

TOWN OF FORT MYERS BEACH
ORDINANCE NO. 96-05

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH,
FLORIDA, TO BE KNOWN AS THE TOWN OF FORT MYERS
BEACH OPEN ALCOHOLIC BEVERAGE CONTAINER
ORDINANCE; PROVIDING AUTHORITY; TITLE AND
CITATION; DEFINITIONS; CONSUMPTION OR
POSSESSION OF ALCOHOLIC BEVERAGES ON A
SEMI-PUBLIC PARKING LOT, PUBLIC WAY PARKING
LOT, OR BEACH; EXEMPTIONS; SEVERABILITY;
REPEALING CLAUSE; AND EFFECTIVE DATE.

IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH, FLORIDA as follows:

SECTION ONE: 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 TWO: Title and Citation

This ordinance shall be known and cited as the "Town of Fort Myers Beach Open Alcoholic Beverage Container Ordinance"

SECTION THREE: Definitions

For the purpose of this Ordinance the following terms, phrases, words and their 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 include the singular and words in the singular include the plural. The words "shall" and "will" are mandatory and not discretionary.

A. "Alcoholic beverages" shall mean all beverages containing more than one percent (1%) of alcohol by weight.

B. "Semi-public parking lot" shall include any area wherein motor vehicles are parked by the public in conjunction with any business, enterprise, commercial establishment, office building, or apartment building.

C. "Package " shall include, but is not limited to, any can, bottle, carton, or other container of alcoholic beverages.

D. "Public beach" shall mean any beach which (1) is below the mean high water lines; or (2) is owned by the Town or Lee County; or (3) has arisen upon it a right of customary use by the public; or (4) has arisen upon it a public easement, prescriptive or otherwise; or (5) is the fore shore of tidal navigable waters, that is the land

between the high and low water marks, and is owned by the State of Florida.

SECTION FOUR: Consumption or Possession of Alcoholic Beverages on a Semi-public Parking Lot, Public Way Parking Lot, or Beach

It shall be unlawful and punishable as provided herein to:

A. Drink or consume any alcoholic beverage on a semi-public parking lot, or a public street, sidewalk, parkway, beach, or parking lot located in the Town of Fort Myers Beach.

B. Transport, carry, or possess any alcoholic beverage, except in the original package and with the seal unbroken, on a semi-public parking lot, or a public street, sidewalk, parkway, beach, or parking lot located in the Town of Fort Myers Beach.

C. Possess an open container of an alcoholic beverage while operating a vehicle or while a passenger in or on a vehicle being operated.

SECTION FIVE: Exemptions

This ordinance shall not apply to:

A. Any person engaged in picking up empty beverage containers for the purpose of collecting the deposit or value of the bottle or can itself, nor to any person taking part in a litter control campaign;

B. The transportation of any open container of alcoholic beverage by any licensed distributor or licensed vendor of alcoholic beverages provided that such alcoholic beverage is being transported solely for commercial purposes;

C. Any wine in the possession of a minister, pastor, priest or rabbi which is to be used solely during religious services;

D. The transportation of any open container of alcoholic beverage in any motor vehicle provided that such container is in a compartment of the vehicle such as a locked glove compartment, trunk, container or other non-passenger area of the motor vehicle;

E. Any carrier which has a valid license to sell alcoholic beverages issued by the State of Florida.

SECTION SIX: Penalty

Any person convicted of violation of SECTION THREE, Subsection A. or B. of this Ordinance shall be punished by a fine not to exceed Five Hundred Dollars (\$500.00) or by imprisonment in the County Jail for a period not to exceed sixty (60) days, or both, such fine and imprisonment for each such offense.

Any person who violates any of the provisions of SECTION THREE, Subsection C. of this ordinance shall be guilty of a non-criminal moving traffic violation as provided by Florida Statute Section 316.193.

SECTION SEVEN: Severability

If any one of the provisions of this ordinance should be held contrary to any express provision of law of contrary to the policy of express law, although not expressly prohibited, or against public policy, or shall 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 affect the validity of all other provisions of this ordinance.

SECTION EIGHT: Repealing Clause

All ordinances or parts thereof in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

SECTION NINE: Effective Date

This ordinance shall become effective September 30, 1996.

The foregoing ordinance was enacted by the Town Council upon a motion by Council Member CERECEDA and seconded by Council Member Reynolds and, upon being put to a

vote, the result was as follows:

Anita T. Cereceda	<u>aye</u>
Ted FitzSimons	<u>aye</u>
William (Rusty) Isler	<u>aye</u>
Garr Reynolds	<u>aye</u>
Ray Murphy	<u>aye</u>

DULY PASSED AND ENACTED this 1st day of July, 1996.

ATTEST:

By: Marsha Segal-George
Marsha Segal-George, Town Clerk

TOWN OF FORT MYERS BEACH

By: Anita T. Cereceda
Anita T. Cereceda, Mayor

Approved as to form by:

Richard V.S. Roos
Richard V.S. Roos, Town Attorney