

ORDINANCE NO. 24-26

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING 1) TABLE 34-2 TITLED “USE SUB-GROUPS PERMITTED IN EACH ZONING DISTRICT” IN CHAPTER 34, ARTICLE III, DIVISION 2 TO AMEND THE ALLOWED SUB-GROUPS, FOR THE CB ZONING DISTRICT, FROM LIMITED TO OPEN FOR THE LODGING, OFFICE, AND RETAIL USE GROUPS; 2) THE LAND DEVELOPMENT CODE SUBDIVISION V. – CB ZONING DISTRICT FOUND IN CHAPTER 34, ARTICLE III, DIVISION 5. – REDEVELOPMENT ZONING DISTRICT TO PLACE LIMITATIONS ON NEW OUTDOOR DINING AND OUTDOOR ENTERTAINMENT USES; PROVIDING FOR SEVERABILITY, C ODIIFICATION, SCRIVENER'S ERRORS; CONFLICTS OF LAW; 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, 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, the proposed changes to the Land Development Code are not more restrictive or burdensome to development; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on September 3, 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 7-0, to recommend approval of this Ordinance; and

WHEREAS, on September 23, 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 adopt Ordinance 24-26 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 27th day of September, 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 27th day of September, 2024, which is 10 days prior to the second reading of the proposed Ordinance as required by Section 166.041; and

WHEREAS, on the 28th day of October, 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. Table 34-2 Use Sub-Groups Permitted in Each Zoning Districts, in Chapter 34, Article III, Division 2 and Subdivision V. – CB Zoning District, Sections 34-702 through 34-705 are hereby amended to read as provided in Exhibits A and B.

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 Councilmember Safford and upon being put to a roll call vote, the result was as follows:

Dan Allers, Mayor	<u>Aye</u>
Jim Atterholt, Vice Mayor	<u>Aye</u>
John R. King, Council Member	<u>Aye</u>
Scott Safford, Council Member	<u>Aye</u>
Karen Woodson, Council Member	<u>Aye</u>

ADOPTED this 28th day of October 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

The foregoing Ordinance was filed in the Office of the Town Clerk on the ____ day of _____, 2024.

Attached Exhibits

Exhibit A – Subdivision V. – CB Zoning District
Exhibit B – Table 34-2

Subdivision V. - CB Zoning District

Sec. 34-701. - Purpose.

The purpose of the CB (Commercial Boulevard) district is to provide standards for existing commercial uses and certain other uses along those portions of Estero Boulevard where the "boulevard" classification of the Fort Myers Beach Comprehensive Plan promotes a mixed-use development pattern.

Sec. 34-702. - Applicability.

- (a) The regulations of this code section allow for the continuation of existing uses, plus additional uses listed in Table 34-2 and further defined in Section 34-703.
- (b) The regulations of this code section allow for:
 - (1) Continuation of existing buildings and structures,
 - (2) Enlargement or expansion of existing structures, in compliance with all of the building placement, size, and design criteria of the CB zoning district regulations, and
 - (3) Replacement in compliance with the building placement, size, and design criteria of the CB zoning district regulations,

~~(a) Continued use.~~ The regulations in this code section allow the continued use of existing buildings and structures for allowable uses as defined in ~~§ 34-703~~ below, on all properties zoned CB:

~~(b) Entarging or replacing buildings for existing commercial uses.~~ The regulations in this code section also allow the following activities:

~~(1) Physical enlargement of buildings or structures containing existing commercial uses, provided that the improvements do not constitute a "substantial improvement" as that term is defined in § 6-424 of this code, and~~

~~(2) Replacement buildings for existing commercial uses that will not increase the existing floor area ratio, as that term is defined in § 34-633 of this chapter.~~

~~(c) Entarging or replacing buildings for all other allowable uses.~~ The regulations in this code section also allow the physical enlargement of and replacement of buildings for all allowable uses, other than existing commercial uses (which are governed by subsection (b) of this section) or new or expanded commercial uses (which are governed by subsection (d) of this section):

~~(d) New or expanded commercial uses.~~ In accordance with Policies 4-B-5 and 4-C-3-iv of the Fort Myers Beach Comprehensive Plan:

~~(1) New or expanded commercial uses in the "boulevard" category of the Fort Myers Beach Comprehensive Plan require rezoning as a commercial planned development (see § 34-951 of this chapter):~~

~~(2) Physical enlargements of existing commercial buildings, with an allowed use, as defined in Table 34-2, that constitute a "substantial improvement" as that term is defined in § 6-424 of this LDC also require rezoning as a commercial planned development.~~

Exhibit A – Amended Subdivision V. – CB Zoning District

~~(3) For purposes of this section only, the following types of re-use of existing floor area shall be deemed a continuation of an existing commercial use rather than a new or expanded commercial use:~~

- ~~a. Conversion of an existing space to office, retail, or restaurant use, when that use previously existed on that parcel;~~
- ~~b. An existing bar or cocktail lounge converted to another bar or cocktail lounge or to a restaurant, retail, or office use;~~
- ~~c. Existing areas of outdoor dining may be converted to another outdoor dining area;~~
- ~~d. Existing areas of outdoor display of merchandise may be converted to another outdoor display of merchandise area;~~
- ~~e. Conversion of existing space previously used as a financial institution with drive-through to small retail, with outdoor display. Outdoor display shall be located in the area previously utilized as a drive-through and shall not exceed 1,500 square feet under roof. Parking spaces may not be used for outdoor display.~~

(Ord. No. [21-07](#), § 2, 11-15-2021)

Sec. 34-703. - Allowedable uUses.

- (a) In the CB district, allowable uses are defined as any of the following:
 - (1) Those uses defined in Table 34-2 for the CB district, with additional regulations as defined in Sec. 34-703(b);
 - (2) Continuation of the commercial uses that were previously allowed on the site, prior to the permit request. Evidence of the previous use may include websites, pictures, pamphlets, permits, tax receipts or similar documentation; and were lawfully existing on March 3, 2003; and
 - ~~(3) Those additional commercial uses of existing floor space as provided by [§ 34-702\(d\)\(3\)](#) of this chapter.~~
- (b) Any landowner wishing to place other new or expanded commercial uses on property that is zoned CB must comply with the following:
 - (1) New outdoor entertainment is allowed with approval of a commercial special exception. Outdoor, for this section, includes any area that is not surrounded by permanent walls and windows;
 - (2) New live entertainment is not permitted without approval of a special exception;
 - (3) New outdoor seating areas must close at sunset unless approved by special exception. ~~rezone the property to commercial planned development.~~
- (c) Any landowner wishing to subdivide land that is zoned CB into residential homesites must comply with all of the setback, lot size, intensity, and density regulations for the RC zoning district as described in Table 34-3. Compliance with these regulations shall substitute for the building placement standards that are found in [§ 34-704](#) below, and for the intensity standard found in [§ 34-705\(c\)](#) of this chapter.

Sec. 34-704. - Building placement.

Exhibit A – Amended Subdivision V. – CB Zoning District

- (a) *Build-to lines established.*
- (1) Build-to lines for structures other than detached single-family and two family residences (see [§ 34-662](#) of this chapter) for Estero Boulevard are established at five to ten feet from front property lines. Awnings, canopies, and marquees over sidewalks and pedestrian walkways are encouraged by the commercial design standards ([§§ 34-991—34-1010](#) of this chapter).
 - (2) Detached single-family and two-family residential structures build-to lines from Estero Boulevard are established at five feet to 18 feet to allow additional setback for a driveway, if desired.
- (b) *Setback lines established.* Setback lines (see [§ 34-662](#) of this chapter) are established as follows:
- (1) For principal buildings:
 - a. Minimum street setbacks for all streets other than Estero Boulevard are ten feet.
 - b. Minimum rear setbacks are 20 feet from rear property lines.
 - c. Minimum side setbacks are five feet from side property lines.
 - d. Minimum setbacks from waterbodies are set forth in [§ 34-638\(d\)\(3\)](#) of this chapter.
 - (2) For accessory structures, minimum setbacks are set forth in [§§ 34-1171—34-1176](#).

Sec. 34-705. - Building size.

- (a) *Building frontage.* Building frontage limits (see [§ 34-663](#) of this chapter) are established as follows:
- (1) For Estero Boulevard, building frontages shall be at least 50 percent of the lot frontage. This 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.
 - (2) 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).
- (b) *Building height.* Building heights (see [§ 34-631](#) of this chapter) shall be limited to:
- (1) For properties that front on the bay side of Estero Boulevard and all streets other than Estero Boulevard, a maximum of 30 feet above base flood elevation and no taller than ~~two three stories,~~ except that an elevated building without enclosed space on the first story may be three stories tall (but still limited to 30 feet above base flood elevation).
 - (2) For properties that front on the beach side of Estero Boulevard, a maximum of 40 feet above base flood elevation and no taller than three stories.
- (c) *Floor area ratio (FAR).* Floor area ratios (see [§ 34-633](#) of this chapter) shall not exceed 1.0 for all structures other than detached single-family and two-family homes.

Sec. 34-706. - Circulation and parking.

- (a) *Parking lot locations.* Off-street parking lots shall be placed in side or rear yards (see Figure 34-5). Off-street parking lots are not permitted in front yards.
- (b) *Under-building parking.* Off-street parking may be provided under commercial or mixed-use buildings provided that all under-building parking spaces are screened in accordance with [§ 34-693\(l\)](#) of this chapter.

Exhibit A – Amended Subdivision V. – CB Zoning District

- (c) *Parking lot interconnections.* Wherever physically possible, parking lots for abutting properties fronting along Estero Boulevard shall be interconnected to eliminate or minimize driveways to Estero Boulevard.
- (1) To ensure the effective use of these connections, the first to develop shall be required to make an irrevocable offer of cross-access to the adjacent parcel (prior to issuance of a development order), and must design and build the parking lot to accommodate cross-access.
 - (2) When adjacent owners seek development orders, they will also be required to reciprocate with a similar cross-access agreements and then must complete the physical connection.
 - (3) Individual property owners shall control all rights to the use of their own parking spaces, but may choose to allow wider use of these spaces for a fee of their choosing or through reciprocal arrangements with other parties.
- (d) *Driveway connections for properties fronting on Estero Boulevard.* Existing driveways and parking spaces shall be relocated from Estero Boulevard to other streets and new driveways shall connect only to other streets, except where these requirements would prohibit all reasonable access to a property. When a driveway onto Estero Boulevard is unavoidable, the driveway shall be shared with an adjoining property if that property also has access only to Estero Boulevard. Otherwise, the driveway shall be spaced as far as practical from other driveways or intersections.

(Ord. No. [21-07](#), § 2, 11-15-2021)

Sec. 34-707. - Commercial design standards.

The commercial design standards (§§ [34-991](#)—34-1010 of this chapter) shall apply to all commercial and mixed-use buildings, or portions thereof, that are being newly built, and to "substantial improvements" to such buildings as defined in [§ 6-424](#) of this LDC.

(Ord. No. [21-07](#), § 2, 11-15-2021)

Secs. 34-708—34-930. - Reserved.

Table 34-2 — Use Sub-Groups Permitted In Each Zoning District ¹						
	<i>Residential</i>	<i>Lodging</i>	<i>Office</i>	<i>Retail</i>	<i>Marine</i>	<i>Civic</i>
	Use Groups and Sub-Groups (Restricted, Limited, Open)					
<i>RS Residential Single-family</i>	Ⓡ	Ⓡ	Ⓡ	—	Ⓡ	Ⓡ
<i>RC Residential Conservation</i>	Ⓛ	Ⓛ	Ⓡ	—	Ⓡ	Ⓡ
<i>RM Residential Multifamily</i>	Ⓞ	Ⓛ	Ⓛ	Ⓡ	Ⓡ	Ⓛ
<i>CR Commercial Resort</i>	Ⓞ	Ⓞ	Ⓞ	Ⓛ	Ⓛ	Ⓛ
<i>CM Commercial Marina</i>	—	—	Ⓛ	Ⓛ	Ⓞ	Ⓛ
<i>CO Commercial Office</i>	Ⓞ	Ⓛ	Ⓞ	Ⓛ	Ⓛ	Ⓞ
<i>SANTOS</i>	Ⓛ	Ⓛ	Ⓞ	Ⓛ	Ⓛ	Ⓛ
<i>IN Institutional</i>	Ⓛ	Ⓛ	Ⓛ	Ⓡ	Ⓛ	Ⓞ
<i>CF Community Facilities</i>	Ⓡ	Ⓡ	Ⓛ	Ⓡ	Ⓛ	Ⓞ
<i>BB Bay Beach</i>	— see § 34-651(b) —					
<i>EC Environmentally Critical</i>	— see § 34-652(d) & (e) —					
<i>DOWNTOWN</i>	Ⓞ	Ⓞ	Ⓞ	Ⓞ	Ⓛ	Ⓞ
<i>SANTINI</i>	Ⓞ	Ⓞ	Ⓞ	Ⓞ	Ⓞ	Ⓞ
<i>VILLAGE</i>	Ⓛ ²	Ⓛ ²	Ⓛ ²	Ⓛ ²	—	Ⓛ
<i>CB Commercial Boulevard</i>	Ⓞ	Ⓞ	Ⓞ	Ⓞ	Ⓛ	Ⓞ
<i>RPD Residential Planned Dev. ⁴</i>	ⓇⓁⓄ	ⓇⓁ	ⓇⓁ	ⓇⓁ	ⓇⓁ	ⓇⓁ
<i>CPD Commercial Planned Dev. ⁴</i>	ⓇⓁⓄ	ⓇⓁⓄ	ⓇⓁⓄ	ⓇⓁⓄ	ⓇⓁⓄ	ⓇⓁⓄ

Note 1: See Table 34-1 for a specific list of Use Groups (Residential, Lodging, Office, Retail, Marine, and Civic) and Sub-Groups of each (Restricted, Limited, and Open).

Note 2: See § 34-692(3) which provides a pre-approved redevelopment option for the VILLAGE district that can also permit residential, lodging, office, and retail uses in the Open Sub-Group under specified conditions.

Note 3: See § 34-702–703 for exceptions and limitations on new and expanded commercial uses.

Note 4: See § 34-933. The resolution approving a planned development zoning district (RPD or CPD) will specify which of the use groups or sub-groups enumerated in Table 34-1 will be permitted on that parcel. Note that some potential use sub-groups are not listed above for the RPD zoning district because they may not be approved in any RPD zoning resolution.