ORDINANCE No. 07-03

AN ORDINANCE AMENDING REGULATIONS IN CHAPTERS 14 AND 27 OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE; PROVIDING AUTHORITY; ADOPTING AMENDMENTS TO ARTICLE I (BEACH AND DUNE MANAGEMENT) OF CHAPTER 14 OF THE LAND DEVELOPMENT CODE WHICH IS TITLED "ENVIRONMENT AND NATURAL RESOURCES"; ADOPTING AMENDMENTS TO ARTICLE I (DEFINITIONS AND ENFORCEMENT) AND ARTICLE II (PERSONAL WATERCRAFT) OF CHAPTER 27 OF THE LAND DEVELOPMENT CODE WHICH IS TITLED "PERSONAL WATERCRAFT AND PARASAILING"; PROVIDING SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

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, Chapters 163 and 166, Florida Statutes, and other applicable provisions of law.

SECTION 2. ADOPTION OF AMENDMENTS TO CHAPTER 14 OF THE LAND DEVELOPMENT CODE. Chapter 14 of the Town of Fort Myers Beach land development code is titled "ENVIRONMENT AND NATURAL RESOURCES." Article I of Chapter 14 is hereby amended as shown in Exhibit A. Entirely new language is indicated with underlining. Language being repealed from the existing code is indicated with ~~strike-throughs~~. Existing language being retained is either omitted entirely or is shown without underlining or strike-throughs. Exhibit C documents the decision not to adopt a proposed Section 14-12 regarding beach furniture and equipment licenses. This ordinance amends the following sections of Chapter 14:

Article I. Beach and Dune Management

Sec. 14-1. Definitions.
Sec. 14-5. Beach furniture and equipment.
Sec. 14-6. Beach raking and wrack line policy.
Sec. 14-9. Enforcement.
Sec. 14-10. Restoration standards for dune vegetation alteration violations.
Sec. 14-11. Special events on the beach.

SECTION 3. ADOPTION OF AMENDMENTS TO CHAPTER 27 OF THE LAND DEVELOPMENT CODE. Chapter 27 of the Town of Fort Myers Beach land development code is titled "PERSONAL WATERCRAFT AND PARASAILING." Articles I and II of Chapter 27 is hereby amended as shown in Exhibit B. Entirely new language is indicated with underlining. Language being repealed from the existing code is indicated with ~~strike-throughs~~. Existing language being retained is either omitted entirely or is shown without underlining or strike-throughs. This ordinance amends the following sections of Chapter 27:

Article I. Definitions and Enforcement

Sec. 27-45. Definitions.

Article II. Personal Watercraft

Sec. 27-49. Regulations and locations for personal watercraft rentals.

SECTION 4. 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 be held invalid, then such provision shall be null and void and shall be deemed separate from the remaining provisions of this ordinance, and in no way shall affect the validity of all other provisions of this ordinance.

SECTION 5. EFFECTIVE DATE. This ordinance shall take effect immediately upon its adoption.

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

Herb Acken	aye
Dennis Boback	aye
Larry Kiker	aye
Charles Meador, Jr.	aye
Bill Shenko, Jr.	aye

DULY PASSED AND ENACTED this 2nd day of April, 2007.

ATTEST:

By: _____
Michelle Mayher, Town Clerk

TOWN OF FORT MYERS BEACH

By: _____
Mayor Dennis Boback

Approved as to form by:

_____
Anne Dalton, Town Attorney

EXHIBIT A

FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 14 — ENVIRONMENT AND NATURAL RESOURCES

ARTICLE I. BEACH AND DUNE MANAGEMENT [2]

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 ~~has the same meaning given it in § 14-72.~~ 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 man-made apparatus or paraphernalia designed or manufactured for use or actually used on the beach or in the adjacent tidal waters. Examples include: chairs, tables, cabanas, 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.

...

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.

...

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.

...

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 means the natural organic marine material cast on the shore, including seaweed and other vegetative and animal debris, but excluding manmade material.

Sec. 14-2. Purpose and intent. *[no changes]*

Sec. 14-3. Destruction or diminishment of dune or beach system. *[no changes]*

Sec. 14-4. Trash and litter on the beach. *[no changes]*

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[2] ***Cross reference(s)—Sea turtle conservation, article II of ch.14; personal watercraft and parasailing, ch. 27; water-oriented rentals ~~activities~~, div. 41 of ch. 34.***

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 § 14-5(a)(2) shall then be safely stacked in areas no larger than 10 feet by 10 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 cable or chain to prevent the 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 5 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, rental podium, but excluding water-dependent equipment) shall be set landward of the mean high water line and at least 10 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) 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 all transport permits:

(a) 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 an 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 10 feet of a sea turtle nest or dune vegetation.

(3) The vehicle and equipment cannot exceed a maximum ground-to-tire pressure of 10 PSI (pounds per square inch) using the formula in § 14-6(c)(4)d.1.

Sec. 14-6. Beach raking and wrack line policy.

(a) The use of boxblades on the beach or dune is prohibited. In an emergency and/or storm event resulting in a build-up of sand against seawalls, the use of a boxblade may be allowed with the approval of DEP, where required, and upon filing that approval with the town manager and meeting any other requirements set by the town.

(b) Under normal circumstances, the raking of the wrack line is prohibited. The town manager may approve the raking of the wrack line conditioned upon prior approval by the DEP if it is determined that excessive accumulation of natural or other debris caused by extreme events, including, but not limited to, red tide, red algae bloom, or storm carried debris, are present. Should such excessive accumulation be determined, the town manager may approve raking consistent with the authorization given by DEP. Any such raking which will result in the unreimbursed expenditure of town funds in excess of currently budgeted funds shall first be approved by the town council. ~~Town approval is necessary for determination that health or safety issues have been confirmed that would allow:~~

~~(1) A larger than normal wrack line resulting from extraordinary circumstances may be raked if the wrack line is at least 10 feet landward of the normal high tide line.~~

~~(2) If health or safety issues are present such as a large fish kill or a red tide event, the wrack~~

~~line may be raked up to 10 feet landward of the normal high tide line.~~

~~(3)~~ If this occurs during sea turtle season (May 1 through October 31), the raking must be in compliance with the specific conditions in § 14-6(c)(4).

(c) Any mechanical beach raking other than town-initiated raking pursuant to subsection (b) above requires a permit from the town:

(1) Application for a permit to mechanically rake an unvegetated portion of the beach shall be submitted to the director, in writing, on a form provided by the director. As part of this application, a site plan will be submitted depicting the property corners, the dimensions of the area to be raked, and the location of existing vegetation and structures.

(2) Prior to the granting or denying of the application, the director will conduct an on-site inspection to determine if the proposed raking conforms to the requirements of this article and if any native vegetation exists to be protected.

(3) Based upon the information contained in the application and the site inspection, the director shall approve or deny the application.

(4) The director shall attach site specific conditions to the permit relating to identifying, designating, and protecting that existing vegetation and other natural features which are not to be removed in accordance with this ordinance. These conditions are in addition to the following standard permit conditions for all mechanical beach raking permits:

a. During the sea turtle nesting season (May 1 through October 31), mechanical beach raking activities shall be confined to daylight hours and shall not begin before 9:00 A.M. or before completion of daily monitoring for turtle nesting activity by a FWC-authorized marine turtle permit holder, whichever occurs first (see requirements in § 14-78(b)).

b. During sea turtle nesting season (May 1 through October 31), the permittee is responsible for ensuring that a daily sea turtle nest survey, protection, and monitoring program is conducted throughout the permitted beach raking area. Such surveys and associated conservation measures shall be completed after sunrise and prior to the commencement of any mechanical beach raking. The sea turtle survey, protection, and monitoring program shall be conducted only by individuals possessing appropriate expertise in the protocol being followed and a valid *F.A.C.* Rule 68-E Permit issued by the FWC. To identify those individuals available to conduct marine turtle nesting surveys within the permitted area, please contact the FWC, Bureau of Imperiled ~~Protected~~ Species Management, at (850) 922-4330. ~~(561) 575-5407.~~

c. All turtle nests will be marked with wooden stakes, flagging tape, and an FWC sea turtle nest sign. No mechanical raking equipment is allowed inside of the staked area. All equipment operators shall be briefed on the types of marking utilized and should be able to easily contact the individual responsible for the nest survey to verify any questionable areas.

d. Mechanical beach raking equipment shall meet the following standards:

1. The vehicle and equipment cannot exceed a maximum ground-to-tire pressure of 10 PSI (pounds per square inch) using the following formula:

-a- PSI = vehicle weight in pounds (includes person and equipment) divided by the footprint in square inches

-b- EXAMPLE: 404 lbs. (ATV weight) + 200 (person + equipment) divided by 198 square inches (ATV with 6" x 8.25" footprint x 4 tires) = 3.1 PSI

2. Raking shall be accomplished with a pronged rake that limits penetration into the surface of the beach to a maximum of two inches. Box blades, front- or rear-mounted blades, or other sand sifting/filtering vehicles are not allowed. A piece of chain link fence or pressure treated lumber not to exceed two pieces 4" by 4" by 10' in size may be pulled behind the rake.

3. The beach raking vehicle and equipment must be removed from the beach when not in use.
4. Beach raking equipment shall be inspected periodically by the town to insure compliance with these standards.
5. Operators of mechanical beach raking equipment shall avoid all native salt-tolerant dune vegetation and staked sea turtle nests by a minimum of 10 feet.
6. ~~7.~~ Mechanical beach raking equipment must travel seaward of the mean high water line with the rake disengaged when driving on the beach from one raking area to another, and shall not disturb any dune or dune vegetation.

e. ~~6.~~ Burial or storage of any debris (biotic or abiotic) collected is prohibited seaward of any frontal dune, vegetation line, or armoring structure. Removal of all accumulated material from the beach must occur immediately after raking has been performed in an area. Prior to removing the debris and to the greatest extent possible, beach compatible sand should be separated from the debris and kept on site.

f. ~~e.~~ A violation of the special or standard conditions shall automatically invalidate the permit. Periodic compliance inspections will be conducted to insure compliance with the permit conditions and this ordinance.

Sec. 14-7. Vehicular traffic on the beach. *[no changes]*

Sec. 14-8. Dune systems. *[no changes]*

Sec. 14-9. Enforcement.

(a) The director is authorized to pursue any one or combination of the enforcement mechanisms provided in this code (for example, § 1-5, or article V of ch. 2) for any violation of this article.

(b) When imposing a sentence or penalty, the court, special magistrate, ~~hearing examiner,~~ or any other appropriate body may, in mitigation, consider the successful replacement of dune vegetation illegally removed, and the restoration of the subject area when deemed by the court, the special magistrate ~~hearing examiner~~ or any other appropriate body that the action taken by the violator has eliminated or significantly decreased the ability of the dune system to recover or perform those functions for which it is being protected.

Sec. 14-10. Restoration standards for dune vegetation alteration violations.

(a) Upon agreement of the director and the violator, or if they cannot agree, then, upon action by the court or special magistrate, ~~hearing examiner,~~ a restoration plan shall be ordered using the standards in this section. Such a restoration plan shall set forth replacement of the same species or any species approved by consent of the before-mentioned parties, or, if appropriate, in accordance with the direction of the court or special magistrate ~~hearing examiner~~.

(b) The restoration plan shall include the following minimum standards:

(1) Restoration plantings for vegetation other than trees must be nursery grown, containerized, and planted at a minimum density of no less than one and one half feet on center. The number of replacement plantings will be computed by the square footage of the area destroyed. The replacement stock shall be one and two inch size container. Higher density plantings may be required at the discretion of the director based upon density and size of the vegetation on the site prior to the violation. If the density or species of the vegetation cannot be determined where the violation occurred, then an assumption shall be made that the density and the species were the same as on similar properties. It shall be within the discretion of the director to allow a deviation

from the above specified ratio. When such deviation is sought, the total size shall equal or exceed that specified in the above standards.

(2) Dune vegetation alteration violations due to raking, excavation, and/or clearing shall be restored to natural ground elevation and soil conditions prior to commencement of replanting.

(3) Replacement plantings shall have a guaranteed minimum of 80 percent survivability for a period of no less than five years; however, success will be evaluated on an annual basis.

(4) Only temporary above ground irrigation may be installed and must be removed no later than one year from the date of planting.

(5) The plan shall specify that within 90 days of completion of the restoration, a written report shall be submitted to the town. This report shall include the date of completion, copies of the nursery receipts, a drawing showing the locations of the plantings, and color photographs of the planting areas from fixed reference points.

(6) The restoration plan shall include a maintenance provision of no less than five years for the control of invasive exotic vegetation, with annual monitoring and maintenance of the restored area to include the following:

a. Removal of all exotic and nuisance vegetation in the area without disturbing the existing dune vegetation.

b. Replacement of dead vegetation that was planted in order to assure at least 90 percent coverage at the end of the five-year period. Replacement vegetation shall be nursery grown and of the same species and at least the same size as those originally planted.

c. Submittal of an annual monitoring report to the director for five years following the completion of the restoration describing the conditions of the restored site. The monitoring report shall include mortality estimates, causes for mortality (if known), growth, invasive exotic vegetation control measures taken, and any other factors which would indicate the functional health of the restored area.

d. The monitoring report shall be submitted on or before each anniversary date of the effective date of the restoration plan. Failure to submit the report in a timely manner shall constitute a violation of this ordinance.

e. To verify the success of the mitigation efforts and the accuracy of the monitoring reports, the director shall periodically inspect the restoration.

Sec. 14-11. Special events on the beach.

(a) Special events on the beach are any social, commercial, or fraternal gathering for the purpose of being entertained, instructed, viewing a competition, or any other reason that would bring them together in one location that normally would not include such a concentration of people on or near the beach.

(b) Special events on the beach are temporary, short-term activities, which may include the construction of temporary structures; temporary excavation, operation, transportation, or storage of equipment or materials; and/or nighttime lighting that is visible seaward of the coastal construction control line (CCCL). Generally, activities within this category include but are not limited to: sporting events (e.g. volleyball, personal watercraft races, offshore powerboat races), festivals, competitions, organized parties (e.g. weddings), promotional activities, concerts, film events, balloon releases, and gatherings under tents.

(c) Due to the potential for adverse impacts, certain special event activities may not be compatible with sea turtle nesting areas. In some cases this is due to the type of activity where permit conditions alone cannot provide adequate protection. In other cases the density of sea turtle nesting prevents certain activities from being conducted safely.

(d) Special events which occur on or near the beach or dune, or where lighting from the special events directly or indirectly illuminates sea turtle nesting habitat, may contain special conditions for the protection of the beach, dune, and sea turtles. These conditions are in addition to the basic requirements of Ordinance No. 98-1, as amended, which must still be met in full.

(1) Along with the regular application for an event permit as required by Ordinance No. 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 § 14-75.

(2) Prior to the granting or denying of the application, an on-site inspection will be conducted to determine if the proposed event conforms to the requirements of this section and if any native vegetation or sea turtle nests exist to be protected.

(3) Based upon the information contained in the application and the site inspection, the application shall be approved or denied. approve or deny the application.

(4) Site-specific conditions may be attached to the permit relating to identifying, designating, and protecting any existing vegetation and sea turtle nests in accordance with this code. These conditions are in addition to the following standard permit conditions for all special events on the beach:

a. During the sea turtle season (May 1 through October 31), special event activities including construction shall be confined to daylight hours and shall not begin before 8:00 A.M. or before completion of daily monitoring for turtle nesting activity by a FWC-authorized marine turtle permit holder, whichever occurs first. However, no activity shall take place until after a daily sea turtle nest survey is conducted as indicated below.

b. During sea turtle nesting season (May 1 through October 31), the permittee is responsible for ensuring that a daily sea turtle nest survey, protection, and monitoring program is conducted throughout the permitted special events area. Such surveys and associated conservation measures shall be completed after sunrise and prior to the commencement of any activity. The sea turtle survey, protection, and monitoring program shall be conducted only by individuals possessing appropriate expertise in the protocol being followed and a valid *F.A.C.* Rule 68-E permit issued by the FWC. To identify those individuals available to conduct marine turtle nesting surveys within the permitted area, please contact the FWC, Bureau of Imperiled ~~Protected~~ Species Management, at (850) 922-4330. ~~(561) 575-5407.~~

c. All turtle nests will be marked with wooden stakes, flagging tape, and an FWC sea turtle nest sign. No activities (including the placement of equipment or the storage of materials) are allowed within 30 feet of the marked nest. The permittee shall ensure that all personnel are briefed on the types of marking utilized and be able to easily contact the individual responsible for the nest survey to verify any questionable areas.

(5) A violation of the special or standard conditions shall automatically invalidate the permit. Periodic compliance inspections will be conducted to insure compliance with the permit conditions and this ordinance.

(6) The release of balloons is prohibited in accordance with 372.995, *F.S.*, except as permitted by that statute.

Secs. 14-12--14-70. Reserved.

EXHIBIT B

FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 27 — PERSONAL WATERCRAFT AND PARASAILING

ARTICLE I. DEFINITIONS AND ENFORCEMENT

Sec. 27-45. Definitions.

For the purposes of this chapter, 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 words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

~~***Beach*** means the soft sand portion of land lying seaward of a seawall or line of permanent vegetation and seaward of the mean high water line.~~

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.

Edge of wet sand means the point where the visible darkening or staining of the beach sand from wave action is no longer detectable.

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.

[no other changes to this section]

ARTICLE II. PERSONAL WATERCRAFT

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 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 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 is issued until

the personal watercraft travels beyond the 500 feet offshore slow speed limit.

(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 12 feet landward from the edge of wet sand. ~~but under no circumstances may a person place or arrange any personal watercraft vessel or associated equipment in any manner which blocks pedestrian traffic on the beach.~~ Between the hours of 9:00 PM and 7:00 AM from May 1 until October 31, 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.

EXHIBIT C

FORT MYERS BEACH LAND DEVELOPMENT CODE

The vote on this Ordinance was taken in two steps. The first vote (as codified previously in this Ordinance) approved passage of Ordinance 07-03 without considering whether to add a proposed new Section 14-12 into Chapter 14. The second vote considered whether to exclude Section 14-12 entirely from Ordinance 07-03. Proposed Section 14-12, as considered during the public hearing, read as follows:

Sec. 14-12. Beach furniture and equipment licenses.

(a) Businesses and/or properties that offer a beach chair service on the beach for rent or complimentary use must apply for one of the following licenses:

(1) ***Beach Furniture Complimentary Use License:*** this license applies to properties that offer a beach chair service that is not open to the general public.

(2) ***Beach Furniture Vending License:*** this license applies to businesses and individual properties that offer beach furniture for rental to the general public.

(b) The following regulations apply to both licenses:

(1) Beach furniture and equipment shall be set back at least 12 feet landward from the edge of wet sand.

(2) Adequate portable garbage receptacles must be located on site during the hours that beach chairs are available for use and must be removed entirely from the beach every night, with the contents legally disposed of.

(c) The following additional regulations apply to the beach furniture vending license:

(1) The amount of beach furniture vending licenses is limited to 14.

(2) A business is required to obtain a Lee County occupational license

(3) If the applicant is not the owner of the property from which the business will be operated, the applicant shall submit a notarized letter of authorization from the owner of the property to the applicant.

(4) No person shall operate a beach chair vending business unless covered by a 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. At a minimum, the policy shall provide coverage of not less than $500,000 per occurrence and $1,000,000 per aggregate. The policy shall list the Town of Fort Myers Beach as an additional insured, and shall provide that coverage can not 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.

Secs. 14-13 ~~12~~--14-70. Reserved.

A motion was made by Council Member Meador and seconded by Council Member Shenko to exclude Section 14-12 from Ordinance 07-03. Upon being put to a vote, the motion passed, with the vote being as follows:

Herb Acken	aye
Dennis Boback	nay
Larry Kiker	nay
Charles Meador, Jr.	aye
Bill Shenko, Jr.	aye

Accordingly, draft Section 14-12 has been excluded from Ordinance 07-03 as adopted on April 2, 2007.