

ORDINANCE NO. 19-11

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34 OF THE LAND DEVELOPMENT CODE OF THE TOWN OF FORT MYERS BEACH, SECTION 34-1176 SWIMMING POOLS, TENNIS COURTS, PORCHES, DECKS AND SIMILAR RECREATION FACILITIES AND RELATED ACTIVITIES, INCLUDING REQUIREMENTS FOR ABOVE- GRADE SWIMMING POOLS, SWIMMING POOL DECKS, AND DECKS, WITHIN THE TOWN, PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVERNER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE.

WHEREAS, the Town of Fort Myers Beach, Florida recognizes that the provisions for the above-grade swimming pool facility in the Town's Land Development Code shall be subject to reasonable regulations as proposed herein, in addition to those regulation in Land Development Code Article IV, Division 2; to maintain the health, safety and welfare of citizens of the Town; and

WHEREAS, Town Council desires to update Chapter 34 of the Land Development Code language to clarify, improve, and create consistency among sections; and

WHEREAS, the Town of Fort Myers Beach recognizes that unregulated above-grade swimming pool facilities, impacts the view corridor; and

WHEREAS, it is necessary and in the interest of the public health, safety and welfare to monitor and provide reasonable means for citizens of the Town to mitigate impacts created by above-grade swimming pools, within the Town, the following amendment to Chapter 34 of the Land Development Code are hereby adopted; and

WHEREAS, on June 4, 2019 the Town of Fort Myers Beach Local Planning Agency (LPA) reviewed and provided a recommendation of approval to the proposed language by a vote of 7-0; and

WHEREAS, on August 19th, 2019 the Town Council held a first reading of the proposed Ordinance; and

WHEREAS, on September 23rd, 2019 the Town Council held a second reading of the proposed Ordinance; and

NOW, THEREFORE, BE IT ORDAINED, by the Town of Fort Myers Beach, Florida that:

1. The above recitals are adopted as the legislative and administrative findings of the Town Council

2. The following shall be added to Chapter 34, Sec. 34-1176. - Swimming pools, tennis courts, porches, decks and similar recreation facilities of the Town's Land Development Code.
3. Additions to existing text are shown by underline and deletions are shown as ~~strike through~~.

Sec. 34-1176. - Swimming pools, tennis courts, porches, decks and similar recreation facilities.

(a) *Applicability.* The regulations set out in this section apply to all swimming pools, tennis courts, shuffleboard courts, porches, decks and other similar recreation facilities which are accessory to a permitted use, and which are not specifically regulated elsewhere in this chapter.

(b) *Location and setbacks.*

(1) *Personal, private and limited facilities.*

a. *Nonroofed facilities.* All swimming pools, tennis courts, decks, and other similar nonroofed accessory facilities, at grade, shall comply with the following setback requirements:

1. Street setbacks as set forth in §§ 34-1174(b) and 34-638 of this chapter.
2. Water setbacks as set forth in § 34-638(d)(3) of this chapter.
3. Rear lot line setback as set forth in § 34-1174(d) of this chapter.
4. Side lot line setbacks as set forth in § 34-1174(d) of this chapter.

b. *Open-mesh screen enclosures.* Swimming pools, patios, decks and other similar recreation facilities may be enclosed with an open-mesh screen enclosure provided that the enclosure complies with the setback requirements set forth in § 34-1174 of this chapter, and provided further that:

1. At least three sides of the enclosure are open-mesh screening from a height of 3½ feet above grade to the top of the enclosure.
2. Enclosures with any two or more sides enclosed by opaque material shall be required to comply with all setbacks required for a principal building. It shall be the responsibility of the applicant to increase all required setbacks sufficient to provide maintenance access around the pool whenever the pool is proposed to be enclosed with open-mesh screening or fencing. A minimum increase in setbacks of three feet is recommended.

c. *Roofed open-mesh enclosures.* Open-mesh screen enclosures may be covered by a solid roof (impervious to weather) provided that:

1. If structurally part of the principal building, the enclosure shall comply with all setback requirements for the principal building.
2. Except when in compliance with the setback requirements for principal buildings, a solid roof over a screen enclosure shall be constructed as a flat roof with the pitch no greater than the minimum required for rain runoff.

d. Swimming pools, swimming pool decks, and decks above grade. Swimming pools, swimming pool decks, and decks may be constructed to a maximum height not to exceed either the constructed or proposed finished floor elevation for the principle structure, with a maximum of four feet of stem wall exposure or four feet above grade, with the rear setback of five feet. Swimming pools and decks which exceed the maximum heights permitted herein shall conform to the rear and side setbacks of the principle structure.

(2) *Commercial and public facilities.* All pools, tennis courts, and other similar recreation facilities owned or operated as a commercial or public establishment shall comply with the setback regulations for the zoning district in which located.

(c) *Fencing.*

(1) *In-ground swimming pools, hot tubs and spas.* Every swimming pool, hot tub, spa, or similar facility shall be enclosed by a fence, wall, screen enclosure or other structure, not less than four feet in height, constructed or installed to prevent unauthorized access to the pool by persons not residing on the property. For purposes of this subsection, the height of the structure shall be measured from the ground level outside of the area so enclosed. The enclosure may be permitted to contain gates, provided they are self-closing and self-latching.

(2) *Above ground swimming pools, hot tubs and spas.* Above ground pools, hot tubs, spas, and similar facilities shall fulfill either the enclosure requirements for in-ground pools or shall be so constructed that the lowest entry point (other than a ladder or ramp) is a minimum of four feet above ground level. A ladder or ramp providing access shall be constructed or installed to prevent unauthorized use.

(3) *Exception.* A spa, hot tub, or other similar facility which has a solid cover (not a floating blanket) which prevents access to the facility when not in use shall be permitted in lieu of fencing or enclosure requirements.

(4) *Tennis courts.* Fences used to enclose tennis courts shall not exceed 12 feet in height above the playing surface.

(d) *Lighting.* Lighting used to illuminate a swimming pool, tennis court, or other recreation facility shall be directed away from adjacent properties and streets, and shall shine only on the subject site and be shielded from the beach.

(e) *Commercial use.* No swimming pool, tennis court, or other recreation facility permitted as a residential accessory use shall be operated as a business.

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

Anita Cereceda, Mayor	Aye
Ray Murphy, Vice Mayor	Aye
Joanne Shamp, Councilmember	Aye

Rexann Hosafros, Councilmember Aye
Bruce Butcher, Councilmember Aye

ADOPTED this 23rd day of September, 2019 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:

John R. Herin, Jr., Town Attorney