

TOWN OF FORT MYERS BEACH  
ORDINANCE NO. 96-13

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH  
FLORIDA, TO BE KNOWN AS THE TOWN OF FORT MYERS  
BEACH LOT MOWING ORDINANCE PROVIDING  
AUTHORITY; TITLE AND CITATION; DEFINITIONS;  
NUISANCE DECLARED; PROHIBITIONS; DESIGNATION  
OF INVESTIGATING AND ENFORCING AUTHORITY;  
PROCEDURE FOR IMPLEMENTATION; BUDGET OF FUNDS;  
CIVIL REMEDIES; 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 Lot Mowing 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. Acreage: for the purpose of the Ordinance, shall mean any tract or parcel of land more than one (1) acre in size.

B. Adjacent Property: shall mean the property immediately adjoining or contiguous to property that is subject to review under this Ordinance.

C. Council: shall mean the Town Council of the Town of Fort Myers Beach.

D. Building: shall mean any structure as defined within the Standard Building Code, Section 201.2. The word "building" includes the word "structure".

E. Town Manager: shall mean the Town Manager of the Town of Fort

Myers Beach, or such designee as may be appointed to carry out the administration and enforcement of this Ordinance.

F. **Developed Property:** shall mean any property which has been improved and is in use for Residential, Commercial, Industrial, Public or Quasi-Public purposes.

G. **Lot:** shall mean any tract or parcel of land one (1) acre or less in size.

H. **Nuisance Grasses and Weeds:** shall mean grasses and weeds which are not regularly cared for and maintained, which exceed sixteen (16) inches in height.

I. **Owner:** shall mean any holder of a recorded fee or leasehold interest in land.

J. **Urban Service Areas:** shall mean those Land Use categories designated in the Town Land Use Regulations.

#### SECTION FOUR: Nuisance Declared

It is hereby declared and determined that grasses and weeds in excess of sixteen (16) inches in height and covering more than fifty percent (50%) of the unimproved lot area, which impair the economic welfare of property, contribute a fire hazard, or create a health hazard shall constitute a nuisance when any part of said growths are located within one hundred fifty (150) feet of the boundary of any developed adjacent property in the Town. When nuisance vegetation is located on acreage, only that part of the growth located within one hundred fifty (150) feet of a Residential, Commercial, or Industrial, Public or Quasi-Public use shall constitute a nuisance.

#### SECTION FIVE: Prohibitions

No person, firm, partnership, corporation, trust or estate, nor any other business entity shall permit nuisance grasses and weeds as defined in this ordinance, to exist within the Town.

#### SECTION SIX: Designation of Investigating and Enforcing Authority

The Town Manager is hereby designated as the investigating and enforcing authority of the provisions of this Ordinance. The Town Manager is hereby directed and empowered to inspect land on which a nuisance is suspected to exist, to receive all complaints of violations of this Ordinance and to enter upon real property in the conduct of official business pursuant to this Ordinance. The Town Manager shall be responsible for providing all notices to affected property owners required by this Ordinance and to take such other action as is reasonably necessary to accomplish the purpose of this Ordinance.

**SECTION SEVEN: Procedure for Implementation**

Any property owner who maintains a nuisance on property as described in this Ordinance, shall be required to remove said nuisance by mowing that portion of the land covered by nuisance grasses and weeds.

A. The Town Manager shall inspect lands where a nuisance is suspected to exist. In the event inspection reveals nuisance grasses and weeds, the Town Manager shall notify the record owner(s) by registered or certified mail, return receipt requested, and physically post a notice on the property which states that a nuisance exists. The notice shall demand that the owner remedy the condition or file a Notice of Appeal with the Town Manager. Notice shall be mailed to the address of the owner(s) found in the Lee County public records and tax rolls. The owner shall have ten (10) days from the date the Notice of Violation is received to abate the nuisance. For the purposes of this ordinance, the owner shall be deemed to have received notice on the tenth working day after the notice is placed in the United States Mail, certified and return receipt requested. In addition, evidence that notice has been mailed as provided in this section shall be sufficient to show that the notice requirements of this section have been satisfied, without regard to whether or not the property owner actually received such notice. The form of the Notice of Violation shall be as follows:

**FIRST NOTICE OF VIOLATION**

DATE OF MAILING:  
TO:  
ADDRESS:  
PROPERTY:

As the Owner of the above-described property, you are hereby notified that a nuisance exists upon such property, contrary to the Lee County Lot Mowing Ordinance. The nuisance consists of grasses and weeds in excess of sixteen (16) inches in height which cover more than fifty percent (50%) of the above-described property.

You are hereby ordered to abate the nuisance by mowing the grasses and weeds within ten (10) days of receipt of this Notice. Upon your failure to abate this nuisance, the Town Manager shall order abatement thereof and at that time County employees, servants, agents or contractors will enter upon your property and abate the nuisance. The cost of such abatement will be levied as an assessment against your property. Thereafter, the Town Manager shall prepare an assessment bill for the entire cost of abatement.

If you wish to contest this Notice of Violation, you may appeal to the Town Manager. Requests for appeal must be made in writing and should be directed to the Administrator within five (5)

days of receipt of this Notice. All decisions of the Town Manager shall be final.

A second notice will contain an invoice detailing the costs incurred by the County to abate the nuisance on your property along with a request for payment of these costs within thirty (30) days of the date of the notice. In the event this invoice is not paid in full within thirty (30) days, an assessment lien will be placed against your property.

The assessment is created by a resolution signed by the Mayor and includes the cost to abate the nuisance and associated administrative costs. Under the resolution, the Town will be entitled to collect interest on the unpaid balance of the assessment at the rate of 12% per year for the life of the lien. Upon execution of the resolution, the Town Manager will cause a certified copy of the resolution to be recorded in the official public records of Lee County, Florida. You should understand, that once this resolution is recorded it constitutes a special assessment lien against your property that will remain until it is paid. This means that any subsequent transfer, sale or other disposition of the property will be affected or otherwise be encumbered by this lien. Further, you should also be aware that the Town has the power to enforce any assessment, together with this accumulated interest thereon, by civil action, including but not limited to, foreclosure of the lien.

All questions and requests for appeals shall be directed to the Town Manager, Town Hall, 2523 Estero Boulevard, Fort Myers Beach, Florida 33931.

B. Within five (5) days of receipt of the First Notice of Violation by mail on posting, the owner(s) of the property may make a written request to the Town Manager for a hearing to demonstrate that the condition alleged in the notice does not exist or that such a condition does not constitute a nuisance. All decisions of the Town Manager shall be final.

C. At the expiration of the ten (10) day period, the Town Manager shall re-inspect the described premises to ascertain whether or not the nuisance has been abated. Should the Town Manager determine that the condition of the subject parcel remains a nuisance as defined in this Ordinance, the Town Manager is authorized to enter upon the property and take such steps as are reasonably necessary to effect abatement. The Town Manager is also authorized to abate the nuisance if reasonable attempts to notify the owner(s) have failed.

D. After abatement by the Town Manager, the Town Manager shall prepare an assessment bill which includes the name of the owner(s), a description of the affected parcel, and a brief description of services rendered including administrative and operating expenses incurred in abating the nuisance. The Town Manager shall send this

information by regular mail to the owner(s). The notice shall demand payment of the assessment within thirty (30) days of mailing; and shall provide that, if the assessment bill is not paid as directed, the Town will place a lien against the property. Interest on said lien shall accrue at a rate of twelve percent (12%) per annum on the unpaid balance of the assessment. The notice shall state that at the time and place mentioned (not less than thirty (30) days from the date of mailing of said notice ), the Council, shall adopt a Resolution which shall levy a special assessment lien in the full amount of such costs listed against the assessed properties. Such Resolution shall describe the property and show the cost of abatement. After the Assessment Resolution has been adopted, a certified copy of the Resolution shall be recorded in the Official Records of Lee County. The Special Assessment Lien shall become effective and due and payable to the Town on the date the Resolution is recorded by the Clerk of the Circuit Court, and such recordation shall serve as constructive notice of the existence of said lien. Until payment is complete, such assessment shall be a legal, valid and binding obligation on the property.

SECOND NOTICE AND INVOICE

RE: PROPERTY STRAP NO. and SUBDIVISION/STREET  
INVOICE NO.:  
REFERENCE NO.:\*

CONTRACTOR REIMBURSEMENT	\$
CERTIFIED MAIL REIMBURSEMENT	\$
ADMINISTRATIVE REIMBURSEMENT	\$

As the Owner of Record of the above-described property you were notified on (date) that a nuisance existed on your property contrary to the Town of Fort Myers Beach Lot Mowing Ordinance. At that time, you were ordered to abate the nuisance within ten (10) days of receipt by mail, or risk the imposition of an assessment lien against the property for the full cost of abatement to the Town.

Since the violation was not abated in a timely fashion, the Town Manager took steps necessary to abate the nuisance.

At the present time there is an impending assessment lien which shall accrue interest at a rate of twelve percent (12%) per annum on any unpaid balance if not paid within thirty (30) days from the date this notice was mailed.

If full payment has not been received by the Town, the Town Council will adopt a resolution which shall levy a special assessment lien against the property. The assessment lien will be a legal, valid and binding obligation. Once recorded, the assessment lien shall run with the land and must be satisfied upon

sale, transfer or any other disposition of the property. This assessment together with interest thereon, may be enforced by civil action in a Lee County Court of appropriate jurisdiction.

It is hereby requested that you immediately pay such assessment to the Town Hall, 2523 Estero Boulevard, Fort Myers Beach, Florida 33931 (941) 765-0202.

\* please use this reference number in all correspondence.

#### SECTION EIGHT: Budget of Funds

Mowing of lands as set forth herein is declared to be for a municipal purpose and the Town Manager is authorized to budget in order to set up funds for the carrying out of the purposes of this Ordinance.

#### SECTION NINE: Civil Remedies

The Council may institute in any court, or before any administrative board of competent jurisdiction, action to prevent, restrain, correct or abate any violation of this Ordinance or of any order or regulations made in connection with its administration or enforcement, and the court or administrative board shall adjudge to the Plaintiff such relief by way of injunction or any other remedy allowed by law or otherwise, to include mandatory injunction, as may be proper under all the facts and circumstances of the case in order to fully effectuate the regulations adopted and orders and rulings made pursuant thereto.

#### SECTION TEN: 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 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 ELEVEN: 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 TWELVE: 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 MURPHY 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 29th 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. Roosa  
Richard V.S. Roosa, Town Attorney