

ORDINANCE NO. 24-08

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE III., DIVISION 5, SECTIONS 34-675 BUILDING SIZE TO 1) CHANGE BUILDING HEIGHT FROM 2 STORIES TO 3 STORIES FOR PROPERTIES THAT FRONT ON TIMES SQUARE AND BAYFRONT PEDESTRIAN PLAZAS, THE NORTH SIDE OF FIRST STREET, THE SOUTH SIDE OF ESTERO BOULEVARD BETWEEN OLD SAN CARLOS BOULEVARD AND THE MAIN PEDESTRIAN CROSSING; AND 2) CHANGE BUILDING HEIGHT FROM 2 STORIES TO 3 STORIES FOR PROPERTIES THAT FRONT ON LAGOON STREET, CRESCENT STREET, FIRST, SECOND, THIRD AND FIFTH STREETS (EAST OF SKY BRIDGE ONLY); PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE.

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, the Town recognizes that redevelopment of the Town, following hurricane Ian requires evaluation and updates to the Land Development Code; and

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

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on April 9, 2024, at time 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 6-0, to recommend approval of this Ordinance; and

WHEREAS, on April 15, 2024, the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons to amend Ordinance 23-05 as provided herein and approved scheduling an adoption public hearing; and

WHEREAS, a Business Impact Estimate was prepared and posted on the City's website on the 18th day of April, 2024, as required by Section 166.041(4), Florida Statutes; and

WHEREAS, an advertisement of the public hearing for adoption of the Ordinance was

published in the News-Press on the 18th day of April, 2024, which is 10 days prior to the second reading of the proposed Ordinance as required by Section 166.041; and

WHEREAS, on the 6th day of May, 2024, the Town Council held a second reading of the Ordinance; at which time the Town Council gave full and complete consideration to the recommendations of staff and the LPA, 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 adopt the proposed change.

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

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

Section 2. Chapter 34, Article III., Division 5, Sections 34-675 Building Size is hereby amended to read as found in **attached Exhibit A** – Amended Sec. 34- Downtown Building Height:

Section 3. The Town Council intends that the provisions of this ordinance be made a part of the Fort Myers Beach Code of Ordinances, and that sections herein may be renumbered or re-lettered and the words or phrases herein may be changed to accomplish codification; regardless, typographical errors that do not affect intent may be corrected with notice to and authorization of the Town Manager without further process.

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

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

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

The foregoing Ordinance was adopted by the Town Council upon a motion by Councilmember King and seconded by Mayor Allers 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
Scott Safford, Council Member	Aye
Karen Woodson, Council Member	Aye

ADOPTED this 6th day of May 2024, by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorney

EXHIBITS

Exhibit A – Amended Downtown Building Height, Sec. 34-675

Exhibit A – Amended Downtown Building Height, Sec. 34-675

Subdivision II. – Downtown Zoning District

Sec. 34-675. - Building size.

(a) Building frontage. Building frontage limits (see § 34-663 of this chapter) vary according to the street types designated on Figure 34-7:

- (1) For pedestrian plazas and primary streets except for Crescent Street and for Fifth Avenue east of the Sky Bridge, building frontages shall be at least 70 percent of the lot frontage.
- (2) For all other streets, building frontages shall be at least 35 percent of the lot frontage.
- (3) For multiple adjoining lots under single control, or for a single lot with multiple buildings, the percentages above apply to the combination of lot(s) and building(s).
- (4) Exception for properties between Estero Boulevard and the Gulf: The required building frontage percentage may be reduced to 35 percent for properties between Estero Boulevard and the Gulf of Mexico provided that the open space thus created allows open views to the Gulf of Mexico.

(b) Building height. Building heights (see § 34-631 of this chapter) shall be limited to:

- (1) For properties that front on the following streets, a maximum of 30 feet above base flood elevation and no taller than ~~two~~ **three** stories:
 - a. Times Square and Bayfront pedestrian plazas (see Figure 34-7);
 - b. North side of First Street;
 - c. South side of Estero Boulevard between Old San Carlos Boulevard and the main pedestrian crossing;
 - d. Carolina Avenue.
- (2) For properties that front on the following streets, a maximum of 30 feet above base flood elevation and no taller than ~~two~~ **three** stories, ~~except that an elevated buildings~~ **are encouraged to limit** ~~without enclosed space on the first story may be three stories tall (but still limited to 30 feet above base flood elevation):~~
 - a. Lagoon Street;
 - b. Crescent Street;

- c. First, Second, Third, and Fifth (east of the Sky Bridge only);
- d. North side of Estero Boulevard west of Old San Carlos Boulevard and east of Crescent Street;
- e. Primo Drive;
- f. Palermo Circle;
- g. Miramar Street, north of Estero;
- h. Ohio Avenue;
- i. Virginia Avenue.

(3) For properties that front on the following streets, a maximum of 40 feet above base flood elevation and no taller than three stories:

- a. Old San Carlos Boulevard between Fifth and First Streets;
- b. South side of First and both sides of Second and Third (west of the Sky Bridge only);
- c. South side of Estero Boulevard east of the main pedestrian crossing;
- d. Canal Street;
- e. Avenues A, C, E, and I;
- f. Alva Drive;
- g. Miramar Street, south of Estero;
- h. Palm Avenue.

(c) Floor area ratio (FAR). Floor area ratios (see § 34-633 of this chapter) shall not exceed:

- (1) 1.8 for properties fronting on Old San Carlos between Fifth and First Streets and fronting on the Times Square pedestrian plaza (see Figure 34-7).
- (2) 1.4 for properties fronting on Estero Boulevard and fronting on the Bayfront pedestrian plazas.
- (3) 1.0 for all other properties in the Downtown district.