

**ORDINANCE NO. 23-11**

**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE III., DIVISION 5, SUBDIVISION II. DOWNTOWN ZONING DISTRICT, SECTION 34-674 BUILDING PLACEMENT; 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 (“Town”) 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 Fort Myers Beach Land Development Code (“LDC”); and

**WHEREAS**, the Town Council desires to update the LDC to clarify, improve and create consistency among sections; and

**WHEREAS**, a public hearing was held before the Local Planning Agency (LPA) on May 9, 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 the requested amendment to Chapter 34., Section 34-674 of the LDC; and

**WHEREAS**, on June 5, 2023, the Town Council held a first reading of this proposed Ordinance; and

**WHEREAS**, on June 20, 2023, 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:**

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, Section 34-674 Building Placement is hereby amended to read as found in attached Exhibit A – Amended Building Placement:

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 Council Member King 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>
Bill Veach, Council Member	<u>Aye</u>
Karen Woodson, Council Member	<u>Aye</u>

ADOPTED this 20th day of June 2023, by the Town Council of the Town of Fort Myers Beach, Florida.

**TOWN OF FORT MYERS BEACH**

**Dan Allers**

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Dan Allers, Mayor

**ATTEST:**

**Amy Baker**

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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:**

**John R. Herin, Jr.**

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John R. Herin, Jr., Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this 20<sup>th</sup> day of July 2023.

Exhibits

Exhibit A – Amended Downtown Building Placement

Sec. 34-674. - Building placement.

(a) *Build-to lines established.* Build-to lines (see § 34-662 of this chapter) vary according to the streets and street types designated on Figure 34-7.

- (1) Build-to lines for all streets are five feet to ten feet from front property lines, except:
  - a. Build-to lines are 0 feet for Old San Carlos Boulevard, all properties facing the Times Square and Bayfront pedestrian plazas, and Estero Boulevard west of the Sky Bridge.
  - b. Built-to lines are 0 to five feet for all of First, Second, Third, and Fifth, and the south side of Estero Boulevard from the Sky Bridge to Miramar Street.
  - c. Build to lines are 0-25 feet for single family and two-family residential construction on secondary streets on the beach side of Estero Blvd.
- (2) The adjustments to build-to lines to maintain visibility that are required by § 34-662(b)(4) of this chapter do not apply:
  - a. To building fronts facing the Times Square or Bayfront pedestrian plazas; or
  - b. To building fronts along Old San Carlos Boulevard, where wide sidewalks and on-street parking lanes will allow the necessary visibility.
- (3) Awnings, canopies, and marquees over sidewalks and pedestrian walkways are encouraged by the commercial design standards (§§ 34-991—34-1010 of this chapter) and are required along Old San Carlos Boulevard.
- (4) Enclosed habitable space may also be allowed over a public right-of-way if located over an arcade or colonnade that shades a public sidewalk (see § 34-995(e)(6) of this chapter), provided that specific permission is granted by the Town of Fort Myers Beach.

(b) *Setback lines established.* Setback lines (see § 34-662 of this chapter) are established as follows:

- (1) *For principal buildings:*
  - a. Minimum rear setbacks are 25 feet from rear property lines, except as follows:
    1. In Times Square, as defined on Figure 34-6, the minimum rear setback is ten feet.
    2. In areas where parking garages could be built, as defined on Figure 34-8, buildings shall be placed so as not to preclude future parking garages from being built on the interiors of these blocks. Along Old San Carlos Boulevard blocks with potential parking garages, this requirement means that principal buildings shall not extend further to the rear of lots than 50 feet back from the right-of-way for Old San Carlos Boulevard.
  - b. Minimum side setbacks are five feet from side property lines, except they may be 0 feet for properties fronting on Old San Carlos, Estero Boulevard, and in Times Square.
  - c. Minimum setbacks from waterbodies are set forth in § 34-638(d)(3) of this chapter.
  - d. Minimum setbacks along those portions of properties abutting the town-owned parking lot between Old Carlos Boulevard and the Sky Bridge that had been platted as "Center Street" in Plat Book 9, Page 9 shall be the same as if those properties abutted any other private property.
- (2) For accessory structures, minimum setbacks are set forth in §§ 34-1171—34-1176.

**Signature:**   
Dan Allers (Jul 21, 2023 06:54 MDT)  
**Email:** allersd@fmbgov.com

**Signature:**   
John Herin (Jul 20, 2023 12:01 EDT)  
**Email:** jherin@foxrothschild.com

**Signature:**   
AMY BAKER (Jul 20, 2023 10:44 EDT)  
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