

## **ORDINANCE 20-15**

### **AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING SECTION 34-639 ENTITLED “PERMITTING SURVEY REQUIREMENTS” and SECTION 6-14 ENTITLED “NEIGHBORHOOD FLOODING” OF THE FORT MYERS BEACH LAND DEVELOPMENT CODE, REVISING THE SURVEY REQUIREMENTS; AND PROVIDING FOR STORMWATER COMPLIANCE AND INSPECTION; 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 Land Development Code language to clarify, improve, and create consistency among sections; and

**WHEREAS**, the Town also recognizes that both its economy and the quality of life of its residents are enriched by a healthy environment and clean nearshore waters; and

**WHEREAS**, on September 10, 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 September 21, 2020 the Town Council held a first reading of the proposed Ordinance; and.

**WHEREAS**, on October 5, 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:**<sup>1</sup>

**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.

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<sup>1/</sup> Additions to existing text are shown by underline, changes to existing text on second reading are shown by double underline, and deletions are shown as ~~strikethrough~~.

Section 2. The Town of Fort Myers Beach Land Development Code is hereby amended to read as follows:

**Sec. 34-639. - Permitting survey requirements.**

(a) *Survey required.* In order to demonstrate compliance with applicable regulations of this division, the applicant or contractor must provide, the following, as illustrated in the chart below, Illustration Chart 1:

- (1) A boundary and topographic survey at the time of building permit application;
- (2) – (5) no changes

(b) *Types of permits requiring survey submission:*

- (1) New construction;
- (2) Room addition;
- (3) Swimming pools and spas, and other impervious surfaces;
- (4) Accessory buildings and structures;
- (5) Fences.
- (6) Driveways

(c) *Waiver of survey requirements.* The director has discretion to review waiver requests under certain situations:

- (1) No change
- (2) In-kind replacement of materials and elevations for driveways;
- (23) ~~If the value of the permitted construction is less than \$10,000.00~~Fences that are clearly within the applicant's property boundary and any errors are solely the responsibility of the owner.
- (4)When proposed improvements are exempt from other sections of the Land Development Code.

(d) As-built survey. Upon completion of a project which changes the building envelope, building height, site grading and stormwater, or infrastructure, an as-built survey shall be required.

Illustration Chart 1:

| Type   | Boundary<br>and<br>Topographic<br>survey | Foundation<br>/Setback survey<br>(under<br>construction) | Structure<br>As-built<br>survey | Height/<br>elevation | Topographic<br>As-built<br>survey <sup>1</sup> |
|--|--|--|---------------------------------|----------------------|--|
| New construction   | x  | x  | x                               | x                    | x  |
| Room addition  | x  | <u>x</u>   | <u>x</u>                        | <u>x</u>             | <u>x</u>                                       |
| Swimming pool/spa,<br><u>Impervious surfaces</u>                     | x  | <u>x</u>   | <u>x</u>                        | <u>x</u>             | <u>x</u>                                       |
| Accessory buildings<br>& structures <u>&gt;150</u><br><u>sq. ft.</u> | x  | x  |                                 | <u>x</u>             | <u>x</u>                                       |
| Fences   | x  |  |                                 |                      |  |
| <u>Driveways</u>   | <u>x</u>                                 |  |                                 |                      | <u>x</u>                                       |

<sup>1</sup> Only when a stormwater plan was required for permit approval.

(Ord. No. 17-10, § 2(Exh. A), 6-19-2017)

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#### **Sec. 6-14. - Neighborhood flooding.**

(a) No change

(b) Substantial Compliance. Upon completion of all grading and landscaping associated with a single-family dwelling, two-family dwelling, detached structure, pool, pool deck, addition, pavers, driveway or patio which increases the impervious surface by 500 square feet or more, an inspection shall be performed by the developer's engineer or designated representative. Upon finding the development has been completed and in substantial compliance with the approved stormwater engineering documents, the engineer shall submit a signed and sealed letter of substantial compliance to the director along with a final inspection request. No final inspection will be performed by the town until the letter of substantial compliance has been accepted. The letter of substantial compliance may include a submittal for a minor change with

highlighted plans showing minor changes which do not substantially affect the technical requirements of this section. Letters of substantial compliance shall be in a form approved by the director or town attorney.

(1) Substantial compliance means that the development, as determined by an on-site inspection by a professional engineer or designated representative, is completed to all the specifications of the approved stormwater engineering plans and that any deviation between the approved plans and actual as-built construction is so inconsequential that, on the basis of accepted engineering practices, it is not significant enough to be shown on the stormwater plans.

Section 4. 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 5. 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 6. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the ordinance as a whole, or any part thereof, other than the part so declared.

Section 7. This ordinance shall become effective upon adoption by the Town Council.

The foregoing Ordinance was adopted by the Town Council upon a motion by Council Member Allers and seconded by Vice Mayor Hosafros and upon being put to a roll call vote, the result was as follows:

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

ADOPTED this 5<sup>th</sup> day of October, 2020 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

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Raymond P. Murphy, Mayor

ATTEST:

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Amy Baker, Deputy Town Clerk

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

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John R. Herin, Jr., Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this \_\_day of \_\_\_\_\_, 2020.