



Fort Myers Beach Management & Planning Session

**Council Chambers
2525 Estero Blvd.
Fort Myers Beach, FL 33931**

Agenda

Wednesday, December 8, 2021

9:00 AM

ORDER OF BUSINESS

I. CALL TO ORDER

II. PLEDGE OF ALLEGIANCE

III. ITEMS FOR DISCUSSION

- A. Bus Shelter Installation/Advertising Discussion
Discussion on Bus Shelter Installation/Advertising
- B. TDC Projects for Grant Cycle FY22 23
Discussion of TDC funded projects for FY22/23
- C. FMB Camera Project
FMB Camera Project updates
- D. Water Sports and Chair Rentals
A discussion of water sports and chair rentals as requested by Town Council.

IV. AGENDA MANAGEMENT

- A. December 2021

V. ADJOURNMENT

NOTE: THIS MEETING IS TELEVISED LIVE ON COMCAST CHANNEL 98.

IF A PERSON DECIDES TO APPEAL A DECISION MADE BY THE COUNCIL IN ANY MATTER CONSIDERED AT THIS MEETING/HEARING, SUCH PERSONS MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDING IS MADE, TO INCLUDE THE TESTIMONY AND EVIDENCE UPON WHICH ANY SUCH APPEAL IS TO BE BASED.

	For special accommodations, please notify the Town Clerk's Office at least 72 hours in advance. (239) 765-0202		Help for the hearing impaired is available through the Assistive Listening System. Receivers can be obtained from the Town Clerk's Office.
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In accordance with the Americans with Disabilities Act (ADA), persons needing a special accommodation to participate in the Board's proceedings should contact the Town Clerk's Office not later than three days prior to the proceedings.

1. **Requested Motion:**

Meeting Date: December 8, 2021

Discussion on Bus Shelter Installation/Advertising

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

ITEMS FOR DISCUSSION

3. **Requirement/Purpose:**

5. **Background:**

Council discussion on allowing advertising on Lee Tran bus shelters located on the island.

There is an opportunity for the Town to request and receive MPO allocated federal funds for the purchase and installation of bus shelters on the Island which would require completion and submission of an information packet application. The requested funds are for FY 2023.

Attached is the compiled list working with LeeTran, LeeDOT and MPO staff for potential locations of bus shelters on Estero Island. An Interlocal Agreement will need to be executed between LeeTran and the Town for the maintenance and upkeep responsibilities for the shelters. Currently, LeeTran maintains the bus stop amenities and Town Staff collects and removes garbage daily. Funding for the shelters may be available as early as July 2022. As part of the local match, the Town may need to provide additional concrete pads for the shelters where necessary. Finally, the Town will need to determine whether to allow Lee Tran to advertise on the bus shelters to help defray all or part of the cost of construction and/or maintenance of the bus shelters. This would be a LAP Project.

Attachments:

1. Bus Stop List for Potential Shelters FMB V2
2. Fort Myers Beach Proposed Shelter Locations

Financial Impact:

6. **Alternative Action**

7. **Staff Recommendations:**

8. **Recommended Approval:**

Amy Baker, Town Clerk

Date: December 01, 2021

John R Herin Jr, Town Attorney

Date: December 01, 2021

Amy Baker, Town Clerk

Date: December 01, 2021

Date: December 02, 2021

Roger Hernstadt, Town
Manager

Fort Myers Beach Bus Stop List for Potential Shelters									
CarteID	Annual Ridership	WKD Boarding	ADJ_ADDRS	ON_STREET	AT_STREET	Notes	Sidewalk Size	Shelter Type Pad As is	N/S San Carlos Blvd
11199	4287	12	1400 ESTERO BLVD	ESTERO BLVD	AVENUE C	Lani Kai	9'	4.4' no ad box	S
11200	1620	5	1560 ESTERO BLVD	ESTERO BLVD	ALVA DR	Bus only lane	10'	5.4' x 8.8' w/ad box	S
11202	2654	8	2370 ESTERO BLVD	ESTERO BLVD	MANGO ST	Bus only lane	9'	4.4' no ad box	S
11205	1946	6	2812 ESTERO BLVD	ESTERO BLVD	SEAVIEW ST	Bus only lane	9'	4.4' no ad box	S
11279	1649	5	6661 ESTERO BLVD	ESTERO BLVD	ISLAND PINES WAY	Moved south of Island Pines Way	12'	5.4' x 8.8' w/ad box	S
11283	4857	15	6221 ESTERO BLVD	ESTERO BLVD	DRIFTWOOD LN	Actual pad & room for a shelter	8'SW & 8x22 pad	5.4' x 8.8' w/ad box	S
11291	4944	15	4741 ESTERO BLVD	ESTERO BLVD	SANDERS DR	Ext. of pad/could move stop in front of Public/concrete shelter	9'	4.4' no ad box	S
11310	1725	6	2301 ESTERO BLVD 07	ESTERO BLVD	FAIRWEATHER LN	Bus only lane	9'	4.4' no ad box	S
TBD	TBD	TBD	1100 ESTERO BLVD	ESTERO BLVD	CRESCENT BEACH	* Future FDOT improvement include pull off and 11' sidewalk	11'	5.4' x 8.8' w/ad box	S
TBD	TBD	TBD	1113 ESTERO BLVD	ESTERO BLVD	SEAFARES/MARGARITAVILLE	* Future FDOT improvement include pull off and 11' sidewalk	11'	5.4' x 8.8' w/ad box	S

# Bus Stops that have a Shelter or will be Installed or Removing Stop									
11192	2349	9	Bowditch Park	ESTERO BLVD	BOWDITCH	Has canopy & seating		N/A	N
11198	3654	14	Lynn Hall Park	ESTERO BLVD	LAGOON ST	Two shelters		N/A	N
11623	33669	129	TimeS Square	ESTERO BLVD	TIMES SQUARE	* Stop will be removed (replaced by FDOT project at Crescent Beach & Seafares)		N/A	N
11963	7308	28	Fifth St	ESTERO BLVD	FIFTH ST	Pad installed and shelter being installed		N/A	S

Notes
81 stops on FMB and above are stops that have 5 or more daily boardings
* FDOT road project includes new bus stops at Crescent Beach and Seafares and each will have a pull off, sidewalk and pad and will replace the stop at Times Square therefore ridership would shift to these stops
Bus stops that already have a shelter, will be installed in the near future or removing stop and relocated by FDOT project



Fort Myers Beach Proposed Shelters

● Shelter Locations

— Beach Route

Stop ID	Location
TBD	Crescent Beach/SB
TBD	Seafarers/NB
1199	Avenue C/Lani Kai/NB
1200	Alva Dr/SB
1310	Fairweather Ln/NB
1202	Mango St/SB
1205	Seaview St/SB
1291	Sanders Dr/NB
1283	Driftwood Ln/NB
1279	Island Pines Way/NB

0 0.25 0.5
Miles



Prepared by LeeTran Planning Department



1. **Requested Motion:**

Meeting Date: December 8, 2021

Discussion of TDC funded projects for FY22/23

Why the action is necessary:

Grant funds require Town Council approval to move forward with the grant application.

What the action accomplishes:

See attached TDC ineligible items.

2. **Agenda:**

ITEMS FOR DISCUSSION

3. **Requirement/Purpose:**

5. **Background:**

TDC Grant cycle opens in January 2022. Discussion and consensus of estimated projects are required for staff to move forward to final approval of projects.

Attachments:

1. Ineligible lists of B S items
2. Town of Fort Myers Beach TDC Project Requests FY22 23

Financial Impact:

6. **Alternative Action**

To not approve projects

7. **Staff Recommendations:**

8. **Recommended Approval:**

Date: November 30, 2021

Alison Giesen, Director of Cultural, Parks & Recreation

Date: December 02, 2021

John R Herin Jr, Town Attorney

Date: December 02, 2021

Amy Baker, Town Clerk

Date: December 02, 2021

Roger Hernstadt, Town Manager

TDC Beach & Shoreline Program Items ineligible for funding

Beach access security cameras¹

Bike paths¹

Concessionaires

Facilities not open to the public¹

Fencing / Gates

General law enforcement¹

Picnic tables¹

Playground equipment

Privately owned facilities¹

Volleyball court

Travel related items (Tolls, etc)²

Communication devices (cell phones, radios)²

Indirect Costs²

Uniforms²

Insurance premiums²

Please note:
This list is intended to serve as a guideline only.
All requests are subject to a legal review by the
Lee County Attorney's Office.

Unless otherwise noted the items on this list are excluded from funding based on Lee County Attorney's Office interpretations of Attorney General Opinions.

¹ items were expressly discussed in Attorney General Opinions

² items listed were directed to be excluded based on TDC motion effective 2/13/09

revised 1/2016

Beach and Shoreline projects to submit to Lee County Tourist and Development Council (TDC) for funding

Fiscal Year 2022/2023

Maintenance Project Request:

Beach and Shoreline Maintenance – (Approximately \$1,000,000 request)

Funding by the Lee County Tourist and Development Council (TDC) provides the Town of Fort Myers Beach the ability to maintain beach and shoreline properties in a clean, attractive, and accessible manner. TDC Funding also allows the Town to protect and enhance the natural environment of the beaches and elevate the overall visitor experience.

The Town is requesting funding for the equivalent of seven full-time positions (including overtime) and 1 part-time position, and 34% of Beach Patrol's time to dedicate for beach and shoreline maintenance activities. These activities include litter, waste and recycling removal, landscape maintenance and maintenance to pedestrian pathways that provide visitor access. Funds requested also include maintenance and upkeep of 29 Beach Accesses including repairs to existing boardwalks, Mound House native landscape, 216 Connecticut Street native landscape, Newton Beach Park native landscape and janitorial requirements for the public restroom facilities at Newton Beach Park and Mound House and Palm Avenue Beach Access Restroom Trailer. At various peak times throughout the year, the Town uses contracted labor to supplement staffing to maintain a quality beach experience. Out of the 7 full-time employees and 3 part-time employees, 2 full-time equivalent positions maintain the Mound House, 216 Connecticut Street and Newton Beach Park landscapes and public restroom facilities.

The Town of Fort Myers Beach is requesting funds for the replacement of an F250 and tractor as well as the repair and maintenance of equipment only used for beach and shoreline operations as well as the costs for trash and recycling removal. It is the Town's intention, in addition to the on-going maintenance related work, to continue the enhancements to its beach accesses by adding native landscaping, maintaining the natural beauty of the beaches, signage and improving accessibility. New equipment purchases request of a bucket truck used for high trimming of palm trees and landscaping.

Mound House, Estero Bay (Approximately 205,000 request)

Located directly off Estero Bay on Fort Myers Beach, Mound House serves thousands of visitors annually who come to fish, boat, kayak the Great Calusa Blueway Paddling Trail, and learn about the site's unique history and ecology as they stroll along the beautifully landscaped shoreline property. To maintain a high-quality visitor experience and to help protect the natural surroundings, Mound House is requesting funds to maintain the native landscaping, existing outdoor interpretive signage, and public restroom facilities that are used by visitors on a daily basis. This request also includes maintaining the native landscape at 216 Connecticut Street. The pet-friendly grounds are open every day from sunrise to sunset. Slight increase in request due to upgrades needed to current public restrooms (better ventilation and flooring).

Newton Beach Park, Gulf of Mexico (Approximately \$82,000 request)

Newton Beach Park is located at 4650 Estero Boulevard directly on the Gulf of Mexico and is one of the most popular beach accesses on Fort Myers Beach. This native landscaped property contains several shade structures, areas for recreational activities, public restrooms, and a beach shower station. Interpretive signage is located throughout the property that educate visitors about the natural environment and the site's unique history. Free environmental programming is conducted weekly by Mound House interpretive staff to enhance the visitor experience. The Town of Fort Myers Beach is requesting funds to help maintain the native landscape, public restroom facilities, beach shower station and shade structures at this popular beachfront property. Funds

awarded will continue to enable the Town to provide a clean, attractive public facility to meet the needs of visitors to Fort Myers Beach.

Beach Profile Monitoring, Gulf of Mexico (Approximately \$32,013 request)

Conduct beach profile monitoring surveys of the active beach zone along the shoreline of Estero Island at each R-Monument, from R-174A to R-210. Profiles surveys shall extend landward to the FDEP monument location or approximately 150 feet landward of the vegetation line, whichever is more seaward. If the point 150 feet landward of the vegetation line cannot be reached because of an obstruction, such as a building, bay water, mangroves or other impassible vegetation or obstacle, then the survey line may be stopped at the obstacle and shall be noted as such in the survey field book. Coastal armoring is generally not an impassible obstacle and is normally to be surveyed. Upland profiles shall extend seaward to a waiting depth deep enough to provide an approximate 50-foot overlap with the offshore portion of the profile survey where environmental conditions allow. Offshore profile surveys will extend seaward 3,000 feet from MHW or to the profile closure, whichever is more landward.

The survey report shall include beach profile plots depicting the 2022 and 2023 surveys, 2023 MHW shoreline position and 2021-2022 MHW change tables, and 2022-2023 beach profile volume changes to seaward point of active transport.

Beach Project Renourishment (Approximately \$9,791,183 request)

The project proposes to dredge sand from the ebb shoal borrow area and place the sand along approximately 6.5 miles of critically eroding gulf shoreline along Estero Island, Lee County. The Project boundary extends from the terminal groin to Florida Department of Environmental Protection (FDEP) Reference Monument R-207. The total length of shoreline within the Project boundary is 33,923 feet. The length of shoreline that has an established Erosion Control Line (ECL) is approximately 24,177 feet (terminal groin to R-198). The Project is consistent with the State's Strategic Beach Management Plan (FDEP, 2021) including these components:

- Restore critically eroding beaches;
- Maximize the infusion of beach-quality sand into the coastal system;
- Implement projects that contribute most significantly to addressing the state's beach erosion problems;

The project proposes renourishment of the north and central beach segments and initial restoration and subsequent renourishment of the south beach segment utilizing offshore sand sources, use of approved upland quarries for hot-spot maintenance and post-storm recovery, and maintenance grading of historic ponding areas.

Up to 900,000 CY are proposed for Project construction. The previously utilized Borrow Area has over 1 MCY remaining and is proposed for the initial event. The Preliminary Opinion of Probable Project Cost including design and permitting, construction, construction phase services, and first year monitoring is approximately \$23,068,000.

Hot-spot maintenance and post-storm recovery will be implemented based on monitoring surveys utilizing FDEP approved upland sand sources, as will maintenance grading, through the life of the Permits. Annual monitoring will be performed in accordance with the FDEP approved Physical Monitoring Plan. The beach will be tilled for three years subsequent to construction in accordance with state and federal requirements.

FY20/21 Design and Permitting: **\$300,000 (18-Months)**

FY21/22 Design and Permitting: **\$40,000 (12-Months)**

FY22/23 Construction/First Year Monitoring: **\$22,686,000 [\$22,524,000-Const, \$162,000-Mon] (9 Months)**

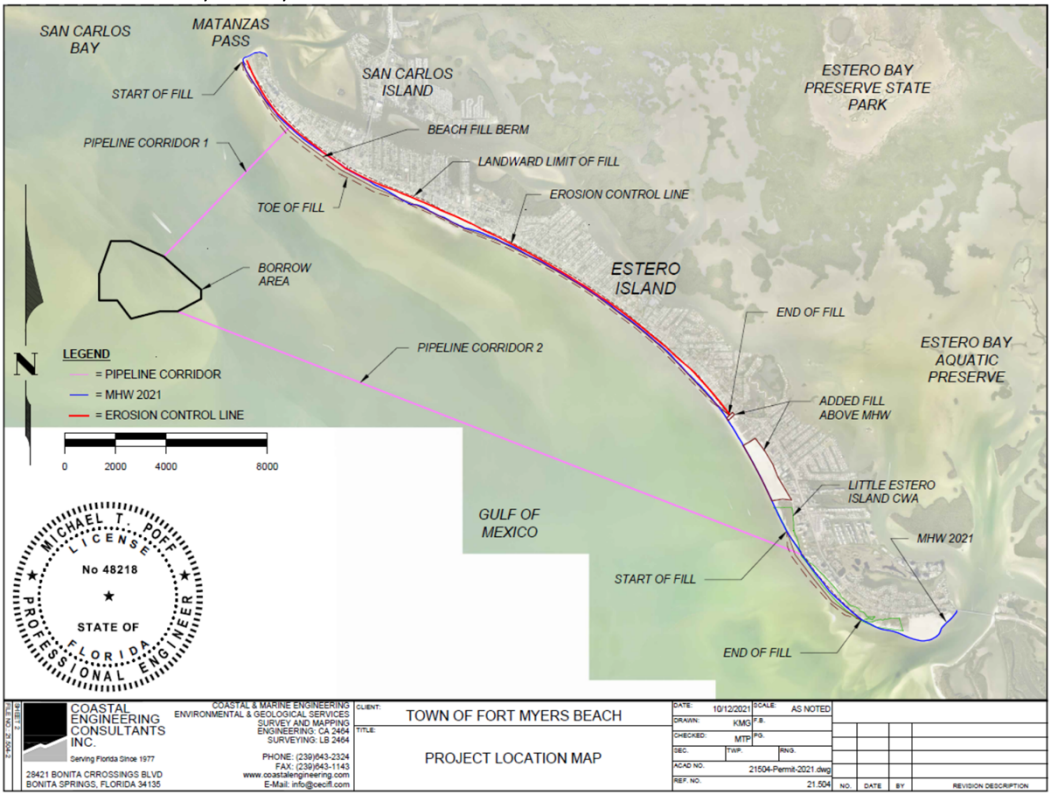
Commented [M1]: Chadd - Do you want us to include monies for CEC to survey and assist Town implement a new ECL from R198 to R207 in case it is needed?

FY23/24 – FY25/26 Annual Physical and Biological Monitoring/Beach Tilling: \$486,000 (3-Years Post-Const)

Table 1. Summary of Construction Cost Allocations

Entity	Cost Share	Cost Allocation
FDEP	40.5%	\$9,124,472
Lee County	43.5%	\$9,791,183
Ft. Myers Beach	16.0%	\$3,608,345
Total	100%	\$22,524,000

The Project will restore storm damage reduction benefits, enhance recreational use of the beach, and provide nesting habitat for sea turtles and shorebirds. The beach will be widened as sand is imported from outside the system. The added beach width will afford greater recreational opportunities at popular beach parks, pier, and hotels that are heavily used by residents and tourists alike.



Total Request for FY 22/23
\$11,110,196 (\$9,791,183 beach nourishment project)

Funding History
Previous Year TDC Approved Funding

FY21/22
\$934,888
Capital Projects
Palm Ave Restroom: \$95,000

FY20/21
\$1,267,625

FY19/20
\$1,135,230
\$127,038 (Out of cycle request) Additional funds for Newton Beach Park Restroom Renovation

FY18/19
\$1,340,970

FY17/18
\$955,400

Commented [M2]: I did not change any of these - defer to Town for final \$\$

1. **Requested Motion:**

FMB Camera Project updates

Meeting Date: December 8, 2021

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

ITEMS FOR DISCUSSION

3. **Requirement/Purpose:**

5. **Background:**

The Town has obtained various alternatives for cameras from Flock Safety. As of publication of this item, the Town has not received updated pricing from Greenwire Technologies.

Attachments:

1. Town of Fort Myers Beach - Flock Safety 4 Camera Quote
2. Town of Fort Myers Beach - Flock Safety 6 Camera Quote
3. Town of Fort Myers Beach - Flock Safety 8 Camera Quote
4. Falcon ALPR Overview

Financial Impact:

6. **Alternative Action**

7. **Staff Recommendations:**

8. **Recommended Approval:**

John R Herin Jr, Town Attorney

Date: December 02, 2021

Roger Hernstadt, Town
Manager

Date: December 02, 2021

flock safety

Created Date 12/1/2021

Expiration Date 12/31/2021

Quote Number 00000313

Prepared By Todd Troutman

Contact Name Roger Hernstadt

Phone 7703102987

Phone 239-765-0202

Email todd.troutman@flocksafety.com

Email roger@fmbgov.com

Bill To Name FL - Town of Fort Myers Beach

Product	Description	List Price	Sales Price	Quantity	Total Price
Flock Falcon Camera	Camera for evidence + real-time alerts to police. Used for high traffic areas	\$2,500.00	\$2,500.00	4.00	\$10,000.00
Implementation Fee	Camera Implementation Fee	\$250.00	\$250.00	4.00	\$1,000.00

Total Price \$11,000.00

Recurring Total \$10,000.00

flock safety

Created Date 12/1/2021

Expiration Date 12/31/2021

Quote Number 00000313

Prepared By Todd Troutman

Contact Name Roger Hernstadt

Phone 7703102987

Phone 239-765-0202

Email todd.troutman@flocksafety.com

Email roger@fmbgov.com

Bill To Name FL - Town of Fort Myers Beach

Product	Description	List Price	Sales Price	Quantity	Total Price
Flock Falcon Camera	Camera for evidence + real-time alerts to police. Used for high traffic areas	\$2,500.00	\$2,500.00	6.00	\$15,000.00
Implementation Fee	Camera Implementation Fee	\$250.00	\$250.00	6.00	\$1,500.00

Total Price \$16,500.00

Recurring Total \$15,000.00

flock safety

Created Date 12/1/2021

Expiration Date 12/31/2021

Quote Number 00000315

Prepared By Todd Troutman

Contact Name Roger Hernstadt

Phone 7703102987

Phone 239-765-0202

Email todd.troutman@flocksafety.com

Email roger@fmbgov.com

Bill To Name FL - Town of Fort Myers Beach

Product	Description	List Price	Sales Price	Quantity	Total Price
Flock Falcon Camera	Camera for evidence + real-time alerts to police. Used for high traffic areas	\$2,500.00	\$2,500.00	8.00	\$20,000.00
Implementation Fee	Camera Implementation Fee	\$250.00	\$250.00	8.00	\$2,000.00

Total Price \$22,000.00

Recurring Total \$20,000.00

Automate investigative leads with a camera that sees like a detective

Flock Safety Falcon™ ALPR Camera

The Flock Safety Falcon is an affordable, infrastructure-free ALPR (automatic license plate recognition) camera for law enforcement agencies who want to increase case clearance and eliminate crime with less. Unlike traditional ALPR, the Falcon uses Vehicle Fingerprint™ technology to transform hours of footage into actionable evidence, even when a license plate isn't visible.

Not your average license plate reader

Infrastructure-Free

With solar power and LTE connectivity, we can install the Falcon where it makes the most impact on crime in just a few weeks.

Safety-as-a-Service

Get software, data, cloud storage, maintenance, and access to a network of 1B+ plate reads/month for one subscription price.

Vehicle Fingerprint Technology

Search footage by vehicle type, make, color, license plate state, missing and covered plates, and other unique features like bumper stickers, decals, and roof racks.



Join 1400+ cities using Flock Safety OS to eliminate crime



Detect

objective evidence
necessary to clear
more cases



Decode

footage with machine
learning to uncover
investigative leads



Deliver

real-time alerts to
dispatch, patrol, and
detectives

Trustworthy technology that drives positive results

130%

More plate
reads than
the
competition

30%

More
accurate
than legacy
ALPR

120

Stolen plate
and vehicle
hits per hour

60%

Crime
reduction in
Cobb County,
GA

\$1.1M

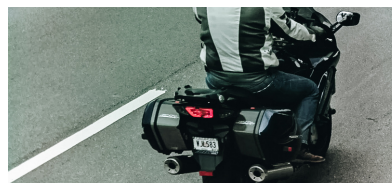
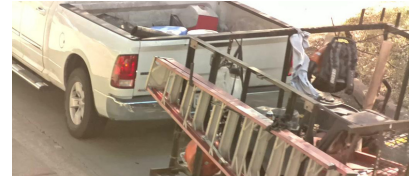
Recovered in
stolen
vehicles in
Wichita, KS

"We are making some pretty
significant arrests almost every
single day."

— Lt. Casey Slaughter
Wichita Police Department



Capture objective evidence 24/7 without the overtime pay



Identify body type, make, color, license plate (partial, missing, or covered plates), temporary plates, license plate state, and unique features like decals, bumper stickers, and accessories that create a traceable Vehicle Fingerprint.



Solar Panel

- Voltage: 18-20V
- Weight: 9.6lbs (with hardware)
- Length: 21.25"
- Width: 14"
- Depth: 2"
- Mount: atop pole with bolts

Pole

- DOT breakaway pole: 6', 12' (\$250)
- Material: SCH 40
- Alloy: 6061
- Weight: 32 lbs

Camera

- Length: 8.75"
- Height: 5"
- Width: 2.875"
- Mount: Adjustable band clamps
- Weight: 3lbs
- Footage: Uploads via LTE
- Line of Sight: 15' wide, 30-65' distance
- Assembly: Flock Safety in Atlanta, GA
- Speed Capture: ≤ 100 MPH

1. **Requested Motion:**

Meeting Date: December 8, 2021

A discussion of water sports and chair rentals as requested by Town Council.

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

ITEMS FOR DISCUSSION

3. **Requirement/Purpose:**

5. **Background:**

Attachments:

1. Sec. 14_5. Beach furniture and equipment
2. 15-12, Rental of Beach Furniture and Equipment - FINAL
3. Chapter 27 PERSONAL WATERCRAFT AND PARASAILING
4. 14-02 PAL-PWVL Ordinance Amendments FINAL
5. 14-07, Ord PWVL PAL FINAL
6. 21-03, Amend Chapter 32 Sea Turtle Conservation 2nd Reading-C1 FINAL

Financial Impact:

6. **Alternative Action**

7. **Staff Recommendations:**

8. **Recommended Approval:**

Amy Baker, Town Clerk

Date: December 02, 2021

John R Herin Jr, Town Attorney

Date: December 02, 2021

Amy Baker, Town Clerk

Date: December 02, 2021

Roger Hernstadt, Town
Manager

Date: December 02, 2021

Sec. 14-5. - Beach furniture and equipment.

- (a) All BFVP holders are required to operate in compliance with the provisions of this section, unless the permit issued by the town specifically provides otherwise.
- (b) All beach furniture, except beach cabanas, must be removed from the beach between the hours of 9:00 p.m. until 7:00 a.m.
 - (1) Beach furniture storage locations must be indicated on the site plan submitted with the BFVP application, see § 14-5(j).
 - (2) Beach furniture storage locations that will be given preference are those that provide:
 - a. Protection from interference with sea turtle nesting activity;
 - b. Dune protection;
 - c. Security of the beach furniture; and
 - d. The ability to expeditiously remove the beach furniture from the property in the event of a hurricane.
- (c) Beach furniture that is removed from the beach, as required by this section, must be safely stacked within the designated storage area.
- (d) Except during sea turtle nesting season, beach cabanas may be left on the beach between the hours of 9:00 p.m. and 7:00 a.m. Turtle nesting season will be in accordance with the Florida Wildlife Commission's official calendar for the Gulf Coast of Florida.
- (e) Beach furniture may not bear commercial signage. BFVP holder identification, such as initials and numbering, must be located on the interior or underside portion of beach furniture so that it is not readily visible when the furniture is in use.

Beach furniture vendors operating with a valid town permit approved prior to January 1, 2015, may continue to use furniture bearing company logos until July 1 2017. After July 1, 2017 no beach furniture rented by BFVP holder for use on the beach within the limits of the Town of Fort Myers Beach may bear commercial signage that is not consistent with this section.

- (f) Beach furniture owned by BFVP holders may not be placed or used in a manner that will block public access to or across the shore or wet sand area.
- (g) Emergency services and Town of Fort Myers Beach personnel have the right to move any beach furniture necessary to ensure a clear line of sight for safety purposes.
- (h) BFVP holders wishing to use a vehicle to transport beach furniture to and from the beach must obtain a permit from the town through the permit process described in LDC § 14-6(c) and must abide by the applicable restrictions. If a beach raking permit is also requested, the permits will be incorporated into one permit. The following additional restrictions will apply to all transport permits:
 - (1) Beach furniture may not be set out in the morning before 9:00 a.m. or prior to completion of daily monitoring for turtle nesting activity by a FWC-authorized marine turtle permit holder, whichever occurs first. The purpose of the monitoring is to examine the beach in the area of the authorized activity to ensure any new sea turtle nests are identified and marked.
 - (2) Transporting vehicles may not travel within ten feet of a sea turtle nest or dune vegetation.
 - (3) The vehicle and equipment cannot exceed a maximum ground-to-tire pressure of ten PSI (pounds per square inch) using the formula in § 14-6.
- (i) By September 30th each year, BVFP holders must file a hurricane action plan with the town. This plan must include the name of a local contact person with current phone number.
- (j) Any business engaged in the rental of beach furniture for use by the public on the town's beaches must meet the following requirements:

- (1) The business must apply for and obtain a beach furniture vending permit (BFVP).
- (2) Applications must include:
 - a. A site plan specifically identifying: (i) the boundaries of the property in which the business will be located; (ii) the specific area/location in which the business will operate; (iii) the proposed area for use of the furniture or equipment by the business patrons; and (iv) the storage location.
 - b. If the applicant is not the owner of the property from which the business will operate, the applicant must submit appropriate documentation evidencing the property owner's approval of the proposed use by the applicant vendor. Appropriate documentation includes, but is not limited to, a notarized letter of authorization from the owner of the property to the applicant, or a lease agreement for the purpose of furniture rental.
 - c. A current Lee County business tax receipt.
 - d. A valid Florida business tax application (DR-1) for the previous year.
 - e. Evidence that tax payments on beach furniture rentals were made during the previous year.
 - f. Proof of insurance coverage meeting the following requirements:
 1. Comprehensive general liability insurance policy insuring the public against bodily injury or property damage resulting from or incidental to the operation, use, or rental of beach furniture.
 2. At a minimum, the policy must provide coverage of not less than \$500,000.00 per occurrence and \$1,000,000.00 aggregate.
 3. The policy must list the Town of Fort Myers Beach as an additional insured, and provide that coverage cannot be canceled or materially altered except after 30 days' written notice has been received by the town, and be written through insurers licensed and authorized to do business in the State of Florida.
 - g. The application fee in the amount specified in the current Town of Fort Myers Beach fee schedule.
- (2) BFVPs are annual permits that will expire at midnight on September 30th each year. The town will accept BFVP renewal applications between September 1st and September 30th of each year. BFVP renewal applications must include the items listed in §§ 14-5(j)(2)a—g.
- (k) All BFVP holders must adhere to the operational requirements of this section, including the following:
 - (1) BFVP holders must stake the corners and the edge of any public rights-of-way or beach access adjoining the property from which they operate. The town manager, or the manager's designee will inspect the staking for compliance with the approved site plan provided in accordance with LDC § 14-5(j) and record the GPS coordinates of the stakes. The stakes must be removed after the GPS coordinates are recorded. BFVP holders will be required to operate in this area only.
 - (2) BFVP holder's furniture must be set back at least 15 feet landward of the wrack line. BFVP holders may not impede public access to any portion of the beach seaward of the setback line identified in this subsection.
 - (3) BFVP holder's furniture must be setback a minimum of ten feet from sea turtle nests and dune vegetation.
 - (4) BFVP holder's furniture must be set back the lessor of ten feet from the side property lines of the property listed on the BFVP or ten percent of the width of the property from the side property lines of the property listed on the BFVP; or, as otherwise specifically provided in the BFVP approval.
 - (5) BFVP holder's furniture must be set back a minimum of ten feet from any beach access.

- (6) When placing beach furniture, BFVP holders must provide clear access isles, a minimum of six feet wide, for every 50 feet of linear beach front applicable to the business operation. The isle should run relatively perpendicular to the shoreline in order to provide public access to the water.
- (7) BFVP holders may not bury or lay water or electric lines on or in the sand without an electrical or plumbing permit.
- (8) BFVP holders may place one freestanding structure on the beach area from which to conduct business consistent with the following:
 - a. This structure may be a table, podium, booth or storage box as identified in the BFVP permit application.
 - b. The total horizontal dimensions of this structure may not exceed four feet by six feet. Any awning, umbrella, or integral roof whose sole purpose is to provide shade is not included in these dimensions.
 - c. The structure must be portable and may not be left on the beach before or after the regular business hours of the BFVP holder.
 - d. The structure and any associated shade must be set back at least 15 feet landward of the wrack line.
 - e. The structure may contain a maximum of three identification or promotional signs painted on or mounted flat against the structure, no one individual sign may exceed eight square feet; as measured in accordance with LDC § 30-91.
 1. Any rate charts smaller than two square feet will not be counted as part of the signage limitation above.
 2. No signs or other advertising for the business are permitted on the beach other than the signage permitted on the structure.
 3. If a BFVP holder also holds a PWVL and/or PAL all business activity for those town approvals must be conducted from a single structure on the beach.
- (9) BFVP holders are prohibited from soliciting customers at any location other than within the property boundaries of the location listed on their permit.

(l) *Nonconforming beach furniture vendors.*

- (1) Beach furniture vendors with an established and existing business as of January 1, 2015, operating at a location that does not meet the locational standards set forth in LDC § 14-5 (and LDC ch. 34) may continue operating at the nonconforming location under the following conditions:
 - a. An application for a BFVP permit is submitted to the town no later than March 1, 2016.
 - b. The application documents with specificity to the existence and operation of the business at the designated location prior to January 1, 2015.
 - c. The application is complete and provides all documentation required under LDC § 14-5(j)(2).
 - d. The vendor must conduct the operation in accordance with the provisions of this section and the BFVP issued by the town.
- (2) Beach furniture vendors that are operating without a valid permit from the town on January 1, 2015, must apply for and obtain a BFVP from the town in accordance with the provisions of this section.
- (3) A beach furniture vendor renting furniture under a PWVL, PAL, or use certificate issued by the town prior to January 1, 2015, may continue operating at the previously approved location, provided the vendor complies with the conditions set forth in §§ 14-5(l)(1)a—d.
- (4) Beach furniture vendors in operation prior to January 1, 2015 that fail to comply with the provisions of this section by March 1, 2016, by either submitting an appropriate application or

otherwise complying with the section, must terminate the beach furniture operation. Once terminated, the beach furniture vendor must comply with all provisions of this section before resuming beach furniture rental activity.

- (m) An independent beach furniture vendor operating at a resort location is required to comply with the provisions of this section.
- (n) *Termination of nonconforming beach furniture vendor operations.* A nonconforming beach furniture vendor operation as described in § 14-5(l) will be terminated if operations are discontinued by the vendor for a period of 30 days or more.
- (o) *Transferability of BFVP.*
 - (1) All BFVPs are issued to a specific vendor at a specific location and may not be transferred to another vendor, entity, or location without prior approval of the town.
 - (2) BFVPs issued to nonconforming operations pursuant to § 14-5(l) are not transferable.
- (p) *Enforcement and penalties.*
 - (1) The town manager, or the manager's designee, may make periodic inspections of BFVP holder's operations to determine continued compliance with the requirements of this section.
 - (2) Enforcement of this section will be as provided for in LDC ch. 2, article V.
 - (3) Any BFVP holder receiving three or more citations for violation of the same provision of this section within any six month time span may be issued a notice of violation. The violation will be scheduled for hearing before the special magistrate. In addition to the imposition of fines and costs, the special magistrate will have the authority to revoke the BFVP for a period of one year or another period determined appropriate by the special magistrate. Appeal of the special magistrate's determination is to the circuit court.
 - (4) If a BFVP is revoked by the special magistrate, the vendor may not submit a new BFVP application for the period designated by the special magistrate.

(Ord. No. 15-12, § 1, 1-19-2016)

ORDINANCE NO. 15-12

AN ORDINANCE AMENDING TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE (LDC) CHAPTERS 14 AND 34 TO AMEND REGULATIONS APPLICABLE TO RENTAL OF BEACH FURNITURE AND EQUIPMENT BY VENDORS; AMENDING LDC CHAPTER 14, ENVIRONMENT AND NATURAL RESOURCES; AMENDING DEFINITIONS (§ 14-1); REPEALING EXISTING LDC §14-5 AND REPLACING IT WITH AMENDED PROVISIONS APPLICABLE TO BEACH FURNITURE AND EQUIPMENT RENTAL; AMENDING SPECIAL EVENTS ON THE BEACH (§14-11); ADD PROVISION TO PROHIBIT RELEASE OF "SKY LANTERNS" (§14-12); AMENDING LDC CHAPTER 34, ZONING; AMENDING DEFINITIONS (§34-2); TABLE 34-1 PERTAINING TO RENTAL OF BEACH FURNITURE; PROVISIONS APPLICABLE TO ENVIRONMENTALLY CRITICAL ZONING DISTRICT (§34-652); AMENDING DEFINITIONS OF "RESIDENTIAL ACCESSORY USE" AND "RESORT ACCESSORY USE" (§34-1172); OUTDOOR DISPLAY OF MERCHANDISE FOR SALE OR RENT (§34-3004); REPEALING PROVISIONS APPLICABLE TO WATER ORIENTED RENTAL ESTABLISHMENTS (§34-3151); PROVIDING FOR SEVERABILITY; CONFLICTS OF LAW; CODIFICATION; SCRIVENER'S ERRORS; AND, AN EFFECTIVE DATE.

WHEREAS, the Town of Fort Myers Beach has authority pursuant to the provisions of Florida Statutes §166.041 to enact and amend ordinances and regulations necessary to the proper functioning of the Town; and

WHEREAS, the Town Council has adopted the Town of Fort Myers Beach, Florida Land Development Code (LDC); and

WHEREAS, the Town Council finds that the existence in the Town of beach furniture vendors provides a public amenity that enhances the beach-going experience for residents and visitors; and

WHEREAS, the Town Council finds such vendors are appropriate on the Town's beaches to the extent that they do not interfere with the right of the public to use and transverse public portions of the beach; and

WHEREAS, the Town of Fort Myers Beach Local Planning Agency reviewed this ordinance on December 8th, 2015 and found it to be consistent with the Town of Fort Myers Beach Comprehensive Plan; and

WHEREAS, the Town Council finds it is appropriate and in the best interest of the public health, safety and welfare to update and amend the provisions applicable to the rental and use of beach furniture and equipment.

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

SECTION 1. AMENDMENT TO TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE CHAPTER 14.

Town of Fort Myers Beach Land Development Code Chapter 14, Article I is hereby amended as follows, with strike through identifying deleted text and underlining identifying additional text.

CHAPTER 14

ENVIRONMENT AND NATURAL RESOURCES

ARTICLE I. BEACH AND DUNE MANAGEMENT

Sec. 14-1. Definitions.

For the purposes of this article, the following terms, phrases, words, and derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and the words in the singular number include the plural number. The word "shall" is always mandatory.

Beach means that area of sand along the Gulf of Mexico that extends landward from the mean low-water line to the place where there is a marked change in material or physiographic form, or to the line of permanent vegetation, usually the effective limit of storm waves.

Beach furniture ~~or equipment~~ means any manmade apparatus or paraphernalia designed or manufactured for use or actually used on the beach or in the adjacent tidal waters. Examples include, but are not limited to:, chairs, tables, cabanas, and lounges, umbrellas, ~~sailing vessels up to 16 feet in length, personal watercraft, concession storage units, canoes, kayaks, paddle vessels, sailboards, surfboards, fishing gear, sporting equipment, floatables, tents, and bicycles.~~

BFVP means a Beach Furniture Vending Permit.

Beach width means the perpendicular distance measured from the edge of wet sand to the place where there is a marked change in material or physiographic form from beach sand to dune vegetation, seawall, turf grass, etc.

Director means the person to whom the town manager has delegated the authority to administer this article, or that person's designee.

Dune means a mound, bluff, ridge, or emergent zone of loose sediment, usually sand-sized sediment, lying upland of the beach and deposited by any natural or artificial

mechanism, which may be bare or covered with vegetation, and is subject to fluctuations in configuration and location (reference F.S. §161.54, 62B-33.002 F.A.C.). It encompasses those ecological zones that, when left undisturbed, will support dune vegetation. As to areas restored or renourished pursuant to a permit issued by the town or state, it encompasses the area specified in the permit as a dune or any area specified as suitable for establishment of dune vegetation.

Dune vegetation means pioneer species of native vegetation which, if left undisturbed by manmade forces, will begin to grow on a dune, including species such as bitter panicum, coastal panic grass, crowfoot grass, saltmeadow cordgrass, sandbur, seacoast bluestem, sea oats, seashore dropseed, seashore paspalum, seashore saltgrass, stiffleaf eustachys, beach bean, blanket flower, dune sunflower, fiddle-leaf morningglory, partridge pea, railroad vine, sea purslane, beach creeper, nicker bean, coin vine, inkberry, lantana, saw palmetto, seashore elder, baycedar, green buttonwood, cabbage palm, cocoplum, seagrape, and southern wax myrtle.

Edge of wet sand means the point where the visible darkening or staining of the beach sand from wave action is no longer detectable.

Hand raking means the use of a standard garden rake, pitchfork, potato fork, or any other handheld tool used for the purpose of removing or altering the "wrack line."

Mechanical beach raking means ~~the cleaning of the sandy beach seaward of the dune and vegetation line of trash and other debris on or near the surface by use of a rake or other similar porous device which penetrates no more than two inches below the existing ambient grade and results in no removal of in situ sand~~ a method of maintaining the beach by pulling a pronged rake or a piece of chain link fence that meets the requirements of the LDC § 14-6(c). The rake or chain link fence may be pulled behind a tractor, golf car, ATV, or other vehicle, as approved by the town, which meets the maximum ground-to-tire pressure found in LDC § 14-6(d).

Seaward line of vegetation means the location closest to the mean high-water line containing, or suitable for, dune vegetation. If there is no such vegetation upon a parcel or portion of a parcel, it shall will encompass a line alongshore projected from the closest areas on each side where such vegetation does exist.

Wet sand means the area on the beach where the sand is saturated by sea water from wave action. This area is identified by a visible darkening or staining of the beach sand from the water driven onshore by wave action.

Wrack line means a well-defined zone of the natural organic marine material cast on the shore by the last high tide, including seaweed and other vegetative and animal debris, but excluding manmade material. Any areas of organic marine material left on the upper beach due to abnormally high spring tides, storm tides, or other extreme conditions or events, as determined by the Town, are not included in the definition of "wrack line."

Sec. 14-5. Beach furniture and equipment.

~~(a) From May 1 through October 31, all beach furniture and equipment must be removed from the beach as follows:~~

- ~~(1) All beach furniture and equipment must be removed from the beach between the hours of 9:00 p.m. until 7:00 a.m.~~
- ~~(2) The beach furniture and equipment must be moved daily either behind the permanent dune line; or where no dune line is present and the beach is wide, then 200 feet from the mean high water line; or where the beach is narrow to the adjacent permanent structure and landward of any seawall. Where compliance with the foregoing provisions would cause an undue hardship, the town manager may, after determining the minimum variance from the requirements of this ordinance, designate the storage location.~~
- ~~(3) Beach furniture and equipment that is removed from the beach as specified in § (a)(2) above, shall then be safely stacked in areas no larger than ten feet by ten feet and each stack must be at least 50 feet removed or apart from the next stack. All stacked items will be secured either by a cable or chain to prevent removal and scattering of items by unauthorized individuals at night. The cable and/or chain must be kept off the ground as these items pose a serious entanglement hazard.~~

~~(b) Trash containers are not included in the definition of beach furniture and equipment and may be left in place on the beach between the hours of 9:00 p.m. and 7:00 a.m.~~

~~(c) No later than the first day of June, beach properties that have more than five cabanas or offer beach equipment for use shall file a hurricane action plan with the town each year prior to the beginning of hurricane season and provide a contact person with current phone number.~~

~~(d) All beach furniture and equipment (such as chairs, umbrellas, cabanas, and rental podium, but excluding water dependent equipment) shall be set landward of the mean high water line and at least ten feet from a sea turtle nest or dune vegetation.~~

~~(e) Vendors wishing to use a vehicle to transport furniture and equipment to and from the beach must obtain a permit from the town through the permit process described in §14-6(c) of this chapter and must abide by the same restrictions. If a beach raking permit is also applied for, the permits will be incorporated into one permit. The following additional restrictions apply to a transport permits:~~

- ~~(1) Equipment shall not be set out in the morning before 8:00 a.m. or before completion of daily monitoring for turtle nesting activity by a FWC authorized marine turtle permit holder to examine the beach in the area of the authorized activity to ensure any new sea turtle nests are identified and marked, whichever occurs first.~~

~~(2) Transporting vehicles shall not travel within ten feet of a sea turtle nest or dune vegetation.~~

~~(3) The vehicle and equipment cannot exceed a maximum ground-to-tire pressure of ten PSI (pounds per square inch) using the formula in §14-6(c)(4)d.1.~~

(a) All BFVP holders are required to operate in compliance with the provisions of this section, unless the permit issued by the town specifically provides otherwise.

(b) All beach furniture, except beach cabanas, must be removed from the beach between the hours of 9:00 p.m. until 7:00 a.m.

(1) Beach furniture storage locations must be indicated on the site plan submitted with the BFVP application, see §14-5(j).

(2) Beach furniture storage locations that will be given preference are those that provide:

a. Protection from interference with sea turtle nesting activity;

b. Dune protection;

c. Security of the beach furniture; and

d. The ability to expeditiously remove the beach furniture from the property in the event of a hurricane.

(c) Beach furniture that is removed from the beach, as required by this section, must be safely stacked within the designated storage area.

(d) Except during sea turtle nesting season, beach cabanas may be left on the beach between the hours of 9:00 p.m. and 7:00 a.m. Turtle nesting season will be in accordance with the Florida Wildlife Commission's official calendar for the Gulf Coast of Florida.

(e) Beach furniture may not bear commercial signage. BFVP holder identification, such as initials and numbering, must be located on the interior or underside portion of beach furniture so that it is not readily visible when the furniture is in use.

Beach furniture vendors operating with a valid Town permit approved prior to January 1, 2015, may continue to use furniture bearing company logos until July 1 2017. After July 1, 2017 no beach furniture rented by BFVP holder for use on the beach within the limits of the Town of Fort Myers Beach may bear commercial signage that is not consistent with this section.

(f) Beach furniture owned by BFVP holders may not be placed or used in a manner that will block public access to or across the shore or wet sand area.

(g) Emergency services and Town of Fort Myers Beach personnel have the right to move any beach furniture necessary to ensure a clear line of sight for safety purposes.

(h) BFVP holders wishing to use a vehicle to transport beach furniture to and from the beach must obtain a permit from the Town through the permit process described in LDC §14-6(c) and must abide by the applicable restrictions. If a beach raking permit is also requested, the permits will be incorporated into one permit. The following additional restrictions will apply to all transport permits:

(1) Beach furniture may not be set out in the morning before 9:00 a.m. or prior to completion of daily monitoring for turtle nesting activity by a FWC-authorized marine turtle permit holder, whichever occurs first. The purpose of the monitoring is to examine the beach in the area of the authorized activity to ensure any new sea turtle nests are identified and marked.

(2) Transporting vehicles may not travel within ten feet of a sea turtle nest or dune vegetation.

(3) The vehicle and equipment cannot exceed a maximum ground-to-tire pressure of ten PSI (pounds per square inch) using the formula in §14-6.

(i) By September 30th each year, BVFP holders must file a hurricane action plan with the town. This plan must include the name of a local contact person with current phone number.

(i) Any business engaged in the rental of beach furniture for use by the public on the town's beaches must meet the following requirements:

(1) The business must apply for and obtain a Beach Furniture Vending Permit (BFVP).

(2) Applications must include:

a. A site plan specifically identifying (i) the boundaries of the property in which the business will be located; (ii) the specific area/location in which the business will operate; (iii) the proposed area for use of the furniture or equipment by the business patrons; and, (iv) the storage location.

b. If the applicant is not the owner of the property from which the business will operate, the applicant must submit appropriate documentation evidencing the property owner's approval of the

proposed use by the applicant vendor. Appropriate documentation includes, but is not limited to, a notarized letter of authorization from the owner of the property to the applicant, or a lease agreement for the purpose of furniture rental.

- c. A current Lee County Business Tax Receipt.
- d. A valid Florida Business Tax Application (DR-1) for the previous year.
- e. Evidence that tax payments on beach furniture rentals were made during the previous year.
- f. Proof of insurance coverage meeting the following requirements:
 - 1. Comprehensive general liability insurance policy insuring the public against bodily injury or property damage resulting from or incidental to the operation, use, or rental of beach furniture.
 - 2. At a minimum, the policy must provide coverage of not less than \$500,000 per occurrence and \$1,000,000 aggregate.
 - 3. The policy must list the Town of Fort Myers Beach as an additional insured, and provide that coverage cannot be canceled or materially altered except after 30 days' written notice has been received by the Town, and be written through insurers licensed and authorized to do business in the State of Florida.
- g. The application fee in the amount specified in the current Town of Fort Myers Beach fee schedule.

- (2) BFVPs are annual permits that will expire at midnight on September 30th each year. The Town will accept BFVP renewal applications between September 1st and September 30th of each year. BFVP renewal applications must include the items listed in 14-5(i)(2)a-g.

(k) All BFVP holders must adhere to the operational requirements of this section, including the following:

- (1) BFVP holders must stake the corners and the edge of any public rights-of-way or beach access adjoining the property from which they operate. The town manager, or the manager's designee will inspect the staking for compliance with the approved site plan provided in accordance with LDC §14-5(i) and record the GPS coordinates of the stakes. The stakes must

be removed after the GPS coordinates are recorded. BFVP holders will be required to operate in this area only.

- (2) BFVP holder's furniture must be set back at least 15 feet landward of the wrack line. BFVP holders may not impede public access to any portion of the beach seaward of the setback line identified in this subsection.
- (3) BFVP holder's furniture must be setback a minimum of ten feet from sea turtle nests and dune vegetation.
- (4) BFVP holder's furniture must be set back the lessor of ten feet from the side property lines of the property listed on the BFVP or ten-percent of the width of the property from the side property lines of the property listed on the BFVP; or, as otherwise specifically provided in the BFVP approval.
- (5) BFVP holder's furniture must be set back a minimum of ten feet from any beach access.
- (6) When placing beach furniture, BFVP holders must provide clear access isles, a minimum of 6 feet wide, for every 50 feet of linear beach front applicable to the business operation. The isle should run relatively perpendicular to the shoreline in order to provide public access to the water.
- (7) BFVP holders may not bury or lay water or electric lines on or in the sand without an electrical or plumbing permit.
- (8) BFVP holders may place one free-standing structure on the beach area from which to conduct business consistent with the following:
 - a. This structure may be a table, podium, booth or storage box as identified in the BFVP permit application.
 - b. The total horizontal dimensions of this structure may not exceed four feet by six feet. Any awning, umbrella, or integral roof whose sole purpose is to provide shade is not included in these dimensions.
 - c. The structure must be portable and may not be left on the beach before or after the regular business hours of the BFVP holder.
 - d. The structure and any associated shade must be set back at least 15 feet landward of the wrack line.
 - e. The structure may contain a maximum of three identification or promotional signs painted on or mounted flat against the structure,

no one individual sign may exceed eight square feet; as measured in accordance with LDC §30-91.

1. Any rate charts smaller than two square feet will not be counted as part of the signage limitation above.
 2. No signs or other advertising for the business are permitted on the beach other than the signage permitted on the structure.
 3. If a BFVP holder also holds a PWVL and/or PAL all business activity for those town approvals must be conducted from a single structure on the beach.
- (9) BFVP holders are prohibited from soliciting customers at any location other than within the property boundaries of the location listed on their permit.
- (l) *Nonconforming Beach Furniture Vendors.*
- (1) Beach furniture vendors with an established and existing business as of January 1, 2015, operating at a location that does not meet the locational standards set forth in LDC §14-5 (and LDC ch. 34) may continue operating at the nonconforming location under the following conditions:
 - a. An application for a BFVP permit is submitted to the Town no later than March 1, 2016.
 - b. The application documents with specificity to the existence and operation of the business at the designated location prior to January 1, 2015.
 - c. The application is complete and provides all documentation required under LDC §14-5(j)(2).
 - d. The vendor must conduct the operation in accordance with the provisions of this section and the BFVP issued by the Town.
- (2) Beach furniture vendors that are operating without a valid permit from the Town on January 1, 2015, must apply for and obtain a BFVP from the Town in accordance with the provisions of this section.
- (3) A beach furniture vendor renting furniture under a PWVL, PAL, or use certificate issued by the Town prior to January 1, 2015, may continue operating at the previously approved location, provided the vendor complies with the conditions set forth in §14-5(l)(1) a - d.

- (4) Beach furniture vendors in operation prior to January 1, 2015 that fail to comply with the provisions of this section by March 1, 2016, by either submitting an appropriate application or otherwise complying with the section, must terminate the beach furniture operation. Once terminated, the beach furniture vendor must comply with all provisions of this section before resuming beach furniture rental activity.
- (m) An independent beach furniture vendor operating at a resort location is required to comply with the provisions of this section.
- (n) Termination of Nonconforming Beach Furniture Vendor Operations. A nonconforming beach furniture vendor operation as described in §14-5(l) will be terminated if operations are discontinued by the vendor for a period of 30 days or more.
- (o) Transferability of BFVP.
- (1) All BFVPs are issued to a specific vendor at a specific location and may not be transferred to another vendor, entity, or location without prior approval of the Town.
- (2) BFVPs issued to nonconforming operations pursuant to §14-5(l) are not transferable.
- (p) Enforcement and Penalties.
- (1) The town manager, or the manager's designee, may make periodic inspections of BFVP holder's operations to determine continued compliance with the requirements of this section.
- (2) Enforcement of this section will be as provided for in LDC Ch. 2, article V.
- (3) Any BFVP holder receiving three or more citations for violation of the same provision of this section within any six month time span may be issued a Notice of Violation. The violation will be scheduled for hearing before the Special Magistrate. In addition to the imposition of fines and costs, the Special Magistrate will have the authority to revoke the BFVP for a period of one year or another period determined appropriate by the Special Magistrate. Appeal of the Special Magistrate's determination is to the Circuit Court.
- (4) If a BFVP is revoked by the Special Magistrate, the vendor may not submit a new BFVP application for the period designated by the Special Magistrate.

Sec. 14-11. -Special events on the beach.

(a) through (c). *No change.*

(d) Special events ~~which~~ that occur on or near the beach or dune, or where lighting from the special events directly or indirectly illuminates sea turtle habitat, may contain special conditions for protection of the beach, dune and sea turtles. These conditions are in addition to the basic requirements of ~~ordinance No. 98-1, as amended,~~ the town's special events permit provisions, which must still be met in full.

(1) Along with the regular application for an event permit ~~as required by Ordinance 98-1, as amended,~~ a site plan must be submitted depicting the property corners and the dimensions of the area where the event is proposed to occur, the location of existing vegetation, structures, and any existing sea turtle nests, and a summary of the activities proposed. A lighting plan that includes the location, number, type, wattage, orientation, and shielding for all proposed artificial light sources that will be used must also be submitted. All lighting must be in compliance with §14-75. ~~of this chapter.~~

(2) through (4). *No change.*

(5) A violation of the special or standard conditions ~~shall~~ will automatically invalidate the permit. Periodic compliance inspections will be conducted to insure compliance with the permit conditions and this ~~ordinance~~ article.

(6) The release of balloons is prohibited in accordance with F.S. § 372.995, except as permitted by that statute.

Sec. 14-12. Sky lantern release prohibited.

The release of "sky lanterns" or any other device that uses an open flame to provide buoyancy is prohibited anywhere within Town limits.

SECTION 2. AMENDMENT TO TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE CHAPTER 34.

Town of Fort Myers Beach Land Development Code Chapter 34 is hereby amended as follows, with strike through indicating deleted text and underlining identifying additional text.

CHAPTER 34

ZONING DISTRICTS, DESIGN STANDARDS AND NONCONFORMITIES

ARTICLE I. IN GENERAL

Sec. 34-2. Definitions.

The following words, terms, and phrases, when used in this chapter, shall have the following meanings, unless the context clearly indicates a different meaning.

Rental of beach furniture means a business that provides beach chairs, umbrellas, and similar equipment for a fee. ~~Rental of beach furniture is permitted as a resort accessory use and also by right in certain zoning districts.~~ holding a valid BFVP. See divisions 1 and 2 of ch. 14 and ~~§34-3151 of this chapter.~~

Residential accessory use means the use of a structure or premises that is customarily incidental and subordinate to the principal use of a residential structure. See *Use, principal*. Typical residential accessory uses are: carports and garages; decks, gazebos, patios, and screen enclosures; dock, personal (§ 34-1863 of this chapter); fences and walls (division 17 in article IV of this chapter); garage sales or yard sales (see definition in this section § 34-2); recreation facilities, personal; seawalls (ch. 26 of this LDG); and storage sheds; and, rental of beach furniture when accessory to a multi-family residential building located adjacent to the Gulf of Mexico containing more than fifty dwelling units (ch. 14). Division 2 and other portions of article IV of this chapter provide regulations for many residential accessory uses.

Resort accessory use means the use of a structure or premises that is customarily incidental and subordinate to a resort. See *Use, principal*. Typical resort accessory uses are: amusement devices (§§ 34-2141—34-2145 and 34-3042 of this chapter); golf courses; parasailing operations office (ch. 27 of this LDG); personal watercraft operations office (ch. 27 of this LDG); and rental of beach furniture (ch. 14 of this LDG).

ARTICLE III. ZONING DISTRICT REGULATIONS

DIVISION 2. ALLOWABLE LAND USES IN EACH ZONING DISTRICT

Table 34-1. Land Uses Assigned to Use Groups and Sub-Groups

Marine / Limited / Rental of Beach Furniture	P
Residential / Open / As Accessory Uses / Rental of Beach Furniture <u>when accessory to a multi-family residential building located adjacent to the Gulf of Mexico containing more than fifty dwelling units</u>	P

DIVISION 4. CONVENTIONAL ZONING DISTRICTS

Sec. 34-652. EC (Environmentally Critical) zoning district.

(a) through (c) *No change.*

(d) *Permitted uses.*

(1) – (5) *No change.*

- (6) Recreation activities, residential accessory uses, including the rental of beach furniture when accessory to a multi-family residential building located adjacent to the Gulf of Mexico containing more than fifty dwelling units, and resort accessory uses that are performed outdoors. These activities and uses include passive recreation and active recreation that requires no permanent structures or alteration of the natural landscape (except as may be permitted by special exception (see §6-366 of this LDC and subsection (e) below). Any temporary structure used in conjunction with such uses must comply with all provisions of this code (for instance, see chapters 14 and 27 of this LDC). Artificial lighting may not be installed in the EC zoning district unless approved by special exception or as a deviation in the planned development rezoning process (see §§6-366 and 14-76 of this LDC).

[No change to the balance of this section.]

ARTICLE IV. SUPPLEMENTAL REGULATIONS**DIVISION 2. ACCESSORY USES, BUILDINGS, AND STRUCTURES****Sec. 34-1172. Definitions.**

Residential accessory use means the use of a structure or premises that is customarily incidental and subordinate to the principal use of a residential structure. See *Use, principal*. Typical residential accessory uses are: carports and garages; decks, gazebos, patios, and screen enclosures; dock, personal (§ 34-1863 of this chapter); fences and walls (division 17 in article IV of this LDC); garage sales or yard sales (§ 34-2 of this chapter); recreation facilities, personal; seawalls (ch. 26 of this LDC); and storage sheds; and, rental of beach furniture when accessory to a multi-family residential building located adjacent to the Gulf of Mexico containing more than fifty dwelling units.

~~(e) Time limitations. The rental activity may not occur between the hours of 9:00 p.m. and 8:00 a.m., and movement of personal watercraft is further restricted by § 27-49(4) of this LDC. Artificial lighting is prohibited.~~

~~(f) Storage during sea turtle nesting season. No structures or equipment of any kind may be left on the beach before or after regular business hours between the hours of 9:00 p.m. and 8:00 a.m. from May 1 until October 31. See also §§ 14-5, 14-78, and 27-49(9) of this LDC.~~

~~(g) Signage. The only signage permitted shall be those signs specifically authorized by § 27-51(c) of this LDC.~~

SECTION 3: SEVERABILITY.

If any one of the provisions of this ordinance should be held contrary to any express provision of law or contrary to the policy of express law, although not expressly prohibited, or against public policy, or for any reason whatsoever beheld invalid, then such provision will be null and void and will be deemed separate from the remaining provisions of this ordinance, and in no way affect the validity of all other provisions of this ordinance.

SECTION 4: CONFLICTS OF LAW.

Whenever the requirements or provisions of this ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements will apply.

SECTION 5: CODIFICATION AND SCRIVENER'S ERRORS.

The Town Council intends that this ordinance will be made part of the Fort Myers beach Code of ordinances; and that sections of this ordinance can be renumbered or relettered and the word "ordinance" can be changed to "section", "article" or some other appropriate word or phrase to accomplish codification, and regardless of whether this ordinance is ever codified, the ordinance can be renumbered or relettered and typographical errors that do not affect the intent can be corrected with the authorization of the Town Manager or designee, without the need for a public hearing.

SECTION 6: EFFECTIVE DATE.

This ordinance becomes effective immediately upon its adoption.

DIVISION 36. STORAGE FACILITIES AND OUTDOOR DISPLAY OF MERCHANDISE

Sec. 34-3004. Outdoor display of merchandise for sale or rent.

- (a) *No change.*
- (b) This code allows outdoor display and sales of merchandise only as follows:
 - (1) *No change.*
 - (2) Beach furniture (in accordance with LDC §14-5 of this LDC)

[No change to the balance of this section.]

DIVISION 41. WATER ORIENTED RENTAL ESTABLISHMENTS

~~Sec. 34-3151. Water-oriented rental establishments.~~

~~(a) Applicability. This section addresses those outdoor rental activities that may be permitted on property adjacent to the Gulf of Mexico and are not located fully within a building. This section is supplemented by the specific standards for beach furniture and equipment that are found in ch. 14 of this LDC and for personal watercraft rental businesses and parasail activities that are found in ch. 27 of this code.~~

~~(b) Permitted districts. Water-oriented rentals are permitted only in resorts as resort accessory uses and in certain zoning districts where permitted by right or by special exception (see division 2 of article III of this chapter). Locations for personal watercraft rental businesses and parasail activities are further restricted by § 27-51(a) of this LDC.~~

~~(c) Location. There may not be any indication from any street that these activities are occurring except as allowed by § 27-51(c)(5) of this LDC.~~

~~(d) Setbacks. The activity must be located within the side property lines and may not be permitted seaward of the minimum waterbody setback for the Gulf of Mexico as set forth in § 34-638(d)(3) of this chapter. Exceptions are:~~

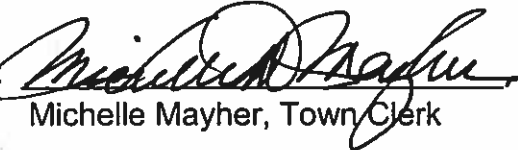
- ~~(1) Beach chairs and umbrellas may be displayed or placed anywhere landward of the mean high water line.~~
- ~~(2) Personal watercraft rental operations and parasail activities that are authorized by this code are permitted seaward of the mean high water line as set forth in ch. 27 of this LDC.~~

The foregoing ordinance was enacted by the Town Council upon a motion by Council Member Hosafros and seconded by Council Member Stockton and, upon being put to a vote, the result was as follows:

Anita Cereceda	Aye
Dan Andre	Aye
Alan Mandel	Aye
Rexann Hosafros	Aye
Summer Stockton	Aye

DULY PASSED AND ENACTED this 19th day of January, 2016.

ATTEST:

By: 
Michelle Mayher, Town Clerk

TOWN OF FORT MYERS BEACH

By: 
Anita Cereceda, Mayor

Approved as to form by:


Town Attorney

Chapter 27 - PERSONAL WATERCRAFT AND PARASAILING^[21]

Footnotes:

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Note— Personal watercraft—Originally adopted as ch. 27 by the Fort Myers Beach Personal Watercraft Ordinance, Ord. No. 96-27.

Note— Parasailing—Originally adopted as ch. 28 by the Fort Myers Beach Parasailing Ordinance, Ord. No. 97-02, and later amended by Ord. No. 99-04.

ARTICLE I. - DEFINITIONS AND ENFORCEMENT

Secs. 27-1—27-44. - Reserved.

Sec. 27-45. - Definitions.

For the purposes of this chapter, the following terms, phrases, words, and derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

Beach means that area of sand along the Gulf of Mexico that extends landward from the mean low-water line to the place where there is a marked change in material or physiographic form, or to the line of permanent vegetation, usually the effective limit of storm waves.

Business shall mean any personal watercraft rental or parasailing activity business, including any commercial activity engaged in the rental, leasing, or bailment for consideration of personal watercraft or parasailing.

Eco-tour shall mean an educational tour led by a guide knowledgeable in environmental and ecological preservation, where the guide can communicate with the tour members and offer commentary about the ecological, environmental, and archaeological significance of Estero Bay.

Edge of wet sand means the point where the visible darkening or staining of the beach sand from wave action is no longer detectable.

FWCC means the Florida Fish and Wildlife Conservation Commission or its successor.

Littoral waters mean that part of the ocean or sea which abuts the shoreline and includes the shore to the ordinary high-water mark. For purposes of this chapter, the littoral right to use such waters shall be limited to the waters within the boundaries of the land-based site as those boundaries extend into the water at right angles from the shoreline.

Operate means to navigate or otherwise use any vessel in, on, or under the water.

PAL shall mean parasailing activity license.

Parasailing or *parasailing activity* shall mean the act of towing a person or object over the water, suspended beneath a parachute, kite, or other similar contrivance.

Person means any individual, partnership, firm, corporation, association, or other entity.

Personal watercraft means a vessel less than 16 feet in length which uses an inboard motor powering a water jet pump as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

PWVL shall mean personal watercraft vendor's license.

Town manager shall include the designee(s) of the Town Manager of the Town of Fort Myers Beach.

Site means the plot or parcel of land or combination of contiguous lots or parcels of land.

Slow speed means no speed greater than that which is reasonable and prudent to avoid either intentionally or negligently disturbing, colliding with, or injuring manatees and which comports with the duty of all persons to use due care under the circumstances. A vessel in a slow speed zone that:

- (1) Is operating on a plane is not proceeding at slow speed;
- (2) That is in the process of coming off plane and settling into the water, which action creates more than no or minimum wake, is not proceeding at slow speed;
- (3) That produces no wake or minimum wake is proceeding at slow speed;
- (4) That is completely off plane and which has settled into the water and is proceeding without wake or with minimum wake is proceeding at slow speed.

"Slow speed" means any through-the-water speed slow enough that the boat is neither planing nor moving with an elevated bow. A vessel that is operating at slow speed shall not be emitting a wake.

Steerage way means the minimum rate of motion required for the helm of the vessel to have effect.

Vessel means a motor propelled or artificially propelled vehicle and every other description of boat, watercraft, barge, and air boat other than a seaplane on the water, used or capable of being used as a means of transportation on water including personal watercraft. This term shall not include rafts, floats, or flotation devices, whether of canvas, vinyl, rubber, Styrofoam, or other substance, intended or capable of assisting in the flotation of a person on or in the water.

Wet sand means the area on the beach where the sand is saturated by sea water from wave action. This area is identified by a visible darkening or staining of the beach sand from the water driven onshore by wave action.

Cross reference— Definitions and rules of construction generally, app. A, § 1-2.

Sec. 27-46. - Area of enforcement.

The area of enforcement of the provisions of this chapter shall be all public navigable waters, creeks, bayous, canals and channels, whether natural or manmade, located within the Town of Fort Myers Beach, including all public waters within the jurisdiction of the town in which the tide ebbs and flows. This chapter does not apply to the county-maintained or county-marked channels.

Sec. 27-47. - Means of enforcement.

The provisions of this chapter shall be enforced by designated town code enforcement officers or members of all duly authorized law enforcement agencies within the town and through any enforcement mechanisms established by this code.

(Ord. No. 14-07, § 1, 10-20-2014)

ARTICLE II. - PERSONAL WATERCRAFT

Sec. 27-48. - Regulations for operation of personal watercraft.

In addition to other regulations in this code, all personal watercraft shall also be operated in the following manner:

- (1) A person may not operate a personal watercraft unless each person riding on or being towed behind such vessel is wearing a type I, type II, type III or type V personal flotation device, other than an inflatable device, approved by the United States Coast Guard.

- (2) A person operating a personal watercraft equipped by the manufacturer with a lanyard-type engine cutoff switch must attach such lanyard to his person, clothing, or personal flotation device as is appropriate for the specific vessel.
- (3) A person shall not operate a personal watercraft at any time between one-half hour before sunset and one-half hour after sunrise. However, agents or employees of law enforcement agencies or fire/emergency rescue services are exempt from this subsection while performing their official duties.
- (4) A personal watercraft must at all times be operated in a reasonable and prudent manner. Maneuvers which unreasonably or unnecessarily endanger life, limb, or property, including, but not limited to, weaving through congested vessel traffic, jumping the wake of another vessel unreasonably or unnecessarily close to such other vessel or when visibility around such other vessel is obstructed, and swerving at the last possible moment to avoid collision shall constitute reckless operation of a vessel. Failure to operate a personal watercraft in such a careful and prudent manner shall constitute careless boating in violation of this chapter.

Sec. 27-49. - Regulations and locations for personal watercraft rentals.

Any business engaged in the rental, leasing, bailment for consideration, or otherwise providing transportation for remuneration, of personal watercraft for use by the public on any waters of the Town of Fort Myers Beach, must meet the following requirements:

- (1) A business is required to obtain a business tax receipt which shall be issued to the personal watercraft operations office.
 - a. The operations office shall be located at a land-based site; and
 - b. The land-based site shall have direct access to the beach. Direct access shall not include public rights-of-way, county-owned or town-owned beach accesses, or any residentially zoned land that must be traversed to gain beach access. That direct access will be used for all necessary business-related beach access that is customary in the course and operation of the personal watercraft business at the particular licensed land-based site; and
 - c. All business transactions such as the exchange of consideration or remuneration for the rental, leasing, bailment, or any other type of transaction between the commercial rental operator and customer shall occur on the land-based site for which the business tax receipt is issued; and
 - d. The personal watercraft shall only be rented or operated on the littoral waters offshore of the land-based site for which the business tax receipt is issued until the personal watercraft travels beyond the 500 feet offshore slow speed limit; and
 - e. The business must provide the town with a list of those PAL vendors who are permitted to pick up customers at the PWVL location, provided, however, that such activity may take place only for customers who have made a prior reservation and appointment for such pick up; and
 - f. PAL and PWVL businesses are prohibited from soliciting customers at any location other than the property boundaries of their land-based site.
- (2) A business must have and maintain a telephone and an operable marine radio at its land-based operations office.
- (3) A business may not knowingly lease, hire, or rent a personal watercraft to any person who is under 18 years of age (see also F.S. § 327.54). No person under the age of 14 may operate any personal watercraft.
- (4) During the sea turtle nesting season (May 1 through October 31), personal watercraft may not be moved across the beach unless:
 - a. Any state permits that may be required for this activity have been issued;

- b. Such movement begins only after 9:00 a.m., or after completion of daily monitoring for turtle nesting activity by a FWCC-authorized marine turtle permit holder, whichever occurs first; and
 - c. The movement does not disturb any sea turtle or sea turtle nest (see also § 14-74(c) of this LDC).
- (5) Businesses may not allow their personal watercraft to be used above slow speed within 500 feet of swimmers, waders, or people floating in/on the water.
- (6) Personal watercraft rental businesses shall have a motorized chase vessel with an operational marine radio in good running condition that meets all United States Coast Guard safety requirements kept at the personal watercraft launching site during all hours of the business operation. The chase vessel may be a personal watercraft reserved for this purpose.
- (7) Each personal watercraft must be registered in the name of the business and have a Florida vessel registration number affixed thereon.
- (8) Identification markings shall be placed on each personal flotation device worn by operators of the personal watercraft which distinguishes the business from other businesses engaged in the rental of personal watercraft. Said marking shall also be located where the personal watercraft are launched. The identification marking, which will be assigned to the business by the town upon issuance of the PWVL, shall be not less than nine inches by five inches in size and of a contrasting color to the personal flotation device.
- (9) Personal watercraft may be moored in the water during the operating hours of the business, or on the beach during operating hours in accordance with the following: Personal watercraft must be set back 15 feet landward from the edge of wet sand. Between the hours of 9:00 p.m. and 7:00 a.m., all personal watercraft and associated equipment, including but not limited to mooring lines, must be removed from the beach and placed behind the dune line.
 - a. If there is no dune line and the beach is wide, personal watercraft and associated equipment must be moved to a point that is at least 200 feet from the water line at all times.
 - b. If there is no dune line and the beach is less than 200 feet wide, personal watercraft and associated equipment must be moved to the adjacent permanent structure and landward of any seawall.

Where compliance with the foregoing provision would cause an undue hardship, the town manager may designate a different storage location after determining the minimum changes from the requirements of this subsection.

- (10) In order to adequately monitor the operation of the personal watercraft, one employee per five personal watercraft actually rented must be located so as to observe the operation of the vessel by the party renting the personal watercraft.
- (11) Fuel tanks may not be stored on the beach but may be stored at the business location provided all applicable federal, state and local fire, safety, and environmental regulations are met.
- (12) Fueling of personal watercraft on the beach or in the water shall require a spill-proof nozzle or other acceptable device designed for prevention of fuel overflow. Any spillage of fuel onto the beach or into the water is a violation of this code.
- (13) Except in locations which have permanent 500-foot markers, the personal watercraft vendor shall place temporary markers in the water not less than 500 feet seaward from the beach to which the personal watercraft are to be launched during each day of personal watercraft operations. All such markers shall be removed each day by the personal watercraft vendor no later than one-half hour after sunset. The personal watercraft vendor must instruct each personal watercraft operator:
 - a. To travel at slow speed until past said markers;

- b. To maintain a distance of not less than 500 feet from the shoreline while operating the personal watercraft;
 - c. To travel at slow speed when returning to the shore; and
 - d. To not travel within environmentally sensitive areas (within the 1,000-foot territorial limits of the town) except with an eco-tour operator or guide associated with a business with a valid PWVL permit.
- (14) Each operator shall provide a buoy lane consisting of six buoys, with a minimum width of 15 feet and a maximum of 75 feet.
- (15) Each PWVL (jet ski) operator is limited to eight rentals per location plus one chase vehicle. When six or more rentals are in use, the chase vehicle must be manned and in the water. An operator may request a variance to allow additional rentals per location by using the standards and procedures in ch. 34 of this LDC.
- (16) *Safe handling instructions.*
- a. Each patron shall receive standardized rules provided by the operator translated in four languages. All owners, operators, PWVL license holders, and employees will obey the same standardized rules. Such rules are included in § 27-58 of this chapter.
 - b. If the FWCC adopts safe handling instructions in accordance with F.S. § 327.39(6)(b), operators must comply with those regulations, which shall be deemed as equivalent to complying with the previous subsection, provided the state instructions are translated into the same four languages.
- (17) Operators must also comply with all other applicable boating and personal watercraft provisions of state law such as those found in F.S. § 327.39.
- (18) No person shall offer for rent, lease, or bailment for consideration, a personal watercraft within the Town of Fort Myers Beach except from a personal watercraft rental business which fully complies with the regulations set forth in this code and this chapter.
- (19) No person shall conduct any personal watercraft rental business within the Town of Fort Myers Beach except from a business holding a valid PWVL and which fully conforms to the terms of this chapter.
- (20) No person shall offer for rent, lease, or bailment for consideration a personal watercraft which is not registered in the name of the business and which does not have a valid Florida vessel registration number affixed thereon.

(Ord. No. 14-07, § 2, 10-20-2014)

ARTICLE III. - PARASAILING

Sec. 27-50. - Regulations and locations for parasail activities.

Any person engaged in parasail activities for consideration or remuneration by the public on any waters of the Town of Fort Myers Beach, must meet the following requirements:

- (1) A person is required to obtain a business tax receipt which shall be issued to the parasailing activities operations office.
 - a. The operations office shall be located at a land-based site; and
 - b. The land-based site shall have direct access to the beach. Direct access shall not include public rights-of-way, county-owned or town-owned beach accesses, or any residentially zoned land that must be traversed to gain beach access; and

- c. All business transactions such as the exchange of consideration or remuneration or any other type of transaction between the PAL and customer shall occur on the land-based site for which the business tax receipt is issued: and
 - d. A person must have and maintain a telephone and an operable marine radio at its land-based operations office.
- (2) No person shall offer a ride on a parasail within the Town of Fort Myers Beach except at a parasail activities site which fully complies with the regulations set forth in this code and this chapter.
 - (3) No person shall have a parasailing operation within the Town of Fort Myers Beach except from a business holding a valid PAL and which fully conforms to the terms of this chapter.
 - (4) No person shall use a vessel for parasailing activity which is not registered in the name of the business and which does not have a valid Florida vessel registration number affixed thereon.
 - (5) Each parasailing vessel must be registered in the name of the business and have a Florida vessel registration number affixed thereon.
 - (6) Parasail operations must have a primary location at a site in conformance with this code or which otherwise specifically permits parasail activity. Parasail operators may pick up and return customers at other sites provided that the parasail operator has obtained written permission on a form provided by the town from the landowner where a PWVL has been issued. Written permission shall be kept on file at the PAL's primary location. In no event shall a parasail operator or his agents or employees solicit at the beach where they are picking up and returning customers.
 - (7) Parasail operators will pick up and drop off customers at the beach location pursuant to subsection (1)b., above. This process will be accomplished through buoy lanes within the 500-foot zone consisting of six buoys, with a minimum width of 15 feet and a maximum of 75 feet. In a congested area, a parasail captain may avoid hazard by approaching to the right or left of the buoy lane.
 - (8) Operators must be at least 1,000 feet from shore when they inflate the chute or deflate the chute and while flying.
 - (9) Operators must limit the length of the line to 1,200 feet and may not fly the chute over or within 500 feet of the pier or within 1,000 feet of the beach. Further, all parasail and all operations must cease at sunset.
 - (10) Operators must also comply with all applicable boating and parasailing provisions of state law such as those found in F.S. § 327.37.

(Ord. No. 14-07, § 3, 10-20-2014)

ARTICLE IV. - ADDITIONAL RULES AND PROCEDURES APPLYING TO BOTH PERSONAL WATERCRAFT AND PARASAILING

Sec. 27-51. - Additional rules applying to both PWVL and PAL businesses.

- (a) Businesses holding a valid PWVL or PAL shall be situated together with their vessels where appropriate upon a site authorized by the remainder of this code plus the provisions of this chapter to have such business.
- (b) No PWVL or PAL business shall be located within 500 feet, as measured from the seaward property line, from any other PWVL or PAL business, except: (1) for businesses which are co-located in accordance with § 27-51(d); or (2) a PWVL may be located within 500 feet of a PAL provided that PWVL does not permit parasailing pick-up from a licensed PAL pursuant to § 27-50.

- (c) No PWVL or PAL business may be located on any beach or land north of or beyond an imaginary line extending from the Sanibel Lighthouse and Bowditch Point on Estero Island; or inland of the Big Carlos Pass Bridge.
- (d) Businesses holding both a valid PWVL and a valid PAL may rent personal watercraft and operate a parasailing activity business from a single location provided the location meets all requirements for both licenses.
- (e) Businesses holding a valid PWVL or PAL must meet the following requirements:
 - (1) *Other boating regulations.* All businesses and their vessels are required to comply with the town's vessel control and water safety ordinance (Ordinance 96-26 as amended) and with F.S. ch. 327.
 - (2) *Insurance.* A business must have and maintain comprehensive third-party liability insurance in accordance with § 27-56.
 - (3) *Structures on the beach.* During its regular business hours only, a business may place one freestanding structure on the beach at its land-based site to conduct business with the public.
 - a. This structure may be a table, podium, booth or storage box.
 - b. The total horizontal dimension of this structure may not exceed a horizontal dimension of four feet by six feet, except for any awning, umbrella, or integral roof whose sole purpose is to provide shade.
 - c. This structure must be portable and never be left on the beach before or after regular business hours.
 - d. No portion of any flag, sign, booth, or equipment may extend to or be located within 15 feet of the wet sand.
 - (4) *Signs on the beach.* This structure may contain a maximum of three identification or promotional signs painted on or mounted flat against the structure, no one of which can exceed eight square feet as measured in accordance with § 30-91.
 - a. Any rate charts or state-mandated informational signs smaller than two square each shall not be counted as part of the signage limitation above.
 - b. No signs or other advertising for the business are permitted on the beach other than the signage permitted on a table, podium, booth or storage box.
 - (5) *Signs off the beach.* A business may also have one portable sandwich-board sign displayed at its land-based site during regular business hours if such signs are otherwise permitted by chapter 30 of this appendix at that site. However, any such sign:
 - a. Must be placed indoors after business hours;
 - b. Must not be illuminated; and
 - c. Must not be placed on the beach at any time.
- (f) Licensed PWVL and PAL businesses may not rent paddleboards, kayaks and other non-motorized watercraft from their land-based location. Paddlecraft vendors at resorts are required to ensure that all renters of non-motorized watercraft adhere to all applicable water safety regulations.

(Ord. No. 14-07, § 4, 10-20-2014)

Sec. 27-52. - PWVL and PAL applications; regulatory fees.

- (a) Application for a PWVL or PAL license shall be made to the town manager on a form provided by the town.
- (b) Information to be provided by the applicant shall include, at a minimum:

- (1) *Business location:*
 - a. The STRAP number and street address from which the personal watercraft or parasailing activity business will operate;
 - b. If the applicant is not the owner of the property from which the business will be operated, the applicant shall submit a notarized letter of authorization from the owner of the property to the applicant.
- (2) *Ownership information:*
 - a. Business owner's name, home address, local address, telephone number;
 - b. Manager's name, home address, local address, telephone number;
 - c. Mailing address at which notice of any town information pertinent to any personal watercraft rental or parasailing activity business shall be considered received and binding upon the applicant or PWVL or PAL holder, on the fifth day after first-class mail is posted to said address;
 - d. State sales tax number.
- (3) *Business equipment information:*
 - a. The number of, and a description of, the vessels to be used by the business, including model, year, manufacturer, color, and Florida vessel registration number(s).
 - b. For PWVL applications only, a description of the chase vessel(s) to be kept at the place of business as well as the Florida vessel registration number(s).
- (4) *Proof of insurance:* Proof of required insurance.
- (5) *Fire report:*
 - a. For PWVL applications: Prior to annual license renewal, the fire marshal will submit evidence of a fire safety inspection to the town.
 - b. For PAL applications: Proof of compliance with fire regulations.
- (6) *CPR certification:* For PWVL applications only, proof of CPR certification of sufficient persons so that there will be one in attendance at all times of operation.
- (7) *Annual fee:* Pays an annual fee of:
 - a. Sixty dollars for town administrative processing costs; and
 - b. Thirty dollars for the right to offer for business, as herein provided, the rental of personal watercraft or the right to operate a parasailing activity business; and
 - c. Eighty dollars for town enforcement costs.
- (c) *Misrepresentation.* Applicants who misrepresent information provided under this section shall not be issued a PWVL or PAL, or if issued, may suffer suspension or revocation of the PWVL or PAL.
- (d) *Cap on number of licenses.* PWVLs and PALs shall be issued on an annual basis coinciding with the town's fiscal year, October 1 through September 30.
 - (1) The town manager may issue no more than 11 PWVL licenses outstanding at any point of time.
 - (2) The town manager may issue no more than seven PAL licenses outstanding at any point of time.
 - (3) See § 27-55 of this chapter for regulations on transfers of existing PWVLs and PALs.

(Ord. No. 12-02, § 1, 6-4-2012; Ord. No. 14-02, § 1, 5-5-2014)

Sec. 27-53. - PWVL and PAL renewals.

- (a) Except as provided in this chapter, upon application the town manager may renew the PWVL or PAL of any applicant who:
 - (1) Held a valid PWVL or PAL and operated the personal watercraft rental or parasailing activity business during the previous year. The following evidence of such operation shall be accepted if provided separately for the specific business location or the specific license (PWVL or PAL) for which the renewal is requested:
 - a. Copy of a valid application to collect and/or report tax in Florida (DR-1) for the previous year; and
 - b. Evidence that tax payments have been made at least quarterly during the previous year in accordance with that specific application.
 - (2) Has provided the town with new or updated information, documents and fees listed in this chapter and continues to meet the other regulations set forth in this code; and
 - (3) Pays a late processing fee of \$25.00 for any renewal application filed after October 1.
- (b) Upon application, the town manager may renew any PWVL or PAL suspended under this chapter, but any remaining term of suspension shall be applied to the renewed license, and during said term the PWVL or PAL confers no rights to offer the rental of any personal watercraft or to operate any parasailing activity.
- (c) Any PWVL or PAL not renewed by October 15 shall be void and of no further use or effect whatsoever. No business deemed to be a nonconforming use in accordance with the provisions of this chapter or other provisions of this code, which fails to renew its license in a timely manner, shall again be issued a license except in conformity with the regulations then in effect.
- (d) The holder of a valid PWVL or PAL license may renew a license as inactive, where no specific land-based site has been identified, each year even provided that all other provisions of this chapter have been met and provided that the transferability provisions of § 27-55 are met before the license may be reactivated and any PWVL or PAL activities resume, however during the pendency of the inactivity, no insurance is required.
- (e) Licenses which have not been renewed as of October 15 shall be available on a first-come first-serve basis.

(Ord. No. 14-07, § 5, 10-20-2014)

Sec. 27-54. - Display of PWVL and PAL licenses.

Any business offering the rental of personal watercraft or parasailing activities shall display the PWVL or PAL in plain sight at the location from which the rental of personal watercraft is offered or at the parasail activities operation's office.

Sec. 27-55. - Transferability of PWVL and PAL licenses.

- (a) *Transferability to a new owner.* Provided that this chapter has been complied with, the PWVL or PAL is transferable to a new owner if:
 - (1) The location of the business complies with the minimum separation requirements of this chapter, or is "grandfathered in" under subsections (c) or (d) below; and
 - (2) The new business owner files an amended application with the town providing the information required in this chapter.
- (b) *Transferability to a new location.* Provided that this chapter has been complied with, the PWVL or PAL is transferable to a new location if:

- (1) The new location of the business complies with the minimum separation requirements of this chapter;
 - (2) The business owner files an amended application with the town providing the information required in this chapter;
 - (3) Transfer of a PAL to a new conforming location is only allowed when there are seven or fewer PAL licenses outstanding;
 - (4) Transfer of PWVL to a new conforming location is only allowed when there are 11 or fewer PWVL licenses outstanding.
- (c) *Nonconforming PWVLs.* Personal watercraft vendors who established or commenced business at a location on or before December 2, 1996, that does not comply with the location requirements set forth in this chapter may continue to operate as a nonconforming use after December 2, 1996, unless terminated for failure to obtain a PWVL or renewal as required by this chapter, voluntary discontinuation of business for a period of 30 days or more, or revocation of the PWVL.
- (d) *Nonconforming PALs.* Parasail operators who established or commenced business at a location on or before January 21, 1997, that does not comply with the location requirements set forth in this chapter, may continue to operate as a nonconforming use after January 21, 1997, unless terminated for failure to obtain a PAL or renewal as required by this chapter, voluntary discontinuation of business for a period of 30 days or more, or revocation of the PAL.

(Ord. No. 12-02, § 2, 6-4-2012; Ord. No. 14-02, § 2, 5-5-2014)

Sec. 27-56. - Insurance.

- (a) No person shall operate a personal watercraft or parasailing activity business unless covered by a comprehensive general liability insurance policy insuring the public against bodily injury or property damage resulting from or incidental to the operation, use, or rental of personal watercraft or parasailing activity. At a minimum, the policy shall provide coverage of not less than \$500,000.00 per occurrence and \$1,000,000.00 per aggregate. The policy shall list the Town of Fort Myers Beach as an additional insured, and shall provide that coverage not be canceled or materially altered except after 30 days' written notice has been received by the town, and be written through insurers licensed and authorized to do business in the State of Florida. The town shall also require a copy of the declaration page of the operator's insurance policy with a listing of all insured watercraft by serial number.
- (b) Evidence of said coverage is subject to acceptance and approval by the town manager prior to issuance of PWVL or PAL.
- (c) Coverage shall remain in full force during the entire time that the PWVL or PAL is valid and outstanding. Failure to provide such proof shall render the PWVL or PAL null and void, and of no further use and effect. The holder's subsequent application for a new PWVL or PAL shall be subject to the regulations for a new business and shall lose the nonconforming status afforded under this chapter.

Sec. 27-57. - Penalty.

Violation of the provisions of this chapter, or failure to comply with any of the requirements, shall constitute a civil infraction. Any person who violates this chapter or fails to comply with any provision shall upon conviction thereof be fined \$150.00 for the first violation; \$300.00 for the second and third violation; and the town shall consider license revocation for more than three violations of this chapter, and in addition the violator shall pay all costs and expenses involved in the case.

Sec. 27-58. - Standardized rules.

RULES

1. Operators must go slow speed until past all idle speed buoys. Operator must travel perpendicular to shore when entering or leaving the marked idle speed zone.
2. Operators must remain 200 feet from any watercraft and 500 feet from swimmers, waders or people floating in the water. Operator must yield right-of-way to all other vessels.
3. All renters must be at least 18 years of age.
4. Operator may not be under the influence of drugs or alcohol.
5. Operator must stay in the boundaries set by the rental vendor and in sight of rental location at all times.
6. No operator shall operate watercraft in a hazardous manner.
7. Operators must listen to and obey all verbal and written rules. If any rules are broken, operator's ride will be terminated. No refunds!

REGLAS

1. El operador tiene que ir a una velocidad despacia hasta que a pasado todas las marcas de velocidad. El operator tiene que viajar perpendicular a la costa cuando entrando o saliendo la zona marcada para una velocidad ociosa.
2. El operator tiene que quedarse 200 pies de cualquier bote y 500 pies de los nadadores o personas flotando en la agua. Operadores tienen que ceder a todas los buques.
3. Todos operadores tienen que ser a lo menos 18 años de edad.
4. Operadores no queden estar en la influencia de drogas o alcohol.
5. Operadores tienen que quedarce siempre en el limite hecho por las personal de alquiler y en la vista del lugar de alquiler.
6. Operadores no deben conducir el equipo en una manera dañoso o peligroso.
7. Operadores tienen que poner atención a todas las regulaciones oral y escritas. Si alguna regulacion no es seguida el alquiler va a ser terminado. El dinero no va hacer devuelto!

Vorschriften zur Mietung eines Wasserfahrzeuges

- #1. Der Bediener muss mit langsamer Geschwindigkeit fahren, bis er alle weissen Bojen passiert hat. Beim ReinKommen oder VerLassen der markierten Geschwindigkeitszone muss er sich senkrecht zum strand bewegen.
- #2. Der Bediener muss 60 m von Wasserfahrzeugen und 152 m von Schwimmern, Watvögeln und anderen Leuten, die sich im Wasser befinden, Abstand halten. Er muss allen Booten, die von rechts Kommen, Vorfahrt gewahren.
- #3. Der Bediener muss mindestens 18 Jahre alt sein.
- #4. Der Bediener darf nicht unter Einfluss von Drogen oder Alkohol stehen.
- #5. Der Bediener muss sich innerhalb der Grenze, die vom Vermieter gesetzt wird, und in der Sicht des Vermietungs standes bleiben.
- #6. Der Bediener soll das Fahrzeug nicht ordnungswidrig fahren.
- #7. Der Bediener sollte alle mundlichen und schriftlichen regeln befolgen. Falls irgendeine Regel missbraucht wird, wird die Fahrt sofort beendet. Es erfolgt keine Kostenerstattung.

REGLES SANDART

Regle #1 • Vitesse

Chaque conducteur doit garder une vitesse ralentie jusqu'au niveau des bouees. La rentree ou la sortie du jet ski doit etre perpendiculaire a la plage et toujours effectuee au ralenti.

Regle #2 • Distance

Le conducteur doit se tenir a 60 metres des autres vehicules, a 152 metres des nageurs et des matelats pneumatiques, ou bien des gens qui flottent. Le jet ski doit laisser la prioritee a droite.

Regle #3 • Age

Tout les conducteurs doivent avoir 18 ans ou plus, sans exception!

Regle #4 • Drogue & Alcohol

Tout les conducteurs doivent etre sobres!

Regle #5 • Delimitation

Chaque conducteur doit rester a tout temps dans les limites du territoire imposees par la maison de location.

Regle #6 • Courtoisie

L'operateur doit toujours conduire avec prudence.

Regle #7 • Regle d'Or

L'operateur doit preter attention et obeir a tout conseil et reglementation ecrite. Si les regles ne sont pas suivies, le conducteur sera disqualifie(e), sans etre rembourse(e)!

ORDINANCE 14-02

AN ORDINANCE AMENDING CHAPTER 27 OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE, "PERSONAL WATERCRAFT AND PARASAILING;" AMENDING SECTION 27-52 BY CHANGING THE NUMBER OF PWVL LICENSES THAT CAN BE OUTSTANDING ANY POINT IN TIME FROM TEN (10) TO ELEVEN (11); AMENDING SECTION 27-55 BY PROVIDING THAT A PWVL MAY BE TRANSFERRED TO A NEW CONFORMING LOCATION WHEN THERE ARE ELEVEN (11) OR FEWER PWVL LICENSES OUTSTANDING; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

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

Section 1. Section 27-52 of the Town of Fort Myers Beach Land Development Code is hereby amended as follows:

Sec. 27-52. PWVL and PAL applications; regulatory fees.

- (a) Application for a PWVL or PAL license shall be made to the town manager on a form provided by the town.
- (b) Information to be provided by the applicant shall include, at a minimum:
 - (1) ***Business location:***
 - a. The STRAP number and street address from which the personal watercraft or parasailing activity business will operate;
 - b. If the applicant is not the owner of the property from which the business will be operated, the applicant shall submit a notarized letter of authorization from the owner of the property to the applicant.
 - (2) ***Ownership information:***
 - a. Business owner's name, home address, local address, telephone number;
 - b. Manager's name, home address, local address, telephone number;
 - c. Mailing address at which notice of any town information pertinent to any personal watercraft rental or parasailing activity business shall be considered received and binding upon the applicant or PWVL or PAL holder, on the fifth day after first-class mail is posted to said address;
 - d. State sales tax number.
 - (3) ***Business equipment information:***
 - a. The number of, and a description of, the vessels to be used by the business, including model, year, manufacturer, color, and Florida vessel registration number(s).
 - b. For PWVL applications only, a description of the chase vessel(s) to be kept at the place of business as well as the Florida vessel registration number(s).
 - (4) ***Proof of insurance:*** Proof of required insurance.
 - (5) ***Fire report:***

- a. For PWVL applications: Prior to annual license renewal, the fire marshal will submit evidence of a fire safety inspection to the town.
- b. For PAL applications: Proof of compliance with fire regulations.
- (6) **CPR certification:** For PWVL applications only, proof of CPR certification of sufficient persons so that there will be one in attendance at all times of operation.
- (7) **Annual fee:** Pays an annual fee of:
 - a. \$60 for town administrative processing costs; and
 - b. \$30 for the right to offer for business, as herein provided, the rental of personal watercraft or the right to operate a parasailing activity business; and
 - c. \$80 for town enforcement costs.

(c) **Misrepresentation.** Applicants who misrepresent information provided under this section shall not be issued a PWVL or PAL, or if issued, may suffer suspension or revocation of the PWVL or PAL.

(d) **Cap on number of licenses.** PWVLs and PALs and license renewals shall be issued on an annual basis coinciding with the town's fiscal year, October 1 through September 30.

- (1) There shall be no more than ~~ten~~ eleven (101) PWVL licenses outstanding at any point in time.
- (2) There shall be no more than seven (7) PAL licenses outstanding at any point in time.
- (3) See § 27-55 for regulations on transfers of existing PWVLs and PALs.

Section 2. Section 27-55 of the Town of Fort Myers Beach Land Development Code is hereby amended as follows:

Sec. 27-55. Transferability of PWVL and PAL licenses.

(a) **Transferability to a new owner.** Provided that this chapter has been complied with, the PWVL or PAL is transferable to a new owner if:

- (1) The location of the business complies with the minimum separation requirements of this chapter, or is "grandfathered in" under subsection (c) or (d) below; and
- (2) The new business owner files an amended application with the town providing the information required in this chapter.

(b) **Transferability to a new location.** Provided that this chapter has been complied with, the PWVL or PAL is transferable to a new location if:

- (1) The new location of the business complies with the minimum separation requirements of this chapter;
- (2) The business owner files an amended application with the town providing the information required in this chapter;
- (3) Transfer of a PAL to a new conforming location is only allowed when there are seven (7) or fewer PAL licenses outstanding.

(4) Transfer of PWVL to a new conforming location is only allowed when there are ~~ten~~ eleven (101) or fewer PWVL licenses outstanding.

(c) **Nonconforming PWVLs.** Personal watercraft vendors who established or commenced business at a location on or before December 2, 1996, that does not comply with the location requirements set forth in this chapter may continue to operate as a nonconforming use after December 2, 1996, unless terminated for failure to obtain a PWVL or renewal as required by this chapter, voluntary discontinuation of business for a period of thirty (30) days or more, or revocation of the PWVL.

(d) **Nonconforming PALs.** Parasail operators who established or commenced business at a location on or before January 21, 1997, that does not comply with the location requirements set forth in this chapter, may continue to operate as a nonconforming use after January 21, 1997, unless terminated for failure to obtain a PAL or renewal as required by this chapter, voluntary discontinuation of business for a period of thirty (30) days or more, or revocation of the PAL.

Section 3. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

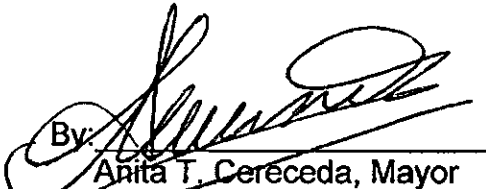
Section 4. Effective Date. This ordinance shall take effect immediately upon adoption by the Town Council.

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

Anita Cereceda, Mayor AYE
Alan Mandel AYE
Summer Stockton AYE

Dan Andre, Vice Mayor AYE
Rexann Hosafros AYE

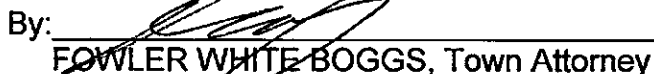
DULY PASSED AND ADOPTED THIS 5th DAY OF MAY 2014, BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH

By: 
Anita T. Cereceda, Mayor

ATTEST:

By: 
Michelle D. Mayher, Town Clerk

Approved as to form and legal sufficiency:

By: 
FOWLER WHITE BOGGS, Town Attorney

ORDINANCE 14-07

AN ORDINANCE AMENDING CHAPTER 27 OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE, "PERSONAL WATERCRAFT AND PARASAILING;" AMENDING SECTION 27-47, "MEANS OF ENFORCEMENT" BY ADDING DESIGNATED TOWN CODE ENFORCEMENT OFFICERS AS PERSONS WHO CAN ENFORCE THE PROVISIONS OF THIS CHAPTER; AMENDING SECTION 27-49 BY ADDING PROVISIONS RELATING TO SOLICITING AND PICKING UP CUSTOMERS; AMENDING SECTION 27-51 BY ADDING PROVISIONS RELATING THAT THERE MUST BE AT LEAST FIVE HUNDRED FEET (500') OF SEPARATION BETWEEN BUSINESSES AND HOW THE SEPARATION IS TO BE MEASURED; PROHIBITING CERTAIN STRUCTURES WITHIN FIFTEEN FEET (15') OF THE WET SAND; DELETING PROVISIONS RELATING TO REMOVAL OF NONCONFORMING STRUCTURES FROM THE BEACH; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

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

Section 1. Section 27-47 of the Town of Fort Myers Beach Land Development Code is hereby amended as follows:

Sec. 27-47. Means of enforcement.

The provisions of this chapter shall be enforced by designated town code enforcement officers or members of all duly authorized law enforcement agencies within the town and through any enforcement mechanisms established by this code.

Section 2. Section 27-49 of the Town of Fort Myers Beach Land Development Code is hereby amended as follows:

Sec. 27-49. Regulations and locations for personal watercraft rentals.

Any business engaged in the rental, leasing, bailment for consideration, or otherwise providing transportation for remuneration, of personal watercraft for use by the public on any waters of the Town of Fort Myers Beach, must meet the following requirements:

- (1) A business is required to obtain a ~~Lee County occupational license~~ business tax receipt which shall be issued to the personal watercraft operations office.
 - a. The operations office shall be located at a land-based site; and,
 - b. The land-based site shall have direct access to the beach. Direct access shall not include public rights-of-way, county-owned or town-owned beach accesses, or any residentially zoned land that must be traversed to gain beach access. That direct access will be used for all necessary business-related

- beach access that is customary in the course and operation of the personal watercraft business at the particular licensed land-based site; and,
- c. All business transactions such as the exchange of consideration or remuneration for the rental, leasing, bailment, or any other type of transaction between the commercial rental operator and customer shall occur on the land-based site for which the ~~occupational license~~ business tax receipt is issued; and,
 - d. The personal watercraft shall only be rented or operated on the littoral waters offshore of the land-based site for which the ~~occupational license~~ business tax receipt is issued until the personal watercraft travels beyond the 500 feet offshore slow speed limit.
 - e. The business must provide the town with a list of those PAL vendors who are permitted to pick up customers at the PWVL location, provided, however, that such activity may take place only for customers who have made a prior reservation and appointment for such pick up.
 - f. PAL and PWVL businesses are prohibited from soliciting customers at any location other than the property boundaries of their land-based site.
- (2) A business must have and maintain a telephone and an operable marine radio at its land-based operations office.
 - (3) A business may not knowingly lease, hire, or rent a personal watercraft to any person who is under 18 years of age (see also F.S. § 327.54)). No person under the age of 14 may operate any personal watercraft.
 - (4) During the sea turtle nesting season (May 1 through October 31), personal watercraft may not be moved across the beach unless:
 - a. any state permits that may be required for this activity have been issued;
 - b. such movement begins only after 9:00 AM, or after completion of daily monitoring for turtle nesting activity by a FWCC-authorized marine turtle permit holder, whichever occurs first; and
 - c. the movement does not disturb any sea turtle or sea turtle nest (see also § 14-74(c)).
 - (5) Businesses may not allow their personal watercraft to be used above slow speed within 500 feet of swimmers, waders, or people floating in/on the water.
 - (6) Personal watercraft rental businesses shall have a motorized chase vessel with an operational marine radio in good running condition that meets all United States Coast Guard safety requirements kept at the personal watercraft launching site during all hours of the business operation. The chase vessel may be a personal watercraft reserved for this purpose.
 - (7) Each personal watercraft must be registered in the name of the business and have a Florida vessel registration number affixed thereon.
 - (8) Identification markings shall be placed on each personal flotation device worn by operators of the personal watercraft which distinguishes the business from other businesses engaged in the rental of personal watercraft. Said marking shall also be located where the personal watercraft are launched. The identification marking, which will be assigned to the business by the town upon issuance of the PWVL, shall be not less than 9" by 5" in size and of a contrasting color to the personal flotation device.

- (9) Personal watercraft may be moored in the water during the operating hours of the business, or on the beach during operating hours in accordance with the following: Personal watercraft must be set back 125 feet landward from the edge of wet sand. Between the hours of 9:00 PM and 7:00 AM, all personal watercraft and associated equipment, including but not limited to mooring lines, must be removed from the beach and placed behind the dune line.
- a. If there is no dune line and the beach is wide, personal watercraft and associated equipment must be moved to a point that is at least 200 feet from the water line at all times.
 - b. If there is no dune line and the beach is less than 200 feet wide, personal watercraft and associated equipment must be moved to the adjacent permanent structure and landward of any seawall.
- Where compliance with the foregoing provision would cause an undue hardship, the town manager may designate a different storage location after determining the minimum changes from the requirements of this subsection.
- (10) In order to adequately monitor the operation of the personal watercraft, one employee per five personal watercraft actually rented must be located so as to observe the operation of the vessel by the party renting the personal watercraft.
- (11) Fuel tanks may not be stored on the beach but may be stored at the business location provided all applicable federal, state, and local fire, safety, and environmental regulations are met.
- (12) Fueling of personal watercraft on the beach or in the water shall require a spillproof nozzle or other acceptable device designed for prevention of fuel overflow. Any spillage of fuel onto the beach or into the water is a violation of this code.
- (13) Except in locations which have permanent 500-foot markers, the personal watercraft vendor shall place temporary markers in the water not less than 500 feet seaward from the beach to which the personal watercraft are to be launched during each day of personal watercraft operations. All such markers shall be removed each day by the personal watercraft vendor no later than a half hour after sunset. The personal watercraft vendor must instruct each personal watercraft operator:
- a. To travel at slow speed until past said markers;
 - b. To maintain a distance of not less than 500 feet from the shoreline while operating the personal watercraft;
 - c. To travel at slow speed when returning to the shore; and
 - d. To not travel within environmentally sensitive areas (within the 1000-foot territorial limits of the town) except with an eco-tour operator or guide associated with a business with a valid PWVL permit.
- (14) Each operator shall provide a buoy lane consisting of 6 buoys, with a minimum width of 15 feet and a maximum of 75 feet.
- (15) Each PWVL (jet ski) operator is limited to 8 rentals per location plus one chase vehicle. When 6 or more rentals are in use, the chase vehicle must be manned and in the water. An operator may request a variance to allow additional rentals per location by using the standards and procedures in ch. 34.
- (16) *Safe handling instructions.*

- a. Each patron shall receive standardized rules provided by the operator translated in four languages. All owners, operators, PWVL license holders, and employees will obey the same standardized rules. Such rules are included in § 27-58.
 - b. If the FWCC adopts safe handling instructions in accordance with F.S. § 327.39(6)(b), operators must comply with those regulations, which shall be deemed as equivalent to complying with the previous subsection, provided the state instructions are translated into the same four languages.
- (17) Operators must also comply with all other applicable boating and personal watercraft provisions of state law such as those found in F.S. § 327.39.
 - (18) No person shall offer for rent, lease, or bailment for consideration, a personal watercraft within the Town of Fort Myers Beach except from a personal watercraft rental business which fully complies with the regulations set forth in this code and this chapter.
 - (19) No person shall conduct any personal watercraft rental business within the Town of Fort Myers Beach except from a business holding a valid PWVL and which fully conforms to the terms of this chapter.
 - (20) No person shall offer for rent, lease, or bailment for consideration a personal watercraft which is not registered in the name of the business and which does not have a valid Florida vessel registration number affixed thereon.

Section 3. Section 27-50 of the Town of Fort Myers Beach Land Development Code is hereby amended as follows:

Sec. 27-50. Regulations and locations for parasail activities.

Any person engaged in parasail activities for consideration or remuneration by the public on any waters of the Town of Fort Myers Beach, must meet the following requirements:

(a) A person is required to obtain a ~~Lee County occupational license~~ business tax receipt which shall be issued to the parasailing activities operations office.

- (1) The operations office shall be located at a land-based site; and,
- (2) The land-based site shall have direct access to the beach. Direct access shall not include public rights-of-way, county-owned or town-owned beach accesses, or any residentially zoned land that must be traversed to gain beach access; and,
- (3) All business transactions such as the exchange of consideration or remuneration or any other type of transaction between the PAL and customer shall occur on the land-based site for which the ~~occupational license~~ business tax receipt is issued: and,
- (4) A person must have and maintain a telephone and an operable marine radio at its land-based operations office.

(b) No person shall offer a ride on a parasail within the Town of Fort Myers Beach except at a parasail activities site which fully complies with the regulations set forth in this code and this chapter.

(c) No person shall have a parasailing operation within the Town of Fort Myers Beach except from a business holding a valid PAL and which fully conforms to the terms of this chapter.

(d) No person shall use a vessel for parasailing activity which is not registered in the name of the business and which does not have a valid Florida vessel registration number affixed thereon.

(e) Each parasailing vessel must be registered in the name of the business and have a Florida vessel registration number affixed thereon.

(f) Parasail operations must have a primary location at a site in conformance with this code or which otherwise specifically permits parasail activity. Parasail operators may pick up and return customers at other sites provided that the parasail operator has obtained written permission on a form provided by the town from the landowner where a PWVL has been issued. Written permission shall be kept on file at the PAL's primary location. In no event shall a parasail operator or his agents or employees solicit at the beach where they are picking up and returning customers.

(g) Parasail operators will pick up and drop off customers at the beach location pursuant to (2) above. This process will be accomplished through buoy lanes within the 500-foot zone consisting of 6 buoys, with a minimum width of 15 feet and a maximum of 75 feet. In a congested area, a parasail captain may avoid hazard by approaching to the right or left of the buoy lane.

(h) Operators must be at least 1,000 feet from shore when they inflate the chute or deflate the chute and while flying.

(i) Operators must limit the length of the line to 1,200 feet and may not fly the chute over or within 500 feet of the pier or within 1,000 feet of the beach. Further, all parasail and all operations must cease at sunset.

(j) Operators must also comply with all applicable boating and parasailing provisions of state law such as those found in F.S. § 327.37.

Section 4. Section 27-51 of the Town of Fort Myers Beach Land Development Code is hereby amended as follows:

Sec. 27-51. Additional rules applying to both PWVL and PAL businesses.

(a) Businesses holding a valid PWVL or PAL shall be situated together with their vessels where appropriate upon a site authorized by the remainder of this code plus the provisions of this chapter to have such business ~~and shall not~~:

(4b) No PWVL or PAL business shall be located within 500 feet, as measured from the seaward property line, from any other PWVL or PAL business, except: (1) for businesses which are co-located in accordance with § 27-514(ed), or (2) a PWVL may be located within 500 feet of a PAL provided that PWVL does not permit parasailing pick up from a licensed PAL pursuant to § 27-50.

(2c) No PWVL or PAL business may be located on any beach or land north of or beyond an imaginary line extending from the Sanibel Lighthouse and Bowditch Point on Estero Island; or inland of the Big Carlos Pass Bridge.

(bd) Businesses holding both a valid PWVL and a valid PAL may rent personal watercraft and operate a parasailing activity business from a single location provided the location meets all requirements for both licenses.

(e) Businesses holding a valid PWVL or PAL must meet the following requirements:

(1) **Other boating regulations.** All businesses and their vessels are required to comply with the town's Vessel Control and Water Safety Ordinance (Ordinance 96-26 as amended) and with Florida Statutes Chapter 327.

(2) **Insurance.** A business must have and maintain comprehensive third-party liability insurance in accordance with § 27-56.

(3) **Structures on the beach.** During its regular business hours only, a business may place one free-standing structure on the beach at its land-based site to conduct business with the public.

a. This structure may be a table, podium, booth, or storage box.

b. The total horizontal dimension of this structure may not exceed a horizontal dimension of 4 feet by 6 feet, except for any awning, umbrella, or integral roof whose sole purpose is to provide shade.

c. This structure must be portable and never be left on the beach before or after regular business hours.

d. No portion of any flag, sign, booth, or equipment may extend to or be located within 15' of the wet sand.

(4) **Signs on the beach.** This structure may contain a maximum of three identification or promotional signs painted on or mounted flat against the structure, no one of which can exceed 8 square feet as measured in accordance with § 30-91.

a. Any rate charts or state-mandated informational signs smaller than 2 square feet each shall not be counted as part of the signage limitation above.

b. No signs or other advertising for the business are permitted on the beach other than the signage permitted on a table, podium, booth, or storage box.

(5) **Signs off the beach.** A business may also have one portable sandwich-board sign displayed at its land-based site during regular business hours if such signs are otherwise permitted by ch. 30 of this code at that site. However, any such sign:

a. must be placed indoors after business hours;

b. must not be illuminated; and

c. must not be placed on the beach at any time.

~~(6) **Removing nonconforming structures from the beach.** Any legal nonconforming tables, podiums, booths, storage boxes, signs, or other structures~~

~~on the beach as of September 24, 2001, may remain for up to twelve additional months but immediately thereafter must be removed or modified to be in conformance with this section.~~

- (f) Licensed PWVL and PAL businesses may not rent paddleboards, kayaks and other non-motorized watercraft from their land-based location. Paddlecraft vendors at resorts are required to ensure that all renters of non-motorized watercraft adhere to all applicable water safety regulations.

Section 5. Section 27-53 of the Town of Fort Myers Beach Land Development Code is hereby amended as follows:

Sec. 27-53. PWVL and PAL renewals.

(a) Except as provided in this chapter, upon application the town manager may renew the PWVL or PAL of any applicant who:

(1) Held a valid PWVL or PAL and operated the personal watercraft rental or parasailing activity business during the previous year. The following evidence of such operation shall be accepted if provided separately for the specific business location and or the specific license (PWVL or PAL) for which the renewal is requested:

a. Copy of a valid Application to Collect and/or Report Tax in Florida (DR-1) for the previous year, and

b. Evidence that tax payments have been made at least quarterly during the previous year in accordance with that specific application; and

(2) Has provided the town with new or updated information, documents, and fees listed in this chapter and continues to meet the other regulations set forth in this code; and

(3) Pays a late processing fee of \$25 for any renewal application filed after October 1.

(b) Upon application, the town manager may renew any PWVL or PAL suspended under this chapter, but any remaining term of suspension shall be applied to the renewed license, and during said term the PWVL or PAL confers no rights to offer the rental of any personal watercraft or to operate any parasailing activity.

(c) Any PWVL or PAL not renewed by October 15th shall be void and of no further use or effect whatsoever. No business deemed to be a nonconforming use in accordance with the provisions of this chapter or other provisions of this code, which fails to renew its license in a timely manner, shall again be issued a license except in conformity with the regulations then in effect.

(d) The holder of a valid PWVL or PAL license may renew a license as inactive, where no specific land-based site has been identified, each year even provided that all other provisions of this chapter have been met and provided that the transferability provisions of §27-55 are met before the license may be reactivated and any PWVL or PAL activities resume, however during the pendency of the inactivity, no insurance is required.

(e) Licenses which have not been renewed as of October 15 shall be available on a first come first serve basis.

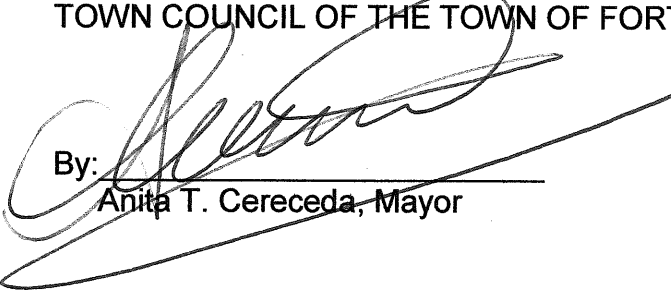
Section 6. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 7. Effective Date. This ordinance shall take effect immediately upon adoption by the Town Council.

The foregoing Ordinance was adopted by the Town Council upon a motion by HOSAFROS and seconded by MANDEL and upon being put to a vote, the result was as follows:

Anita Cereceda, Mayor	AYE	Dan Andre, Vice Mayor	AYE
Alan Mandel	AYE	Rexann Hosafros	AYE
Summer Stockton	AYE		

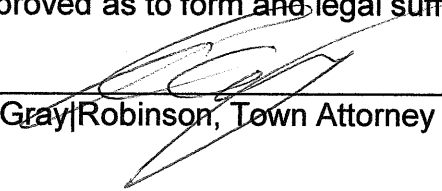
DULY PASSED AND ADOPTED THIS 20TH DAY OF OCTOBER 2014, BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH

By: 
Anita T. Cereceda, Mayor

ATTEST:

By: 
Michelle D. Mayher, Town Clerk

Approved as to form and legal sufficiency:

By: 
Gray Robinson, Town Attorney

ORDINANCE NO. 21-03

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”, 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 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 March 15, 2021 the Town Council held a first reading of this proposed Ordinance; and

WHEREAS, on April 5, 2021 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

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 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 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 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.

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; equals 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 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 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 uplights.

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 kemp*i). 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 percent.

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 windows, walls, railings and doors on the seaward and shore-perpendicular sides ~~of~~ included in any new construction, alteration, or window replacement shall utilize glass with an inside to outside light transmittance value of 15 percent or less.
- (f) 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) 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. § 161.053, a town approved lighting plan meeting the provisions of this article and Chapter 34, Article IV, Division 20. – Lighting Standards is required.
- (h) 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. § 161.053, a town approved lighting plan meeting the provisions of this article and Chapter 34, Article IV, Division 20. – Lighting Standards is required.
- (i) Prior to the issuance of a certificate of occupancy (CO) or a certificate of completion (CC), the exterior and interior lighting of new development shall be inspected after dark by the town, with all exterior and interior lighting turned on, to determine compliance with the approved lighting plan and this article. In addition, all manufacturer specification stickers shall remain affixed to all glass windows, walls, railings and doors on the seaward and shore-perpendicular sides of any new construction to determine compliance with the approved window and door specifications and plan.

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 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 following measures can 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 light transmittance standards for tinted glass;

- (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) A combination of the above techniques may be required to achieve compliance with this article.

Sec. 32-107. - Outdoor areas.

- (a) All lighting of outdoor areas 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) All pathway lighting shall utilize low-level fixtures that do not exceed 42 inches in height. Fixtures shall be downward directed and utilize long wavelength lamps and beachside shields.
- (c) All non-egress outdoor lighting shall not be directly, indirectly, or cumulatively visible from any portion of the beach.
- (d) Internally or externally lighted signs shall not be located on the seaward and shore-perpendicular sides of any structures, and shall not produce light that is directly, indirectly, or cumulatively visible from any portion of the beach.
- (e) Ponds and fountains on the seaward and shore-perpendicular sides of any structures shall not produce light that is directly, indirectly, or cumulatively visible from any portion of the beach.
- (f) Fire, including cooking fires, bonfires and fire pits, if permitted by the town, shall be shielded with an opaque structure or partition, and positioned such that the flame is not directly, indirectly, or cumulatively visible from any portion of the beach.
- (g) Televisions shall be located landward of the dune and shall be shielded or positioned such that they are not directly, indirectly, or cumulatively visible from the beach.
- (h) Handheld and other portable temporary lighting shall not be directed toward or used in a manner that disturbs sea turtles or other coastal wildlife.

Sec. 32-108. - Parking areas.

- (a) All lighting of parking areas shall be long wavelength, downward directed, full cutoff, fully shielded, and mounted to the minimum level required to maintain compliance with federal, state and local law.
- (b) Parking area lighting shall be shielded from the beach via vegetation, natural features, or artificial structures rising from the ground. These shall prevent artificial light sources, including but not limited to, vehicular headlights, from producing light that is directly, indirectly, or cumulatively visible from any portion of the beach.
- (c) Lighting of parking areas shall produce no more lighting than the minimum requirement as outlined by federal, state and local law.
- (d) Lighting of parking areas shall consist of either:
 - (1) Ground-level, downward-directed fixtures, equipped with interior dark non-reflective baffles or louvers, mounted either with a wall mount, on walls or piles, facing away from the beach, or
 - (2) Bollard-type fixtures, which do not extend more than 42 inches above the adjacent floor or deck, measured from the bottom of fixture, equipped with downward-directed louvers that completely hide the light source, and externally shielded 180 degrees on the side facing the beach, or
 - (3) Pole-mounted lights, if required, which shall:
 - a. Only be used in parking areas when mounting the lights at lower elevations cannot practicably comply with minimum light levels set forth in applicable federal and state laws designed to protect public safety.
 - b. Located on the landward sides of buildings and shall not produce light that is directly, indirectly, or cumulatively visible from any portion of the beach.
 - c. Mounted at the minimum height necessary to meet the minimum light level requirement.

- d. Downward-directed onto non-reflective surfaces.
- (4) Equipment yards, storage yards, and temporary security lights shall also adhere to the lighting restrictions contained herein.

Sec. 32-109. - Pool areas.

- (a) Lighting of pool decks, pool facilities, swimming pools, and spas 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) Lighting of the pool water surfaces and the pool wet deck surfaces shall comply with the minimum light levels set forth in applicable federal and state laws designed to protect public safety.
- (c) Above-water lighting of pool decks, pool facilities, swimming pools, and spas shall otherwise adhere to the applicable requirements for acceptable light fixtures set forth herein.
- (d) Underwater lighting of pools or spa light shall:
 - (1) Be mounted horizontally in the wall,
 - (2) Not produce light that is directly, indirectly, or cumulatively visible from any portion of the beach, and
 - (3) Shall comply with minimum light levels set forth in applicable federal and state laws designed to protect public safety.

Sec. 32-110. - Pier structures.

- (a) Lighting of pier structures projecting over the beach or over water shall be long wavelength, downward directed, and fully shielded.
- (b) Lighting of pier structures projecting over the beach, or over water, shall be mounted no higher than 42 inches above the deck surface. These shall be directed onto the deck surface only, preventing light pollution or light spillage beyond the walking surface.
- (c) Lighting of pier structures projecting over the beach or over water shall comply with minimum light levels set forth in applicable federal and state laws designed to protect public safety.

Sec. 32-111. - Dune walkovers and beach access points.

- (a) Lighting of beach access points shall be restricted to that portion of the structure landward of the dune. All lighting of beach access points shall be long wavelength, downward directed, full cutoff and fully shielded and shall not be directly, indirectly, or cumulatively visible from the beach.
- (b) Lights are allowable on dune walkovers or elevated boardwalks only as required for building code purposes and may only be installed landward of the frontal dune. Walkover lighting shall not be directly, indirectly or cumulatively visible from the beach.

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. § 379.2431(1), 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 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.

Sec. 32-113. - Beach furniture and obstructions.

- (a) Man-made objects shall not obstruct sea turtle nesting habitat during nesting season during nighttime. All obstructions, including, but not limited to, beach furniture, cabanas, umbrellas, tents, personal watercraft, bikes, vehicles, and boats, shall be removed from sea turtle nesting habitat between the hours of 9:00 p.m. and 7:00 a.m. during sea turtle nesting season.
- (b) During sea turtle nesting season, permitted beach furniture vendors shall not place beach furniture onto sea turtle nesting habitat before 9:00 a.m., or prior to the completion of daily monitoring for sea turtle nesting activity by the FWC authorized marine turtle permit holder, whichever comes first.
- (c) No beach furniture or other man-made object shall be placed within ten feet of a marked sea turtle nest.

Sec. 32-114. - Take and disorientation.

- (a) A person, firm, or corporation shall not cause a disorientation of nesting sea turtles or sea turtle hatchlings.

- (b) A person, firm, or corporation shall not take, disturb, mutilate, destroy, cause to be destroyed, transfer, sell, offer to sell, molest, or harass any sea turtle species or hatchling, or parts thereof, or the eggs or nest of any sea turtle species.

Sec. 32-115. - Penalties.

- (a) Any violation of this article may be prosecuted in accordance with the provisions set out in section 1-5 and chapter 2, article V of the Land Development Code.
- (b) This article may be enforced by any duly authorized law enforcement officer, town code enforcement officer or town designee.
- (c) The law enforcement officer, town code enforcement officer or town designee is authorized and empowered to make inspections at reasonable hours of all activities regulated by this article in order to ensure compliance with the provisions of this article. Any person who violates any provision of this chapter, or of any regulation or guideline that implements this chapter, shall be ordered immediately to stop all work.
- (d) Any person who takes any action or omission in violation of any provision of this article and fails to cure such violation after proper notice is provided, shall be subject to a fine of up to \$250.00 per day per violation for initial violations, and \$500.00 per day per violation for repeat violations. All penalties incurred as a result of violation of this article shall continue to accrue until such violations are cured.
- (e) Nothing contained herein will prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article. Such other lawful action will include, but will not be limited to, an equitable action for injunctive relief or an action at law for damages.

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 are in 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 as a whole, or any part thereof, other than the part so declared.

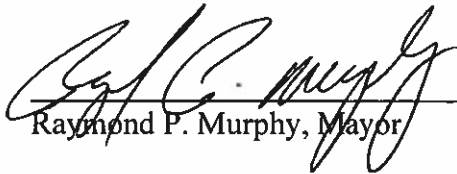
Section 6. This ordinance shall become effective upon adoption by the Town Council.

The foregoing Ordinance was adopted by the Town Council upon a motion by Councilmember 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	aye
Jim Atterholt, Council Member	aye
Bill Veach, Council Member	aye

ADOPTED this 5th day of April, 2021 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH



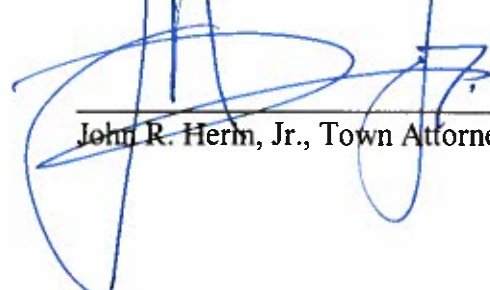
Raymond P. Murphy, Mayor

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. Herm, Jr., Town Attorney

AGENDA MANAGEMENT

289	Ordinance: 1st Reading, Text Amendment Minimum Setbacks	P&Z	added 11.12.2021	01.10.2022
292	Ordinance: 1st Reading, Repeal Sec. 2-50 (Personnel Manual)	Clerk	added 12.01.2021	01.10.2022
290	Agreements with Flock Safety / Greenwire Technology / LSCO (cameras)	TM	added 11.15.2021	01.10.2022
282	Discussion (Ord) Registration of rental co's requiring lights/bells on bicycles	TC	added 11.04.2021	01.13.2022 M&P
289	Ordinance: 2nd Reading, Text Amendment Minimum Setbacks	PW	added 11.09.2021	01.24.2022
292	Ordinance: 2nd Reading, Repeal Sec. 2-50 (Personnel Manual)	Clerk	added 12.01.2021	01.24.2022
283	Playground Equipment BORC/Beach School	PW	added 11.09.2021	01.24.2022
226	Resolution: Renewal of Multi-jurisdictional PPI	P&Z	added 08.23.2021	TBD TC mtg
254	Committee Reorganizations (BV)	TC	added 10.07.2021	TBD M&P
205	Memorial Naming Options (Dan Hughes)	TC	added 06.07.2021	TBD M&P
267	Mooring Field Upland Services site discussion	PW	added 09.28.2021	TBD M&P
274	Tree preservation/replacement on cleared building lots (RH)	Environmental	added 10.18.2021	TBD M&P
280	Seasonal use of Voice (LCSO)	TC	added 11.04.2021	TBD M&P
291	Discussion: CB Zoning District vision	TC	added 11.15.2021	TDB M&P

County Estero Blvd. Update at the M&P each month