

RESOLUTION OF THE LOCAL PLANNING AGENCY OF
THE TOWN OF FORT MYERS BEACH FLORIDA
RESOLUTION NUMBER 2014-009
AMENDMENTS TO PAL-PWVL REGULATIONS IN
LAND DEVELOPMENT CODE, CHAPTER 27

WHEREAS, the existence of the Local Planning Agency (LPA) is mandated by Florida Statutes Section 163.3174; and

WHEREAS, the Local Planning Agency (LPA) is statutorily responsible under Chapter 163, Florida Statutes, and the Town of Fort Myers Land Development Code (LDC) Section 34-120 for the review of proposed land development regulations, land development codes, or amendments thereto, and for making recommendations to the Town Council with regard thereto and performing such other reviews as are requested by the Town Council; and

WHEREAS, following proper notice and as required under the LDC, the LPA conducted a public hearing on August 12, 2014 to consider a proposed Town Ordinance amending certain sections of the LDC, which is attached hereto as *Exhibit A* and is hereby incorporated by reference; and

WHEREAS, the aforesaid Ordinance, if passed, would amend regulations relating to Personal Watercraft and Parasailing, as is more fully set forth in the proposed Ordinance; and

NOW THEREFORE BE IT RESOLVED, that the LPA recommends that Town Council **APPROVE/DENY** and adopt the proposed Town 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 to how the 500 foot separation is to be measured and that there must be at least five hundred feet (500') of separation between businesses of the same type; prohibiting certain structures within fifteen feet (15') of the wet sand; deleting provisions relating to removal of nonconforming structures from the beach; and providing that PAL and PWVL businesses may also rent paddleboards, kayaks and other non-motorized watercraft, and amending Section 27-53 relating to renewals and recommends the following findings of fact and conclusions with regard thereto:

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. The proposed ordinance is in the best interest of the health, safety and welfare of the citizens, residents, visitors, and business owners of the Town of Fort Myers Beach and the LPA hereby recommends that the Town Council adopt the proposed ordinance with changes as noted below.
2. The LPA hereby recommends the following revision(s) to the proposed ordinance:

The foregoing Resolution was adopted by the LPA upon a motion by LPA Member _____ and seconded by LPA Member _____, and upon being put to a vote, the result was as follows:

Hank Zuba, Chair	AYE/NAY	Joanne Shamp, Vice Chair	AYE/NAY
Chuck Bodenhafer	AYE/NAY	Al Durrett	AYE/NAY
John Kakatsch	AYE/NAY	Jane Plummer	AYE/NAY
Jim Steele	AYE/NAY		

DULY PASSED AND ADOPTED THIS **12th** day of **AUGUST, 2014**

Local Planning Agency of the Town of Fort Myers Beach

By: _____
Hank Zuba, LPA Chair

Approved as to legal sufficiency:

ATTEST:

By: _____
BUCHANAN, INGERSOLL & ROONEY
FOWLER WHITE BOGGS, *LPA Attorney*

By: _____
Michelle Mayher
Town Clerk

ORDINANCE 14-

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 TO HOW THE 500 FOOT SEPARATION IS TO BE MEASURED AND THAT THERE MUST BE AT LEAST FIVE HUNDRED FEET (500') OF SEPARATION BETWEEN BUSINESSES OF THE SAME TYPE; PROHIBITING CERTAIN STRUCTURES WITHIN FIFTEEN FEET (15') OF THE WET SAND; DELETING PROVISIONS RELATING TO REMOVAL OF NONCONFORMING STRUCTURES FROM THE BEACH; AND PROVIDING THAT PAL AND PWVL BUSINESSES MAY ALSO RENT PADDLEBOARDS, KAYAKS AND OTHER NON-MOTORIZED WATERCRAFT; 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. PWVL and PAL businesses shall not utilize employees or agents to solicit customers within two hundred fifty feet (250') of any other PWVL or PAL business, provided, however that this restriction shall not apply to customer solicitations at a joint PWVL/PAL location by the businesses at that location.
- (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 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 also rent paddleboards, kayaks and other non-motorized watercraft from their land-based location. Vendors 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,

(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 _____ and seconded by _____ and upon being put to a vote, the result was as follows:

Anita Cereceda, Mayor
Alan Mandel
Summer Stockton

Dan Andre, Vice Mayor
Rexann Hosafros

DULY PASSED AND ADOPTED THIS ____ DAY OF _____ 2014, BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH

ATTEST:

By: _____
Anita T. Cereceda, Mayor

By: _____
Michelle D. Mayher, Town Clerk

Approved as to form and legal sufficiency:

By: _____
Buchanan, Ingersoll & Rooney, Town Attorney