

TOWN OF FORT MYERS BEACH  
ORDINANCE NO. 96-14

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH  
FLORIDA, TO BE KNOWN AS THE TOWN OF FORT MYERS  
BEACH TRANSIENT MERCHANT REGULATION ORDINANCE  
PROVIDING AUTHORITY; TITLE AND CITATION;  
DEFINITIONS; EXEMPTIONS; PROHIBITION;  
APPLICATION FOR PERMITS; CONTENTS; FEE; PERMIT  
NOT TRANSFERABLE; BOND REQUIRED; SERVICE OF  
PROCESS; BACKGROUND INVESTIGATION; ISSUANCE OR  
DENIAL; REVOCATION OF PERMIT; EXPIRATION OF  
PERMIT; DISPLAY OF PERMIT; PENALTY;  
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 Transient Merchant Regulation 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. "Person" shall include any individual, firm, association, corporation or partnership.

B. "Transient Merchant" means any person who engages in the temporary business of selling, offering for sale or exhibiting for sale any goods, wares or merchandise within the Town from any motor vehicle, wagon, truck or trailer, or hires, leases, uses or occupies any hotel or motel room, or any lot or parcel of land through or from which any goods, wares or merchandise, whatever type, form or characteristic, may be sold, offered for sale or exhibited for sale.

C. "Temporary" shall mean any continuous selling, exhibiting or offering for sale of goods within the meaning of this Ordinance for less than one year's duration.

#### SECTION FOUR: Exemptions

Excluded from the provisions of this Ordinance are:

A. Any person who is a precious metal dealer as defined in Florida Statutes 538.03.

B. Any person who is a peddler or hawker as defined in Lee County Code of Laws and Ordinance Article IV Hawkers and Peddlers sections 22-46 through 22-53 inclusive.

C. Salespersons representing wholesale houses or distributors who sell to local retail merchants.

D. Sales of goods or merchandise at festivals, fairs, celebrations, or other special events sponsored or Permitted by the appropriate governing body or authority.

E. Any business sponsored by or under contract with an established business, shopping mall or shopping center provided that such established business, shopping mall or shopping center agrees in writing to act as surety therefor for the period which said business contracts with or is sponsored by such established business, shopping mall or shopping center and 180 days thereafter.

F. Any bona fide charitable, religious, youth, scientific or educational organization when the organization engages in fund-raising projects for such bona fide charitable, religious, youth, scientific or educational purpose.

#### SECTION FIVE: Prohibition

A. It shall be unlawful for any person, whether through agent or employee, to engage in the business of a transient merchant in the Town of Fort Myers Beach without first securing a permit as required by this ordinance.

B. It shall be a violation of this ordinance to make any false statements in reference to the matter required of this ordinance.

C. No transient merchant shall sell, offer for sale or exhibit for sale, any goods, wares or merchandise on private property without the written consent of the owner or lessee and such consent shall be in the physical possession of the transient merchant.

D. No transient merchant shall sell, offer for sale or exhibit for sale, any goods, wares or merchandise on any property where such

use would constitute a violation of the Town Zoning Regulations.

E. No transient merchant shall sell, offer for sale or exhibit for sale, any goods, wares or merchandise on the right-of-way of any road, street or highway.

**SECTION SIX: Application for Permits; Contents; Fee**

Applicants for a permit under this Ordinance must file with the County Tax Collector, a sworn application in writing which shall provide the following:

A. Name and description of the applicant;

B. Permanent home address, full local address of the applicant and the location where applicant will conduct business in the Town. Applicant shall immediately inform the Town Manager of any change in the location of the business within Town;

C. If not self-employed, the name and address of the employer, together with credentials showing authority to represent the employer;

D. The last three places, other than the permanent place of business of the applicant where applicant conducted a transient business, stating the nature thereof and giving the post office and street address of any building or office in which such business was conducted;

E. The length of time for which the right to do business is desired;

F. A statement of the nature, character and quality of the goods, wares or merchandise to be sold or offered for sale by applicant in the Town, whether the same are proposed to be sold from stock in possession or by taking orders for future delivery; and where such goods or products are located at the time said application is filed; and whether or not the goods, wares or merchandise to be sold or offered for sale are covered by any warranties to the consumer, what type of warranty and from whom the warranty runs;

G. A brief statement of the nature and character of the advertising done or proposed to be done in order to attract customers, and, if required by the Lee County Tax Collector, copies of all said advertising whether by handbills, circular, newspaper advertising, or otherwise, shall be attached to said application as exhibits thereto;

H. A photograph of the applicant, taken within sixty (60) days immediately prior to the date of the filing of the application, which picture shall be two inches by two inches (2" x 2") showing the face and shoulders of the applicant in a clear and

distinguishing manner;

I. The fingerprints of the applicant and the names of at least two (2) reliable property owners of Lee County who will certify as to the applicant's good character and business respectability, or in lieu of the names of references, such other available evidence as to the good character and business responsibility of the applicant as will enable an investigator to properly evaluate such character and business responsibility;

J. A statement as to whether or not the applicant or a person having the management or supervision of the applicant's business has been convicted of any crimes or misdemeanors, the nature of the offense and the punishment assessed therefor; and

K. If the business involves the sale of food, proof of an operating permit from the Lee Public Health Unit must be presented before the issuance of a permit under this ordinance.

L. A non-refundable application fee for the obtaining of a transient merchant permit will be charged to the applicant and paid at the time of the application. The fee will be set by resolution of the Town Council. Such fee is hereby declared to be necessary for the purpose of processing the application and for the administration of this ordinance.

**SECTION SEVEN: Permit not transferable**

No permit issued under this Ordinance shall be transferable nor shall such permit authorize any other person to engage in the business of transient merchant other than the person to whom it was issued.

**SECTION EIGHT: Bond required**

Before any permit shall be issued for engaging in a transient business, every applicant not a resident of Lee County or though a resident of Lee County who represents a person whose place of business is located outside Lee County, shall file with the Tax Collector a surety bond payable to the Town for the use and benefit of Town and any other person or persons entitled thereto, in the amount of Five Thousand Dollars (\$5,000.00), with a surety acceptable to and approved by the Tax Collector and conditioned that the principal and surety will pay all damages to persons caused by, or arising from or growing out of, the wrongful, fraudulent, or illegal conduct of the transient merchant while conducting the sale or offer for sale in the Town.

**SECTION NINE: Service of Process**

Before any permit shall be issued for engaging in the business of transient merchant, such applicant shall file with the Lee

County Tax Collector, an instrument nominating and appointing the Lee County Tax Collector to acknowledge service of notice of process for and on behalf of said applicant in respect to any matters connected with or arising out of the business transacted under said permit and the bond given as required by this Ordinance, or for the performance of the conditions of said bond. This appointing instrument shall include recitals to the effect that the applicant consents and agrees that service of any notice or process may be made on said agent, and when so made shall be taken and held to be as valid as if personally served upon the person applying for the permit according to the law of this or any other state, and waiving all claim or right of error by reason of such acknowledgment of service or manner of service. Immediately upon service of process upon the Lee County Tax Collector, as herein provided, the Lee County Tax Collector shall send to the permittee at his last known address, by registered mail, a copy of said process.

#### SECTION TEN: Background Investigation

Upon receipt of such application, the original application and the applicant shall be referred to the Lee County Sheriff. Upon the presentation of proper identification the applicant shall be finger printed to complete the application. Once the application is completed, the Sheriff shall conduct a background investigation of the applicant. Such investigation shall include the applicant's criminal record, if any.

#### SECTION ELEVEN: Issuance or Denial

Upon receipt of the completed application, the bond, approval from the Zoning Department, report from the Sheriff indicating no convictions of any crime or misdemeanor involving fraud or moral turpitude, and the processing fee, the Tax Collector shall issue to the applicant a permit.

Should the permit be denied, the applicant may request a hearing before the Town Council within fifteen (15) days after the denial.

#### SECTION TWELVE: Revocation of Permit

Any permit issued pursuant to this ordinance may be revoked by the Town Manager for any of the following causes:

- 1) Any violation of this ordinance;
- 2) Any fraud, misrepresentation or false statement made in connection with the selling of goods, wares, or merchandise;
- 3) Any fraud, misrepresentation or false statement contained in the application for permit;

4) Conviction of permittee of any felony or misdemeanor involving fraud or moral turpitude; or,

5) Conducting business permitted under this ordinance in an unlawful manner.

An applicant may request a hearing before the Town Council within fifteen (15) days after the Manager's action.

**SECTION THIRTEEN: Expiration of Permit**

All permits issued under the provisions of this Ordinance shall expire 1 year after the date of issuance unless a prior date is fixed therein.

**SECTION FOURTEEN: Display of Permit**

Any person engaging in the business of transient merchant shall prominently and conspicuously display on his person or the premises where the business is conducted, the permit issued pursuant to this Ordinance while engaged in such business.

**SECTION FIFTEEN: Penalty**

The failure of any person to comply with any of the provisions of this Ordinance shall be a second degree misdemeanor.

**SECTION SIXTEEN: 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 SEVENTEEN: 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 EIGHTEEN: 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 Murphy 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:

TOWN OF FORT MYERS BEACH

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

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

Approved as to form by:

Richard V.S. Roosa  
Richard V.S. Roosa, Town Attorney