

## **ORDINANCE 23-05**

### **AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING THE PLACEMENT OF TEMPORARY HOUSING AND TEMPORARY GOVERNMENTAL USE FACILITIES IN SPECIFIED ZONING DISTRICTS OF THE TOWN, PROVIDING FOR CONFLICT OF LAW, SCRIVENER'S ERRORS, SEVERABILITY, SUNSETTING OF THIS ORDINANCE, 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 recognizes that redevelopment of the Town, following hurricane Ian requires evaluation and updates to the Town's Codes and Ordinances; and

**WHEREAS**, a public hearing was held before the Local Planning Agency (LPA) on January 18, 2023, at which the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the record, and the testimony of all interested persons, and the LPA voted 7-0, to recommend approval of this Ordinance; and

**WHEREAS**, on March 6, 2023, the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the recommendation of staff, and the testimony of all interested persons; and

**WHEREAS**, the Town Council set a second reading of the proposed Ordinance and a public hearing on this matter to be legally advertised and held before the Town Council on March 20, 2023; at which time the Town Council gave full and complete consideration to the recommendation of staff, and the testimony of all interested persons; and

**WHEREAS**, the Town finds that it is in the best interests of the health, safety, and welfare of the Town's business owners, residents, and visitors to allow for the placement of temporary housing and temporary governmental use facilities in specified zoning districts of the Town.

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

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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.

Council.

Section 2. The Town Council determines that adoption of the following interim regulations is in the best interests of the health, safety, and welfare of the Town's business owners, residents, and visitors, which regulations shall read as follows:

**Temporary Placement of Emergency Uses, Manufactured  
Homes, Mobile Homes, Motor Homes, Recreational Vehicles  
Other Temporary Residential Dwelling or Temporary  
Moveable Commercial Units**

- (1) An emergency governmental use, manufactured home, mobile home, motor home, recreational vehicle, or other temporary unit, may be permitted on a limited basis by the issuance of a temporary placement permit (TPP) by the Town.
- (2) Unless otherwise provided in this Ordinance, an emergency governmental use, manufactured home, mobile home, motor home, recreational vehicle, or other temporary unit shall be removed from the site within thirty (30) days after issuance of a certificate of occupancy or certificate of use associated with the approved permit, or at the time of the expiration of the TPP, whichever is earlier. TPP shall not be used for the purpose of placing and operating a Short Term Rental.
  - A. A TPP may be granted as indicated below:
    - (i) Within any Commercial or Institutional Zoning District, a TPP may be issued for the purpose of providing an emergency governmental use to provide an essential governmental service adversely impacted due to adverse weather or other acts of God.
    - (ii) Within any Commercial, Institutional or Residential Zoning District, a TPP may be issued for the purposes of placing a manufactured home, mobile home, motor home, recreational vehicle, or other temporary unit for displaced owner-occupants or tenants if their existing living unit(s) has/have become uninhabitable due to adverse weather damage or other acts of God. Habitability of the existing residential unit(s)

shall be determined by an inspection by the City building official, Florida certified building inspector, architect, or engineer, and subject to the following requirements and restrictions:

- (a) No more than one (1) manufactured home, mobile home, motor home, recreational vehicle, or other temporary unit shall be allowed per living unit, for single family and two-family homes. Additional units may only be allowed with approval of a waiver by the Town Council.
  - (b) The TPP shall only be allowed while the damaged living unit is uninhabitable and in the process of repair or a replacement living unit is in the process of being constructed.
  - (c) Placement of a manufactured home, mobile home, motor home, recreational vehicle, or other temporary unit on a site must meet all State requirements for tie-downs. Mobile homes shall be installed by a licensed mobile home contractor and in accordance with requirements of Florida Statutes and the Florida Building Code.
  - (d) Only verified residents of Fort Myers Beach may be granted a TPP.
- (iii) The TPP shall be issued in increments of six (6) months by review of the Town and shall not be issued for a period exceeding eighteen (18) months from the date of this ordinance adoption. The Town may, however, grant extensions to a TPP permit exceeding eighteen (18) months if a TPP permit holder demonstrates that a significant hardship exists. The Town Manager or designee shall decide if a hardship exists based upon evidence provided by the permit holder that they have exercised all due diligence in obtaining permits either for repair or replacement of the affected structure. The

Town Manager may consider whether the applicant has had difficulties in completing insurance claims, obtaining an architect or engineer, obtaining construction materials, or obtaining a contractor, and if relevant, whether they have had difficulty in obtaining grants or loans to assist in repair or replacement of the affected structure.

- (iv) The holder of the TPP shall apply for a building permit for the damaged or destroyed dwelling unit no later than six (6) months after the date of this ordinance adoption. The Town Manager or designee may, however, grant extensions to this deadline requirement based upon evidence provided by the property owner that they have exercised all due diligence in obtaining permits either for repair or replacement of the affected structure. The Town Manager may consider whether the applicant has had difficulties in completing insurance claims, obtaining an architect or engineer, obtaining construction materials, or obtaining a contractor, and if relevant, whether they have had difficulty in obtaining grants or loans to assist in repair or replacement of the affected structure.
- (v) Noncompliance may result in revocation of the TPP.
- (vi) The occupants of the manufactured home, mobile home, motor home, recreational vehicle, or other temporary residential unit must comply with all mandatory hurricane evacuation requirements. Failure to do so may result in the revocation of the TPP.

3. Submission Requirements:

- A. A completed TPP application; and
- B. Map or other documentation indicating the proposed location of the manufactured home, mobile home, motor home, recreational vehicle, or other temporary residential unit; and

C. State Department of Health, State Department of Environmental Protection, and Town permit(s) authorizing the connection of the manufactured home, mobile home, motor home, recreational vehicle, or other temporary residential unit to an on-site or existing community wastewater treatment system.

4. An appeal of any decision made under this Ordinance may be made pursuant to the provisions found in Section 34-86 of the Town's Land Development Code.

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

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

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

Section 6. Absent extension of this Ordinance in accordance with State law and the Town Code this Ordinance shall terminate effective eighteen months (18) from its effective date and shall be of no further force or effect after such date.

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

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

ADOPTED this 15<sup>th</sup> day of May 2023, by the Town Council of the Town of Fort Myers Beach, Florida.

**TOWN OF FORT MYERS BEACH**

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Dan Allers, Mayor

**ATTEST:**

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Amy Baker, Town Clerk

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

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John R. Herin, Jr., Town Attorney

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