

ORDINANCE NO. 20-13

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA ADOPTING A NEW ARTICLE V, OF CHAPTER 16 OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH ENTITLED “NUISANCE ABATEMENT BOARD”, PROVIDING FOR THE CREATION OF A NUISANCE ABATEMENT BOARD; INTENT AND JURISDICTION; PROVIDING FOR CERTAIN ACTIVITIES TO BE DECLARED NUISANCES; DEFINITIONS; ORGANIZATION; INITIATION OF PROCEEDINGS; CONDUCT OF HEARINGS; COSTS AND FINES; APPEALS; ENFORCEMENT; RIGHTS RESERVED; AND PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER’S ERRORS; CONFLICTS OF LAW AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach (“Town”) empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, the Town desires to enact regulations to address places or premises used as sites for the unlawful sale or delivery of controlled substances, prostitution, youth and street gang activity, illegal gambling, murder, attempted felony murder, aggravated battery with a deadly weapon, aggravated assault with a deadly weapon without intent to kill, or declared to be a nuisance under Sections 823.05 or 823.10, Florida Statutes, because of the adverse effects of such activities on the public health, safety, and welfare of the businesses and residents of the Town; and

WHEREAS, the Town finds it to be in the best interests of the Town and its residents to adopt this Ordinance to promote, protect and improve the public health, safety and welfare of the residents of the Town; and

WHEREAS, on August 17, 2020 the Town Council held a first reading of this proposed Ordinance; and

WHEREAS, on September 21, 2020 the Town Council held a second reading of this proposed Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF TOWN OF FORT MYERS BEACH, FLORIDA:¹

Section 1. The above recitals are true and correct, and incorporated herein by this reference and are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. A new Article V of Chapter 16 of the Code of Ordinances of the Town of Fort Myers Beach entitled “Nuisance Abatement Board” is hereby adopted to read as follows:

CHAPTER 16 – OFFENSES
ARTICLE V – NUISANCE ABATEMENT BOARD

Sec. _____ . – Creation of a nuisance abatement board

Pursuant to Chapter 166 and Chapter 893, Florida Statutes, the Town of Fort Myers Beach Nuisance Abatement Board is created.

Sec. _____ . – Intent and purpose

It is the intent of this Article to establish the Town of Fort Myers Beach Nuisance Abatement Board. The purpose of this Article is to promote, protect, and improve the health, safety and welfare of the residents of the town by providing an equitable and effective method to reduce the use of property within the town for the unlawful sale or delivery of controlled substances, prostitution, youth and street gang activity, illegal gambling, murder, attempted felony murder, aggravated battery with a deadly weapon, aggravated assault with a deadly weapon without intent to kill, or declared to be a nuisance under Sections 823.05 or 823.10, Florida Statutes.

Sec. _____ . – Jurisdiction

The Nuisance Abatement Board shall have jurisdiction throughout the town.

Sec. _____ . – Definitions

Clerk means a person retained by the town to perform the required clerical duties for the Nuisance Abatement Board, and such other duties as provided herein necessary to carry out all of the activities of the Nuisance Abatement Board.

^{1/} Additions to existing text are shown by underline, changes to existing text on second reading are shown by double underline, and deletions are shown as ~~strikethrough~~.

Council means the Town Council of Fort Myers Beach.

Nuisance Abatement Board means the persons appointed by the Council and designated as the town Nuisance Abatement Board.

Operator means a tenant, lessee, or person having control or possession of a place or premises, which is the subject of a complaint filed with the Nuisance Abatement Board.

Owner means the lawful owner of real property consisting of a place or premises, which is the subject of a complaint filed with the Nuisance Abatement Board.

Party means a complainant, owner or operator.

Public Nuisance means all relevant Florida Statutes pertaining to public nuisances as they may be renumbered or amended from time to time, and other relevant provisions of Florida law. Generally, but not limited to, a public nuisance shall mean any place or premises which has been the site on more than two (2) occasions within a six-month period:

- (1) The unlawful sale or delivery of controlled substances as defined by law, or
- (2) A youth and street gang for the purpose of conducting a pattern of youth and street gang activity as defined by law, or
- (3) Prostitution, or solicitation of prostitution as defined by law, or
- (4) Illegal gambling as defined by law, or
- (5) Murder; or
- (6) Attempted felony murder; or
- (7) Aggravated battery with a deadly weapon; or
- (8) Aggravated assault with a deadly weapon without intent to kill; or
- (9) Declared to be a nuisance under Sections 823.05 or 823.10, Florida Statutes, as they may be renumbered or amended from time to time.

Sec. _____ . - Certain activities declared nuisances

Any place or premises within the town that has been found on more than two (2) occasions within a six-month period as a site for the unlawful sale or delivery of controlled substances, prostitution, youth and street gang activity, illegal gambling, murder, attempted felony murder, aggravated battery with a deadly weapon, aggravated assault

with a deadly weapon without intent to kill, or declared to be a nuisance under Sections 823.05 or 823.10, Florida Statutes, is a public nuisance.

Sec. _____ . – Composition and organization

- (a) The Town Council shall appoint a seven-member Nuisance Abatement Board. Each Councilmember shall appoint one member, and two (2) members shall be appointed "at large", collectively, by the Town Council, one member who shall be an attorney in good standing with the Florida Bar.
- (b) All board members, except the Chair shall be residents of the town. One (1) member may be a retired law enforcement officer as defined in Section 943.10, Florida Statutes, who is not currently employed nor engaged in any law enforcement activities.
- (c) One (1) member may be a local attorney with a criminal prosecution or criminal defense background currently practicing law in Lee County and a member in good standing with the Florida Bar.
- (d) One (1) member may be a local attorney practicing law in any other area of the law, currently practicing in Lee County and a member in good standing with the Florida Bar.
- (e) Four (4) members of the general public, who possess outstanding reputations for civic pride, integrity, responsibility and business or professional ability who may be engaged in matters involving real property, banking, finance, social work, religious work, or other local matters, with an interest or any experience in abating public nuisances and who reflect the ethnic and cultural diversity of the community.
- (f) The initial appointments to the Nuisance Abatement Board shall be as follows:
 - (1) The seven (7) members shall be appointed for a term of three (3) years each.
 - (2) A member may be reappointed for successive terms by the appointing Councilmember upon the Town Council approval.
 - (3) If a member fails to attend two (2) out of three (3) successive meetings without cause and without prior

- approval of the Board Chair, the Nuisance Abatement Board shall declare the member's office vacant and the Town Council shall promptly fill such vacancy. Members shall serve in accordance with applicable state law and all other ordinances and regulations of the town, and may be suspended or removed with or without cause by the Town Council.
- (4) The Town Council members of the Nuisance Abatement Board shall elect a Chair and Vice Chair who must be a licensed attorney in good standing with the Florida Bar. A Clerk shall be provided by the town and shall be responsible for clerical and administrative duties as may be reasonably required by the Nuisance Abatement Board for the proper performance of its duties.
- (5) The presence of at least three (3) four (4) members shall constitute a quorum of the Board for the purposes of conducting the Board's general business. A majority vote of those members present shall enable the Nuisance Abatement Board to take any action, except that in no case, may the Nuisance Abatement Board find the existence of a nuisance, enter any order, or direct counsel to seek any judicial relief by a vote of less than four (4) members. The Nuisance Abatement Board shall adopt such additional internal procedures and rules, as it deems necessary to conduct its regular business. Members shall serve without compensation.
- (ge) The town attorney or designee shall represent the Nuisance Abatement Board in all matters and at all proceedings.

Sec. _____ - Initiation of proceedings

- (a) Any person who resides in or is employed within the town may file a complaint with the Lee County Sheriffs Office (LCSO) Nuisance Abatement Coordinator or the Town with regard to nuisances as described in this article. However, no member of the Nuisance Abatement Board may file such a complaint.
- (b) The LCSO Nuisance Abatement Coordinator shall or Town may schedule a hearing with the Nuisance Abatement Board for each complaint after the town attorney or designee determines the complaint and supporting documentation that sufficiently alleges a nuisance as defined in this article, and

such place or premises was used on more than two (2) occasions within a six-month period in violation of Sec. (certain activities declared nuisances), and the nature of the evidence the LCSO Nuisance Abatement Coordinator or Town or other designee will introduce to prove such nuisance occurred at the place or premises.

(c) Upon the written approval of the town attorney or designee The the LCSO Nuisance Abatement Coordinator or Town shall give written notice of every hearing by certified mail or hand delivery to the owner(s) and/or operator(s) of the designated property at the last known address(es), at least fourteen (14) days prior to the scheduled hearing. If an attempt to reach an owner or operator by certified mail or hand delivery is unsuccessful, notice of hearing may be by publication as provided for in Chapter 49, Florida Statutes. Notice to owners shall include the following:

- (1) The time, date, place, and nature of the hearing;
- (2) A reference to this article;
- (3) A short and plain statement summarizing the incidents, which form the basis of the complaint;
- (4) A statement that "Failure to attend may result in an order being issued adverse to your property interests";
- (5) A statement that all parties may be represented by counsel;
- (6) A statement that all parties shall be given an opportunity to present evidence in support of their position, submit rebuttal evidence, and conduct cross-examinations; and
- (7) A conspicuous statement reflecting the requirements of Chapter 286, Florida Statutes, that a person deciding to appeal any decision of the Nuisance Abatement Board will need to ensure that a verbatim record of the proceedings is made.

(d) Meetings of the Nuisance Abatement Board may be scheduled by the Chair, by written notice signed by at least three (3) Board members, or by the Board at any meeting. All meetings shall be open to the public and minutes shall be kept and recorded.

Sec. _____ . – Conduct of hearing

- (a) The Nuisance Abatement Board shall adopt procedure rules for the conduct of its hearings generally consistent with the Florida Rules of Evidence. All hearings and proceedings shall be open to the public and minutes kept. All testimony shall be taken under oath and shall be recorded.
- (b) The Nuisance Abatement Board shall proceed to hear complaints on the agenda for the day scheduled for the public hearings. Before the Nuisance Abatement Board may hear a complaint, the Board shall make a finding that the notice requirements as set forth herein have been satisfied. In no case shall the Nuisance Abatement Board proceed to hear any complaint unless the notice requirements herein have been found to be satisfied.
- (c) The Florida Rules of Evidence shall not apply, but both substantive and procedural due process rights of the parties shall be preserved. The Nuisance Abatement Board may consider any evidence, including evidence of the general reputation of the place or premises, in its decision process. All evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs may be admissible, whether or not such evidence would be ordinarily admissible in a Florida Court under the Rules of Evidence.
- (d) Each party shall have the following rights:
- (1) To call and examine witnesses;
 - (2) To introduce documentary evidence, exhibits, or physical evidence;
 - (3) To cross-examine opposing witnesses on any relevant matter;
 - (4) To impeach any witnesses;
 - (5) To submit rebuttal evidence; and
 - (6) To be represented by counsel.
- (e) The owner of the place or premises in question may introduce evidence as to any remedial or mitigating measures taken to abate the conditions, which led to the illegal conduct (nuisances) on his/her premises.
- (f) All findings of the Nuisance Abatement Board shall be based upon the standard of a preponderance of the evidence. The Nuisance Abatement Board may rely on rebuttal evidence, impeachment evidence, or other relevant factors to the hearing. Hearsay evidence may be used for the purpose of

supplementing or explaining other evidence, but it shall not be sufficient in and of itself to support a finding of a public nuisance. The burden of proof shall be on the party bringing the complaint.

- (g) At the conclusion of the hearing, the Nuisance Abatement Board shall issue written findings of fact and its conclusions with respect to the issues brought before it by the LCSO or Town Nuisance Abatement Coordinator, or other designee.
- (h) If the Nuisance Abatement Board finds that on more than two (2) occasions, a place or premises was the site of an unlawful sale or delivery of controlled substances, prostitution, youth and street gang activity, illegal gambling, murder, attempted felony murder, aggravated battery with a deadly weapon, aggravated assault with a deadly weapon without intent to kill, or declared to be a nuisance under Sections 823.05 or 823.10, Florida Statutes, the Nuisance Abatement Board may find and declare the place or premises in question to be a public nuisance. Upon such declaration, the Nuisance Abatement Board may enter an order immediately prohibiting:
- (1) The maintaining of the nuisance;
 - (2) The operating or maintaining of the place or premises; or
 - (3) The conduct, operation, or maintenance of any business or activity on the premises, which is conducive to such nuisance.
- (i) An order of the Nuisance Abatement Board shall automatically expire on its terms after one (1) year, or at such earlier time as may be stated in the Order, or upon further action of the Nuisance Abatement Board.

Sec. _____ . – Costs and fines

- (a) In the event that the Nuisance Abatement Board finds a place or premises to be a public nuisance and issues an order as provided for herein, the Nuisance Abatement Board shall assess against the owner of the place or premises the reasonable costs which the town and Sheriff's Office incurred in the preparation, investigation, and presentation of the case.
- (b) The Nuisance Abatement Board may enter an order:

- (1) Imposing a fine not to exceed \$250 per day for each day that conduct occurred upon which the Board based its finding of a public nuisance; and/or
 - (2) Imposing a fine not to exceed \$500 per day for recurring public nuisance conduct occurring on the premises. A "recurring public nuisance conduct" means any additional instances of conduct after being found a public nuisance; and/or
 - (3) Imposing a fine not to exceed \$100 per day for each day the owner of the premises fails to comply with an order of the Board.
 - (4) The total fines imposed shall not exceed \$15,000 during the effective term of any order.
- (c) These costs and/or fines shall be due and payable thirty (30) days after the written order of the Nuisance Abatement Board has been filed or such other time as the Nuisance Abatement Board may direct. A certified copy of an order imposing costs and/or fines may shall be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists or, if the violator does not own the land, upon any other real or personal property owned by the violator; and it may be enforced in the same manner as a court judgment by the sheriffs of this state including levy against the personal property, but shall not be deemed to be a judgment of a court except for enforcement purposes. After one year from the filing of any such lien, which remains unpaid, the town may foreclose or otherwise execute on the lien. Interest shall accrue on the unpaid costs and/or fines at the rate of interest set forth in Section 55.023, Florida Statutes, as that section may be amended from time to time.

Sec. _____ . – Appeals

An aggrieved party may appeal a final order of the Nuisance Abatement Board to the Circuit Court of the Twentieth Judicial Circuit. Such an appeal shall not be a hearing de novo, but shall be limited to an appellate review of the record created before the Nuisance Abatement Board. Such appeal shall be filed within thirty (30) days of the date of the written order from the Nuisance Abatement Board. No appeal may be sought beyond the thirty (30) day filing time as set out herein.

Sec. _____ . - Enforcement

The Nuisance Abatement Board, with the approval of the Town Council, may direct the town attorney to bring a complaint under Section 60.05, Florida Statutes, seeking an injunction against any place, property or premises found to be a public nuisance in addition to, or for the purposes of enforcement of any order of the Nuisance Abatement Board. The Nuisance Abatement Board, with the approval of the Town Council, may additionally seek any other lawfully available relief as may be provided or permitted by law. Notwithstanding any other code section or law, a rental property that is declared a nuisance under this article may not be abated or subject to forfeiture under the Florida Contraband Forfeiture Act if the nuisance was committed by someone other than the property owner and the property owner commences rehabilitation of the property within 30 days after the property is declared a nuisance and completes the rehabilitation within a reasonable time thereafter.

Sec. _____ - Rights preserved

This article does not limit, restrict nor abridge the rights of any person to proceed under Section 60.05 of the Florida Statutes against any public nuisance, nor prohibits any jurisdiction from proceeding against a public nuisance by any other lawfully available means.

Section 3. The Town Council intends that the provisions of this ordinance be made a part of the Fort Myers Beach Code of Ordinances, and that sections herein may be renumbered or re-lettered and the words or phrases herein may be changed to accomplish codification; regardless, typographical errors that do not affect intent may be corrected with notice to and authorization of the Town Manager without further process.

Section 4. 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 5. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the ordinance as a whole, or any part thereof, other than the part so declared.

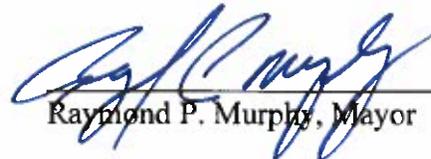
Section 6. This ordinance shall become effective upon adoption by the Town Council.

The foregoing Ordinance was adopted by the Town Council upon a motion by Council Member Allers and seconded by Council Member Atterholt, and upon being put to a roll call vote, the result was as follows:

Raymond P. Murphy, Mayor	nay
Rexann Hosafros, Vice Mayor	nay
Dan Allers, Council Member	aye
Jim Atterholt, Council Member	aye
Bill Veach, Council Member	aye

ADOPTED this 21st day of September, 2020 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH



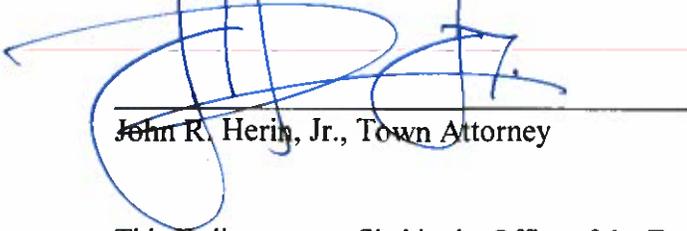
Raymond P. Murphy, Mayor

ATTEST:



Michelle D. Mayher, Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE AND RELIANCE OF THE TOWN OF FORT MYERS BEACH SOLELY:



John R. Herin, Jr., Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this 15 day of October 2020.