

ORDINANCE No. 99- 7

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH TO BE KNOWN AS THE TOWN OF FORT MYERS BEACH ANTI-LITTER ORDINANCE PROVIDING AUTHORITY; DEFINITIONS; LITTER IN PUBLIC PLACES; PLACEMENT OF LITTER IN RECEPTACLES; SWEEPING LITTER INTO GUTTERS; LITTER THROWN BY PERSONS IN VEHICLES; TRUCK LOADS CAUSING LITTER; COMMERCIAL AND NON-COMMERCIAL HANDBILLS ON VEHICLES; COMMERCIAL AND NON-COMMERCIAL HANDBILLS ON UNINHABITED OR VACANT PREMISES; DISTRIBUTING COMMERCIAL AND NON-COMMERCIAL HANDBILLS AT INHABITED PRIVATE PREMISES; LITTER ON OCCUPIED PRIVATE PROPERTY; ENFORCEMENT; PENALTIES; SEVERABILITY; CONFLICTS AND EFFECTIVE DATE.

WHEREAS, the Town Council finds that with the continuing incline in population and overall growth of the Town of Fort Myers Beach, the necessity of an Anti-litter Ordinance has become increasingly important in that litter destroys community pride, makes the Town a less desirable place in which to live, and cost citizens unnecessary tax dollars each year on its collection and disposal; and,

WHEREAS, the Town Council further finds that enacting such an Ordinance is in the common interest of the people of the Town in that it would foster strong civil awareness, cooperation, and a sense of personal responsibility.

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

SECTION 1. Authority. This Ordinance is enacted pursuant to the provisions of Chapter 95-494, Laws of Florida, Chapter 166, Florida Statutes, and other applicable provisions of law.

SECTION 2. Definitions. For purposes of this Ordinance, the terms listed below shall have the following meanings unless otherwise specifically stated. When not inconsistent to the context, words used in the present tense include the future, words in the plural include the singular and words in the singular number include the plural. The word "shall" is always mandatory and not merely discretionary.

(1) Commercial Handbill: Any printed or written matter, any sample or device, dodger, circular, leaflet, pamphlet, paper, booklet, or any other printed or otherwise reproduced original or copies of any matter of literature:

(a) Which advertises for sale any merchandise, product, commodity, services, thing;
or

(b) Which directs attention to any business or mercantile or commercial establishment, or other activity, for the purpose of either directly or indirectly promoting the interest thereof by sales; or

(c) Which directs attention to or advertises any meeting, theatrical performance, exhibition, or event of any kind, for which an admission fee is charged for the purpose of private gain or profit; but the terms of this clause shall not apply where an admission fee is charged or a collection is taken up for the purpose of defraying the expenses incident to such meeting, theatrical performance, exhibition, or event of any kind, when either of the same is held, given or takes place in connection with the dissemination to information which is not restricted under the ordinary rules of decency, good morals, public peace, safety and good order; provided, that nothing contained in this clause shall be deemed to authorize the holding, giving or taking place of any meeting, theatrical performance, exhibition, or event of any kind, without a license, where such license is or may be required by any law of this State, or under any Ordinance of this Town;
or

(d) Which, while containing reading matter other than advertising matter, is predominantly and essentially an advertisement, and is distributed or circulated for advertising purposes, or for the private benefit and gain of any person so engaged as advertiser or distributor.

(2) Town: Town of Fort Myers Beach, Lee County, Florida.

(3) Litter: As defined in Chapter 403, Florida Statutes, as it may be amended from time to time.

(4) Newspaper: Any newspaper of general circulation as defined by general law, any newspaper duly entered with the Post Office Department of the United States, in accordance with Federal statute or regulation, and any newspaper filed and recorded with any recording officer as provided by general law; and, in addition thereto, shall mean and include any periodical or current magazine regularly published with not less than four issues per year, and distributed.

(5) Non-Commercial Handbill: Any printed or written matter, any sample or device, dodger, circular, leaflet, pamphlet, newspaper, magazine, paper, booklet, or any other printed or otherwise reproduced original or copies of any matter of literature not included in the aforesaid definitions of a commercial handbill or newspaper.

- (6) Law Enforcement Officer: As defined in Chapter 943, Florida Statutes, as it may be amended from time to time.
- (7) Person: As defined in Chapter 403, Florida Statutes, as it may be amended from time to time.
- (8) Private Premises: Any dwelling, house, building, or other structure, designed or used either wholly or in part for private residential purposes, whether inhabited or temporarily or continuously uninhabited or vacant, and shall include any yard, grounds, walk, driveway, porch, steps, vestibule or mailbox belonging or appurtenant to such dwelling, house, building or other structure within the Town.
- (9) Public Place: Any and all streets, sidewalks, boulevards, alleys or other public ways and any and all public parks, squares, spaces, grounds, and buildings.
- (10) Refuse: All putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and solid market and industrial wastes.
- (11) Rubbish: Nonputrescible solid wastes consisting of both combustible wastes, such as paper, wrappings, cigarettes, cardboard, tin cans, yard clippings, leaves, wood, glass, bedding, crockery and similar materials.
- (12) Vehicle: As defined in Chapter 316, Florida Statutes, as it may be amended from time to time.

SECTION 3. Litter In Public Places. It is unlawful for any person to throw or deposit litter in any manner or amount upon any street or other public place within the Town except in public receptacles, in authorized private receptacles for collection.

SECTION 4. Placement of Litter in Receptacles. It is unlawful for persons placing litter in public receptacles or authorized private receptacles to do so in a manner that allows the litter to be carried or deposited by the elements upon any street or other public place or upon private property.

SECTION 5. Sweeping Litter into Gutters. It is unlawful for any person to sweep litter into or deposit litter in any gutter, street or other public place within the Town.

SECTION 6. Litter Thrown by Persons in Vehicles. It is unlawful for any person, while a driver or passenger in or on a vehicle, to throw or deposit litter upon any street or other public place or upon private property within the Town.

SECTION 7. Truck Loads Causing Litter. It is unlawful for any person to drive or move within the Town any truck or vehicle which is constructed or loaded in such a way as to allow the load, contents or litter to be blown or deposited upon any street or other public place. It is also unlawful for any person to drive or move any vehicle or truck within the Town, the wheels or tires of which carry onto or deposit in any street, alley or other public place, mud, dirt, sticky substances, litter or foreign matter of any kind.

SECTION 8. Commercial And Non-Commercial Handbills On Vehicles. It is unlawful to throw, deposit, or place any commercial or non-commercial handbill in or upon any vehicle without the expressed consent of the driver or occupant of a vehicle who is willing to accept it.

SECTION 9. Commercial And Non-Commercial Handbills On Uninhabited Or Vacant Premises. It is unlawful to throw or deposit any commercial or non-commercial handbill in or upon any private premises, that is uninhabited or vacant.

SECTION 10. Distributing Commercial And Non-Commercial Handbills At Inhabited Private Premises. It is unlawful to throw, deposit or distribute any commercial or non-commercial handbill in or upon private premises which are inhabited, except by handing or transmitting any such handbill directly to the owner, occupant, or other person then present in or upon such private premises. Provided, however, that in case of inhabited private premises such person, unless requested by anyone upon such premises not to do so, may place or deposit any such handbill in or upon such inhabited private premises, if such handbill is so placed or deposited as to secure or prevent such handbill from being blown or drifted about such premises or sidewalks, streets, or other public places, and except that mailboxes may not be so used when so prohibited by Federal postal law or regulations.

(a) Exemption for Mail and Newspapers. The provisions of this Section shall not apply to the distribution of mail by the United States, nor to newspapers (as defined herein) except that newspapers shall be placed on private property in such a manner as to prevent their being carried or deposited by the elements upon any street, sidewalk or other public place or upon private property.

SECTION 11. Litter On Occupied Private Property. It is unlawful for any person to throw or deposit litter on any occupied private property within the Town, whether owned by such person or not, except that the owner or person in control of private property may maintain authorized private receptacles for collection in such a manner that litter will be prevented from being carried

or deposited by the elements upon any street, sidewalk or other public place or upon any private property.

SECTION 12. Enforcement. A law enforcement officer is authorized to issue a citation to a person when, based upon personal investigation, the officer has reasonable cause to believe that the person has committed a civil infraction in violation of this Ordinance.

SECTION 13. Penalties. Any person who violates this Ordinance shall be cited as follows:

A. Civil Penalties - Any person who litters in violation of this Ordinance is guilty of a non-criminal infraction, punishable by a civil penalty of Fifty Dollars (\$50.00) for the first violation.

1. Any person who litters in violation of this Ordinance is guilty of a non-criminal infraction, punishable by a civil penalty of Two Hundred Fifty Dollars (\$250.00) for the second violation.

2. Any person who litters in violation of this Ordinance is guilty of a non-criminal infraction, punishable by a civil penalty not to exceed Five Hundred Dollars (\$500.00) for the third violation.

3. All fines can be converted to community service time.

B. Criminal Penalties - The fourth and all subsequent violations of the provisions of this Ordinance shall constitute a misdemeanor of the second degree and shall be punishable by a fine of up to:

1. Five Hundred Dollars (\$500.00) fine, and/or

2. Imprisonment of up to ten (10) days, and/or community service time as prescribed; or

3. By both such fine and imprisonment and/or community service time.

SECTION 14. 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 15. Conflicts. 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 shall apply.

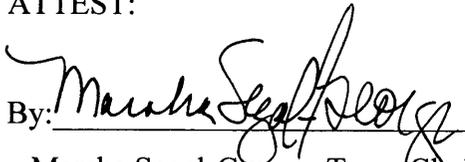
SECTION 16. Effective Date. This ordinance shall become effective immediately upon its adoption.

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

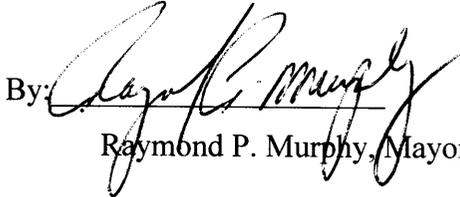
Anita T. Cereceda	<u>aye</u>
Daniel Hughes	<u>aye</u>
John Mulholland	<u>aye</u>
Garr Reynolds	<u>aye</u>
Ray Murphy	<u>aye</u>

DULY PASSED AND ENACTED this 7 day of June , 1999.

ATTEST:

By: 
Marsha Segal-George, Town Clerk

TOWN OF FORT MYERS BEACH

By: 
Raymond P. Murphy, Mayor

Approved as to form by:


Richard V.S. Roosa, Town Attorney