

Town of Fort Myers Beach  
Agenda Item Summary

Blue Sheet Number: **2011-099**

**1. Requested Motion:** Motion to introduce ordinance 11-09, Amending Public Service Tax and set a Public Hearing date for October 3, 2011 at 9:00 AM **Meeting Date:** 9/26/11

**Why the action is necessary:** State law provides that prior to adoption of an ordinance, it must be read by title at a public meeting at least once prior to the date when it is adopted.

**What the action accomplishes:** Introduces the ordinance by reading the title and sets a public hearing date for the ordinance.

**2. Agenda:**

Consent  
 Administrative

**3. Requirement/Purpose:**

Resolution  
 Ordinance  
 Other

**4. Submitter of Information:**

Council  
 Town Staff  
 Town Attorney

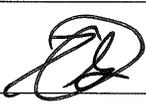
**5. Background:** Council has requested the drafting of an ordinance amendment to adopt a public service tax. The ordinance amendments adopt a ten percent (10%) public service tax on electricity and delete references to any public service tax on natural or propane gas.

Attached to this blue sheet for your information is a memo from Fowler White Boggs outlining other optional exemptions.

**6. Alternative Action:** Decline to introduce the proposed ordinance and set a public hearing date.

**7. Management Recommendations:** Introduce the ordinance and set a public hearing date.

**8. Recommended Approval:**

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Cultural Resources Director	Town Clerk
						

**9. Council Action:**

Approved     Denied     Deferred     Other

TO: Mayor and Town Council

FROM: Marilyn W. Miller

DATE: September 12, 2011

RE: Town Code Amendments/Public Service Tax

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As you directed at last week's Town Council Meeting, I am preparing amendments to the current Town Code provisions to implement a public service tax for electricity only. The current provisions authorizing a public service tax are contained in Chapter 24, Article II of the Town Code of Ordinances. The Town's authority to impose a public service tax is Florida Statute Section 166.231. Under that statute, there are certain exemptions, some that are mandatory and others that are optional. This memorandum will explain those exemptions because Town Council will need to decide which, if any, of the optional exemptions you wish to include in the ordinance.

I also want to clarify that the public service tax on electricity can be in any amount up to and including ten percent (10%) of the payments received by FPL from the sale of electricity. The tax does NOT, however, apply to any "fuel adjustment charge" which is the amount that is separately stated on the electric bill and represents increases in the cost of fuel to FPL.

The enabling state statute provides for certain exemptions that are *mandatory*. Those exemptions are:

- Purchases by the U.S. Government, the State, and all counties, school districts, municipalities and any public bodies exempted by law or court order; and
- Purchases by any recognized church for use exclusively for church purposes

Other exemptions authorized by Section 166.231, Florida Statutes are *optional* and Town Council can decide whether or not to include them in the Code. The optional exemptions are:

- An exemption for any amount up to and including the first 500 kilowatt hours of electricity per month for *residential* use. This exemption applies to each separate residential unit regardless of the number of meters, so, for example, if there is a duplex that has only one electric meter, the exemption would be for up to and including the first 1000 kilowatt hours of electricity and the tax would be equally allocated between the two units. The current provisions in the Town Code contain an exemption for the first 200 kilowatt hours for residential purchasers. Council will need to decide whether to leave this exemption as is, delete the exemption altogether, or change it to an amount that is a number between 1 and 500 kilowatt hours per residence.

- An exemption of not less than 50 percent of the tax imposed on purchasers of electricity who are qualified businesses located in an “enterprise zone” designated pursuant to Section 290.0055, Florida Statutes (the Town does not, at this point, have any such zones, but the exemption could still be included so that if such a zone is ever created, qualified businesses located therein would be exempt)

If you have any questions concerning the foregoing, please do not hesitate to contact me.

cc: Terry Stewart, Town Manager  
Evelyn Wicks, Finance Director  
Michelle Mayher, Town Clerk

ORDINANCE NO. 11-09

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING CHAPTER 24, ARTICLE II IN THE CODE OF ORDINANCES, "PUBLIC SERVICE TAX;" AMENDING SECTION 24-19, "DEFINITIONS," BY DELETING UNNECESSARY DEFINITIONS; AMENDING SECTION 24-21, "LEVY OF TAX," TO PROVIDE FOR A TEN PERCENT (10%) PUBLIC SERVICE TAX ON ELECTRICITY AND DELETING PROVISIONS RELATING TO NATURAL AND LP GAS; AMENDING SECTION 24-22, "DUTY OF SELLER," SECTION 24-23, "REQUIRED RECORDS," SECTION 24-24, "DUTY TO COLLECT," AND 24-25, EXEMPTION FROM TAX," BY DELETING ALL PROVISIONS RELATING NATURAL AND LP GAS; PROVIDING FOR SEVERABILITY; PROVIDING 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 24-19 of the Town of Fort Myers Beach Code of Ordinances is hereby amended as follows:

**Sec. 24-19. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~Manufactured gas is limited to manufactured natural gas and manufactured propane and excludes industrial gases as permitted under F.S. § 166.231.~~

*Purchase* means every act or transaction whereby possession of, utilization of, control over title to:

- (1) Electricity;
- (2) ~~Metered natural gas;~~
- (3) ~~Liquefied petroleum gas, either metered or bottled;~~
- (4) ~~Manufactured gas, either metered or bottled;~~

becomes vested in the purchaser within the incorporated area of the town for which payment is made pursuant to a duty and obligation therefor.

*Purchaser* includes, but shall not be limited to, any natural person, firm, corporation, partnership or joint venture who is legally liable for the payment of a taxable item or service.

*Sale* is synonymous with purchase and vice versa.

*Seller* means every person delivering or rendering a taxable item or service as set forth herein to any purchaser thereof.

Section 2. Section 24-21 of the Town of Fort Myers Beach Code of Ordinances is hereby amended as follows:

**Sec. 24-21 Levy of tax.**

(a) There is hereby levied by the town on each and every purchase of electricity; ~~metered natural gas; liquefied petroleum gas, either metered or bottled; or manufactured gas;~~

~~either metered or bottled~~, within the incorporated area of the town, a tax at a rate of zero ten percent (10%) purchased by a purchaser during a monthly period.

(b) The monthly period referenced to in this section is the monthly billing cycle of a seller. If a seller bills in any manner other than on a monthly basis, the tax rate for all sales shall be zero ten percent (10%). The tax shall not be applied against any fuel adjustment charge, and such charge shall be separately stated on each bill. The term "fuel adjustment charge" means all increases in the cost of utility services to the ultimate consumer resulting from an increase in the cost of fuel to the utility subsequent to October 1, 1973.

Section 3. Section 24-22 of the Town of Fort Myers Beach Code of Ordinances is hereby amended as follows:

**Sec. 24-22. Duty of seller.**

(a) It shall be the duty of every seller of electricity; ~~metered natural gas; liquefied petroleum gas, either metered or bottled; or manufactured gas either metered or bottled~~, within the boundaries of the town, to collect from the purchaser thereof for the use of the town the taxes hereby levied at the time of collecting the selling price charged for each and every transaction; and to report and pay over on or before the 15th day of each calendar month to the town manager all such taxes levied and collected during the preceding calendar month.

(b) It shall be unlawful for any seller to collect the price of any purchase of electricity; ~~metered natural gas; liquefied petroleum gas, either metered or bottled; manufactured gas, either metered or bottled~~; sold within the incorporated area of the town, without at the same time collecting such tax hereby levied in respect to such purchase or purchases unless such seller shall elect to assume and pay such tax without collecting the same from the purchaser or consumer, providing, however, that the seller shall not be liable for the payment of such tax upon uncollected bills.

(c) Any seller failing to collect such tax at the time of collecting the price of any purchase and sale, as aforesaid, where the seller has not elected to assume and pay such tax shall be liable to the town for the amount of such tax in like manner as if the same had actually been paid to the seller, and the town shall bring and cause to be brought all such suits and actions and take such proceedings as may be necessary for the recovery of such tax.

Section 4. Section 24-23 of the Town of Fort Myers Beach Code of Ordinances is hereby amended as follows:

**Sec. 24-23. Required records.**

(a) Each and every seller of electricity; ~~metered natural gas; liquefied petroleum gas, either metered or bottled; or manufactured gas either metered or bottled~~, within the incorporated area of the town, with respect to sales and purchases, on which the tax is hereby levied, shall keep full and complete records showing all purchases and sales of such electricity; ~~metered natural gas; liquefied petroleum gas, either metered or bottled; manufactured gas, either metered or bottled~~; within the incorporated area of the town, which records shall show the price

charged upon each sale and purchase, the date and period of time covered thereby and the date of payment thereof.

(b) The records referred to in section 24-22(a) shall, with reasonable prior notice by the town, be open for inspection by duly authorized agents of the town during regular business hours of the seller at a place designated by the seller at the sole expense of the town. The agents of the town shall have the right, power and authority to make such transcripts or copies thereof as they may desire. Records not prepared by the seller in the ordinary course of business may be provided at the town's expense and as the town and the seller may agree in writing. Such audit shall be impartial and all audit findings, whether they decrease or increase payment to the town, shall be reported to the seller. The town's right to examine the records of the seller in accordance with this section shall not be conducted by any third party employed by the town whose fee for conducting such audit is contingent on findings of the audit.

Section 5. Section 24-24 of the Town of Fort Myers Beach Code of Ordinances is hereby amended as follows:

**Sec. 24-24. Duty to collect.**

(a) The sellers of electricity; ~~metered natural gas; liquefied petroleum gas, either metered or bottled; or manufactured gas, either metered or bottled;~~ within the incorporated area of the town, shall act as the collection medium and collecting agency for the collection from the purchaser of the herein levied tax for the use of the town. The town may bring such legal action as in its discretion may appear advisable under the terms of this section.

(b) The sellers of electricity; ~~metered natural gas; liquefied petroleum gas, either metered or bottled; or manufactured gas, either metered or bottled;~~ within the incorporated area of the town, shall furnish to the town a certification duly executed by one of the officials of the company certifying as to the accuracy and correctness of billings and collections required under the terms of this section; which certification shall accompany the remittance of such tax collected or paid for the preceding month.

Section 6. Section 24-25 of the Town of Fort Myers Beach Code of Ordinances is hereby amended as follows:

**Sec. 24-25. Exemption from tax.**

(a) The following purchasers are declared to be exempt from the tax authorized and imposed by this article for purchases:

- (1) The United States Government;
- (2) The state including within the state all:
  - a. Counties;

- b. School districts; and
- c. Municipalities;
- (3) Public bodies exempted by law or court order;
- (4) Any other public body as defined in F.S. § 1.01;
- (5) Purchases by any recognized church in the state for use exclusively for church purposes; and
- ~~(6) The purchase of natural gas, manufactured gas, or fuel oil by a public or private utility, either for resale or for use as fuel in the generation of electricity.~~

(b) Residential users of electricity are exempted from the tax imposed by this article in an amount up to and including the first 200 kilowatt hours of electricity purchased per month for residential use. Such exemption shall apply to each separate residential unit, regardless of whether such unit is on a separate meter or a central meter and shall be passed on to each individual tenant.

Section 7. Section 24-26 of the Town of Fort Myers Beach Code of Ordinances is hereby amended as follows:

**Sec. 24-26. Billing procedures.**

In all cases where the seller of the taxable commodity or service collects the price thereof in monthly periods, the tax hereby levied shall be computed on the aggregate amount of sales during each monthly period; providing that the amount of tax to be collected shall be the nearest whole cent to the amount computed. When a seller renders a bill to a purchaser to cover purchases made during the particular period of time to which a bill is applicable, the amount of the public service tax shall be stated separately from other governmental charges and taxes and shall not be levied on such taxes and charges.

Section 8. 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 9. 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:

Larry Kiker, Mayor  
Joe Kosinski  
Alan Mandel

Bob Raymond, Vice Mayor  
Jo List

DULY PASSED AND ADOPTED THIS \_\_\_\_ DAY OF \_\_\_\_\_ 2011, BY THE  
TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH

ATTEST:

By: \_\_\_\_\_  
Larry Kiker, Mayor

By: \_\_\_\_\_  
Michelle D. Mayher, Town Clerk

Approved as to form and legal sufficiency:

By: \_\_\_\_\_  
FOWLER WHITE BOGGS, Town Attorney