

**ORDINANCE 25-01**

**AN ORDINANCE OF THE TOWN COUNCIL OF FORT MYERS BEACH, FLORIDA APPROVING WITH CONDITIONS THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING AMENDMENT FOR THE PROPERTY LOCATED AT 2500, 2510 AND 2518 ESTERO BLVD. AND 2543 COTTAGE AVENUE, GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W3-0120A.0100; 19-46-24-W3-01302.0000; 19-46-24-W3-01301.0000; 19-46-24-W3-0120A.013A IN FORT MYERS BEACH, TO ALLOW A MOBILE VENDOR/FOOD TRUCK PARK WITH SHARED PARKING; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR 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**, Empire Holding Corp. an Indiana Corporation as Trustee for Ann Trust, the owner, and The Neighborhood Company, as agents for the property located at 2500/2510/2518 Estero Blvd. & 2543 Cottage Ave., Ft Myers Beach, FL 33931, parcels generally identified as STRAP numbers 19-46-24-W3-0120A.0100; 19-46-24-W3-01302.0000; 19-46-24-W3-01301.0000; 19-46-24-W3-0120A.013A in the Town of Fort Myers Beach, filed applications to rezone the property from the CPD adopted in Resolution 07-28 with the expanded boundaries as adopted in Ordinance 25-02, to a Mobile Vending Park within a Schedule of Uses and corresponding Master Concept Plan (MCP) with certain deviations to the Land Development Code (LDC) to allow the operation of a Mobile Vending Park and Shared Parking Lot; and

**WHEREAS**, the subject property is a combination of four parcels located in the Boulevard Future Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach; and

**WHEREAS**, a public hearing was held before the Local Planning Agency (LPA) on January 9, 2025. One LPA member was absent, and the LPA continued the hearing to February 11, 2025 due to a tie vote on a motion to approve the request with conditions and a tie vote on a motion to deny the request based on incompatibility with the neighborhood; and

**WHEREAS**, at the February 11, 2025 LPA meeting, Pelican Watch Condominium Association, Thomas F. and Debra Danford as managers and members of Coastal Cottages LLC, and Edwin T. French III, asked the LPA to grant them intervenor status, which was granted for the purposes of the hearing and the LPA thereafter gave full and complete consideration of the applicant's request, recommendations by staff, the documents in the record, and the testimony of all interested persons, including the intervenors as required by Section 34-85 of the Town Land Development Code; and

**WHEREAS**, at the February 11, 2025 public hearing, the LPA found that the request is consistent with the Comprehensive Plan and the requirements of the LDC and voted to recommend approval with conditions; and

**WHEREAS**, on March 3, 2025 the Town Council received a request from Pelican Watch Condominium Association, Thomas F. and Debra Danford as managers and members of Coastal Cottages LLC, and Edwin T. French III, for intervenor status, which was granted, and thereafter held a first reading of the proposed Ordinance, with consideration given to the request of the applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, including the intervenors, as required by Section 34-85 of the LDC; and

**WHEREAS**, the Town Council voted on March 3, 2025 to have a second reading of the proposed Ordinance and a public hearing on this matter was advertised in the Fort Myers News-Press more than 10 days prior to the Town Council meeting on April 7, 2025; and

**WHEREAS**, at the April 7, 2025 public hearing, the Town Council gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, including the intervenors, as required by Fort Myers Beach Land Development Code (LDC) Section 34- 85; and

**WHEREAS**, the Applicant has resolved and is current on any outstanding fees associated with notice, advertisement, and consulting services required by the Town; and

**WHEREAS**, a Business Impact Estimate has been prepared and is published on the Town's website; and

**WHEREAS**, with the following terms, conditions, and requirements which the LPA finds to be in the public health, safety, and welfare, all of which are in compliance with the Comprehensive Plan and the Land Development Code; and

**WHEREAS**, Exhibit A provides the conditions of approval to be used during the permitting process; and Exhibit B provides the Master Concept Plan and the schedule of uses for this CPD to be used during the permitting process; and

**WHEREAS**, the Town Council finds that this request to rezone the property from the CPD adopted in Resolution 07-28 and as amended in Ordinance 25-02 to CPD with Master Concept Plan with seven deviations to the LDC in order to develop a Mobile Vendor Park with a Shared Parking Lot; and

**WHEREAS**, the requested deviations from the LDC include:

**Deviation #1**

Relief from Section 10-285 that requires driveways to be located at least 250 feet from the centerline of a local street such as Chapel Street, to allow a distance of 100 feet from Estero Boulevard. Chapel Street is a local street that is maintained by the Town of Fort Myers Beach. The previous development on the site used this driveway as an access point and the proposed development will continue to use this driveway. The applicant is unable to meet the 250-foot separation distance, therefore the Town Council approved this application with a condition that the property owner voluntarily donate a 5-foot easement along Estero Boulevard to the Town of Fort Myers Beach for roadway, utility, drainage and reasonably related purposes.

**Deviation #2**

Relief from LDC Section 10-285 that requires driveways to be located at least 250 feet from the centerline of the intersection of Estero Boulevard and Chapel Street and the driveway to Pelican Watch Condominiums. This will allow the existing driveway located on Estero Boulevard to remain approximately 210 feet from the Chapel Street/Estero intersection and 150 feet from the existing driveway to Pelican Watch Condominiums.

**Deviation #3**

Relief from LDC Section 34-706(d) which states that existing driveway and parking spaces shall be relocated from Estero Boulevard to allow for the existing access point to remain from Estero Boulevard into the property.

**Deviation #4**

Relief from the LDC Section 34-706(a) which requires that off-street parking lots be placed in side or rear yards. This deviation will allow the parking lot to be located along Chapel Street between Estero Boulevard and Cottage Avenue.

**Deviation #5**

Relief from LDC Section 34-2017, which requires high turnover parking lots to have a paved surface to allow for a stabilized gravel/lime rock/crushed shell parking surface.

**Deviation #6**

Relief from LDC Section 10-416(d)(2) Table 10-8, which requires a 15-foot-wide Type D buffer when the proposed parking and vehicle use area abuts a right-of-way or road easement to allow for a minimum 10-foot-wide buffer.

**Deviation #7**

Relief from LDC Section 10-416(d)(2) Table 10-8, which requires a 15-foot-wide Type D buffer when the proposed parking and vehicle use area abuts a right-of-way or road easement to allow for a minimum 5-foot-wide buffer.

**WHEREAS**, the Town Council considered all relevant factors and made the following formal findings based on evidence and testimony in the record before making its final decision on the requested rezoning to a Commercial Planned Development (See LDC 34-85 and 34-216):

- a. The rezoning would carry out the policies and requirements of the Comprehensive Plan and Land Development Code.
- b. The Town Council carefully considered the testimony of the applicant, the recommendations of staff and of the local planning agency, and testimony from the public.
- c. The rezoning would be consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses in the Comprehensive Plan.
- d. The rezoning would meet or exceed all performance and locational standards set forth for the proposed use.
- e. Urban services are available and adequate to serve the proposed use.
- f. The rezoning would protect, conserve, or preserve environmentally critical areas and natural resources.
- g. The rezoning would be compatible with existing and planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- h. The rezoning would not place an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.
- i. The rezoning, with the mitigating factors volunteered by the applicant and the special conditions imposed by the Town Council, is consistent with the Fort Myers Beach Comprehensive Plan, Land Development Code, and other applicable town ordinances or codes.
- j. The proposed use or mix of uses is appropriate at the subject location.
- k. Sufficient safeguards to the public interest are provided by the recommended special conditions to the master concept plan and by other applicable regulations.
- l. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.

**WHEREAS**, the Town Council made the following formal findings before making final decisions on the eight requested deviations from "by-right" requirements of the Land Development Code (see LDC 34-216):

- a. Each item enhances the achievement of the objectives of the planned development; and
- b. The general intent of this chapter to protect the public health, safety and welfare will be preserved and promoted; and

- c. Each deviation operates to the benefit, or at least not to the detriment, of the public interest; and
- d. Each deviation is consistent with the Fort Myers Beach Comprehensive Plan.

**WHEREAS**, the Town Council finds that this application to approve Ordinance 25-01 which is, **consistent** with the Town of Fort Myers Beach Comprehensive Plan and LDC and voted to **approve with conditions** the Application.

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

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

Section 2. The Town Council determines the Applicant **did** meet its burden of proof, that the request to approve Town of Fort Myers Beach's Ordinance 25-01 and the conditions of approval for the commercial planned development zoning, **does** meet the requirements of the Town Comprehensive Plan and LDC. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties, the Town Council **APPROVE WITH CONDITIONS** the requested application.

Section 3. Town Ordinance 25-01 is adopted and conditions of approval for the Property's CPD set forth in Exhibit A and the attached Master Concept Plan and the schedule of uses in Exhibit B, attached hereto and incorporated herein by this reference are approved.

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

Section 5. Any typographical errors that do not affect the intent of this Ordinance may be corrected with notice to and authorization of the Town Manager without further process.

Section 6. 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 as a whole, or any part thereof, other than the part so declared.

Section 7. This Ordinance will take effect immediately upon adoption by the Town Council.

**THE FOREGOING ORDINANCE** was adopted by the Town Council upon a motion by Mayor Allers and seconded by Council Member King, and upon being put to a roll call vote, the result was as follows:

**DULY PASSED AND ADOPTED** on this 7<sup>th</sup> day of April 2025.

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

**FORT MYERS BEACH TOWN COUNCIL**

Dan Allers

Dan Allers (May 7, 2025 10:55 EDT)

\_\_\_\_\_  
Dan Allers, Mayor

**ATTEST:**

Amy Baker

Amy Baker (May 14, 2025 14:14 EDT)

\_\_\_\_\_  
Amy Baker, Town Clerk

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

Nancy Stuparich

Nancy Stuparich (May 7, 2025 35:48 EDT)

\_\_\_\_\_  
Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 15<sup>th</sup> day of May 2025.

**Exhibits:**

A-Conditions of Approval

B - Master Concept Plan (MCP) and Schedule of Use

## **Exhibit A: Conditions of Approval**

1. The development of "Option A", as approved and conditioned in Resolution 07-28, will no longer be valid.
2. At the time of development order, the applicant must provide the following buffers:
  - a. Along a portion of Estero Boulevard, a minimum 10-foot-wide buffer. This buffer will provide a minimum of 10 trees per 100 linear feet and a minimum 3-foot-high hedge planted in a double-staggered row. This buffer area may incorporate pedestrian access and a maximum of three (3) bicycle parking areas.
  - b. Along Chapel Street (the west property line), a 5-foot-wide buffer with a minimum of 10 trees per 100 linear feet and a 3-foot-high hedge planted in a double staggered row.
  - c. Along the east property line that extends from Estero Boulevard to the proposed park support structure, a minimum 10-foot-wide buffer with a 4-foot-high decorative fence. From the proposed park support structure and abutting the neighboring pool/amenity and parking area, a minimum 12.5-foot-wide buffer. This buffer area will provide a minimum of 10 trees per 100 linear feet, a minimum of 12 feet tall at time of planting, a 3-foot-high hedge planted in a double staggered row and allow for a maximum 3-foot-wide sidewalk to access the structure.
  - d. Along the south and east property lines adjacent to 2553 and 2563 Cottage Avenue, a minimum 10-foot-wide buffer with 6-foot-high opaque fence, where applicable. This buffer will provide a minimum of 8 trees per 100 linear feet, a minimum of 12 feet tall at time of planting, a 3-foot-high hedge planted in a double staggered row planted on the outside of the fence and allow for a maximum 3-foot-wide sidewalk to access the structure.
  - e. Along Cottage Avenue (the south property line), a minimum 10-foot-wide buffer. This buffer will provide a 4-foot-high decorative fence, a minimum of 8 trees per 100 linear feet, a minimum of 12 feet tall at time of planting, and a 3-foot-high hedge planted in a double staggered row.
3. A maximum of 5 mobile vendor/transient merchant pads, in addition to a permanent service structure (maximum of 3000 sf), is permitted. Any additional mobile vendor pads not shown on the MCP shall require an Amendment to the CPD.
4. All mobile vendors will be associated with either food or merchandise. There shall be no cannabis or smoke/vape related merchandise vendors allowed.
5. Consumption on the premises will be limited to beer and wine only.
6. Hours of operation for the mobile vendor/transient merchants and outdoor seating area will be 7am to 9pm (except during Daylight Savings Time when closing will be 10pm) 7 days a week. These hours do not include waste removal, deliveries or service to the facility, which may occur outside the hours of operation.
7. The parking lot will be available for use the same hours as the mobile vending park, 7am to 9pm (except during Daylight Savings Time when closing will be 10pm) 7 days a week. Camping or sleeping in vehicles is prohibited.

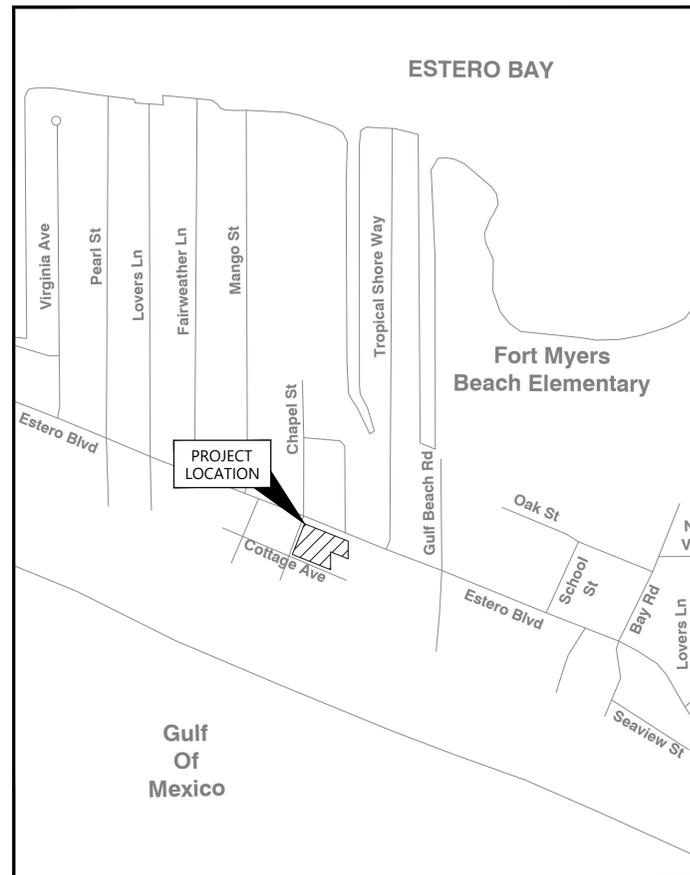
8. All amplified sound (ambient or live) will be controlled by the property owner/management staff and will not be permitted from any mobile vendor.
  1. Ambient music will be no greater than 60 dB as measured in accordance with the Town's Noise Ordinance Ambient music is allowed during the hours of operation (See condition #6)
  2. Live music or live entertainment is restricted to the hours of noon to 8pm. Live entertainment may take place for no more than 4 days per week, no more than 4 hours a day with only 3 days of live music. Any of the 4 allotted days not utilized for live music may have non-music entertainment. Live music and/or live entertainment are only permitted within the main park support structure provided the structure is fully roofed with a minimum of three enclosing walls. No bands (3 or more performers) or drums/percussion unless approved through the Town's special event permitting process.
9. All sound generated on-site will be in compliance with the Fort Myers Beach Noise Ordinance, Article II, Chapter 14, except where otherwise restricted herein. If the Town, through the code compliance/enforcement process, determines sound to be in violation coming from the site, the owner/operator may lose the ability to have live music and/or live entertainment.
10. A publicly accessible "comfort station" consisting of restrooms, outdoor shower/foot rinse, hand washing and water fountain will either be integrated within the proposed main park support structure or as a stand-alone structure on-site.
11. Access to the "comfort station" will only be during the same hours of operation of 7am to 9pm (except during Daylight Savings Time when closing will be 10pm), 7 days a week for the mobile vending park. Water service to the exterior showers and foot washing stations must be shut off and all restroom access locked to the public outside of the hours of operation.
12. Per Deviation #5, the Applicant may utilize a stabilized gravel/lime rock/crushed shell parking surface. If that option is chosen, the Applicant is required to use a grid/semi-pervious paver system to increase permeability and to aid in retaining materials on site in the parking lot area.
13. Mobile vendors, outdoor seating, restrooms and any storage space must be located on an approved stabilized non-pervious or semi-pervious surface.
14. A special event permit must be obtained for any special event where additional vendors of any type and/or increased visitor numbers are expected, including but not limited to: festival; rally; holiday celebration; or carnival. All special events permits will require Town Council approval.
15. Mobile vendors must provide evidence that all required permits, inspections, licensure, or other approvals as needed by either county, state, or federal agencies prior to operating within the town.
16. Liquid waste or grease must be disposed of at an approved location and may not be placed in tree pits, storm drains, or sanitary sewers, or onto sidewalks, streets, or other public or private spaces.
17. All mobile vendors shall be required to connect to onsite utilities. Generator use is only allowed when electrical service is disrupted or temporarily non-available due to designated disaster related events. The exercising of portable generators associated with mobile vendors for regular maintenance is prohibited on-site.

18. All mobile vendors and park facilities must comply with FEMA regulations. No temporary storage containers are permitted or other non-compliant structures. All mobile vendors will be required to evacuate the property and the site secured when evacuation orders are issued by Lee County Emergency Management or the Town of Fort Myers Beach. The removal of vendor vehicles and securing the site is the responsibility of the property owner. Vendors may not return until authorized by the Town and Lee County Sheriff's Office.
19. Restroom facilities must be provided based on the maximum occupancy of the total seating area in conformance with the Florida Building Code.
20. All alcohol sales must be in conformance with state regulations.
21. A local development order is required prior to any development of the site, in accordance with this planned development approval and consistent with the approved MCP.
22. All state and local permits, including but not limited to right of way and stormwater permits must be applied for and received prior to site development.
23. All signage and landscaping must meet the Vehicle Visibility at Intersection requirements found in Sec. 34-3131
24. Access to and from the property for mobile vendors only via the existing Estero Boulevard access point will not be allowed during typical peak season traffic times, which are 8 am – 11 am and 4 pm – 7 pm.
25. At the time of local development order approval, directional and restrictive vehicle access signage (e.g. NO THRU TRAFFIC) will be provided at the primary access, along Chapel Street and Cottage Avenue. The egress onto Chapel Street will be designed for right-out only through the installation of a traffic island (e.g. porkchop style) and a "Right Turn Only" directional sign at the parking lot egress point to direct guests/visitors back to Estero Boulevard. These shall be installed at the expense of the property owner. The property owner shall coordinate additional directional signage, to include "No Parking" signs, with the Town Manager or designee at the time of Development Order.
26. At the time of local development order approval, on-street/right-of-way buffer landscape plantings, no parking signage and infrastructure (e.g. decorative post and rope/chain) will be provided to help eliminate illegally parked vehicles within the Chapel Street and Cottage Avenue rights-of-way abutting the subject property. The on-street/right-of-way buffer landscape area will vary in width based on the roadway configuration and consist of shrubs and trees complementary to the adjacent on-site landscaping; be maintained less than 36 inches high for shrubs; and will not violate vehicle visibility requirements.
27. Outdoor lighting: In no case may the illumination exceed 0.2 footcandles measured at the property line. The amount of illumination projected onto a residentially zoned property or use from another property may not exceed 0.0 footcandles measured at 10 feet from the property line onto the adjacent residential property. (NOTE: Current regulations allow 0.5 footcandles measured at the property line and 0.2 footcandles 10 feet from property onto residential property.)
28. Proper site management, including site cleanliness and proper waste removal is the responsibility of the property owner/manager and any violations will be issued to the site ownership for remediation and not to individual vendors.

29. A trip generation study must be provided at the time of the development order application to evaluate that the proposed development does not further impact the surrounding transportation network than what was approved under the 2008 Traffic Impact Statement.
30. Applicant must provide a Parking Operation Plan at the time of development order. This plan will include 1) Parking lot managed by an automated gated kiosk. 2) free parking for the first 20 minutes to accommodate Mobile Vendor customers and 3) an LDC compliant sign indicating the number of available parking spaces for vehicles traveling on Estero Blvd.
31. Applicant must provide sunshade sails over the seating area for the Mobile Vendor Park as identified on the MCP.

# MASTER CONCEPT PLAN FOR 2500 ESTERO CPD

SECTION 19, TOWNSHIP 46S, RANGE 24E,  
FORT MYERS BEACH, FLORIDA



VICINITY MAP  
N.T.S.



SITE LOCATION MAP  
N.T.S.

PREPARED BY:



5618 WHISPERING WILLOW WAY  
FORT MYERS, FL 33908

PREPARED FOR:

EMPIRE HOLDING CORPORATION

6104 E. 21ST STREET  
INDIANAPOLIS, IN 46219

## CONTENTS

SHEET NUMBER	SHEET DESCRIPTION
1	COVER SHEET
2	MASTER CONCEPT PLAN
3	NOTES

DATE:	January, 2025	PROJECT No.:	230035.01.01	SHEET No.:	1 OF 3
-------	---------------	--------------	--------------	------------	--------



