

ORDINANCE NO. 24-25

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING CHAPTER 16, ARTICLE I OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH BY CREATING SECTION 16-1 “PUBLIC CAMPING OR SLEEPING ON ANY PUBLIC PROPERTY, PUBLIC BUILDING, OR PUBLIC RIGHT-OF-WAY PROHIBITED,” AND AMENDING ARTICLE IV OF CHAPTER 32, TO REMOVE SECTIONS 32-70 “APPLICABILITY,” 32-71 “INTENT,” AND 32-72 “PROHIBITED”; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER’S ERRORS, CONFLICTS OF LAW, AND AN EFFECTIVE DATE.

WHEREAS, Chapter 166, Florida Statutes authorizes a municipality to enact regulations to protect the health, safety, welfare, and morals of its citizens; and

WHEREAS, On March 20, 2024, Governor Ron DeSantis signed House Bill 1365, which has been codified as Chapter 2024-11, Laws of Florida. The new law goes into effect on October 1, 2024, and creates Section 125.0231, Florida Statutes. The purpose of the law is to regulate public camping and public sleeping and is focused on Florida’s homeless population, which is over 30,000 persons; and

WHEREAS, while enacting House Bill 1365, the Florida Legislature considered evidence that approximately 50 percent of people experiencing homelessness in Florida were unsheltered, meaning their primary nighttime residence is a place not suitable for human habitation, such as sidewalks, vehicles, abandoned buildings or parks. Living unsheltered can have significant impacts on a person’s health and safety; and

WHEREAS, the Town of Fort Myers Beach has a significant interest in providing a safe and pleasant environment and in eliminating public camping or sleeping on any public property, public building, or public right-of-way; and

WHEREAS, the Town Council of the Town of Fort Myers Beach finds it is in the best interests and welfare of the citizens, business owners, visitors and the homeless population of the Town of Fort Myers Beach to enact this Ordinance; and

WHEREAS, on the 9th day of September 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 13th 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 News-Press on the 13th 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 23rd 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 COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, 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. Article I “In General” of Chapter 16 “Offenses” of the Code of Ordinances of the Town of Fort Myers Beach, Florida, is hereby amended to read as follows:

ARTICLE I. – ~~IN GENERAL~~ PUBLIC CAMPING AND SLEEPING

Sec. 16-1. – Public camping or sleeping on any public property, public building, or public right-of-way prohibited.

(a) **Findings.** The Town of Fort Myers Beach has a significant interest in providing a safe and pleasant environment for its citizens, business owners, visitors and its homeless population by eliminating public camping or sleeping on any public property, public building, or public right-of-way. Public camping or public sleeping in a public place not suitable for human habitation, such as a sidewalk, vehicle, abandoned building, or park can have significant impacts on a person’s health and safety. The Town Council of the Town of Fort Myers Beach hereby determines that this Section fulfills an important Town purpose by ensuring the health, safety, welfare, quality of life, and aesthetics of the Town of Fort Myers Beach; and

(b) **Intent.** The purpose and intent of this Section is to recognize the constitutional right of persons to gather in any lawful manner or place or time; however public sleeping and public camping constitutes a threat and danger to health, safety, security and welfare to the citizens, business owners, visitors and the homeless population of the Town of Fort Myers Beach. The goal of this Section is to ensure the foregoing constitutional rights while through reasonable regulation, acting to protect citizens, business owners, visitors and the homeless population.

(c) **Definition.** The following definition is hereby adopted for this Section:

1. **“Public camping or sleeping” means:**

a. **Lodging or residing overnight in a temporary outdoor habitation used as a dwelling or living space and evidenced by the erection of a tent or**

other temporary shelter, the presence of bedding or pillows, or the storage of personal belongings; or

b. Lodging or residing overnight in an outdoor space without a tent or other temporary shelter.

2. The term does not include:

a. Lodging or residing overnight in a motor vehicle that is registered, insured, and located in a place where it may lawfully be.

b. Camping for recreational purposes on property designated for such purposes.

(d) **Violations.** All Town code enforcement and law enforcement officers are hereby authorized to enforce this Section, as follows:

1. No person may engage in public camping or sleeping on any public property, including, but not limited to, any public building or its grounds or any public right-of-way.

2. The penalty for the first violation shall be no less than a \$50 fine; the penalty for a second offense shall be no less than a \$100 fine; and the penalty for all subsequent violations shall be no less than a \$200 fine for each and every offense thereafter. A warning notice may be issued in lieu of fine if no prior violations have occurred. In addition to any penalty mentioned herein, A law enforcement officer may issue a trespass warning, or any other penalty prescribed for a violation of any applicable section of Chapter 810, Florida Statutes.

3. All fines collected resulting from violations of this Section shall be held by the Town of Fort Myers Beach for the care of the homeless population to fund any non-profit organization that provides shelter, food, or medical care at the discretion and selection by majority vote of the Town Council.

4. Nothing within this Section precludes the Town of Fort Myers Beach from pursuing other remedies authorized in the Town of Fort Myers Beach Code of Ordinances or any civil or administrative remedies.

Secs. 16-12—16-18. – Reserved.

ARTICLE IV. – NIGHT SLEEPING ON BEACH RESERVED

~~Sec. 32-70. – Applicability.~~

~~This article shall apply to all public beaches located in the town. For purposes of this article, the term "public beaches" means any beach within the territorial boundaries of the town which:~~

~~(1) Is below the mean high water lines;~~

- ~~(2) Is owned by the county or the town;~~
- ~~(3) Has arisen upon it a right of customary use by the public;~~
- ~~(4) Has arisen upon it a public easement, prescriptive or otherwise; or~~
- ~~(5) Is the foreshore of tidal navigable waters, that is the land between the high water and low water marks, and is owned by the state.~~

Sec. 32-71.— Intent.

~~It is the intent of the town council in the adoption of the ordinance from which this article is derived to preserve and protect the beauty of the public beaches since such beaches are invaluable natural assets which are held in trust by the town for recreational use by residents and visitors alike. The town council has made the following findings in reaching the determination that:~~

- ~~(1) Sleeping on the beaches during nighttime hours must be prohibited;~~
- ~~(2) The beaches are one of its most valuable natural assets;~~
- ~~(3) The beaches are intended to be used solely for recreational purposes and are not intended to be used for sleeping during nighttime hours;~~
- ~~(4) The town's economic well being is substantially dependent upon tourism which is, in turn, dependent upon maintaining attractive and inviting beaches;~~
- ~~(5) Permitting persons to sleep upon the beaches during nighttime hours will negatively affect the appearance of the beaches, will have a deleterious effect upon the town's tourism industry and will require the unwarranted expenditure of funds in order to provide a reasonably safe and healthy sleeping environment for those who may choose to sleep upon the beaches during nighttime hours;~~
- ~~(6) Persons asleep on beaches during nighttime hours are exposed to the risk of harm from others or from the elements; and~~
- ~~(7) Prohibiting persons from sleeping upon the beaches during nighttime hours will promote the public health, safety and welfare.~~

Sec. 32-72.— Prohibited.

~~It shall be unlawful for any person to sleep on any public beach within the town between the hours of 10:00 p.m. and 6:00 a.m. of the following day.~~

Secs. 32-730—32-100. - Reserved.

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 immediately 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 Woodson, 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 September 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers

Dan Allers (Mar 11, 2025 15:45 EDT)

Dan Allers, Town Mayor

ATTEST

Amy Baker

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 Suparich

Nancy Suparich (Mar 8, 2025 15:44 EST)

Vose Law Firm, Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this 7th day of March 2025.