

ORDINANCE No. 97- 11

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, TO BE KNOWN AS THE TOWN OF FORT MYERS BEACH REMOVAL OF NUISANCE ACCUMULATIONS ORDINANCE; PROVIDING AUTHORITY; TITLE AND CITATION; PURPOSE, INTENT AND SCOPE; DEFINITIONS; NUISANCE; ACCUMULATIONS ON PRIVATE PROPERTY; PENALTIES; SEVERABILITY; CONFLICTS AND 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, Chapter 166, Florida Statutes, and other applicable provisions of law.

SECTION 2. TITLE AND CITATION. This Ordinance shall be known and may be cited as the Town of Fort Myers Beach Removal of Nuisance Accumulations Ordinance.

SECTION 3. PURPOSE, INTENT AND SCOPE. The purpose of this ordinance is to provide an effective procedure to promptly notify landowners of the existence of nuisance accumulations of abandoned or lost personal property, trash, rubbish, refuse, or garbage located on their personal property. This ordinance is intended to direct and provide for the removal of nuisance accumulations on private property in a timely manner to preserve the health, safety and welfare of the citizens of Fort Myers Beach and to preserve and enhance the aesthetic value of the Town.

SECTION 4. DEFINITIONS. For purposes of this ordinance, the terms listed below shall have the following meanings unless otherwise specifically stated. When not inconsistent to the context, words used in the present tense include the future, words in the plural include the singular and words in the singular number include the plural. The word "shall" is always mandatory and not merely discretionary.

(1) LOST PROPERTY - means all tangible personal property which:

- (a) Does not have an identifiable owner: and
- (b) Is in a substantially operable, functioning condition or which has an apparent intrinsic value to the rightful owner: and
- (c) Has been mislaid on private property.

(2) GARBAGE - means any accumulation of animal, fruit or vegetable waste resulting from the preparation, use, cooking, processing, handling, sale, consumption, serving or storage of meats, fish, fowl, fruits, vegetables other matter which is subject to decomposition, decay, putrefaction or the generation of noxious or offensive gases or

odors, or which, during or after decay, may serve as breeding or feeding materials for insects and animals.

(3) ABANDONED PROPERTY - means all tangible personal property, which does not have an identifiable owner and which, has been disposed of on private property in a wrecked, inoperative or partially dismantled condition or which has no apparent intrinsic value to the rightful owner.

(4) PUBLIC PROPERTY - means lands and improvements owned by the Federal Government, the state, county, or a municipality and includes sovereignty submerged lands located adjacent to the county, buildings, grounds, parks, playgrounds, streets, sidewalks, parkways, rights-of-way, and other similar property.

(5) NUISANCE ACCUMULATIONS - means garbage, refuse, trash, rubbish or abandoned or lost property which is located on private property where the Fort Myers Beach Land Development Code does not permit disposal of such items and dense vegetative growth on vacant platted lots lying between dwelling units.

(6) PRIVATE PROPERTY - means privately owned lands and improvements to land located within the Town of Fort Myers Beach.

(7) REFUSE - means a combination of rubbish and garbage.

(8) RUBBISH - means any solid waste accumulation of metal; metal products, minerals, and chemicals, rocks, building rubble, cement, asphalt, tar, oil, grease, glass, crockery, and rubber, rubber tires, bottles, cans, lumber, sawdust, or other waste materials.

(9) TRASH - means an accumulation of materials which does not meet the definitions of "abandoned property", "lost property", "garbage", "refuse" or "rubbish" and which may have some real or perceived value to the owner of private property upon which it is located but which constitutes by its existence a nuisance in that it devalues the underlying or adjacent property, creates a public nuisance, nuisance per se, or attractive nuisance as defined by law, or threatens the public health, safety and welfare.

SECTION 5. NUISANCE; ACCUMULATIONS ON PRIVATE PROPERTY.

(1) Nuisance Declared. The Town Council hereby declares that nuisance accumulations on private property shall constitute a public nuisance, subject to immediate abatement as provided by this ordinance or by any other, remedy in law or equity, if:

(a) The nuisance accumulation impairs the economic value of the underlying or adjacent property, creates a danger to the public health, safety and welfare, constitutes an attractive nuisance as defined by law, or creates a fire hazard; and

(b) The accumulation is not made as a part of a regularly scheduled garbage removal program or service, and;

(c) The private property is not:

(i) A legally permitted junkyard, automobile wrecking, or wrecking yard or sanitary landfill as defined and regulated by the Fort Myers Beach Land Development Code or any other applicable ordinance or;

(ii) Zoned or permitted by special permit or variance to allow such nuisance accumulations.

(2) Investigating and Enforcing Authority. The Town Manager or his or her designated employee or contractor, hereinafter referred to as Manager, is empowered to investigate and enforce the provisions of this ordinance in regard to the disposition of nuisance accumulations on private property. The Manager is hereby directed and empowered to inspect private property where a nuisance is suspected to exist and to receive all complaints of a violation of this section. The Manager is responsible for providing notice to all landowners affected by operation of this section and shall take any other action necessary to enforce this ordinance.

(3) Abatement Procedure. When the Manager has determined that a violation of this ordinance exists, the owner of the underlying private property shall immediately remove and properly dispose of the nuisance.

(a) The Manager is empowered to inspect lands, within the parameters of law, on which a nuisance or violation of this ordinance is suspected to exist. In the event Town inspection reveals the presence of a nuisance, the Manager shall notify the property owner or owners of record by registered or certified mail, return receipt requested, of the violation. When notice by mail would not be effective, the Manager shall provide notice of the violation by hand delivery or any other legally cognizable method of providing notification. If mailed, notice shall be sent to the last available address of the owner or owners of record as found in the Lee County public records and tax rolls. The notice shall advise the owner of the right to a hearing. If notice is provided by mail or hand delivery, the owner shall have twenty-one (21) days from the date notice is received to abate the nuisance by removal and proper disposal or request a hearing as provided in paragraph (4) Hearing. The owner shall have twenty-one (21) days from the last date of publication if notice is provided by publication to abate the nuisance by removal and proper disposal or request a hearing as provided in paragraph (4) Hearing.

(b) Upon expiration of the twenty-one day period, the Manager shall re-inspect the described premises. If the Manager determines that the subject parcel of land still has not been properly cleared or that the nuisance accumulation has not been properly disposed of after the owner has been notified of the violation as provided above, then the Manager may forthwith abate the nuisance. In addition to or in lieu of abatement the Manager may, at the Manager's sole election, seek imposition of the civil and criminal penalties against the owner set forth in Section Six of this ordinance. The Manager's election to abate a

nuisance as provided herein shall not act to bar from also seeking the imposition of penalties.

(c) If the Manager elects to abate the nuisance, the Manager shall, through agents or contractors, be authorized to enter upon the property and take such steps as are reasonably necessary to abate the nuisance. However, the Town shall not be required or obligated to have any parcel of land cleared.

(i) As soon after abatement as feasible, the Town's cost to clear the parcel and properly dispose of the nuisance accumulation, including administrative and operating costs, shall be calculated and reported by the Manager to the Town Council.

(ii) A bill representing the entire cost of abatement shall be prepared and forwarded to the owner at the owner's last known address. The bill shall provide full detail of the services rendered and costs incurred in abating the nuisance. The bill shall demand payment within twenty-one (21) days of the date the bill is mailed. Upon expiration of the twenty-one (21) day grace period, the Manager shall submit a list of all unpaid bills for the abatement of nuisance accumulations to the Town Council. Thereupon, the Town Council may, by resolution, levy a special assessment lien in the amount of the full cost incurred against such parcel. Such resolution shall describe the land and show the total cost of abatement. Until payment is completed, the assessment shall be a legal, valid and binding obligation upon the property. A base assessment amount is established and set to coincide with and copy the Lee County Administrative Code and is hereby declared to be necessary for the purpose of inspection, administration and enforcement of this section.

(iii) As soon as possible after the assessment has been made by resolution of the Town Council, a certified copy of the resolution shall be recorded in the official records in the office of the Clerk of the Circuit Court in and for Lee County, Florida. The special assessment lien shall become effective and the assessment due and payable to the Town on the date a copy is recorded by the Clerk of the Circuit Court. Following recording the Town Clerk shall mail a Notice of Assessment to the owners last known address. Thirty (30) days after the date of mailing of the Notice of Assessment by the Town Clerk, interest shall begin to accrue at the rate of twelve percent (12%) per annum on the unpaid balance of the assessment. The assessment lien shall run with the land and shall be satisfied upon sale, transfer, or any other disposition of the property subject to the lien. Any assessment together with interest thereon may be enforced by civil action in the appropriate Lee County court of appropriate jurisdiction. Liens shall continue in full force from January 1, of the year the assessment was levied until discharged by payment.

(iv) The Manager shall mail a second notice to the last known address of the record owner or owners of each parcel of land described in the resolution, by certified mail, return receipt requested. The notice shall be in substantially the following form:

NOTICE

TO: _____

Address: _____

Property: _____

Date of Mailing: _____

As the record owner of the property above described, you are hereby advised that the Town Council, through the Manager, did on the ____ day of _____, 19__, order the abatement of a certain nuisance existing on your property described above. You were previously sent notice that the nuisance consisted of:

(here describe briefly)

You failed to abate the nuisance: It was therefore abated by the Town of Fort Myers Beach at a cost of \$_____. Such cost plus an administrative and operating fee of \$_____ has been levied against the property described above by resolution of the Council and became a lien on the property described as of the date of recording the resolution in the public records of Lee County, Florida. Interest shall begin to accrue at the rate of twelve (12%) percent per annum thirty (30) days from the date the Town Clerk mails you notice of the assessment. To avoid additional expense, you should immediately pay such assessment to the Town at the Town Hall.

Town of Fort Myers Beach, Florida

By: _____

Mayor

(4) Hearing. Within twenty-one (21) days after the date the initial notice of a nuisance is:

- (a) Received by the owner, if notice is mailed or hand-delivered. or;
- (b) Within twenty-one (21) days of the last date of Publication if notice is provided by publication; the owner of the property may request a hearing to show that the condition alleged in the notice does not exist or that such condition does not constitute a nuisance. All requests for hearings shall be in writing and shall be directed to the Manager. Notice of the right to such hearing shall be included in the initial notice of a nuisance accumulation Provided to the landowner. Failure to request a hearing or to timely appear for the hearing when scheduled shall be deemed a waiver of the land owner's right to a hearing. The Manager shall give the landowner seeking a hearing written notice of the date and location of the scheduled hearing. All initial hearings shall be before the Town Council. At the hearing, the Town and the property owner may introduce such evidence as is deemed necessary. All decisions of the Town Council with regard to this section

shall be final. Appeals of a Council decision shall be to Circuit Court. Any appeal shall be filed within thirty (30) days of the date the Council renders judgment. Following expiration of the thirty-day appeal period, the Manager may proceed to abate the nuisance or seek the imposition of penalties as directed by the Council and provided below.

(5) Budget of Funds. Clearing of accumulations from private lands as set forth herein is declared to be for a Town purpose and the Council is authorized to budget in order to set up funds for the carrying out of the purposes of this ordinance. Funds received by the Town under the terms of this ordinance shall be deposited in the general fund of the Town.

SECTION 6. PENALTIES. Any person, organization, society, association or corporation, or any agent or representative thereof, who violates any provisions of this ordinance shall, upon conviction, be subject to the following penalties:

(1) Criminal Penalties

- (a) A fine not to exceed Five Hundred Dollars (\$500.00) per day; or
- (b) Imprisonment in the County Jail for a term not exceeding sixty (60) days; or
- (c) By both a fine and imprisonment.

(2) Civil Penalties

- (a) The Town shall be entitled to injunctive relief to enjoin and restrain any person from violating the provisions of the ordinance; and
- (b) Prosecution before the Lee County Code Enforcement Board pursuant to current executed interlocal as between the Town and Lee County.
- (c) Any other relief available pursuant to law. Each day that a nuisance accumulation continues to exist after the expiration of the twenty-one (21) day grace period from the date the notice was received or the last date of publication (if notice was published) shall constitute a separate offense, punishable as Provided above.

SECTION 7. SEVERABILITY. It is declared to be the legislative intent that if any section, subsection, sentence, clause or provision of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate provision and the remaining provisions of this Ordinance shall not be affected. It is hereby declared to be the legislative intent of the Town Council that this ordinance would have been adopted had such unconditional provision not been included therein.

SECTION 8. CONFLICTS. 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 requirements shall apply.

SECTION 9. EFFECTIVE DATE. This ordinance shall become effective immediately upon its adoption.

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>yes</u>
Ted FitzSimons	<u>absent</u>
William (Rusty) Isler	<u>yes</u>
Garr Reynolds	<u>yes</u>
Ray Murphy	<u>yes</u>

DULY PASSED AND ENACTED this 8th day of September, 1997.

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