tobacco products at the Facility.

ARTICLE 9 - NOTICES

- 9.1 Notices: Wherever in this Agreement is shall be required or permitted that notice or demand be given or served by either party to or on the other, such notice or

demand be given or served by either party to or on the other, such notice or demand shall not be deemed to have been duly given or served unless in writing and either personally delivered or forwarded by registered or certified mail, postage prepaid, to the respective addresses hereinafter set forth. Such addresses may be changed from time to time by either party by serving notice as above provided.

TO TOWN:

Town of Fort Myers Beach
c/o Town Manager
2525 Estero Boulevard
Fort Myers Beach, Florida 33931

TO LEAGUE:

Fort Myers Beach Little League, Inc.
P.O. Box 2326
Fort Myers Beach, Florida 33931

ARTICLE 10 - INSURANCE

- 10.1 Insurance: The League shall procure and maintain throughout the term of this Agreement comprehensive general liability insurance providing for a minimum of \$1,000,000.00 in coverage. Accident insurance must be available to all sports participants by the League. The name of the insured on the policy shall be the same as the League and the Town shall be named as an additional insured under said policy. A copy of the insurance certificate showing the Town as an additional insured shall be provided to the Director no later than March 1st, 2020. In the event the League fails to deliver said certificate to the Town in the above stated manner, the Town may cancel this Agreement or, but shall not be obligated to, procure the required policy. The certificate procured by the League shall provide for thirty (30) days prior written notice from the insurer to the Town of any cancellation or amendment to said insurance policy

ARTICLE 11 – TOWN RULES AND REGULATIONS

- 11.1 Rules and Regulations: The League will observe, obey & comply with all rules and regulations adopted by the Town and all laws, ordinances and regulations of other governmental units and agencies having lawful jurisdiction, which may be applicable to League's operations under this Agreement.

ARTICLE 12 – MISCELLANEOUS PROVISIONS

- 12.1 Indulgence Not Waiver: The indulgence of either party with regard to any breach or failure to perform any provision of the Agreement shall not deem to constitute a waiver of the provision or any portion of this Agreement either at the time the breach or failure occurs or at any time throughout the term of this Agreement.
- 12.2 Interpretation; Venue: This Agreement constitutes the entire Agreement between the parties with respect to the subject matter hereof and supersedes all prior verbal or written Agreements between the parties with respect thereto. This Agreement may only be amended by written document, properly authorized, executed and delivered by both parties hereto. This Agreement shall be interpreted as a whole unit and section headings are for convenience only. All interpretations shall be governed by the laws of the State of Florida. In the event it is necessary for either party to initiate legal action regarding this Agreement, venue shall be in the Twentieth Judicial Circuit for Lee County, Florida, for claims under state law and the Middle District of Florida for any claims which are justifiable in Federal Court.
- 12.3 Mediation: In the event of a dispute between the parties in connection with this Agreement, the parties agree to submit the disputed issue or issues to a mediator for non-binding mediation prior to filing a lawsuit. The parties shall agree on a mediator chosen from a list of certified mediators available from the Clerk of Court for Lee County. The fee of the mediator shall be shared equally by the parties. To the extent allowed by law, the mediation process shall be confidential and the results of the mediation or any testimony or argument introduced at the mediation shall be inadmissible as evidence in any subsequent proceeding concerning the disputed issue.
- 12.4 Public Records: The League shall allow public access to all documents, papers, letters, or other material subject to the provisions of the Town and made or received by the League in conjunction with this Agreement. Specifically, League shall:
- (a) Keep and maintain public records that ordinarily and necessarily would be required by the Town in order to perform the service.
 - (b) Meet all requirements for retaining public records and transfer, at no cost, to the Town all public records in possession of the League upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Town in a format that is compatible with the information technology system of the Town.

Shannon Orlandini

League President/ Designee Signature

1/15/2020
Date

Shannon Orlandini

League President/ Designee Printed Name

 Roger Hernstadt
Town of Fort Myers Beach Town Manager Signature
Roger Hernstadt

2/6/2020
Date

6

AFFIDAVIT OF CRIMINAL BACKGROUND SCREENING

(ATHLETIC AGREEMENT/ CONTRACT HOLDER)

ORGANIZATION/ AGREEMENT HOLDER NAME: FMB Little League
CONTACT'S NAME Shannon Orlandini TITLE President

DATE(S) OF FACILITY/ FIELD RENTAL:

Jan 08, 2020 - June 1, 2020

By signing this Affidavit, I am swearing or affirming that: (1) pursuant to the requirements set forth in Section 943.0438, Florida Statutes, all athletic coaches for independent sanctioning authorities have been Level 1 criminal background screened as provided in Section, 435.03, Florida Statutes, and have been deemed eligible by the Athletic agreement/contract holder listed on the Athletic agreement/contract, or (2) no individuals providing services or activities under the Athletic agreement/contract holder are required under Section 943.0438, Florida Statutes, to be Level 1 criminal background screened. The information contained in this Affidavit is up to date as of the date this Affidavit is furnished to the Town of Fort Myers Beach Parks and Recreation office.

Each athletic coach providing services or activities under the facility/field usage agreement who is required to comply with the Level 1 criminal background screening requirements set forth in Section 943.0438, Florida Statutes, is listed below, and is identified by name, birth date, and date deemed eligible by the Athletic agreement/ contract holder.

[Insert or attach list of individuals]

Shannon Orlandini

Signature of Affiant

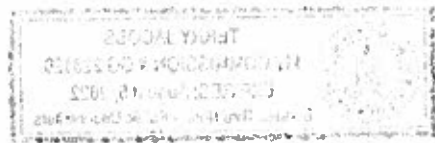
Sworn to and subscribed before me this 16 day of Jan, 2020.



Terry Jacobs
NOTARY PUBLIC, STATE OF FLORIDA

My signature, as Notary Public, verifies the Affiant's identification has been validated by

Personally Known



FACILITY USE AGREEMENT FOR YOUTH SPORTS PROVIDER

THIS FACILITY USE AGREEMENT ("Agreement") made and entered into on this [REDACTED] day of [REDACTED], 202[REDACTED], by and between the **Town of Fort Myers Beach**, a Florida municipal corporation ("Town"), whose address is 2525 Estero Boulevard, Fort Myers Beach, FL 33931, and the **Fort Myers Beach Little League, Inc., a Florida not for profit corporation** ("League"), whose address is P.O. Box 2326, Fort Myers Beach, FL 33931.

Whereas, the Town and League recognize the need for public recreational facilities and programs, which contribute to a better quality of life for all of the Town's residents and visitors; and,

Whereas, the League and the Town are mutually interested in promoting youth sports and are aware of the beneficial effect on the youth, their families and the community; and,

Whereas, in the interest of providing the best possible youth sports program at the least cost to participants and users of the Town facilities, full cooperation between the Town and the League is necessary, and it is in the best interest of the parties to outline the details of such cooperation.

WITNESSETH:

ARTICLE 1 – PREMISES

- 1.1 Premises: For and in consideration of the mutual terms and conditions hereinafter set forth the Town grants the League, the non-exclusive right to use the baseball and softball fields, batting cage, community room/press box, concession stand, restrooms, three storage containers and authorization to post banners from sponsors of the League, within: Bay Oaks Recreation Campus, located at 2731 Oak Street, Town of Fort Myers Beach, Florida, 33931 ("Facility"), subject to the terms and conditions of this Agreement and the Town's rules and regulations for its use.
- 1.2 Use of Facility:
 - (a) The League shall use the Facility for the purpose of player registration, concession activities, conducting League business meetings for baseball/softball, baseball/softball games and practices during the primary season, from [REDACTED], 20[REDACTED], to [REDACTED], 20[REDACTED], with the possibility to extend further if League growth requires a longer season.
 - (b) The League may conduct fundraising activities during the primary season, if any fundraising activity by another group or organization on behalf of, or the benefit of the League, shall be approved in writing by the Town's Director of Parks and Recreation or designee ("Director") after submission of required documentation.
 - (c) No other use is authorized without the written approval of the Director.
 - (d) The League is an independent contractor responsible to all parties for all of its acts or omissions related to the use of the Facility.
- 1.3 Required Documentation: No later than [REDACTED], 20[REDACTED], the League shall provide the Director or designee with the following:
 - (a) Names and contact information for the League Board of Directors, including names, addresses, email address and contact phone number, as

- well as the name and contact information for the League representative appointed by the Board of Directors.
- (b) Confirmation of continued active status as a nonprofit corporation in the State of Florida.
- (c) Confirmation of continued membership in a national youth organization.
- (d) Proof of insurance as identified in Article 10.
- (e) A notarized statement regarding background screening of coaches and assistant coaches as identified in Article 5.
- (f) A schedule of League events including fundraising activities, practices and games for purposes of scheduling field maintenance. Changes to the schedule shall be submitted to the Director at least 48 hours in advance and the Town will make its best effort to accommodate any changes made to the schedule by League.

1.4 Control of Facility: While conducting games, practices and events, the Town shall provide the League access and keys to the Facility. However, the Town shall access to the Facility at all times and may require the League to pay for the cost of a law enforcement officer of the Lee County Sheriff's Office to enforce applicable Town ordinances, rules and regulations if deemed necessary by the Town.

1.5 Contact Person: The Town's contact person is the Director with a phone number of (239) 765-4222 and email address of alison@fmbgov.com. The contact person for the League is Shannon Orlandini with a phone number of (239) 285-5015 and email address of shannon.orlandini@gmail.com. The parties shall direct all matters arising in connection with the performance of this Agreement to the attention of the contact person for attempted resolution or action. The League will advise the Town of changes in the League's contact person and league president within ten (10) days of any change. The Town will advise League of any outside requests for Facility usage within ten (10) days of receiving any such request, or as soon as practicable.

ARTICLE 2 - COST SHARING

2.1 Capital Improvement Projects and In -Kind -Services:

- (a) Currently budgeted project requests will only be considered for approval upon successful performance of this Agreement.
- (b) The Director will consider all infrastructure and/or facility improvement requests submitted in writing by the League, and must be submitted to the Director by [REDACTED] of each year to be considered in developing the Department's budget.
- (c) Facility additions, structures or construction of any kind will not be permitted on Town property without prior written request and written approval by the Director. It is the policy of the Town not to construct or authorize any improvements to the Facility that negatively affect the limited resources of the Department.
- (d) Any authorized improvement to the Facility by the League will be viewed as a donation to the Town and will become property of the Town. A licensed and insured contractor shall perform all such improvements, changes, alterations, or additions and all costs (including any required

- permits) shall be borne by the League.
- (e) Necessary maintenance functions not performed by the League in a timely fashion may be performed by the Town, or at the Town's discretion a Town authorized vendor. The cost of maintenance will be billed directly to the League, and shall be paid by the League within thirty (30) days of receipt of the invoice.

2.2 In Kind Services: The League agrees to provide the following in-kind-services:

- (a) Support of community based programs.
- (b) Improvement of dugout benches.
- (c) Replace /make improvements to dug-outs on large field
- (d) Replace /repair fencing sections as mutually agreed to by the League and the Director.
- (e) Continue efforts to develop additional shared storage space

ARTICLE 3 - TERM OF USE

- 3.1 Term: The term of this Agreement shall commence on _____, 20____, and shall end (unless terminated sooner as hereinafter provided) on _____, 20____, with the possibility to extend further if League growth requires a longer season.
- 3.2 Termination: The Town shall have the right to terminate this Agreement with or without cause, and thereby end all obligations created by this Agreement upon sixty (60) calendar days' written notice (any termination will be effective after the season unless public safety requires immediate termination).
- 3.3 Right of Entry: The Town and/or its designated agents, and third parties with whom it has contractual relationships, shall have the right to enter and inspect the Facility at any time during the term of this Agreement. The Town shall have the keys to all buildings at the Facility, and shall use reasonable efforts to minimize interference with League events. The Town will provide the League 24-hour verbal notice of any need to utilize the concession and/or office. Town use of concession stand would require a separate agreement to use League equipment.
- 3.4 Licenses, Permits and Fees: The League shall be responsible for obtaining any licenses or permits required for the operation of the concession or for placing signs at the facility. The League shall also be responsible for all fees related to the operation licensing and/or permits of their programs.
- 3.5 Assignment, Leasing and Successors in Interest: The Town reserves the right to assign this Agreement; the League, however, shall not assign this Agreement to any other persons or organization without first obtaining the Town's written approval. In addition, the League shall not have the right to assign any and all of its rights and interests under this Agreement to any subsidiary or parent company, or any successor to its business through merger, consolidation, voluntary sale, or transfer of substantially all of its assets without the express written consent of the Town. The League shall not lease or allow any other organization or persons to utilize the Facility, but shall direct all inquiries to the Town. Any attempt to effect an assignment without the Town's prior written consent shall be deemed a default, subject to the remedies provided herein.

ARTICLE 4 - TOWN OBLIGATIONS

4.1 Town's Maintenance Responsibilities: The Town will, based on available staff and budget limitations:

- (a) Be responsible for the mowing of the athletic fields and common areas.
- (b) Be responsible for coordinating the irrigation and lighting of the fields.
- (c) Be responsible for coordination of the fertilization, herbicide treatment, pesticide treatment and fungicide treatment of the fields.
- (d) Be responsible for the maintenance of the public restrooms.
- (e) Be responsible for the maintenance of building and field infrastructure.
- (f) Provide trash bags and receptacles, and the removal of trash from receptacles and place into dumpsters.
- (g) Be responsible for infield preparation prior to the first game scheduled each day. Any games after that, on the same day, will be the responsibility of the League to prepare.
- (h) Paint the initial game lines prior to the first game scheduled each day. Any games after that, on the same day, will be the responsibility of the League to chalk the game lines.
- (i) Over-seed the fields annually, or as needed at the Town's discretion.

ARTICLE 5 - LEAGUE OBLIGATIONS

5.1 League's Obligations: The League agrees to the following obligations:

- (a) Responsible for all the trash and litter pick up from areas that will be used by the League (Ball fields, dug outs, stands, concession area and parking lot) at the end of practices, games, and place them in the proper receptacles.
- (b) Responsible for any equipment loaned to the League by the Town.
- (c) Responsible for all utility charges for use of concession, storage rooms, meeting rooms and press box.
- (d) Ensure that all equipment in the concession stand, whether owned by the League or the Town, is in good working condition, and turned off following the completion of the season unless the League and the Town have made other arrangements.
- (e) Not charge admission to any game or activity under this Agreement.
- (f) Not sell, give, permit or otherwise distribute any alcohol beverages or tobacco products at the Facility.
- (g) Leave the Facility free of litter, personal items, materials and equipment upon leaving the Facility after each day of use.
- (h) In the event of a default in performance of any covenant, condition, or provision herein contained, the Town may serve written notice of such default on the League; and if the League shall not cure the same within thirty (30) calendar days, the Town may immediately terminate this Agreement and repossess the Facility.
- (i) The League is an independent operator, responsible to all parties for all of its acts or omissions.
- (j) At the League's expense, and without obligation or liability on the part of the Town, maintain and replace all items or equipment owned by the League, including but not limited to concession equipment, freezers, warmers, steamers, etc.

- (k) Supply the Town with a complete game and practice schedule with dates and times at least 2 weeks prior to the beginning of the season.
- (l) Any changes to the League schedule will be notified to the Town as follows:
 - Non-weather related cancellations of games and practices: 24 hours.
 - Addition of practice: 2 days.
 - Addition of games: 5 days.

5.2 Background Screening: As set forth in Section 943.0438, Fla. Stat. (as same may be amended from time-to-time), no person shall be authorized to act as an athletic coach or assistant coach for the League, unless a background screening has been conducted which did not result in disqualification. Prior to [REDACTED] of each year, the annual screening shall be conducted for each athletic coach and assistant coach, for sexual offenders and sexual predators; including criminal history. The League will be responsible for verifying that all coaches have had background screening prior to the beginning of their respective seasons. One week prior to the start of the season of each year, the League shall provide the Director a notarized statement which provides the names of all coaches and assistant coaches for the League and attests to the fact that they have all been screened in accordance with Section 943.0438, Fla. Stat. The statement shall also attest that there are no other coaches or assistant coaches for the League who are not on the list and that any new coaches or assistant coaches will first be the subject of the background screening required in Section 943.0438, Fla. Stat., and if approved, the names will be submitted in an addendum to the list and submitted to the Director within 5 days of the approval of the background screening. The League further agrees to timely comply with any additional requirements for background screening that may be imposed during the term of the Agreement by the Town.

ARTICLE 6 - IMPOSSIBILITY OF PERFORMANCE

6.1 Force Majeure: If the Facility or any part is destroyed or damaged by fire or any other cause or if any other casualty or unforeseen occurrence renders the fulfillment of this Agreement by the Town impossible, then this Agreement shall be terminated. The League hereby waives any claim for damages or compensation from the Town because of such termination.

ARTICLE 7 – INDEMNIFICATION

7.1 Indemnification: The League will indemnify, defend, and hold the Town harmless from any and all liability, loss damage, costs expenses, including, without limitation, attorneys' fees, on account of injury or damage to persons, firms or corporations or to property directly or indirectly arising out of or relating to this Agreement, the performance or breach thereof, or the use or occupancy of the Facility, the parking area or other areas of the Facility by the League or its agents, servants, employees, exhibitors, independent contractors, patrons, guests or invitees; and in the event that suit shall be brought against the Town, either independently or jointly with the League on account thereof, the League will defend any such suit or suits -including appellate proceedings- at the sole cost of the League; and in the event of final judgment being obtained against Town, either independently or jointly with the League, then the League will pay such judgment

immediately, with all interest and costs thereon, and shall hold the Town harmless therefrom. In the event the League shall fail to defend any such action on behalf of the Town to the satisfaction of the Town, Town may, but shall not be obligated to, defend the same by counsel of its choice, the cost of which defense to be borne exclusively by the League and paid by the League in such intervals and in such amounts as the Town shall demand. The League will comply with all requirements imposed by any federal, state, county or Town emergency declaration. Failure to do so will result in immediate revocation of this Agreement. The League is familiar with federal, state, county and local laws, orders, directives, and guidelines relating to COVID-19 (including the Center of Disease Control's prevention guidance), and will comply with all such orders, directives and guidelines while on Town property and covenant not enter onto Town property if any League member is experiencing any symptoms of COVID-19, or have a confirmed or suspected case of COVID-19, or have come in contact in the last fourteen (14) days with a person who has been confirmed or suspected of having COVID-19. Notwithstanding the risks associated with participating in events held on Town facilities, the League accepts and assumes all risks and liability of personal injury, illness, disability, death, or property damage related to COVID-19, arising from being on the premises or engaging in activity on the premises, whether caused by the negligence of the Town or otherwise. Nothing in this Agreement shall be construed to affect in any way the Town's rights, privileges, and immunities, including sovereign immunity as provided by law and set forth in Section 768.28 Fla. Stat. This provision shall survive the termination of this Agreement.

ARTICLE 8 – LIABILITY

- 8.1 Liability for Damage or Injury: The Town shall not be liable for any loss, damage or injury which may be sustained by any party or persons at the Facility other than the damage or injury caused solely by the negligence of the Town.
- 8.2 Alcoholic Beverages: The League shall not sell, give, permit or otherwise distribute any alcoholic beverages or tobacco products at the Facility.

ARTICLE 9 – NOTICES

- 9.1 Notices: Wherever in this Agreement is shall be required or permitted that notice or demand be given or served by either party to or on the other, such notice or demand shall not be deemed to have been duly given or served unless in writing and either personally delivered or forwarded by registered or certified mail, postage prepaid, to the respective addresses hereinafter set forth. Either party may change such addresses from time to time by serving notice as above provided.

TO TOWN:

Town of Fort Myers Beach c/o Town Manager
2525 Estero Boulevard
Fort Myers Beach, Florida 33931

TO LEAGUE:

Fort Myers Beach Little League, Inc.

ARTICLE 10 – INSURANCE

- 10.1 Insurance: The League shall procure and maintain throughout the term of this Agreement comprehensive general liability insurance providing for a minimum of \$1,000,000.00 in coverage. Accident insurance must be available to all sports participants by the League. The name of the insured on the policy shall be the same as the League and the Town shall be named as an additional insured under said policy. A copy of the insurance certificate showing the Town as an additional insured shall be provided to the Director no later than , 20 . In the event the League fails to deliver said certificate to the Town in the above stated manner, the Town may cancel this Agreement or, but shall not be obligated to, procure the required policy. The certificate procured by the League shall provide for thirty (30) days prior written notice from the insurer to the Town of any cancellation or amendment to said insurance policy

ARTICLE 11 - TOWN RULES AND REGULATIONS

- 11.1 Rules and Regulations: The League will observe, obey & comply with all rules and regulations adopted by the Town and all laws, ordinances and regulations of other governmental units and agencies having lawful jurisdiction, which may be applicable to League's operations under this Agreement.

ARTICLE 12 - MISCELLANEOUS PROVISIONS

- 12.1 Indulgence Not Waiver: The indulgence of either party with regard to any breach or failure to perform any provision of the Agreement shall not deem to constitute a waiver of the provision or any portion of this Agreement at the time the breach or failure occurs or at any time throughout the term of this Agreement.
- 12.2 Interpretation: This Agreement constitutes the entire Agreement between the parties with respect to the subject matter hereof and supersedes all prior verbal or written Agreements between the parties with respect thereto. This Agreement may only be amended by written document, properly authorized, executed and delivered by both parties hereto. This Agreement shall be interpreted as a whole unit and section headings are for convenience only. The laws of the State of Florida shall govern all interpretations.
- 12.3 Venue: In the event it is necessary for either party to initiate legal action regarding this Agreement, venue shall be in the Twentieth Judicial Circuit for Lee County, Florida, for claims under state law and the Middle District of Florida for any claims, which are justifiable in Federal Court.
- 12.4 Mediation: In the event of a dispute between the parties in connection with this Agreement, the parties agree to submit the disputed issue or issues to a mediator for non-binding mediation prior to filing a lawsuit. The parties shall agree on a mediator chosen from a list of certified mediators available from the Clerk of Court for Lee County. The fee of the mediator shall be shared equally by the parties. To

the extent allowed by law, the mediation process shall be confidential and the results of the mediation or any testimony or argument introduced at the mediation shall be inadmissible as evidence in any subsequent proceeding concerning the disputed issue.

- 12.5 Severability: If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable.
- 12.6 Survival of Provisions: Any terms or conditions of this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.
- 12.7 Attorneys' Fees and Waiver of Jury Trial: If either the Town or League is required to enforce the terms of this Agreement by court proceedings or otherwise, whether or not formal legal action is required, the parties shall bear their own attorney fees, costs and expenses, at the trial and appellate level. In the event of any litigation arising out of this Agreement. EACH PARTY HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ITS RIGHT TO TRIAL BY JURY.
- 12.8 Counterparts: This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterpart shall constitute the same instrument.
- 12.9 Authorization to Sign Contract: The execution and delivery of this Agreement by both parties is within their capacity and all requisite action has been taken to make this Agreement valid and binding on the parties in accordance with its terms.
- 12.10 Public Records: Notwithstanding anything contained herein, as provided under Section 119.0701, Fla. Stat., if League: (i) provides a service; and (ii) acts on behalf of Town as provided under Section 119.011(2) Fla. Stat., the League shall comply with the requirements of Section 119.0701, Fla. Stat., as it may be amended from time to time. The League is specifically required to:
 - (a) Keep and maintain public records required by the Town to perform services as provided under this Agreement.
 - (b) Upon request from the Town's Custodian of Public Records, provide the Town with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Fla. Stat., or as otherwise provided by law. The League further agrees that all fees, charges and expenses shall be determined in accordance with Town fees associated with public records requests.
 - (c) Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement, if the League does not transfer the records to the Town.

- (d) Upon completion of the Agreement, the League shall transfer, at no cost to the Town, all public records in possession of the League unless notified by Town's representative/liaison, on behalf of the Town's custodian of public records, to keep and maintain public records required by the Town to perform the service. If the League transfers all public records to the Town upon completion of the Agreement, the League shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If the League keeps and maintains public records upon completion of the Agreement, the League shall meet all applicable requirements for retaining public records. All records stored electronically by the League must be provided to Town, upon request of the Town's custodian of public records, in a format that is compatible with the information technology systems of Town, and at no cost to Town.

Failure of the League to comply with the requirements of this article shall be a material breach of this Agreement. Town shall have the right to exercise any and all remedies available to it, including but not limited to, the right to terminate for cause. The League acknowledges that it has familiarized itself with the requirements of Chapter 119, Fla. Stat., and other requirements of state law applicable to public records not specifically set forth herein.

IF THE LEAGUE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE LEAGUE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, PLEASE CONTACT THE TOWN CLERK AT 2525 ESTERO BLVD., FORT MYERS BEACH, FL 33931, BY E-MAIL AT AMY@FMBGOV.COM OR BY TELEPHONE AT 239-765-0202.

[REMINDER OF PAGE LEFT BLANK – SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement by their proper officials, duly authorized to do so the date above first written.

TOWN OF FORT MYERS BEACH

Roger T. Hernstadt, Town Manager

ATTEST:

Amy Baker, Assistant 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

FORT MYERS BEACH LITTLE LEAGUE, INC.

Name: _____
Title: _____

WITNESS

Name: _____

AFFIDAVIT OF CRIMINAL BACKGROUND SCREENING

{ATHLETIC AGREEMENT/ CONTRACT HOLDER}

ORGANIZATION/ AGREEMENT HOLDER NAME:

CONTACT'S NAME _____ TITLE _____

DATES(S) OF FACILITY/ FIELD RENTAL:

By signing this Affidavit, I am swearing or affirming that: (1) pursuant to the requirements set forth in Section 943.0438, Florida Statutes, all athletic coaches for independent sanctioning authorities have been Level 1 criminal background screened as provided in Section, 435.03, Florida Statutes, and have been deemed eligible by the Athletic agreement/contract holder listed on the Athletic agreement/contract, or (2) no individuals providing services or activities under the Athletic agreement/contract holder are required under Section 943.0438, Florida Statutes, to be Level 1 criminal background screened. The information contained in this Affidavit is up to date as of the date this Affidavit is furnished to the Town of Fort Myers Beach Parks and Recreation office.

Each athletic coach providing services or activities under the facility/field usage agreement who is required to comply with the Level 1 criminal background screening requirements set forth in Section 943.0438, Florida Statutes, is listed below, and is identified by name, birth date, and date deemed eligible by the Athletic agreement/ contract holder.

[Insert or attach list of agreements]

Signature of Affiant

STATE OF FLORIDA)

COUNTY OF LEE)

SWORN TO AND SUBSCRIBED BEFORE ME, on this ____ day of _____, 20__, by means of () physical presence or () online notarization, personally appeared _____ as _____ of the Town of Fort Myers Beach, () who is personally known to me or () who has produced _____ as identification.

NOTARY PUBLIC – State of Florida

My commission expires:

FACILITY USE AGREEMENT FOR YOUTH SPORTS PROVIDER

THIS FACILITY USE AGREEMENT ("Agreement") made and entered into on this day of , 202 , by and between the **Town of Fort Myers Beach**, a Florida municipal corporation ("Town"), whose address is 2525 Estero Boulevard, Fort Myers Beach, FL 33931, and the **Fort Myers Beach Little League, Inc., a Florida not for profit corporation** ("League"), whose address is P.O. Box 2326, Fort Myers Beach, FL 33931.

Whereas, the Town and League recognize the need for public recreational facilities and programs, which contribute to a better quality of life for all of the Town's residents and visitors; and,

Whereas, the League and the Town are mutually interested in promoting youth sports and are aware of the beneficial effect on the youth, their families and the community; and,

Whereas, in the interest of providing the best possible youth sports program at the least cost to participants and users of the Town facilities, full cooperation between the Town and the League is necessary, and it is in the best interest of the parties to outline the details of such cooperation.

WITNESSETH:

ARTICLE I – PREMISES

- 1.1 Premises: For and in consideration of the mutual terms and conditions hereinafter set forth the Town grants the League, the non-exclusive right to use the baseball and softball fields, batting cage, community room/press box, concession stand, restrooms, three storage containers and authorization to post banners from sponsors of the League, within: Bay Oaks Recreation Campus, located at 2731 Oak Street, Town of Fort Myers Beach, Florida, 33931 ("Facility"), subject to the terms and conditions of this Agreement and the Town's rules and regulations for its use.
- 1.2 Use of Facility:
 - (a) The League shall use the Facility for the purpose of player registration, concession activities, conducting League business meetings for baseball/softball, baseball/softball games and practices during the primary season, from , 20 , to , 20 , with the possibility to extend further if League growth requires a longer season.
 - (b) The League may conduct fundraising activities during the primary season, if any fundraising activity by another group or organization on behalf of, or the benefit of the League, shall be approved in writing by the Town's Director of Parks and Recreation or designee ("Director") after submission of required documentation.
 - (c) No other use is authorized without the written approval of the Director.
 - (d) The League is an independent contractor responsible to all parties for all of its acts or omissions related to the use of the Facility.
- 1.3 Required Documentation: No later than , 20 , the League shall provide the Director or designee with the following:
 - (a) Names and contact information for the League Board of Directors, including names, addresses, email address and contact phone number, as

well as the name and contact information for the League representative appointed by the Board of Directors.

- (b) Confirmation of continued active status as a nonprofit corporation in the State of Florida.
- (c) Confirmation of continued membership in a national youth organization.
- (d) Proof of insurance as identified in Article 10.
- (e) A notarized statement regarding background screening of coaches and assistant coaches as identified in Article 5.
- (f) A schedule of League events including fundraising activities, practices and games for purposes of scheduling field maintenance. Changes to the schedule shall be submitted to the Director at least 48 hours in advance and the Town will make its best effort to accommodate any changes made to the schedule by League.

1.4 Control of Facility: While conducting games, practices and events, the Town shall provide the League access and keys to the Facility. However, the Town shall access to the Facility at all times and may require the League to pay for the cost of a law enforcement officer of the Lee County Sheriff's Office to enforce applicable Town ordinances, rules and regulations if deemed necessary by the Town.

1.5 Contact Person: The Town's contact person is the Director with a phone number of (239) 765-4222 and email address of alison@fmbgov.com. The contact person for the League is Shannon Orlandini with a phone number of (239) 285-5015 and email address of shannon.orlandini@gmail.com. The parties shall direct all matters arising in connection with the performance of this Agreement to the attention of the contact person for attempted resolution or action. The League will advise the Town of changes in the League's contact person and league president within ten (10) days of any change. The Town will advise League of any outside requests for Facility usage within ten (10) days of receiving any such request, or as soon as practicable.

ARTICLE 2 - COST SHARING

2.1 Capital Improvement Projects and In -Kind -Services:

- (a) Currently budgeted project requests will only be considered for approval upon successful performance of this Agreement.
- (b) The Director will consider all infrastructure and/or facility improvement requests submitted in writing by the League, and must be submitted to the Director by September of each year to be considered in developing the Department's budget.
- (c) Facility additions, structures or construction of any kind will not be permitted on Town property without prior written request and written approval by the Director. It is the policy of the Town not to construct or authorize any improvements to the Facility that negatively affect the limited resources of the Department.
- (d) Any authorized improvement to the Facility by the League will be viewed as a donation to the Town and will become property of the Town. A licensed and insured contractor shall perform all such improvements, changes, alterations, or additions and all costs (including any required

- permits) shall be borne by the League.
- (c) Necessary maintenance functions not performed by the League in a timely fashion may be performed by the Town, or at the Town's discretion a Town authorized vendor. The cost of maintenance will be billed directly to the League, and shall be paid by the League within thirty (30) days of receipt of the invoice.

2.2 In Kind Services: The League agrees to provide the following in-kind-services:

If town has new renovation budget this should be edited to reflect no capital improvements are to occur in 2020-2021 season. We have already done d and b and replaced critical fencing.

- (a) Support of community based programs. **What does A mean?**
- (b) ~~Improvement of dugout benches.~~
- (c) Replace /make improvements to dug-outs on large field
- (d) ~~Replace /repair fencing sections as mutually agreed to by the League and the Director.~~
- (e) Continue efforts to develop additional shared storage space

TERM OF USE

- 3.1 Term: The term of this Agreement shall commence on , 20 , and shall end (unless terminated sooner as hereinafter provided) on , 20 , with the possibility to extend further if League growth requires a longer season.
- 3.2 Termination: The Town shall have the right to terminate this Agreement with or without cause, and thereby end all obligations created by this Agreement upon sixty (60) calendar days' written notice (any termination will be effective after the season unless public safety requires immediate termination).
- 3.3 Right of Entry: The Town and/or its designated agents, and third parties with whom it has contractual relationships, shall have the right to enter and inspect the Facility at any time during the term of this Agreement. The Town shall have the keys to all buildings at the Facility, and shall use reasonable efforts to minimize interference with League events. The Town will provide the League 24-hour verbal notice of any need to utilize the concession and/or office. Town use of concession stand would require a separate agreement to use League equipment.
- 3.4 Licenses, Permits and Fees: The League shall be responsible for obtaining any licenses or permits required for the operation of the concession or for placing signs at the facility. The League shall also be responsible for all fees related to the operation licensing and/or permits of their programs.
- 3.5 Assignment, Leasing and Successors in Interest: The Town reserves the right to assign this Agreement; the League, however, shall not assign this Agreement to any other persons or organization without first obtaining the Town's written approval. In addition, the League shall not have the right to assign any and all of its rights and interests under this Agreement to any subsidiary or parent company, or any successor to its business through merger, consolidation, voluntary sale, or transfer of substantially all of its assets without the express written consent of the Town. The League shall not lease or allow any other organization or persons to utilize the Facility, but shall direct all inquiries to the Town. Any attempt to effect an assignment without the Town's prior written consent shall be deemed a default, subject to the remedies provided herein.

ARTICLE 4 - TOWN OBLIGATIONS

4.1 Town's Maintenance Responsibilities: The Town will, based on available staff and budget limitations:

- (a) Be responsible of the mowing of the athletic fields and common areas.
- (b) Be responsible for coordinating the irrigation and lighting of the fields.
- (c) Be responsible for coordination of the fertilization, herbicide treatment, pesticide treatment and fungicide treatment of the fields.
- (d) Be responsible for the maintenance of the public restrooms.
- (e) Be responsible for the maintenance of building and field infrastructure.
- (f) Provide trash bags and receptacles, and the removal of trash from receptacles and place into dumpsters.
- (g) Be responsible for infield preparation prior to the first game scheduled each day. Any games after that, on the same day, will be the responsibility of the League to prepare.
- (h) Paint the initial games lines prior to the first game scheduled each day. Any games after that, on the same day, will be the responsibility of the League to chalk the game lines.
- (i) Over-seed the fields annually, or as needed at the Town's discretion.

ARTICLE 5 - LEAGUE OBLIGATIONS

5.1 League's Obligations: The League agrees to the following obligations:

- (a) Responsible for all the trash and litter pick up from areas that will be used by the League (Ball fields, dug outs, stands, concession area and parking lot) at the end of practices, games, and place them in the proper receptacles.
- (b) Responsible for any equipment loaned to the League by the Town.
- (c) Responsible for all utility charges for use of concession, storage rooms, meeting rooms and press box.
- (d) Ensure that all equipment in the concession stand, whether owned by the League or the Town, is in good working condition, and turned off following the completion of the season unless the League and the Town have made other arrangements.
- (e) Not charge admission to any game or activity under this Agreement.
- (f) Not sell, give, permit or otherwise distribute any alcohol beverages or tobacco products at the Facility.
- (g) Leave the Facility free of litter, personal items, materials and equipment upon leaving the Facility after each day of use.
- (h) In the event of a default in performance of any covenant, condition, or provision herein contained, the Town may serve written notice of such default on the League; and if the League shall not cure the same within thirty (30) calendar days, the Town may immediately terminate this Agreement and repossess the Facility.
- (i) The League is an independent operator, responsible to all parties for all of its acts or omissions.
- (j) At the League's expense, and without obligation or liability on the part of the Town, maintain and replace all items or equipment owned by the League, including but not limited to concession equipment, freezers, warmers, steamers, etc.

- (k) Supply the Town with a complete game and practice schedule with dates and times at least 2 weeks prior to the beginning of the season.
- (l) Any changes to the League schedule will be notified to the Town as follows:
 - Non-weather related cancellations of games and practices: 24 hours.
 - Addition of practice: 2 days.
 - Addition of games: 5 days.

5.2 Background Screening: As set forth in Section 943.0438, Fla. Stat. (as same may be amended from time-to-time), no person shall be authorized to act as an athletic coach or assistant coach for the League, unless a background screening has been conducted which did not result in disqualification. Prior to ~~the beginning~~ of each year, the annual screening shall be conducted for each athletic coach and assistant coach, for sexual offenders and sexual predators; including criminal history. The League will be responsible for verifying that all coaches have had background screening prior to the beginning of their respective seasons. One week prior to the start of the season of each year, the League shall provide the Director a notarized statement which provides the names of all coaches and assistant coaches for the League and attests to the fact that they have all been screened in accordance with Section 943.0438, Fla. Stat. The statement shall also attest that there are no other coaches or assistant coaches for the League who are not on the list and that any new coaches or assistant coaches will first be the subject of the background screening required in Section 943.0438, Fla. Stat., and if approved, the names will be submitted in an addendum to the list and submitted to the Director within 5 days of the approval of the background screening. The League further agrees to timely comply with any additional requirements for background screening that may be imposed during the term of the Agreement by the Town.

ARTICLE 6 - IMPOSSIBILITY OF PERFORMANCE

- 6.1 Force Majeure: If the Facility or any part is destroyed or damaged by fire or any other cause or if any other casualty or unforeseen occurrence renders the fulfillment of this Agreement by the Town impossible, then this Agreement shall be terminated. The League hereby waives any claim for damages or compensation from the Town because of such termination.

ARTICLE 7 – INDEMNIFICATION

- 7.1 Indemnification: The League will indemnify, defend, and hold the Town harmless from any and all liability, loss damage, costs expenses, including, without limitation, attorneys' fees, on account of injury or damage to persons, firms or corporations or to property directly or indirectly arising out of or relating to this Agreement, the performance or breach thereof, or the use or occupancy of the Facility, the parking area or other areas of the Facility by the League or its agents, servants, employees, exhibitors, independent contractors, patrons, guests or invitees; and in the event that suit shall be brought against the Town, either independently or jointly with the League on account thereof, the League will defend any such suit or suits -including appellate proceedings- at the sole cost of the League; and in the event of final judgment being obtained against Town, either independently or jointly with the League, then the League will pay such judgment

This should say something that refers to will comply with current CDC requirements at the time of suspected case (CDC just changed this to 7 days).

immediately, with all interest and costs thereon, and shall hold the Town harmless therefrom. In the event the League shall fail to defend any such action on behalf of the Town to the satisfaction of the Town, Town may, but shall not be obligated to, defend the same by counsel of its choice, the cost of which defense to be borne exclusively by the League and paid by the League in such intervals and in such amounts as the Town shall demand. The League will comply with all requirements imposed by any federal, state, county or Town emergency declaration. Failure to do so will result in immediate revocation of this Agreement. The League is familiar with federal, state, county and local laws, orders, directives, and guidelines relating to COVID-19 (including the Center of Disease Control's prevention guidance), and will comply with all such orders, directives and guidelines while on Town property and covenant not enter onto Town property if any League member is experiencing any symptoms of COVID-19, or have a confirmed or suspected case of COVID-19, or have come in contact in the last fourteen (14) days with a person who has been confirmed or suspected of having COVID-19. Notwithstanding the risks associated with participating in events held on Town facilities, the League accepts and assumes all risks and liability of personal injury, illness, disability, death, or property damage related to COVID-19, arising from being on the premises or engaging in activity on the premises, whether caused by the negligence of the Town or otherwise. Nothing in this Agreement shall be construed to affect in any way the Town's rights, privileges, and immunities, including sovereign immunity as provided by law and set forth in Section 768.28 Fla. Stat. This provision shall survive the termination of this Agreement.

Strike the yellow highlight. We will NOT agree to this

ARTICLE 8 -- LIABILITY

- 8.1 Liability for Damage or Injury: The Town shall not be liable for any loss, damage or injury which may be sustained by any party or persons at the Facility other than the damage or injury caused solely by the negligence of the Town.
- 8.2 Alcoholic Beverages: The League shall not sell, give, permit or otherwise distribute any alcoholic beverages or tobacco products at the Facility.

ARTICLE 9 NOTICES

- 9.1 Notices: Wherever in this Agreement is shall be required or permitted that notice or demand be given or served by either party to or on the other, such notice or demand shall not be deemed to have been duly given or served unless in writing and either personally delivered or forwarded by registered or certified mail, postage prepaid, to the respective addresses hereinafter set forth. Either party may change such addresses from time to time by serving notice as above provided.

TO TOWN:

Town of Fort Myers Beach c/o Town Manager
2525 Estero Boulevard
Fort Myers Beach, Florida 33931

TO LEAGUE:

Fort Myers Beach Little League, Inc.

ARTICLE 10 – INSURANCE

- 10.1 Insurance: The League shall procure and maintain throughout the term of this Agreement comprehensive general liability insurance providing for a minimum of \$1,000,000.00 in coverage. Accident insurance must be available to all sports participants by the League. The name of the insured on the policy shall be the same as the League and the Town shall be named as an additional insured under said policy. A copy of the insurance certificate showing the Town as an additional insured shall be provided to the Director no later than ~~January 1, 2000~~, 20~~00~~. In the event the League fails to deliver said certificate to the Town in the above stated manner, the Town may cancel this Agreement or, but shall not be obligated to, procure the required policy. The certificate procured by the League shall provide for thirty (30) days prior written notice from the insurer to the Town of any cancellation or amendment to said insurance policy

ARTICLE 11 - TOWN RULES AND REGULATIONS

- 11.1 Rules and Regulations: The League will observe, obey & comply with all rules and regulations adopted by the Town and all laws, ordinances and regulations of other governmental units and agencies having lawful jurisdiction, which may be applicable to League's operations under this Agreement.

ARTICLE 12 - MISCELLANEOUS PROVISIONS

- 12.1 Indulgence Not Waiver: The indulgence of either party with regard to any breach or failure to perform any provision of the Agreement shall not deem to constitute a waiver of the provision or any portion of this Agreement at the time the breach or failure occurs or at any time throughout the term of this Agreement.
- 12.2 Interpretation: This Agreement constitutes the entire Agreement between the parties with respect to the subject matter hereof and supersedes all prior verbal or written Agreements between the parties with respect thereto. This Agreement may only be amended by written document, properly authorized, executed and delivered by both parties hereto. This Agreement shall be interpreted as a whole unit and section headings are for convenience only. The laws of the State of Florida shall govern all interpretations.
- 12.3 Venue: In the event it is necessary for either party to initiate legal action regarding this Agreement, venue shall be in the Twentieth Judicial Circuit for Lee County, Florida, for claims under state law and the Middle District of Florida for any claims, which are justifiable in Federal Court.
- 12.4 Mediation: In the event of a dispute between the parties in connection with this Agreement, the parties agree to submit the disputed issue or issues to a mediator for non-binding mediation prior to filing a lawsuit. The parties shall agree on a mediator chosen from a list of certified mediators available from the Clerk of Court for Lee County. The fee of the mediator shall be shared equally by the parties. To

the extent allowed by law, the mediation process shall be confidential and the results of the mediation or any testimony or argument introduced at the mediation shall be inadmissible as evidence in any subsequent proceeding concerning the disputed issue.

Attorney comments:
12.5 standard- ok to leave

12.5 Severability: If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable.

12.6 standard- ok to leave

12.6 Survival of Provisions: Any terms or conditions of this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

12.7 STRIKE we will not agree to waiver of trial. Per our attorney no need to say costs/fees are shared that is standard in all agreements and is not usually in contracts.

12.7 Attorneys' Fees and Waiver of Jury Trial: If either the Town or League is required to enforce the terms of this Agreement by court proceedings or otherwise, whether or not formal legal action is required, the parties shall bear their own attorney fees, costs and expenses, at the trial and appellate level. In the event of any litigation arising out of this Agreement. EACH PARTY HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ITS RIGHT TO TRIAL BY JURY.

&
12.8 & 12.9 standard- ok to leave. they are basically redundant of each other.

12.8 Counterparts: This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterpart shall constitute the same instrument.

12.9 Authorization to Sign Contract: The execution and delivery of this Agreement by both parties is within their capacity and all requisite action has been taken to make this Agreement valid and binding on the parties in accordance with its terms.

12.10 Public Records: Notwithstanding anything contained herein, as provided under Section 119.0701, Fla. Stat., if League: (i) provides a service; and (ii) acts on behalf of Town as provided under Section 119.011(2) Fla. Stat., the League shall comply with the requirements of Section 119.0701, Fla. Stat., as it may be amended from time to time. The League is specifically required to:

(a) Keep and maintain public records required by the Town to perform services as provided under this Agreement.

(b) Upon request from the Town's Custodian of Public Records, provide the Town with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Fla. Stat., or as otherwise provided by law. The League further agrees that all fees, charges and expenses shall be determined in accordance with Town fees associated with public records requests.

(c) Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement, if the League does not transfer the records to the Town.

12.10 b,c and d - No idea what this means it is not clear. Fee/ costs for what? Town is not obligated to provide LL Records.

Strike both of these as they do not apply to us. We would have no records to transfer.

- (d) Upon completion of the Agreement, the League shall transfer, at no cost to the Town, all public records in possession of the League unless notified by Town's representative/liaison, on behalf of the Town's custodian of public records, to keep and maintain public records required by the Town to perform the service. If the League transfers all public records to the Town upon completion of the Agreement, the League shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If the League keeps and maintains public records upon completion of the Agreement, the League shall meet all applicable requirements for retaining public records. All records stored electronically by the League must be provided to Town, upon request of the Town's custodian of public records, in a format that is compatible with the information technology systems of Town, and at no cost to Town.

Failure of the League to comply with the requirements of this article shall be a material breach of this Agreement. Town shall have the right to exercise any and all remedies available to it, including but not limited to, the right to terminate for cause. The League acknowledges that it has familiarized itself with the requirements of Chapter 119, Fla. Stat., and other requirements of state law applicable to public records not specifically set forth herein.

IF THE LEAGUE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE LEAGUE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, PLEASE CONTACT THE TOWN CLERK AT 2525 ESTERO BLVD., FORT MYERS BEACH, FL 33931, BY E-MAIL AT AMY@FMBGOV.COM OR BY TELEPHONE AT 239-765-0202.

[REMINDER OF PAGE LEFT BLANK – SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement by their proper officials, duly authorized to do so the date above first written.

TOWN OF FORT MYERS BEACH

Roger T. Hernstadt, Town Manager

ATTEST:

Amy Baker, Assistant 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

FORT MYERS BEACH LITTLE LEAGUE, INC.

Name: _____
Title: _____

WITNESS

Name: _____

AFFIDAVIT OF CRIMINAL BACKGROUND SCREENING

{ATHLETIC AGREEMENT/ CONTRACT HOLDER}

ORGANIZATION/ AGREEMENT HOLDER NAME:

CONTACT'S NAME _____ TITLE _____

DATES(S) OF FACILITY/ FIELD RENTAL:

By signing this Affidavit, I am swearing or affirming that: (1) pursuant to the requirements set forth in Section 943.0438, Florida Statutes, all athletic coaches for independent sanctioning authorities have been Level 1 criminal background screened as provided in Section, 435.03, Florida Statutes, and have been deemed eligible by the Athletic agreement/contract holder listed on the Athletic agreement/contract, or (2) no individuals providing services or activities under the Athletic agreement/contract holder are required under Section 943.0438, Florida Statutes, to be Level 1 criminal background screened. The information contained in this Affidavit is up to date as of the date this Affidavit is furnished to the Town of Fort Myers Beach Parks and Recreation office.

Each athletic coach providing services or activities under the facility/field usage agreement who is required to comply with the Level 1 criminal background screening requirements set forth in Section 943.0438, Florida Statutes, is listed below, and is identified by name, birth date, and date deemed eligible by the Athletic agreement/ contract holder.

[Insert or attach list of agreements]

Signature of Affiant

STATE OF FLORIDA)

COUNTY OF LEE)

SWORN TO AND SUBSCRIBED BEFORE ME, on this ____ day of _____, 20____, by means of () physical presence or () online notarization, personally appeared _____ as _____ of the Town of Fort Myers Beach, () who is personally known to me or () who has produced _____ as identification.

NOTARY PUBLIC – State of Florida

My commission expires:

1. **Requested Motion:**

Meeting Date: January 19, 2021

Overview of Town of Fort Myers Beach COVID-19 State of Emergency Declarations 1 - 7

Why the action is necessary:

Requested by Town Council

What the action accomplishes:

2. **Agenda:**

TOWN ATTORNEY'S ITEMS

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

Declaration of Emergency Regulations - March 19, 2020

Declaration of Emergency Regulations No. 2 - March 29, 2020

Declaration of Emergency Regulations No. 3 - March 30, 2020

Declaration of Emergency Regulations No. 4 Amending Declaration of Emergency Regulations
No. 2 - April 3, 2020

Declaration of Emergency Regulations No. 5 Amending Declaration of Emergency Regulations
No. 1 - April 27, 2020

Declaration of Emergency Regulations No. 6 Amending Declaration of Emergency Regulations
No. 4 - April 27, 2020

Declaration of Emergency Regulations No. 7 - July 1, 2020

Attachments:

1. Declaration of Emergency Regulations No. 1 - 3.19.2020
2. Declaration of Emergency Regulations No. 2 - 3.29.2020
3. Declaration of Emergency Regulations No. 3 - 3.30.2020
4. Declaration of Emergency Regulations No. 4 - 4.3.2020
5. Declaration of Emergency Regulations No. 5 - 4.27.2020
6. Declaration of Emergency Regulations No. 6 - 4.27.2020

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Amy Baker, Town Clerk

John R Herin Jr, Town Attorney

Roger Hernstadt, Town Manager

Created/Initiated - 1/13/2021

Approved - 1/13/2021

Final Approval - 1/13/2021

DECLARATION OF EMERGENCY REGULATIONS

(COVID-19 State of Emergency - March 19, 2020)

WHEREAS, Novel Coronavirus Disease 2019 (COVID-19) is a severe acute respiratory illness that can spread among humans through respiratory transmission and other potential methods, and presents symptoms similar to those of influenza;

WHEREAS, in December of 2019, a new and substantial outbreak of COVID-19 emerged in Wuhan, China, and has since spread rapidly to 150 countries and territories throughout the World, including the United States, and more specifically Lee County and 30 other counties in the State of Florida;

WHEREAS, on March 11, 2020, the World Health Organization (WHO) declared COVID-19 a pandemic;

WHEREAS, the Centers for Disease Control and Prevention (CDC) is predicting that it is likely that widespread transmission of COVID-19 will also occur in the United States;

WHEREAS, no vaccine or drug is currently available to cure or combat COVID-19;

WHEREAS, the Town of Fort Myers Beach is threatened by COVID-19 because of the ability of the virus to spread rapidly among humans, and COVID-19 thereby constitutes a clear and present threat to the health, safety, and welfare of the residents and visitors of the Town of Fort Myers Beach;

WHEREAS, the CDC has issued guidelines for "community mitigation strategies" to limit the spread of COVID-19, including recommendations for social distancing, which has proven to be an effective method for containing COVID-19;

WHEREAS, President Trump issued an Proclamation Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak; Governor DeSantis has issued Executive Orders 20-51, 20-52 and 20-68, Lee County Board of County Commissioners adopted Resolution 20-03-18 declaring a state of emergency and subsequently closing all county beaches and parks; and the Town Council of the Town of Fort Myers Beach adopted Resolution 20-13 regarding COVID-19, declaring a state of emergency, and authorizing in accordance with Section 252.38, Florida Statutes, the waiving of "the procedures and formalities otherwise required of the political subdivision by law pertaining to . . . [the] performance of public work **and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;**" and

WHEREAS, pursuant to Town of Fort Myers Beach Charter and Sections 12-19 through 12-25 of the Code of Ordinances of the Town of Fort Myers Beach, Florida, in the event of a proclamation of a state of emergency by the Governor, the Town Council of the Town of Fort Myers Beach is empowered to take all prudent actions necessary to ensure the health, safety and welfare of the community.

NOW, THEREFORE BE IT RESOLVED,

1. The following events and activities within the Town of Fort Myers Beach are postponed, cancelled, closed or suspended:
 - A. All regular meetings of the Town boards, including all advisory and statutory boards, Town committees and Town working groups;
 - B. All Town special events.
 - C. All public gatherings of any type, whether organized or otherwise, of greater than 10 persons are prohibited.
 - D. All restaurants and other like entertainment facilities and businesses shall adhere to the latest state executive orders and mandates by Governor Ron DeSantis.
 - E. **All beaches and beach accesses in the Town of Fort Myers Beach are closed. No persons or activities are permitted on the beach and within the EC zoning district of the Town** (generally seaward of the Coastal Construction Control Line). The beach is defined as the area of sand along the Gulf of Mexico that extends landward from the mean low-water line to the place where there is a marked change in material or physiographic form, or to the line of permanent vegetation, within the territorial boundaries of the Town of Fort Myers Beach from Bowditch Point (26°27'53.88"N, 81°58'7.74"W) to San Carlos Point (26°24'15.45"N, 81°52'58.38"W).
 - F. All Town Parks, including recreational and cultural facilities and programs, are closed.
 - G. All residents and visitors of the Town of Fort Myers Beach are directed to comply with these emergency regulations and necessary measures, which shall be strictly enforced, and to cooperate with public officials and public safety personnel in executing any emergency operational plans, and to obey and comply with the lawful direction of all properly identified public officers.
2. In accordance with applicable state law, Sections 1-12 and 12-25 of the Code of Ordinances of the Town of Fort Myers Beach and Article V of Chapter 2 of the

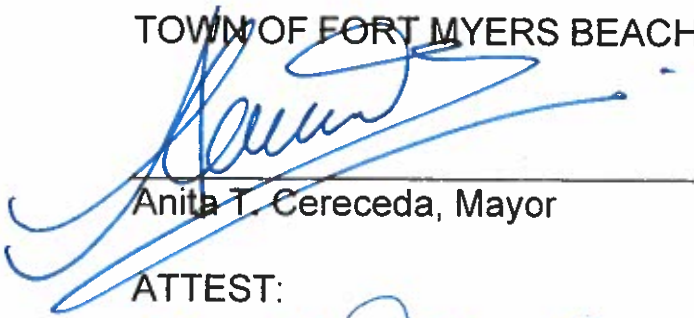
Land Development Code of Fort Myers Beach, any violation of any rule or regulation issued and set forth herein may be punishable by a fine of up to \$5000.

This will be effective starting at 6:00 PM on Thursday, March 19, 2020 until further notice.

Anita T. Cereceda, Mayor	Yes
Ray Murphy, Vice Mayor	Yes
Joanne Shamp, Councilmember	Yes
Rexann Hosafros, Councilmember	No
Bruce Butcher, Councilmember	Yes

ADOPTED this 19th day of March, 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

DECLARATION OF EMERGENCY REGULATIONS No. 2

(COVID-19 State of Emergency - March 29, 2020)

WHEREAS, Novel Coronavirus Disease 2019 (COVID-19) is a severe acute respiratory illness that can spread among humans through respiratory transmission and other potential methods, and presents symptoms similar to those of influenza; and

WHEREAS, in December of 2019, a new and substantial outbreak of COVID-19 emerged in Wuhan, China, and has since spread rapidly to 150 countries and territories throughout the World, including the United States, and more specifically Lee County and 30 other counties in the State of Florida; and

WHEREAS, on March 11, 2020, the World Health Organization (WHO) declared COVID-19 a pandemic; and

WHEREAS, President Trump issued a Proclamation Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak; and

WHEREAS, the Centers for Disease Control and Prevention (CDC) is predicting that it is likely that widespread transmission of COVID-19 will also occur in the United States; and

WHEREAS, no vaccine or drug is currently available to cure or combat COVID-19; and

WHEREAS, the CDC has issued guidelines for "community mitigation strategies" to limit the spread of COVID-19, including recommendations for social distancing, which has proven to be an effective method for containing COVID-19;

WHEREAS, according to information from the Center for Disease Control and Prevention, Public Health Professionals, and the 2010 Federal Census the Town of Fort Myers Beach is an "at-risk" community for severe or critical reactions to COVID-19 infections, and

WHEREAS, the Town of Fort Myers Beach is threatened by COVID-19 because of the ability of the virus to spread rapidly among humans, COVID-19 thereby constitutes

a clear and present threat to the health, safety, and welfare of the residents and visitors of the Town of Fort Myers Beach; and

WHEREAS, the number of confirmed COVID-19 cases continues to rise throughout the country, the State of Florida, and Lee County, with at least 1 confirmed case in the Town of Fort Myers Beach (according to the Florida Department of Health report issued March 28, 2020); and

WHEREAS, the CDC has cautioned against non-essential travel within the United States; and

WHEREAS, Florida is experiencing an increase in individuals fleeing to Florida from out-of-state locations where "shelter-in-place" orders are being implemented and community spread exists; and

WHEREAS, many cases of COVID-19 in Florida have resulted from individuals coming into the State of Florida from international travel and other states, posing great risk to Florida residents; and

WHEREAS, vacation rentals and third-party platforms advertising vacation rentals in Florida present attractive lodging destinations for individuals coming into Florida; and

WHEREAS, Governor DeSantis has issued numerous Executive Orders regarding the Covid-19 pandemic, including Executive Order No. 20-87 ordering all parties engaged in rental of vacation rental properties to suspend vacation rental operations, prohibiting the making of new reservations or bookings, and accepting new guests for check-in for the duration of Executive Order No. 20-87; and

WHEREAS, in accordance with Section 252.38, *Florida Statutes*, the Town Council of the Town of Fort Myers Beach adopted Resolution 20-13, declaring a state of emergency regarding COVID-19, and authorizing **taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community**"; and

WHEREAS, pursuant to Town of Fort Myers Beach Charter and Sections 12-19 through 12-25 of the Code of Ordinances of the Town of Fort Myers Beach, Florida, the Town Council of the Town of Fort Myers Beach is empowered to take all prudent actions necessary to ensure the health, safety and welfare of the community.

NOW, THEREFORE IT IS ORDERED:

1. All parties engaged in the rental of public lodging establishments as defined in §509.013(4)(a), *Florida Statutes* as transient or non-transient lodging, and any vacation and timeshare accommodations as defined in §721.05(1), *Florida Statutes*, shall cancel all existing reservations and not extend existing stays, nor accept new guests or new reservations for the duration of this Declaration. Any guests of such accommodations

that have checked in as of 11:59 PM, Monday, March 30, 2020, may remain for the duration of their stay. This closure order includes but is not limited to single-family or multi-family homes, condominiums, timeshares, or vacation rentals, and any other place of public accommodation for lodging, including any bed and breakfast, resort housing, inn, hotel, motel, or other establishment that provides lodging to transient guests. This prohibition does not affect the ability of an owner of a condominium, single family or multi-unit property from staying in his or her own property for some or all of the restricted period, excluding timeshares; nor any lodging of first responders or employees.

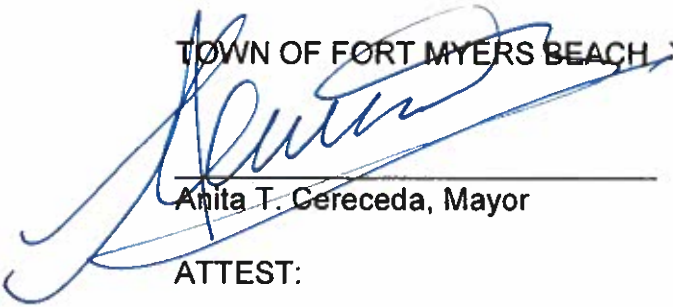
2. All residents and visitors of the Town of Fort Myers Beach are directed to comply with these emergency regulations and necessary measures, which shall be strictly enforced, and to cooperate with public officials and public safety personnel in executing any emergency operational plans, and to obey and comply with the lawful direction of all properly identified public officers.
3. In accordance with applicable state law, Sections 1-12 and 12-25 of the Code of Ordinances of the Town of Fort Myers Beach and Article V of Chapter 2 of the Land Development Code of Fort Myers Beach, any violation of any rule or regulation issued and set forth herein may be punishable by a fine of up to \$5000.
4. This Emergency Declaration does not modify or otherwise supersede any prior Emergency Declaration.

This Emergency Declaration will be effective immediately and stay in effect for ninety (90) days.

Anita T. Cereceda, Mayor	aye
Ray Murphy, Vice Mayor	aye
Joanne Champ, Councilmember	aye
Rexann Hosafros, Councilmember	aye
Bruce Butcher, Councilmember	aye

ADOPTED this 30th day of March, 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 R. Herin, Jr., Town Attorney

DECLARATION OF EMERGENCY REGULATIONS No. 3

(COVID-19 State of Emergency - March 30, 2020)

WHEREAS, Novel Coronavirus Disease 2019 (COVID-19) is a severe acute respiratory illness that can spread among humans through respiratory transmission and other potential methods, and presents symptoms similar to those of influenza; and

WHEREAS, in December of 2019, a new and substantial outbreak of COVID-19 emerged in Wuhan, China, and has since spread rapidly to 150 countries and territories throughout the World, including the United States, and more specifically Lee County and 30 other counties in the State of Florida; and

WHEREAS, on March 11, 2020, the World Health Organization (WHO) declared COVID-19 a pandemic; and

WHEREAS, President Trump issued a Proclamation Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak; and

WHEREAS, the Centers for Disease Control and Prevention (CDC) is predicting that it is likely that widespread transmission of COVID-19 will also occur in the United States; and

WHEREAS, no vaccine or drug is currently available to cure or combat COVID-19; and

WHEREAS, the CDC has issued guidelines for "community mitigation strategies" to limit the spread of COVID-19, including recommendations for social distancing, which has proven to be an effective method for containing COVID-19;

WHEREAS, according to information from the Center for Disease Control and Prevention, Public Health Professionals, and the 2010 Federal Census the Town of Fort Myers Beach is an "at-risk" community for severe or critical reactions to COVID-19 infections, and

WHEREAS, the Town of Fort Myers Beach is threatened by COVID-19 because of the ability of the virus to spread rapidly among humans, COVID-19 thereby constitutes a clear and present threat to the health, safety, and welfare of the residents and visitors of the Town of Fort Myers Beach; and

WHEREAS, the number of confirmed COVID-19 cases continues to rise throughout the country, the State of Florida, and Lee County, with at least 1 confirmed case in the Town of Fort Myers Beach (according to the Florida Department of Health report issued March 28, 2020); and

WHEREAS, the Office of the Governor of the State of Florida has directed in Executive Order 20-83 that the State Surgeon General and State health officer issued a public health advisory to all persons over 65 years of age, and person that have a serious underlying medical condition that places them at a high risk of severe illness from COVID-19, urging them to stay home and to take such other measures as necessary to limit their risk of exposure to COVID-19; and

WHEREAS, in accordance with Section 252.38, *Florida Statutes*, the Town Council of the Town of Fort Myers Beach adopted Resolution 20-13, declaring a state of emergency regarding COVID-19, and authorizing **taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community**"; and

WHEREAS, pursuant to Town of Fort Myers Beach Charter and Sections 12-19 through 12-25 of the Code of Ordinances of the Town of Fort Myers Beach, Florida, the Town Council of the Town of Fort Myers Beach is empowered to take all prudent actions necessary to ensure the health, safety and welfare of the community.

NOW, THEREFORE THE TOWN COUNCIL RECOMMENDS THAT:

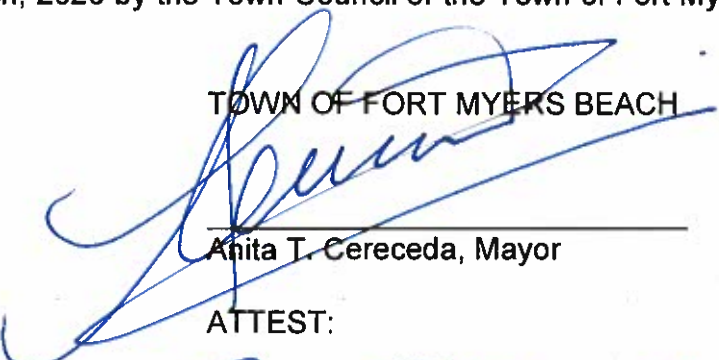
1. Persons residing or visiting the Town of Fort Myers Beach remain in their dwelling units or on their property (excluding the beach and within the EC zoning district of the Town), except as necessary, to seek medical care, food, and other essential needs.
2. Resident and visitors shall adhere to social distancing practices, washing hands with soap and water for at least twenty seconds or using hand sanitizer, covering coughs and sneezes (into the sleeve or elbow, not hands), regularly cleaning high-touch surfaces, and not shaking hands. Residents and visitors are strongly encouraged to limit all of their travel, except as necessary.
3. Residents and visitors may engage in outdoor activity and recreation in areas not otherwise closed to the public, but urged to maintain a distance of at least six (6) feet between each other, including without limitations, walking, hiking, running, or cycling. Groups of 10 or more individuals may not gather on a public street, alley, public way, sidewalk, or government facility open to the public.
4. This Emergency Declaration does not modify or otherwise supersede any prior Emergency Declaration.

This Emergency Declaration will be effective starting at 12:01 AM on Tuesday, March 31, 2020 and stay in effect until rescinded by the Town Council.

Anita T. Cereceda, Mayor	aye
Ray Murphy, Vice Mayor	aye
Joanne Shamp, Councilmember	aye
Rexann Hosafros, Councilmember	aye
Bruce Butcher, Councilmember	aye

ADOPTED this 30th day of March, 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 R. Herin, Jr., Town Attorney

DECLARATION OF EMERGENCY REGULATIONS No. 4 – AMENDING DECLARATION OF EMERGENCY REGULATIONS No. 2

(COVID-19 State of Emergency – April 3, 2020)

WHEREAS, Novel Coronavirus Disease 2019 (COVID-19) is a severe acute respiratory illness that can spread among humans through respiratory transmission and other potential methods, and presents symptoms similar to those of influenza; and

WHEREAS, in December of 2019, a new and substantial outbreak of COVID- 19 emerged in Wuhan, China, and has since spread rapidly to 150 countries and territories throughout the World, including the United States, and more specifically Lee County and 30 other counties in the State of Florida; and

WHEREAS, on March 11, 2020, the World Health Organization (WHO) declared COVID-19 a pandemic; and

WHEREAS, President Trump issued a Proclamation Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak; and

WHEREAS, the Centers for Disease Control and Prevention (CDC) is predicting that it is likely that widespread transmission of COVID-19 will also occur in the United States; and

WHEREAS, no vaccine or drug is currently available to cure or combat COVID-19; and

WHEREAS, the CDC has issued guidelines for "community mitigation strategies" to limit the spread of COVID-19, including recommendations for social distancing, which has proven to be an effective method for containing COVID-19;

WHEREAS, according to information from the Center for Disease Control and Prevention, Public Health Professionals, and the 2010 Federal Census the Town of Fort Myers Beach is an "at-risk" community for severe or critical reactions to COVID-19 infections, and

WHEREAS, the Town of Fort Myers Beach is threatened by COVID-19 because of the ability of the virus to spread rapidly among humans, COVID-19 thereby constitutes a clear and present threat to the health, safety, and welfare of the residents and visitors of the Town of Fort Myers Beach; and

WHEREAS, the number of confirmed COVID-19 cases continues to rise throughout the country, the State of Florida, and Lee County, with at least 1 confirmed case in the Town of Fort Myers Beach (according to the Florida Department of Health report issued March 28, 2020); and

WHEREAS, the CDC has cautioned against non-essential travel within the United States; and

WHEREAS, Florida is experiencing an increase in individuals fleeing to Florida from out-of-state locations where "shelter-in-place" orders are being implemented and community spread exists; and

WHEREAS, many cases of COVID-19 in Florida have resulted from individuals coming into the State of Florida from international travel and other states, posing great risk to Florida residents; and

WHEREAS, on March 1, 2020, the Governor of Florida issued Executive Order Number 20-51, directing the State Health Officer and Surgeon General to declare a Public Health Emergency due to the discovery of COVID-19 in Florida; and

WHEREAS, on March 9, 2020, the Governor of Florida issued Executive Order Number 20-52, declaring a State of Emergency for the state of Florida related to COVID-19/novel Coronavirus; and

WHEREAS, due to the intensity of COVID-19 in other hot spots in the nation, the Governor of Florida has imposed additional screening measures for travelers departing from hot spots, see, Executive Orders 2020-80 and 2020-82; and

WHEREAS, vacation rentals and third-party platforms advertising vacation rentals in Florida present attractive lodging destinations for individuals coming into Florida; and

WHEREAS, the Governor of Florida issued Executive Order No. 20-87 ordering all parties engaged in rental of vacation rental properties to suspend vacation rental operations, prohibiting the making of new reservations or bookings, and accepting new guests for check-in for the duration of Executive Order No. 20-87; and

WHEREAS, the President of the United States has extended the CDC's nationwide social distancing guidelines through the end of the month of April 2020; and

WHEREAS, the Governor of Florida issued Executive Orders No. 20-91 and 20-92 instituting a state-wide "safer at home" guidelines and ordering "all persons in Florida [to] limit their movements and personal interactions outside of their home to only those necessary to obtain or provide essential services or conduct essential activities"; and

WHEREAS, "essential services" means and encompasses the list detailed by the U.S. Department of Homeland Security in its Guidance on the Essential Critical Infrastructure Workforce, v. 2 (March 28, 2020) and any subsequent lists published; and also include those businesses and activities designated by Executive Order 20-89 and a list propounded by Miami-Dade County in multiple orders; and

WHEREAS, Miami-Dade County currently lists "hotels and commercial lodging establishments" as an "essential services", but with significant restrictions as set forth herein; and

WHEREAS, in accordance with Sections 252.38 and 252.46, *Florida Statutes*, the Town Council of the Town of Fort Myers Beach adopted Resolution 20-13, declaring a state of emergency regarding COVID-19, and authorizing **"taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community"**; and

WHEREAS, pursuant to Sections 252.38 and 252.46, *Florida Statutes*; the Town of Fort Myers Beach Charter, and Sections 12-19 through 12-25 of the Code of Ordinances of the Town of Fort Myers Beach, Florida, the Town Council of the Town of Fort Myers Beach is empowered to take all prudent actions necessary to ensure the health, safety and welfare of the community; and

WHEREAS, on March 30, 2020, the Fort Myers Beach Town Council adopted Emergency Declaration No. 2, attached hereto as Exhibit "A", which closed all hotels, motels, and all other public lodging establishments as set forth therein; and

WHEREAS, in the interests of protecting the health, safety, and welfare of the residents and visitors of the Town of Fort Myers Beach, and in order to meet the minimum requirements of the Governor of the State of Florida's Executive Orders 20-91 and 20-92, the Town Council amends Emergency Declaration No. 2 to read as set forth herein.

NOW, THEREFORE IT IS ORDERED:

1. Effective March 30, 2020, all parties engaged in the rental of public lodging establishments as defined in §509.013(4)(a), *Florida Statutes*, operation of a recreational vehicle park as defined in §513.01(11), *Florida Statutes*, and any vacation and timeshare accommodations as defined in

§721.05(1), *Florida Statutes*, engaged in rentals or occupancy of less than 30 days shall:

- (a) Cancel all existing reservations and not extend existing stays, nor accept new guests or new reservations for the duration of this Declaration.
 - (b) Any guests of such accommodations that have checked in as of 11:59 PM, Monday, March 30, 2020, may remain for the duration of their stay.
2. This closure order includes single-family or multi-family homes, condominiums, timeshares, or vacation rentals, and any other place of public accommodation for lodging, including any bed and breakfast, resort housing, inn, hotel, motel, recreational vehicle park or other establishment engaged in rentals or transient occupancy of less than 30 days.
3. This closure order does not apply to the rental or transient occupancy of any public lodging establishments, recreational vehicle park or any vacation and timeshare accommodation to the following individuals providing verifiable evidence of their status as:
- (a) Healthcare professionals providing Covid-19 related healthcare services to the Town or its residents and visitors.
 - (b) First responders providing Covid-19 related services to the Town or its residents and visitors.
 - (c) National Guard members providing Covid-19 related services to the Town or its residents and visitors.
 - (d) Law enforcement officers providing Covid-19 related services to the Town and its residents and visitors.
 - (e) State or federal government employees providing Covid-19 related services to the Town and its residents and visitors.
 - (f) Journalists reporting on Covid-19 related issues in the Town.
 - (g) Others responding to the COVID-19 pandemic to assist the Town, or its residents and visitors.

(h) Displaced Town employees or residents.

(i) Town visitors unable to return to their home due to COVID-19 impacts on travel.

(j) Town residents who must vacate their homes due to exigent circumstances, such as fire or flood.

(k) Town residents utilizing hotels as transitional living arrangements.

(l) Town residents sheltering in hotels due to domestic violence.

(m) Fort Myers Beach public lodging employees, service providers, and contractors.

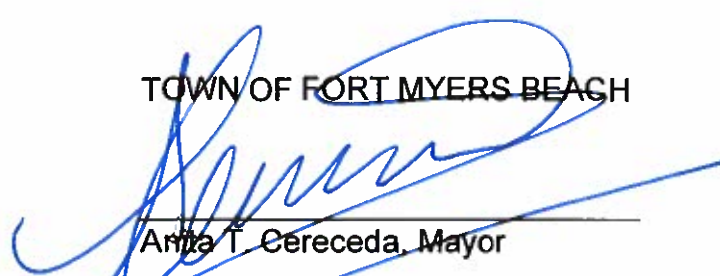
4. All residents and visitors of the Town of Fort Myers Beach are directed to comply with these emergency regulations and necessary measures, which shall be strictly enforced, and to cooperate with public officials and public safety personnel in executing any emergency operational plans, and to obey and comply with the lawful direction of all properly identified public officers.
5. In accordance with applicable state law, Sections 1-12 and 12-25 of the Code of Ordinances of the Town of Fort Myers Beach and Article V of Chapter 2 of the Land Development Code of Fort Myers Beach, any violation of any rule or regulation issued and set forth herein may be punishable by a fine of up to \$5000.
6. This Emergency Declaration amends and supersedes Emergency Declaration No. 2; it does not modify or otherwise supersede any other prior Emergency Declaration.

This Emergency Declaration will be effective immediately and stay in effect until June 26, 2020.

Anita T. Cereceda, Mayor	Yes.
Ray Murphy, Vice Mayor	Yes.
Joanne Shamp, Councilmember	Yes.
Rexann Hosafros, Councilmember	Yes.
Bruce Butcher, Councilmember	Yes.

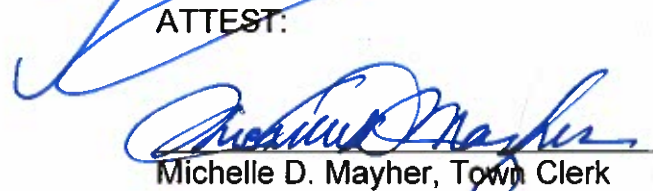
ADOPTED this 3rd day of April, 2020 by the Town Council of the Town of Fort Myers Beach, Florida.

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 R. Herin, Jr., Town Attorney

This Declaration was filed in the Office of the Town Clerk on this ____ day of April 2020
[see, §252.46(2), Fla. Stat.].

DECLARATION OF EMERGENCY REGULATIONS No. 2

(COVID-19 State of Emergency - March 29, 2020)

WHEREAS, Novel Coronavirus Disease 2019 (COVID-19) is a severe acute respiratory illness that can spread among humans through respiratory transmission and other potential methods, and presents symptoms similar to those of influenza; and

WHEREAS, in December of 2019, a new and substantial outbreak of COVID- 19 emerged in Wuhan, China, and has since spread rapidly to 150 countries and territories throughout the World, including the United States, and more specifically Lee County and 30 other counties in the State of Florida; and

WHEREAS, on March 11, 2020, the World Health Organization (WHO) declared COVID-19 a pandemic; and

WHEREAS, President Trump issued a Proclamation Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak; and

WHEREAS, the Centers for Disease Control and Prevention (CDC) is predicting that it is likely that widespread transmission of COVID-19 will also occur in the United States; and

WHEREAS, no vaccine or drug is currently available to cure or combat COVID-19; and

WHEREAS, the CDC has issued guidelines for "community mitigation strategies" to limit the spread of COVID-19, including recommendations for social distancing, which has proven to be an effective method for containing COVID-19;

WHEREAS, according to information from the Center for Disease Control and Prevention, Public Health Professionals, and the 2010 Federal Census the Town of Fort Myers Beach is an "at-risk" community for severe or critical reactions to COVID-19 infections, and

WHEREAS, the Town of Fort Myers Beach is threatened by COVID-19 because of the ability of the virus to spread rapidly among humans, COVID-19 thereby constitutes

a clear and present threat to the health, safety, and welfare of the residents and visitors of the Town of Fort Myers Beach; and

WHEREAS, the number of confirmed COVID-19 cases continues to rise throughout the country, the State of Florida, and Lee County, with at least 1 confirmed case in the Town of Fort Myers Beach (according to the Florida Department of Health report issued March 28, 2020); and

WHEREAS, the CDC has cautioned against non-essential travel within the United States; and

WHEREAS, Florida is experiencing an increase in individuals fleeing to Florida from out-of-state locations where "shelter-in-place" orders are being implemented and community spread exists; and

WHEREAS, many cases of COVID-19 in Florida have resulted from individuals coming into the State of Florida from international travel and other states, posing great risk to Florida residents; and

WHEREAS, vacation rentals and third-party platforms advertising vacation rentals in Florida present attractive lodging destinations for individuals coming into Florida; and

WHEREAS, Governor DeSantis has issued numerous Executive Orders regarding the Covid-19 pandemic, including Executive Order No. 20-87 ordering all parties engaged in rental of vacation rental properties to suspend vacation rental operations, prohibiting the making of new reservations or bookings, and accepting new guests for check-in for the duration of Executive Order No. 20-87; and

WHEREAS, in accordance with Section 252.38, *Florida Statutes*, the Town Council of the Town of Fort Myers Beach adopted Resolution 20-13, declaring a state of emergency regarding COVID-19, and authorizing **taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community**"; and

WHEREAS, pursuant to Town of Fort Myers Beach Charter and Sections 12-19 through 12-25 of the Code of Ordinances of the Town of Fort Myers Beach, Florida, the Town Council of the Town of Fort Myers Beach is empowered to take all prudent actions necessary to ensure the health, safety and welfare of the community.

NOW, THEREFORE IT IS ORDERED:

1. All parties engaged in the rental of public lodging establishments as defined in §509.013(4)(a), *Florida Statutes* as transient or non-transient lodging, and any vacation and timeshare accommodations as defined in §721.05(1), *Florida Statutes*, shall cancel all existing reservations and not extend existing stays, nor accept new guests or new reservations for the duration of this Declaration. Any guests of such accommodations

that have checked in as of 11:59 PM, Monday, March 30, 2020, may remain for the duration of their stay. This closure order includes but is not limited to single-family or multi-family homes, condominiums, timeshares, or vacation rentals, and any other place of public accommodation for lodging, including any bed and breakfast, resort housing, inn, hotel, motel, or other establishment that provides lodging to transient guests. This prohibition does not affect the ability of an owner of a condominium, single family or multi-unit property from staying in his or her own property for some or all of the restricted period, excluding timeshares; nor any lodging of first responders or employees.

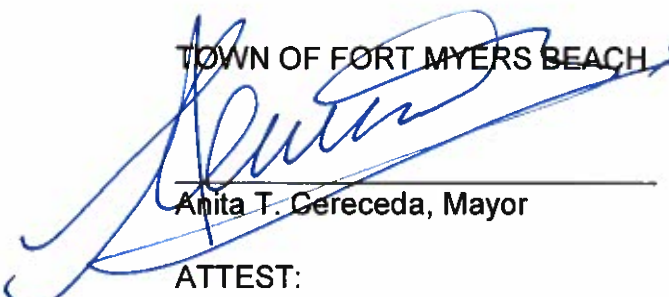
2. All residents and visitors of the Town of Fort Myers Beach are directed to comply with these emergency regulations and necessary measures, which shall be strictly enforced, and to cooperate with public officials and public safety personnel in executing any emergency operational plans, and to obey and comply with the lawful direction of all properly identified public officers.
3. In accordance with applicable state law, Sections 1-12 and 12-25 of the Code of Ordinances of the Town of Fort Myers Beach and Article V of Chapter 2 of the Land Development Code of Fort Myers Beach, any violation of any rule or regulation issued and set forth herein may be punishable by a fine of up to \$5000.
4. This Emergency Declaration does not modify or otherwise supersede any prior Emergency Declaration.

This Emergency Declaration will be effective immediately and stay in effect for ninety (90) days.

Anita T. Cereceda, Mayor	aye
Ray Murphy, Vice Mayor	aye
Joanne Shamp, Councilmember	aye
Rexann Hosafros, Councilmember	aye
Bruce Butcher, Councilmember	aye

ADOPTED this 30th day of March, 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. Mayner, 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

DECLARATION OF EMERGENCY REGULATIONS No. 5 AMENDING DECLARATION OF EMERGENCY REGULATIONS No. 1

(COVID-19 State of Emergency - April 27, 2020)

WHEREAS, Novel Coronavirus Disease 2019 (COVID-19) is a severe acute respiratory illness that can spread among humans through respiratory transmission and other potential methods, and presents symptoms similar to those of influenza;

WHEREAS, in December of 2019, a new and substantial outbreak of COVID-19 emerged in Wuhan, China, and has since spread rapidly to 150 countries and territories throughout the World, including the United States, and more specifically Lee County and 30 other counties in the State of Florida;

WHEREAS, on March 11, 2020, the World Health Organization (WHO) declared COVID-19 a pandemic;

WHEREAS, the Centers for Disease Control and Prevention (CDC) is predicting that it is likely that widespread transmission of COVID-19 will also occur in the United States;

WHEREAS, no vaccine or drug is currently available to cure or combat COVID-19;

WHEREAS, the Town of Fort Myers Beach is threatened by COVID-19 because of the ability of the virus to spread rapidly among humans, and COVID-19 thereby constitutes a clear and present threat to the health, safety, and welfare of the residents and visitors of the Town of Fort Myers Beach;

WHEREAS, the CDC has issued guidelines for "community mitigation strategies" to limit the spread of COVID-19, including recommendations for social distancing, which has proven to be an effective method for containing COVID-19;

WHEREAS, according to information from the Center for Disease Control and

Prevention, Public Health Professionals, and the 2010 Federal Census the Town of Fort Myers Beach is an "at-risk" community for severe or critical reactions to COVID-19 infections, and

WHEREAS, the Town of Fort Myers Beach is threatened by COVID-19 because of the ability of the virus to spread rapidly among humans, COVID-19 thereby constitutes a clear and present threat to the health, safety, and welfare of the residents and visitors of the Town of Fort Myers Beach; and

WHEREAS, the number of confirmed COVID-19 cases continues to rise throughout the country, the State of Florida, and Lee County, with at least 1 confirmed case in the Town of Fort Myers Beach (according to the Florida Department of Health report issued March 28, 2020); and

WHEREAS, on March 1, 2020, the Governor of Florida issued Executive Order Number 20-51, directing the State Health Officer and Surgeon General to declare a Public Health Emergency due to the discovery of COVID-19 in Florida; and

WHEREAS, on March 9, 2020, the Governor of Florida issued Executive Order Number 20-52, declaring a State of Emergency for the state of Florida related to COVID-19/novel Coronavirus; and

WHEREAS, the President of the United States has extended the CDC's nationwide social distancing guidelines through the end of the month of April 2020; and

WHEREAS, the Governor of Florida issued Executive Orders No. 20-91 and 20-92 instituting a state-wide "safer at home" guidelines and ordering "all persons in Florida [to] limit their movements and personal interactions outside of their home to only those necessary to obtain or provide essential services or conduct essential activities"; and

WHEREAS, "essential services" means and encompasses the list detailed by the U.S. Department of Homeland Security in its Guidance on the Essential Critical Infrastructure Workforce, v. 2 (March 28, 2020) and any subsequent lists published; and also include those businesses and activities designated by Executive Order 20-89 and a list propounded by Miami-Dade County in multiple orders; and

WHEREAS, in accordance with Sections 252.38 and 252.46, *Florida Statutes*, the Town Council of the Town of Fort Myers Beach adopted Resolution 20-13, declaring a state of emergency regarding COVID-19, and authorizing **"taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community"**; and

WHEREAS, pursuant to Sections 252.38 and 252.46, *Florida Statutes*; the Town of Fort Myers Beach Charter, and Sections 12-19 through 12-25 of the Code of Ordinances of the Town of Fort Myers Beach, Florida, the Town Council of the Town of Fort Myers Beach is empowered to take all prudent actions necessary to ensure the health, safety and welfare of the community; and

WHEREAS, on March 30, 2020, the Fort Myers Beach Town Council adopted

Emergency Declaration No. 1, attached hereto as Exhibit "A", which closed all Town meetings, Town parks beaches as set forth therein; and

WHEREAS, in the interests of protecting the health, safety, and welfare of the residents and visitors of the Town of Fort Myers Beach, the Town Council amends Emergency Declaration No. 1 to read as set forth herein.

NOW, THEREFORE BE IT RESOLVED,

1. The following events and activities within the Town of Fort Myers Beach are postponed, cancelled, closed or suspended:
 - A. All regular meetings of the Town boards, including all advisory and statutory boards, Town committees and Town working groups;
 - B. All Town special events.
 - C. All public gatherings of any type, whether organized or otherwise, of greater than 10 persons are prohibited.
 - D. All restaurants and other like entertainment facilities and businesses shall adhere to the latest state executive orders and mandates by Governor Ron DeSantis.
 - E. **Except as provided herein, all beaches and beach accesses in the Town of Fort Myers Beach are closed. No persons or activities are permitted on the beach and within the EC zoning district of the Town (generally seaward of the Coastal Construction Control Line). The beach is defined as the area of sand along the Gulf of Mexico that extends landward from the mean low-water line to the place where there is a marked change in material or physiographic form, or to the line of permanent vegetation, within the territorial boundaries of the Town of Fort Myers Beach from Bowditch Point (26°27'53.88"N, 81°58'7.74"W) to San Carlos Point (26°24'15.45"N, 81°52'58.38"W).**
 - (i) Residents of the Town of Fort Myers Beach, carrying proof of residency, may exercise (bike, run, and walk) on the public portion of the beach at or below the mean high tide line between 7 am and 10 am. All social distancing rules apply including:
 - (a) All individuals shall maintain 6 feet apart.
 - (b) No groups of more than 10 individuals.
 - (c) All individuals must wear facial covering, masks, etc.
 - (d) No sitting, reclining, or bringing of beach paraphernalia (i.e., no towels, chairs, coolers, etc.)

(ii) Parking lot closures remain in effect.

(iii) Beach access shall be via Town owned beach access points.

F. All Town Parks, including recreational and cultural facilities and programs, remain closed.

G. All residents and visitors of the Town of Fort Myers Beach are directed to comply with these emergency regulations and necessary measures, which shall be strictly enforced, and to cooperate with public officials and public safety personnel in executing any emergency operational plans, and to obey and comply with the lawful direction of all properly identified public officers.

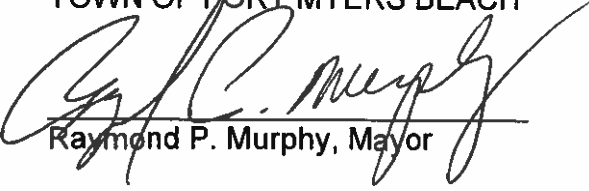
2. This Emergency Declaration amends and supersedes Emergency Declaration No. 1; it does not modify or otherwise supersede any other prior Emergency Declaration.

3. In accordance with applicable state law, Sections 1-12 and 12-25 of the Code of Ordinances of the Town of Fort Myers Beach and Article V of Chapter 2 of the Land Development Code of Fort Myers Beach, any violation of any rule or regulation issued and set forth herein may be punishable by a fine of up to \$5000.

This Emergency Declaration will be effective starting at 7:00 AM on Tuesday 28, April, 2020 until further notice.

Raymond P. Murphy, Mayor	nay
Rexann Hosafros, Vice Mayor	aye
Dan Allers, Council Member	aye
Jim Atterholt, Council Member	aye
Bill Veach, Council Member	nay

TOWN OF FORT MYERS BEACH


Raymond P. Murphy, 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 R. Herin, Jr., Town Attorney

This Declaration was filed in the Office of the Town Clerk on this 30th day of April 2020
[see, §252.46(2), Fla. Stat.]. Michelle D. Mayher, Town Clerk

Exhibit "A"

DECLARATION OF EMERGENCY REGULATIONS

(COVID-19 State of Emergency - March 19, 2020)

WHEREAS, Novel Coronavirus Disease 2019 (COVID-19) is a severe acute respiratory illness that can spread among humans through respiratory transmission and other potential methods, and presents symptoms similar to those of influenza;

WHEREAS, in December of 2019, a new and substantial outbreak of COVID-19 emerged in Wuhan, China, and has since spread rapidly to 150 countries and territories throughout the World, including the United States, and more specifically Lee County and 30 other counties in the State of Florida;

WHEREAS, on March 11, 2020, the World Health Organization (WHO) declared COVID-19 a pandemic;

WHEREAS, the Centers for Disease Control and Prevention (CDC) is predicting that it is likely that widespread transmission of COVID-19 will also occur in the United States;

WHEREAS, no vaccine or drug is currently available to cure or combat COVID-19;

WHEREAS, the Town of Fort Myers Beach is threatened by COVID-19 because of the ability of the virus to spread rapidly among humans, and COVID-19 thereby constitutes a clear and present threat to the health, safety, and welfare of the residents and visitors of the Town of Fort Myers Beach;

WHEREAS, the CDC has issued guidelines for "community mitigation strategies" to limit the spread of COVID-19, including recommendations for social distancing, which has proven to be an effective method for containing COVID-19;

WHEREAS, President Trump issued an Proclamation Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak; Governor DeSantis has issued Executive Orders 20-51, 20-52 and 20-68, Lee County Board of County Commissioners adopted Resolution 20-03-18 declaring a state of emergency and subsequently closing all county beaches and parks; and the Town Council of the Town of Fort Myers Beach adopted Resolution 20-13 regarding COVID-19, declaring a state of emergency, and authorizing in accordance with Section 252.38, Florida Statutes, the waiving of "the procedures and formalities otherwise required of the political subdivision by law pertaining to . . . [the] performance of public work **and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;**" and

WHEREAS, pursuant to Town of Fort Myers Beach Charter and Sections 12-19 through 12-25 of the Code of Ordinances of the Town of Fort Myers Beach, Florida, in the event of a proclamation of a state of emergency by the Governor, the Town Council of the Town of Fort Myers Beach is empowered to take all prudent actions necessary to ensure the health, safety and welfare of the community.

NOW, THEREFORE BE IT RESOLVED,

1. The following events and activities within the Town of Fort Myers Beach are postponed, cancelled, closed or suspended:
 - A. All regular meetings of the Town boards, including all advisory and statutory boards, Town committees and Town working groups;
 - B. All Town special events.
 - C. All public gatherings of any type, whether organized or otherwise, of greater than 10 persons are prohibited.
 - D. All restaurants and other like entertainment facilities and businesses shall adhere to the latest state executive orders and mandates by Governor Ron DeSantis.
 - E. **All beaches and beach accesses in the Town of Fort Myers Beach are closed. No persons or activities are permitted on the beach and within the EC zoning district of the Town (generally seaward of the Coastal Construction Control Line). The beach is defined as the area of sand along the Gulf of Mexico that extends landward from the mean low-water line to the place where there is a marked change in material or physiographic form, or to the line of permanent vegetation, within the territorial boundaries of the Town of Fort Myers Beach from Bowditch Point (26°27'53.88"N, 81°58'7.74"W) to San Carlos Point (26°24'15.45"N, 81°52'58.38"W).**
 - F. All Town Parks, including recreational and cultural facilities and programs, are closed.
 - G. All residents and visitors of the Town of Fort Myers Beach are directed to comply with these emergency regulations and necessary measures, which shall be strictly enforced, and to cooperate with public officials and public safety personnel in executing any emergency operational plans, and to obey and comply with the lawful direction of all properly identified public officers.
2. In accordance with applicable state law, Sections 1-12 and 12-25 of the Code of Ordinances of the Town of Fort Myers Beach and Article V of Chapter 2 of the

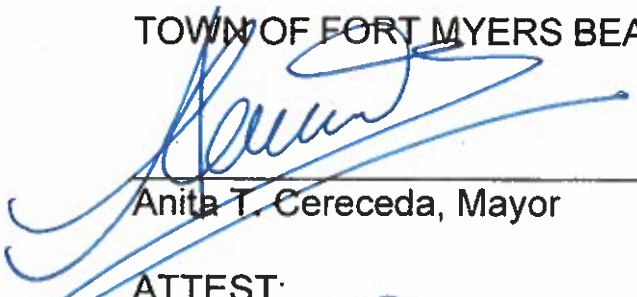
Land Development Code of Fort Myers Beach, any violation of any rule or regulation issued and set forth herein may be punishable by a fine of up to \$5000.

This will be effective starting at 6:00 PM on Thursday, March 19, 2020 until further notice.

Anita T. Cereceda, Mayor	Yes
Ray Murphy, Vice Mayor	Yes
Joanne Shamp, Councilmember	Yes
Rexann Hosafros, Councilmember	No
Bruce Butcher, Councilmember	Yes

ADOPTED this 19th day of March, 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

DECLARATION OF EMERGENCY REGULATIONS No. 6 AMENDING DECLARATION OF EMERGENCY REGULATIONS No. 4

(COVID-19 State of Emergency - April 27, 2020)

WHEREAS, Novel Coronavirus Disease 2019 (COVID-19) is a severe acute respiratory illness that can spread among humans through respiratory transmission and other potential methods, and presents symptoms similar to those of influenza;

WHEREAS, in December of 2019, a new and substantial outbreak of COVID- 19 emerged in Wuhan, China, and has since spread rapidly to 150 countries and territories throughout the World, including the United States, and more specifically Lee County;

WHEREAS, on March 11, 2020, the World Health Organization (WHO) declared COVID-19 a pandemic;

WHEREAS, the Centers for Disease Control and Prevention (CDC) is predicting that widespread transmission of COVID-19 will occur in the United States;

WHEREAS, no vaccine or drug is currently available to cure or combat COVID-19;

WHEREAS, the CDC has issued guidelines for "community mitigation strategies" to limit the spread of COVID-19, including recommendations for social distancing, which has proven to be an effective method for containing COVID-19;

WHEREAS, President Trump issued a Proclamation Declaring a National Emergency Concerning the Novel Coronavirus Disease - COVID-19 Outbreak;

WHEREAS, the President of the United States has extended the CDC's nationwide social distancing guidelines through the end of the month of April 2020;

WHEREAS, COVID-19 threatens the Town of Fort Myers Beach because of the ability of the virus to spread rapidly, and COVID-19 thereby constitutes a clear and present threat to the health, safety, and welfare of the residents and visitors of the Town of Fort

Myers Beach;

WHEREAS, according to information from the Center for Disease Control and Prevention, Public Health Professionals, and the 2010 Federal Census the Town of Fort Myers Beach is an "at-risk" community for severe or critical reactions to COVID-19 infections;

WHEREAS, on March 1, 2020, the Governor of Florida issued Executive Order Number 20-51, directing the State Health Officer and Surgeon General to declare a Public Health Emergency due to the discovery of COVID-19 in Florida; and

WHEREAS, on March 9, 2020, the Governor of Florida issued Executive Order Number 20-52, declaring a State of Emergency for the state of Florida related to COVID-19;

WHEREAS, due to the intensity of COVID-19 in other hot spots in the nation, the Governor of Florida has imposed additional screening measures for travelers departing from hot spots, see, Executive Orders 2020-80 and 2020-82;

WHEREAS, vacation rentals and third-party platforms advertising vacation rentals in Florida present attractive lodging destinations for individuals coming into Florida;

WHEREAS, the Governor of Florida issued Executive Order No. 20-87 ordering all parties engaged in rental of vacation rental properties to suspend vacation rental operations, prohibiting the making of new reservations or bookings, and accepting new guests for check-in for the duration of Executive Order No. 20-87;

WHEREAS, the Governor of Florida issued Executive Orders No. 20-91 and 20-92 instituting a state-wide "safer at home" guidelines and ordering "all persons in Florida [to] limit their movements and personal interactions outside of their home to only those necessary to obtain or provide essential services or conduct essential activities";

WHEREAS, "essential services" means and encompasses the list detailed by the U.S. Department of Homeland Security in its Guidance on the Essential Critical Infrastructure Workforce, v. 2 (March 28, 2020) and any subsequent lists published; and also include those businesses and activities designated by Executive Order 20-89 and a list propounded by Miami-Dade County in multiple orders;

WHEREAS, Miami-Dade County currently lists "hotels and commercial lodging establishments" as an "essential services", but with significant restrictions as set forth herein;

WHEREAS, in accordance with Sections 252.38 and 252.46, *Florida Statutes*, and Sections 12-19 through 12-25 of the Code of Ordinances of the Town of Fort Myers Beach, Florida, the Town Council of the Town of Fort Myers Beach adopted Resolution 20-13, declaring a state of emergency regarding COVID-19, and authorizing the **"taking [of] whatever prudent action is necessary to ensure the health, safety, and welfare of the community"**;

WHEREAS, on March 30, 2020, the Fort Myers Beach Town Council adopted Emergency Declaration No. 2, attached hereto as Composite Exhibit "A", which closed all hotels, motels, and all other public lodging establishments as set forth therein;

WHEREAS, on April 3, 2020, the Fort Myers Beach Town Council adopted Emergency Declaration No. 4 amending Declaration No. 2, attached hereto as Composite Exhibit "A", which closed all hotels, motels, and all other public lodging establishments as set forth therein;

WHEREAS, the Governor's Executive Orders No. 20-87, No. 20-91, and No. 20-92 are scheduled to expire on April 30, 2020;

WHEREAS, the Town Council amends Emergency Declaration No. 4 to read as set forth herein.

NOW, THEREFORE IT IS ORDERED:

1. Effective March 30, 2020, all parties engaged in the rental of public lodging establishments as defined in §509.013(4)(a), *Florida Statutes*, operation of a recreational vehicle park as defined in §513.01(11), *Florida Statutes*, and any vacation and timeshare accommodations as defined in §721.05(1), *Florida Statutes*, engaged in rentals or occupancy of less than 30 days shall:
 - (a) Cancel all existing reservations and not extend existing stays, nor accept new guests.
 - (b) Any guests of such accommodations that have checked in as of 11:59 PM, Monday, March 30, 2020, may remain for the duration of their stay.
2. This closure order includes single-family or multi-family homes, condominiums, timeshares, or vacation rentals, and any other place of public accommodation for lodging, including any bed and breakfast, resort housing, inn, hotel, motel, recreational vehicle park or other establishment engaged in rentals or transient occupancy of less than 30 days.
3. This closure order does not apply to the rental or transient occupancy of any public lodging establishments, recreational vehicle park or any vacation and timeshare accommodation to the following individuals providing verifiable evidence of their status as:
 - (a) Healthcare professionals providing Covid-19 related healthcare services to the Town or its residents and visitors.
 - (b) First responders providing Covid-19 related services to the

Town or its residents and visitors.

- (c) National Guard members providing Covid-19 related services to the Town or its residents and visitors.
 - (d) Law enforcement officers providing Covid-19 related services to the Town and its residents and visitors.
 - (e) State or federal government employees providing Covid-19 related services to the Town and its residents and visitors.
 - (f) Journalists reporting on Covid-19 related issues in the Town.
 - (g) Others responding to the COVID-19 pandemic to assist the Town, or its residents and visitors.
 - (h) Displaced Town employees or residents.
 - (i) Town visitors unable to return to their home due to COVID-19 impacts on travel.
 - (j) Town residents who must vacate their homes due to exigent circumstances, such as fire or flood.
 - (k) Town residents utilizing hotels as transitional living arrangements.
 - (l) Town residents sheltering in hotels due to domestic violence.
-
- (m) Fort Myers Beach public lodging employees, service providers, and contractors.

4. Notwithstanding the foregoing, all parties engaged in the rental of public lodging establishments as defined herein may accept reservations commencing on May 15, 2020, for stays commencing on or after May 15, 2020 subject to the following:

- (a) Deposits on reservations must be 100% refundable and no change fees may be charged in the event of reservation cancellations or modifications.

5. All residents and visitors of the Town of Fort Myers Beach are directed to comply with these emergency regulations and necessary measures, which

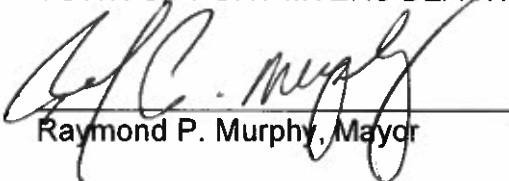
shall be strictly enforced, and to cooperate with public officials and public safety personnel in executing any emergency operational plans, and to obey and comply with the lawful direction of all properly identified public officers.

6. In accordance with applicable state law, Sections 1-12 and 12-25 of the Code of Ordinances of the Town of Fort Myers Beach and Article V of Chapter 2 of the Land Development Code of Fort Myers Beach, any violation of any rule or regulation issued and set forth herein may be punishable by a fine of up to \$5000.
7. This Emergency Declaration amends and supersedes Emergency Declaration No. 4; it does not modify or otherwise supersede any other prior Emergency Declaration.

This Emergency Declaration is effective immediately and shall stay in effect until May 14, 2020 at 11:59 p.m., or the expiration of the Governor's Executive Orders No. 20-87, No. 20-91, and No. 20-92, whichever occurs first.

Raymond P. Murphy, Mayor	aye
Rexann Hosafros, Vice Mayor	aye
Dan Allers, Council Member	aye
Jim Atterholt, Council Member	aye
Bill Veach, Council Member	nay

TOWN OF FORT MYERS BEACH


Raymond P. Murphy, 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 R. Herin, Jr., Town Attorney

This Declaration was filed in the Office of the Town Clerk on this 30th day of April 2020
[see, §252.46(2), Fla. Stat.]. Michelle D. Mayher, Town Clerk

DECLARATION OF EMERGENCY REGULATIONS No. 2

(COVID-19 State of Emergency - March 29, 2020)

WHEREAS, Novel Coronavirus Disease 2019 (COVID-19) is a severe acute respiratory illness that can spread among humans through respiratory transmission and other potential methods, and presents symptoms similar to those of influenza; and

WHEREAS, in December of 2019, a new and substantial outbreak of COVID-19 emerged in Wuhan, China, and has since spread rapidly to 150 countries and territories throughout the World, including the United States, and more specifically Lee County and 30 other counties in the State of Florida; and

WHEREAS, on March 11, 2020, the World Health Organization (WHO) declared COVID-19 a pandemic; and

WHEREAS, President Trump issued a Proclamation Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak; and

WHEREAS, the Centers for Disease Control and Prevention (CDC) is predicting that it is likely that widespread transmission of COVID-19 will also occur in the United States; and

WHEREAS, no vaccine or drug is currently available to cure or combat COVID-19;
and

WHEREAS, the CDC has issued guidelines for "community mitigation strategies" to limit the spread of COVID-19, including recommendations for social distancing, which has proven to be an effective method for containing COVID-19;

WHEREAS, according to information from the Center for Disease Control and Prevention, Public Health Professionals, and the 2010 Federal Census the Town of Fort Myers Beach is an "at-risk" community for severe or critical reactions to COVID-19 infections, and

WHEREAS, the Town of Fort Myers Beach is threatened by COVID-19 because of the ability of the virus to spread rapidly among humans, COVID-19 thereby constitutes

a clear and present threat to the health, safety, and welfare of the residents and visitors of the Town of Fort Myers Beach; and

WHEREAS, the number of confirmed COVID-19 cases continues to rise throughout the country, the State of Florida, and Lee County, with at least 1 confirmed case in the Town of Fort Myers Beach (according to the Florida Department of Health report issued March 28, 2020); and

WHEREAS, the CDC has cautioned against non-essential travel within the United States; and

WHEREAS, Florida is experiencing an increase in individuals fleeing to Florida from out-of-state locations where "shelter-in-place" orders are being implemented and community spread exists; and

WHEREAS, many cases of COVID-19 in Florida have resulted from individuals coming into the State of Florida from international travel and other states, posing great risk to Florida residents; and

WHEREAS, vacation rentals and third-party platforms advertising vacation rentals in Florida present attractive lodging destinations for individuals coming into Florida; and

WHEREAS, Governor DeSantis has issued numerous Executive Orders regarding the Covid-19 pandemic, including Executive Order No. 20-87 ordering all parties engaged in rental of vacation rental properties to suspend vacation rental operations, prohibiting the making of new reservations or bookings, and accepting new guests for check-in for the duration of Executive Order No. 20-87; and

WHEREAS, in accordance with Section 252.38, *Florida Statutes*, the Town Council of the Town of Fort Myers Beach adopted Resolution 20-13, declaring a state of emergency regarding COVID-19, and authorizing **taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community**"; and

WHEREAS, pursuant to Town of Fort Myers Beach Charter and Sections 12-19 through 12-25 of the Code of Ordinances of the Town of Fort Myers Beach, Florida, the Town Council of the Town of Fort Myers Beach is empowered to take all prudent actions necessary to ensure the health, safety and welfare of the community.

NOW, THEREFORE IT IS ORDERED:

1. All parties engaged in the rental of public lodging establishments as defined in §509.013(4)(a), *Florida Statutes* as transient or non-transient lodging, and any vacation and timeshare accommodations as defined in §721.05(1), *Florida Statutes*, shall cancel all existing reservations and not extend existing stays, nor accept new guests or new reservations for the duration of this Declaration. Any guests of such accommodations

that have checked in as of 11:59 PM, Monday, March 30, 2020, may remain for the duration of their stay. This closure order includes but is not limited to single-family or multi-family homes, condominiums, timeshares, or vacation rentals, and any other place of public accommodation for lodging, including any bed and breakfast, resort housing, inn, hotel, motel, or other establishment that provides lodging to transient guests. This prohibition does not affect the ability of an owner of a condominium, single family or multi-unit property from staying in his or her own property for some or all of the restricted period, excluding timeshares; nor any lodging of first responders or employees.

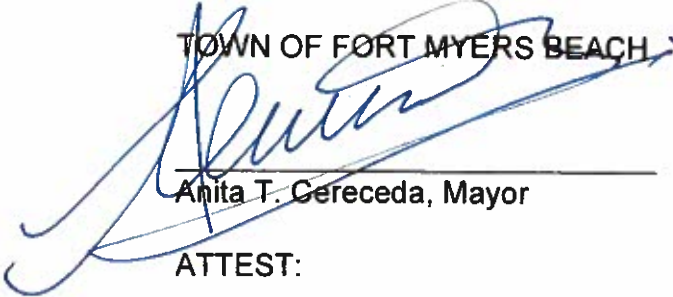
2. All residents and visitors of the Town of Fort Myers Beach are directed to comply with these emergency regulations and necessary measures, which shall be strictly enforced, and to cooperate with public officials and public safety personnel in executing any emergency operational plans, and to obey and comply with the lawful direction of all properly identified public officers.
3. In accordance with applicable state law, Sections 1-12 and 12-25 of the Code of Ordinances of the Town of Fort Myers Beach and Article V of Chapter 2 of the Land Development Code of Fort Myers Beach, any violation of any rule or regulation issued and set forth herein may be punishable by a fine of up to \$5000.
4. This Emergency Declaration does not modify or otherwise supersede any prior Emergency Declaration.

This Emergency Declaration will be effective immediately and stay in effect for ninety (90) days.

Anita T. Cereceda, Mayor	aye
Ray Murphy, Vice Mayor	aye
Joanne Shamp, Councilmember	aye
Rexann Hosafros, Councilmember	aye
Bruce Butcher, Councilmember	aye

ADOPTED this 30th day of March, 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. Mayner, 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