

ORDINANCE NO. 22-11

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING ARTICLE V OF CHAPTER 32 OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH ENTITLED “SEA TURTLE CONSERVATION” TO PROVIDE FOR A TINTED GLASS OPACITY REQUIREMENT FOR ALL NEW CONSTRUCTION AND ALL RENOVATIONS, RETROFITTING OR WINDOW REPLACEMENTS TO EXISTING BUILDINGS TO REDUCE THE INSIDE TO OUTSIDE LIGHT TRANSMITTANCE VALUE, 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 of Fort Myers Beach, Florida ("Town") recognizes that artificial lighting and other human activities on the beach and upland areas have a detrimental effect on the life cycle and nesting activities of sea turtles, which are an endangered species protected by federal and state law, and therefore subject to reasonable regulations as proposed herein; and

WHEREAS, the Town also recognizes that both its economy and the quality of life of its residents are enriched by a healthy sea turtle population; and

WHEREAS, the Town also recognizes the Florida Fish and Wildlife Conservation Commission Marine Turtle Biologist guidance that glass tints with light transmittance values of fifteen (15) percent or the darkest tint practicable have been used successfully to mitigate the impacts of light pollution on sea turtle nesting habitat from interior lighting from structures with windows and doors in line of sight of the beach; and

WHEREAS, the Town also recognizes preservation and protection of sea turtles and sea turtle nesting habitat requires strict enforcement of the Sea Turtle Conservation Ordinance in accordance with Florida Statutes Chapter 162; and

WHEREAS, the Town desires to minimize the detrimental impact on nesting sea turtle populations, and other listed sensitive wildlife by implementing a system of rules and regulations that reduces the amount of artificial light intentionally or unintentionally visible from beaches; and

WHEREAS, on May 16, 2022, the Town Council held a first reading of this proposed Ordinance; and

WHEREAS, on August 1, 2022, the Town Council held a second reading of this proposed Ordinance.

NOW THEREFORE IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH, FLORIDA:¹

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. Article V of Chapter 32 of the Code of Ordinances of the Town of Fort Myers Beach entitled "Sea Turtle Conservation" is hereby amended to read as follows:

CHAPTER 32 - WATERWAYS AND BEACHES

ARTICLE V. - SEA TURTLE CONSERVATION

Sec. 32-101. - Article purpose and objectives.

The purpose of this article is to protect nesting and hatchling sea turtles on the beaches in the Town of Fort Myers Beach ("town") by ensuring that their nesting habitat is not degraded by artificial light. The objective of the article is to ensure artificial light does not interfere with sea turtle nesting and hatching events through the appropriate design and implementation of coastal lighting systems. ~~In order to~~ To further the objective of full implementation, this article also includes provisions designed to educate residents and beach users in the town on the benefits of appropriate coastal lighting and provides for weekly inspections to ensure compliance with the acceptable lighting standards.

Sec. 32-102. - Applicability.

The provision of this article shall apply to all properties within the town that may produce artificial light directly, indirectly, or cumulatively visible from any portion of the beach, regardless of whether those properties are beachfront properties; and to all buildings and related infrastructure, including landscaping, as well as all other activities that may adversely impact sea turtles.

Sec. 32-103. - Definitions.

For the purposes of this article, the following words and phrases will have the meanings respectively ascribed to them by this

^{1/} 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 unless the context clearly indicates otherwise:

Artificial light means the light emanating from any human-made device.

Beach means the zone of unconsolidated material that extends landward from the mean low water line to the place where there is marked change in material or physiographic form, or to the line of permanent vegetation.

Certified Wildlife Lighting means lighting fixtures and bulbs reviewed and approved with conditions of use through the Florida Fish and Wildlife Conservation Commission's Wildlife Lighting Certification Process and published at [https://myfwc.com/conservation/you-
conserve/lighting/criteria/certified/](https://myfwc.com/conservation/you-
conserve/lighting/criteria/certified/).

Cumulatively visible means light from numerous artificial light sources on a single property that as a group are directly or indirectly visible to an observer standing anywhere on the beach.

Directly visible means visibility of the glowing elements, lamps, globes, or reflectors of an artificial light source by an observer standing anywhere on the beach.

Disorientation means an event caused by direct, indirect, or cumulative artificial lighting on sea turtle nesting habitat resulting in the disruption in the ability of nesting sea turtle females and sea turtle hatchlings to find the sea from the beach.

Footcandle means the English unit for measuring illuminance; the uniform illumination of a surface one foot away from a point source of one candela; one lumen per square foot equal to 10.76 lux.

Frontal dune means the first natural or man-made mound or bluff of sand which is located landward of the beach and which has sufficient vegetation, height, continuity, and configuration to offer protective value.

Full cutoff means a lighting fixture constructed in such a manner that no light emitted by the fixture, either directly from the lamp or a diffusing element or indirectly by reflection or refraction from any part of the luminaire, is projected at or above 90 degrees as determined by photometric test or certified by the manufacturer.

Fully shielded means a lighting fixture constructed in such a manner

that the glowing elements, lamps, globes, or reflectors of the fixture are completely covered by an opaque material to prevent them from being directly visible from the beach. Any structural part of the light fixture providing this shielding must be permanently affixed.

Indirectly visible means visibility of reflected light ~~because of~~ ~~as a result of~~ glowing elements, lamps, globes, or reflectors of an artificial light source which is visible to an observer standing anywhere on the beach without the light source being directly visible.

Lighting plan means plan view and cross section drawings describing location, number, wattage, wavelength, elevation, orientation, fixture cut sheets, and all types of proposed exterior artificial light sources, including, but not limited to, artificial lighting affixed to permanent structures, outdoor lighting, pool lighting, and internally or externally lighted signs.

Long wavelength means a luminaire emitting light wavelengths of 560 nanometers or greater and absent wavelengths below 560 nanometers. Lamps that meet the definition of long wavelength ~~through the use of~~ using filters, gels, or lenses are not permitted.

New Construction means all new construction of or additions ~~and alterations~~ to buildings, pools, pavement, other structures, landscape areas or lighting systems, including the change or resumption of land use.

Nesting season means the nesting period for sea turtles is from May 1 through October 31 of each year. Nesting season may be extended before or after these dates on an annual basis based on nesting activity observed in the Town of Fort Myers Beach.

Nighttime means the locally effective time ~~period~~ between sunset and sunrise.

Non-egress lighting means lighting that is not being used to light a distinct path or meet minimum requirements for emergency egress, including but not limited to, decorative lights (e.g., Christmas lights, strobe lights, string lights, etc.), balcony lights, ceiling fan lights, landscape lights, and up-lights.

Outdoor area means any portion of a property that could have an artificial light source not attached to a permanent structure, including but not limited to, pathway lighting, landscape lighting, pool lighting, etc.

Sea turtle means any turtle, including all life stages from egg to adult, of these species: Green (*Chelonia mydas*), Leatherback (*Dermochelys coriacea*), Loggerhead (*Caretta caretta*), Hawksbill (*Eretmochelys imbricata*), and Kemp's Ridley (*Lepidochelys kempii*). For the purposes of this article, the term sea turtle is synonymous with marine turtle.

Sea turtle nesting habitat means all sandy beaches adjoining the waters of the Atlantic Ocean, the Gulf of Mexico, and the Straits of Florida in all coastal counties and all inlet shorelines of those beaches. Nesting habitat includes all sandy beach and unvegetated or vegetated dunes immediately adjacent to the sandy beach and accessible to nesting female turtles.

Take means an act that ~~actually~~ kills or injures marine turtles, and includes significant habitat modification or degradation that kills or injures marine turtles by significantly impairing essential behavioral patterns, such as breeding, feeding, or sheltering.

Temporary lighting means any non-permanent light source that may be hand-held or portable including, but not limited to, tiki torches, lanterns, flashlights (including cell phone flashlights), candles, flash photography, etc.

Tinted glass means glass modified via tinting, film, or other material to reduce the inside to outside light transmittance value ~~to 15~~ 45 percent to forty-five (45) percent or less.

Window coverings means any type of attachments or materials used to cover a non-opaque window or door either internally or externally to reduce light and energy transmittance through windows and doors. Types of window coverings include blinds, shades, curtains, shutters, tinted plastic films. Window coverings with a lower Visual Transmittance rating by the Attachment Energy Rating Council are preferred.

Window and door schedule means a detailed list of window and door manufacturers, models, types, sizes, locations, hardware, and installation details. The window and door schedule for non-opaque windows and doors shall include the Visible Transmittance rating from the National Fenestration Rating Council.

Sec. 32-104. - Annual public notice.

At least 30 days prior to the commencement of every sea turtle nesting season, the town shall provide written notice

summarizing the provisions contained in this article.

Sec. 32-105. - Exterior and interior lighting affixed to new structures, new construction and improvements to existing structures.

- (a) All artificial lighting affixed to the exterior of new permanent structures, construction or additions shall be long wavelength, downward directed, full cutoff, fully shielded and mounted as close to the ground or finished floor surface as possible to achieve the required footcandles.
- (b) As an exception to (a) above, all non-egress lighting may be affixed to the landward exterior of permanent structures provided that the fixtures are fitted with a long wavelength source and are shall not be directly, indirectly, or cumulatively visible from any portion of the beach.
- (c) Lighting at egress points shall be limited to the minimum number of fixtures and footcandles necessary to meet federal, state, and local safety requirements.
- (d) Locations including, but not limited to, stairwells, elevators, parking garages, or courtyards shall not produce light that is directly, indirectly, or cumulatively visible from any portion of the beach. Window film, tinting, light screens, shades, or curtains shall be used to block visibility of interior lights from the beach. Light screens shall be used on open or enclosed staircases on the seaward or shore-perpendicular side of a building or for parking garages to limit visibility of lights from the nesting beach.
- (e) All ~~glass~~ non-opaque windows, walls, railings, and doors on the seaward and shore-perpendicular sides included in any new construction, ~~alteration, or window replacement for structures within direct line of sight from the beach~~ of structures located seaward of the Coastal Construction Control Line as defined by Section 161.053, Florida Statutes as the same may be amended from time-to-time, shall utilize glass with an inside to outside light transmittance value of

~~15~~ 45 ~~forty-five (45)~~ percent or less and be fitted with a window covering.

(f) All renovations, retrofitting, and replacement of non-opaque windows, walls, railings, and doors on the seaward and shore-perpendicular sides of structures located seaward of the Coastal Construction Control Line, as defined by Section 161.053, Florida Statutes as the same may be amended from time-to-time, shall utilize glass with an inside to outside light transmittance value of forty-five (45) percent or less and be fitted with a window covering. ~~Glass windows, walls, railings, and doors with light transmittance values greater than 15 percent may require additional window coverings to be compliant with the requirement for interior light to not directly, indirectly, or cumulatively illuminate the beach.~~

~~(f)~~(g) Emergency lights shall be on a separate circuit and activated only during power outages or other situations in which emergency lighting is necessary for public safety.

~~(g)~~(h) Prior to issuance of a development order ~~and/or~~ building permit for all new structures, new construction, and improvements to existing structures seaward of the Coastal Construction Control Line as defined by ~~F.S. §~~ Section 161.053, Florida Statutes as the same may be amended from time-to-time, a town approved lighting plan and window and door schedule meeting the provisions of this article and Chapter 34. Article IV, Division 20. - Lighting Standards is required.

~~(h)~~(i) Prior to issuance of a development order ~~and/or~~ building permit for all multifamily, commercial, and industrial new structures, new construction, and improvements to existing structures landward of the Coastal Construction Control Line as defined by ~~F.S. §~~ Section 161.053, Florida Statutes as the same may be amended from time-to-time, a town approved lighting plan and window and door schedule meeting the provisions of this article and Chapter 34. Article IV. Division 20. - Lighting Standards is required.

~~(i)~~(j) Prior to the issuance of a certificate of occupancy

(CO) or a certificate of completion (CC), the exterior and interior lighting of new development and window coverings shall be inspected after dark by the town, with all exterior and interior lighting turned on, to determine compliance with the approved lighting plan, window and door schedule and this article.

- (k) ~~In addition,~~ Prior to the issuance of a certificate of occupancy (CO) or a certificate of completion (CC), all glass windows, window coverings, walls, railings, and doors on the seaward and shore-perpendicular sides of structures located seaward of the Coastal Construction Control Line, as defined by Section 161.053, Florida Statutes as the same may be amended from time-to-time, included in new construction and replacement shall be inspected to determine compliance with the town approved lighting plan and window and door schedule, meeting the provisions of this article and Chapter 34, Article IV, Division 20. All manufacturer specification stickers, including the National Fenestration Rating Council label, shall remain affixed to all glass windows, walls, railings, and doors on the seaward and shore-perpendicular sides of any new construction and replacements until the Town's inspection is complete to determine compliance with the approved lighting plan and window and door schedule.

Sec. 32-106. - Existing exterior and interior lighting.

- (a) Existing artificial lighting affixed to the exterior of permanent structures shall not be directly, indirectly, or cumulatively visible from any portion of the beach during sea turtle nesting season.
- (b) Appropriate techniques for existing exterior lighting to achieve compliance with the provisions of this article include, but are not limited to:
- (1) Reposition, modify, or remove existing lighting fixtures so that the point source of light or any reflective surface of the light fixture is no longer directly, indirectly, or cumulatively visible from the beach;

- (2) Replace fixtures having an exposed light source with fully shielded fixtures;
- (3) Replace any light source, light bulb or lamp that is not long wavelength (e.g., incandescent, fluorescent, or high intensity lighting) with the lowest wattage long wavelength (e.g., LED, or low-pressure sodium) light source or lamp available for the specific application;
- (4) Replace non-directional fixtures with directional fixtures that ~~point down~~ are directed downward and away from the beach;
- (5) Provide shields for fixtures visible from the beach and not practical to immediately be replaced. Beachside shields are to cover 270 degrees and extend below the bottom edge of the fixture on the seaward side so that the light source or any reflective surface of the light fixture is not visible from the beach;
- (6) Replace pole lamps with low-profile, low-level luminaries so that the light source or any reflective surface of the light fixture is not visible from the beach;
- (7) Plant or improve vegetation buffers between the light source and the beach to screen light from the beach;
- (8) Construct a ground level barrier to shield light sources from the beach. Ground-level barriers must not interfere with sea turtle nesting or hatchling emergence, or cause short- or long-term damage to the beach and dune system;
- (9) Permanently remove or permanently disable any fixture which cannot be brought into compliance with the provisions of these standards;
- (10) Televisions shall be shielded or positioned such that they are not directly, indirectly, or

cumulatively visible from the beach.

- (c) Interior lighting shall not be directly, indirectly, or cumulatively visible from any portion of the beach during sea turtle nesting season.
- (d) Appropriate techniques to achieve compliance for interior lighting with the provisions of this article include, but are not limited to ~~the~~ the following measures ~~can~~ to reduce or eliminate the negative effects of interior light emanating from doors and windows within line-of-sight of the beach:
 - (1) Apply window tint or film that ~~meets the~~ reduces the inside to outside light transmittance standards for tinted glass to 15 percent or less the darkest tint practicable;
 - (2) Rearrange lamps and other moveable fixtures away from windows;
 - (3) Use opaque shades or room darkening window treatments (e.g., blinds, curtains, screens) to shield interior lights from the beach.
 - (4) Use artificial lighting that is long wavelength and shielded from the beach.
 - (5) A combination of the above techniques may be required to achieve compliance with this article.

Sec. 32-112. - Special events, vehicles, raking and temporary lighting.

- (a) All special events or construction taking place on or adjacent to the beach require a permit from the town, and may require a permit from the Florida Department of Environmental Protection.
- (b) Lighting associated with a special event that may directly, indirectly, or cumulatively be visible from any portion of the beach shall not be authorized at

nighttime during sea turtle nesting season.

- (c) The operation of all vehicles, except emergency and law enforcement vehicles or those permitted on the beach for sea turtle conservation in accordance with F.S. § Section 379.2431 Florida Statutes, as the same may be amended from time-to-time (H), or other research and conservation, shall be prohibited on the beach at nighttime during sea turtle nesting season. Excepted, non-emergency vehicles shall affix red filter to their headlights when operating on sea turtle nesting habitat at nighttime.
- (d) Beach raking activities during sea turtle nesting season, if permitted by the town, shall not:
 - (1) Operate at nighttime;
 - (2) Begin before 9:00 a.m. or before the completion of daily monitoring for turtle nesting activity by the Florida Fish and Wildlife Conservation Commission (FWC) authorized marine turtle permit holder, whichever occurs first;
 - (3) Occur within ten feet of any marked sea turtle nest.
- (e) Within sea turtle nesting season, temporary work zone lighting for roadway construction, beach renourishment construction, and during declared emergencies shall be directed away from the beach to avoid illumination of or direct visibility from the beach. Work zone luminaires shall be shielded to avoid lighting areas outside of the immediate construction area.
- (f) All other temporary construction lighting shall be:
 - (1) Inclusive of all the standards herein, including utilizing fixtures that are long wavelength, downward directed, full cutoff, and fully shielded so light is not directly or indirectly visible from the beach, and
 - (2) Turned off during nighttime in sea turtle

nesting season, or if temporary lighting is deemed necessary during sea turtle nesting season it shall only be allowed from 6:00 a.m. to 9:00 p.m., must be restricted to the minimal amount necessary, and shall incorporate all the standards herein, and

- (3) Mounted less than eight feet above the adjacent floor or deck, measured from the bottom of fixture, and
- (4) Restricted to the minimal number of footcandles necessary to conform to the applicable construction safety regulations.

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 Council Member Veach 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	nay
Jim Atterholt, Council Member	nay
Bill Veach, Council Member	aye

ADOPTED this 15th day of August 2022, by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH



Raymond P. Murphy, 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:**



John R. Herin, Jr., Town Attorney

This ordinance was filed in the Office of the Town Clerk this 22nd day of August 2022.