

ORDINANCE NO. 24-19

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTION 28-30 “IMMOBILIZATION AND IMPOUNDING OF ILLEGALLY PARKED VEHICLES” OF DIVISION 1 “GENERALLY” OF ARTICLE II “STOPPING, STANDING AND PARKING” OF CHAPTER 28 “TRAFFIC AND VEHICLES” OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH, TO INCLUDE THE ACCEPTED METHODS OF PAYMENT OF ANY FINES AND CHARGES RELATED TO ILLEGAL PARKING AND IMMOBILIZATION OF ILLEGALLY PARKED VEHICLES; PROVIDING FOR CODIFICATION, SEVERABILITY, 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 desires to amend the Town Code to include the accepted methods of payment of any fines and charges related to illegal parking and immobilization of illegally parked vehicles; and

WHEREAS, the Town wishes to restrict the accepted methods of payment of any such fines and charges to a cashier’s check or a money order; and

WHEREAS, on the 19th day of August, 2024, the Town Council held a first reading of this Ordinance and gave full and complete consideration to the request of the proposed ordinance, the recommendation of staff, the documents in the record, and the testimony of all interested persons; and

WHEREAS, a Business Impact Estimate was prepared and posted on the Town’s website on the 13 day of September, 2024, as required by Section 166.041(4), Florida Statutes; and

WHEREAS, an advertisement of the public hearing for adoption of this Ordinance was published in the Fort Myers News-Press on the 13 day of September, 2024, which is 10 days prior to the second reading of this proposed Ordinance as required by Section 166.041, Florida Statutes; and

WHEREAS, on the 23 day of September, 2024, the Town Council held a second reading of this Ordinance; and

WHEREAS, the Town Council determined that adoption of the ordinance as provided herein is in the best interests of the health, safety, welfare, and morals of the Town's residents.

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

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. Section 28-30 "Immobilization and impounding of illegally parked vehicles" of Division 1 "Generally" of Article II "Stopping, Standing and Parking" of Chapter 28 "Traffic and Vehicles" of the Code of Ordinances of the Town of Fort Myers Beach, Florida, is hereby amended to read as follows:

Sec. 28-30. – Immobilization and impounding of illegally parked vehicles.

- (a) The town is authorized to attach a device that is capable of immobilizing a motor vehicle so that it cannot be moved under its own power or have the vehicle towed at the owner's expense whenever such a vehicle is found upon a public street or highway, a public parking lot or other public property in the town or parked overnight on public property, provided there are five unpaid and outstanding parking tickets or one unpaid and outstanding disability violation issued to the vehicle.
- (b) The immobilizing device will be attached to the motor vehicle at the location where the vehicle is parked, except that no motor vehicle will be immobilized within the traveled portion of a street or on a portion of a street when immobilization at such location will create a hazard to the public or traffic on the street. At the time the immobilizing device is attached to a motor vehicle, a notice will be affixed to the windshield, the driver side window, or other prominent place on the motor vehicle, where the operator of the vehicle would reasonably be expected to observe it, stating the following:
 - (1) The immobilizing device has been so attached, that the operator should not attempt to operate the motor vehicle while the immobilizing device is attached;
 - (2) The total amount of fines and charges due for illegal parking and immobilization and the methods of payment accepted by the town; and
 - (3) Where the operator may pay the fines to have the immobilizing device removed from the motor vehicle.

Any attempt to remove or otherwise tamper with the immobilization device, or any attempt to threaten or otherwise harass a town representative will constitute an offense against the town.

- (c) The immobilizing device will be removed from the motor vehicle upon payment of the total fines due to the town. The town shall only accept a cashier's check or a

money order as a form of payment of any fines and charges due to the town. No other forms of payment will be accepted by the town. The town may also approve the removal of the immobilizing device upon obtaining a satisfactory arrangement for payment of the fines due. Written proof of the owner or operator's arrangement for payment must be shown to the town before the immobilization device may be removed. If the owner or operator has failed to pay or make a satisfactory arrangement for payment by the end of the next immediate business day after the date of the immobilization, then the immobilized vehicle will be referred to the county sheriff. The vehicle will then be towed by a designated town towing company and placed into the impound yard. The parking enforcement specialist on duty at the time of tow will ensure that the immobilization device is removed in order for the towing agency to safely remove the vehicle. If the immobilization device is damaged or tampered with by anyone other than the parking enforcement specialist, the owner of the vehicle is liable for any damage to the immobilization device or the vehicle. If the device is damaged beyond repair, the owner of the vehicle must replace the device.

- (d) The town is hereby vested with authority, and it will be their duty, to impound any unoccupied vehicle parked in violation of any of the parking regulations of the town and to move or cause to be moved any illegally parked vehicle by wrecker or otherwise. As an alternative to immobilizing a motor vehicle as provided herein, the town may immediately cause any illegally parked motor vehicle to be towed in accordance with this section. All expenses for towing and impoundment will be the responsibility of the owner of the vehicle. All towing and impoundment hereunder must be accomplished in accordance with this section and applicable state and federal law.
- (e) Upon being impounded, the towing company can only release the towed vehicle after full payment, excluding the amount of any ticket issued concurrently with the immobilization device, provided the owner or operator wishes to contest the newly-issued ticket, has been received by the town and a receipt of that payment is presented to the towing company.
- (f) Parking enforcement personnel must not accept any payments for violations.

Section 3. That the Town Council intends that the provisions of this ordinance be made a part of the Fort Myers Beach, Florida, Code of Ordinances, and that sections herein may be renumbered or re-lettered and the words or phrases herein may be changed to accomplish codification; regardless, typographical errors that do not affect intent may be corrected with notice to and authorization of the town manager without further process.

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

Section 5. If any section, subsection, sentence, clause, word, 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 Council Member King and seconded by Council Member Safford, and upon being put on a roll call vote, the results were as follows:

Dan Allers, Mayor	Aye
Jim Atterholt, Vice Mayor	Aye
John R. King, Council Member	Aye
Karen Woodson, Council Member	Aye
Scott Stafford, Council Member	Aye

ADOPTED this 23rd day of Septmeber 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH


Dan Allers (Sep 24, 2024 18:15 EDT)

Dan Allers, Town 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:


Nancy Stuparich (Sep 24, 2024 14:50 EDT)

Vose Law Firm, Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this 24th day of September 2024.