

RESOLUTION OF THE LOCAL PLANNING AGENCY OF THE
TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 2015-XX
AMENDMENTS TO
BEACH FURNITURE AND EQUIPMENT SECTION 5 ARTICLE I OF CHAPTER 14
SPECIAL EVENTS ON THE BEACH, SECTION 11, ARTICLE 1 OF CHAPTER 14
DEFINITIONS, SECTION 2, ARTICLE 1 OF CHAPTER 34
TABLE 34-1, DIVISION 2, ARTICLE 3, OF CHAPTER 34
DEFINITIONS, DIVISION 2, ARTICLE 4, CHAPTER 34
STORAGE FACILITIES AND OUTDOOR DISPLAY OF MERCHANDISES, DIVISION 36,
ARTICLE 4 OF CHAPTER 34 AND
WATER ORIENTED RENTAL ESTABLISHMENTS, DIVISION 41, ARTICLE 4 OF
CHAPTER 34 OF THE
TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE

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 Florida Statute and the LDC, the LPA conducted a public hearing on December 12, 2015 to consider a proposed Town Ordinance, which is attached hereto as Exhibit A and is hereby incorporated by reference; and

WHEREAS, the aforesaid Ordinance, if passed, would amend the regulation of parking within Town municipal limits, as is more fully set forth in the draft Ordinance; and

NOW THEREFORE BE IT RESOLVED, that the LPA **recommends/does not recommend** that Town Council approve and adopt the proposed Town Ordinance to amend Chapter 14, Article 1, Section 5 Beach Furniture and Equipment and associated sections in Chapter 34 of the Town Land Development Code and **recommends/does not recommend** 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 interests of the health, safety and welfare of the citizens, residents, visitors, and business owners of the Town of Fort Myers Beach.
2. The proposed ordinance will promote the safe enjoyment of the town's beaches by residents and visitors.

3. The proposed ordinance will protect the public's right to use and traverse public portions of the beach.
4. The LPA hereby recommends the following revision(s) to the proposed ordinance:

[Insert any recommended changes]

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 |
| Jane Plummer | AYE/NAY | Bruce Butcher | AYE/NAY |
| Al Durrett | AYE/NAY | Jim Steele | AYE/NAY |
| Suzanne Katt | AYE/NAY | | |

DULY PASSED AND ADOPTED THIS _____ day of _____ 2015.

LPA of the Town of Fort Myers Beach

By: _____
Hank Zuba LPA Chair

Approved as to legal sufficiency:

ATTEST:

By: _____

LPA Attorney

By: _____
Michelle Mayher, Town Clerk

ATTACHMENT A

ORDINANCE NO. 15-__

AN ORDINANCE AMENDING CHAPTER 14 OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE, "ENVIRONMENT AND NATURAL RESOURCES;" AMENDING SECTION 14-5, "BEACH FURNITURE AND EQUIPMENT" BY ADDING PROVISIONS FOR THE ISSUANCE OF BEACH FURNITURE VENDOR PERMITS, BY PROVIDING REGULATIONS FOR BEACH FURNITURE VENDOR PERMIT HOLDER OPERATIONS; AMENDING SECTION 14-11, "SPECIAL EVENTS ON THE BEACH," BY ADDING THE PROHIBITION OF THE RELEASE OF SKY LANTERNS AND OTHER DEVICES; AMENDING CHAPTER 34 OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE "ZONING DISTRICTS, DESIGN STANDARDS & NONCONFORMITIES," SECTION 34-2 DEFINITIONS TO STANDARDIZE THE DEFINITIONS OF RENTAL OF BEACH FURNITURE, RESIDENTIAL ACCESSORY USE, AND RESORT ACCESSORY USE; AMENDING TABLE 34-1 TO PERMIT THE RENTAL OF BEACH FURNITURE AS AN ACCESSORY USE FOR SPECIFIC RESIDENTIAL USES; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

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 has authority pursuant to the provisions of Florida Statutes S. 166.____ 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 it is appropriate to update and amend the provisions applicable to the rental and use of beach furniture and equipment; and

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

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 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 Sec. 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, that meet the maximum ground-to-tire pressure found in LDC Sec 14-6(c).

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 and equipment must be removed from the beach and placed behind the dune line between the hours of 9:00 p.m. until 7:00 a.m.

(1) If there is no dune line and the beach is wide, beach furniture must be moved to a point that is at least 200 feet from the water line at all times.

(2) If there is no dune line and the beach is less than 200 feet wide, beach furniture must be moved to the adjacent permanent structure and landward of any seawall.

(c) Screening: when removed from the beach, beach furniture must be screened from view from the public beach, road rights-of-way, adjoining properties, and from public beach accesses. Lawfully existing permanent structures may be used to provide the required screening and appropriate vegetation or fencing can be added. Fencing used to provide screening must comply with the requirements of LDC Chapter 6, Articles III and IV and LDC §34-1744.

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

(e) Except for during sea turtle nesting season, May 1 to October 31 annually, beach cabanas may be left on the beach between the hours of 9:00 p.m. and 7:00 a.m.

(f) 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.

(1) Beach furniture vendors operating with a valid town permit approved prior to July 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.

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

(h) 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.

(i) All beach furniture must be set back at least 15 feet wrack line and at least ten feet from a sea turtle nest or dune vegetation.

(j) 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 applied for, 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.

(k) 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.

(l) 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) The Town will accept applications for BFVPs between September 1 and September 30 of each year. The application must include:

a. A site plan specifically identifying (a) the boundaries of the property in which the business will be located; (b) the specific area/location in which the business will operate; (c) the proposed area for use of the furniture or equipment by the business patrons; and (d) 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 or equipment rental.

c. 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 per 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.

d. The application fee in the amount specified in the current Town of Fort Myers Beach fee schedule.

(3) The business must maintain a current Lee County Business Tax Receipt. A copy of the tax receipt must be provided with the annual permit application.

(4) BFVPs are annual permits that will expire at midnight on September 30th each year.

(5) The number of active BFVPs will not exceed 26 at any time.

(m) All BFVP holders must adhere to the operational requirements of this section.

(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 Sec.

14-5(j) and record the GPS coordinates of the stakes. The stakes must be removed after the GPS coordinates are recorded.

- (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 set back line identified in this subsection.
- (3) BFVP holder's furniture must be set back ten feet from the side property lines of the property listed on the BFVP.
 - a. If a vendor holds BFVPs for adjacent properties the ten foot setback from the side property line may be removed along abutting side property lines.
- (4) BFVP holder's furniture must be set back a minimum of ten feet from any beach access.
- (5) 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 shore line in order to provide access to the water.
- (6) BFVP holders may not bury or lay water or electric lines on or in the sand without an electrical or plumbing permit.
- (7) BFVP holders may place one free-standing structure on the beach area from which they operate to conduct business:
 - a. This structure may be a table, podium, both 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. The structure must be portable and shall 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 of which can exceed 8 square feet as measured in accordance with Sec. 30-91.
 - i. Any rate charts smaller than 2 square feet shall not be counted as port of the signage limitation above.
 - ii. No signs or other advertising for the business are permitted on the beach other than the signage permitted on the structure.

- f. If a BFVP holder also holds a PWVL and/or PAL no more than one structure for conducting business may be placed on any property from which the vendor is operating.

(8) BFVP holders are prohibited from soliciting customers at any location other than within the property boundaries of the location listed on their permit.

(n) Nonconforming Beach Furniture Vendors. Beach furniture vendors who established or commenced business at a location that does not comply with the requirements set forth in this chapter before July 1, 2015 may continue to operate as a nonconforming use for a period two years from (date of adoption) if the following conditions are met:

(1) Nonconforming Beach Furniture Vendors must submit an use certificate application to the Town within thirty days of (the date of adoption of this ordinance). The use certificate application must be accompanied by the documentation specified in Sec. 14-5(l)(2)a-d and 14-5(l)(3).

(2) Nonconforming Beach Furniture Vendors must operate in compliance with regulations set forth in Sec. 14-5(a) through 14-5(k) and 14-5(m).

(o) Termination of Nonconforming Beach Furniture Vendor Operations.

(1) A Nonconforming Beach Furniture Vendor Operation as described in Sec. 14-5(n) will be terminated if operations are discontinued by the vendor for a period of thirty days or more.

(2) A Nonconforming Beach Furniture Vendor Operation as described in Sec. 14-5(n) receiving and found guilty of by way of Magistrate of three or more notice of violations from the Town of Fort Myers Beach within a one-year time span measured from the date of the first finding of guilt, shall be terminated upon the third finding of guilt.

(3) After (date this two-year period expires) all Nonconforming Beach Furniture Vendor Operations shall terminate unless a BFVP as required by this chapter is obtained.

(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 and found guilty of by way of Magistrate of three or more notice of violations from the Town of Fort Myers Beach within a one-year time span measured from the date of the first finding of guilt, shall have their BFVP permit revoked for three years. The Town makes no guarantee that a BFVP will be available for issuance at the end of the revocation period.
- (4) If a BFVP holder is determined to be in violation of this section, by the Town's special magistrate or the county court, three or more times in a one-year period, the Town may revoke the BFVP. One revoked under this circumstance, the vendor may not submit a renewal or new BFVP application for a period of three years.

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 §14-85 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 "sky lanterns" or any other device that uses an open flame to provide buoyancy is prohibited anywhere within Town limits. The release of balloons is prohibited in accordance with F.S. § 372.995, except as permitted by that statute.

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 or equipment 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 or operating in conjunction with a permitted resort accessory use that provides beach furniture or equipment for a fee. 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); 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 sixty 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 (§§ 34-2141-2145 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 or equipment (ch. 14 of this LDG).

ARTICLE III. ZONING DISTRICT REGULATIONS

Division 2. Allowable Land Uses in Each Zoning District

Table 34-1

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

Division 4. Conventional Zoning Districts

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

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

(d) Permitted uses.

- (1) Recreation activities, rental of beach furniture when accessory to a multi-family residential building located adjacent to the Gulf of Mexico containing more than sixty dwelling units (ch. 14) and resort accessory uses that are performed outdoors.

ARTICLE IV. SUPPLEMENTL 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); fences and walls (division 17 in article IV); garage sales or yard sales (§ 34-2); recreation facilities, personal; seawalls (ch. 26); 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 sixty dwelling units (ch. 14). Division 2 and other portions of article IV provide regulations for many residential accessory uses.

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 allow 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.~~

~~(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.

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

Anita Cereceda _____
Dan Andre _____

Alan Mandel _____
Rexann Hosafros _____
Summer Stockton _____

DULY PASSED AND ENACTED this _____ day of _____ .

ATTEST:
By: _____
Michelle Mayher, Town Clerk

TOWN OF FORT MYERS BEACH
By: _____
Anita Cereceda, Mayor

Approved as to form by:

Town Attorney

