

TOWN OF FORT MYERS BEACH  
ORDINANCE NO. 08-13

AN ORDINANCE TO BE KNOWN AS THE TOWN OF FORT MYERS BEACH EMERGENCY PREPAREDNESS FUND ACCESS ORDINANCE; PROVIDING FOR ACCESS TO EMERGENCY PREPAREDNESS FUND UPON DECLARATION OF STATE OF EMERGENCY OR UPON AFFIRMATIVE VOTE OF SUPERMAJORITY OF TOWN COUNCIL; PROVIDING FOR CONFLICT, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, Article VIII, Section 2 of the State Constitution and Chapter 166 of the 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 services, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Section 166.241(2), Florida Statutes provides that the governing body of the municipality must adopt a budget each fiscal year and such budget must regulate expenditures of the municipality; and

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

WHEREAS, the entire incorporated area of the Town is located within an area of Coastal High Hazard as defined in Section 163.3178, Florida Statutes and, as such, all life and property within the Town is especially vulnerable to destruction caused by hurricanes, high wind, tropical storms, tornadoes or other natural or man-made disasters; and

WHEREAS, the Town is also vulnerable to harm from a wide range of other natural and man-made emergencies which may or may not constitute disasters; and

WHEREAS, it is fiscally prudent for the Town to establish and maintain an Emergency Preparedness Fund within the Town budget, which Fund is available for bona fide Town emergencies as declared by the Town Council; and

WHEREAS, it is also fiscally prudent for the Town to have access to the Emergency Preparedness Fund for other extraordinary reasons, so long as such access is restricted by the requirement of a supermajority affirmative vote of Town Council; and

WHEREAS, the measures set forth in this Ordinance are necessary to provide for the protection of public health, safety, and welfare and to preserve the lives and property of the people of the Town.

NOW, THEREFORE, IT IS ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AS FOLLOWS:

**Section 1. Incorporation of Whereas Clauses** The above "Whereas" clauses are incorporated herein as findings of fact and citations of legal authority, as applicable.

**Section 2. Access to Emergency Preparedness Fund Upon Town Declaration of State of Emergency.** The Town shall have ~~unrestricted~~ access to the Emergency Preparedness Fund ~~for any purpose~~ upon the Town Council's passage of a Resolution declaring a state of emergency within the Town. Restrictions, if any, on the Town's usage of such funds shall be set forth in the annual resolution referenced in section 4 below.

**Section 3. Access to Emergency Preparedness Fund Upon Supermajority Vote of Town Council.** The Town shall have unrestricted access to the Town Emergency Preparedness Fund for any purpose upon an affirmative vote of a supermajority of Councilmembers in any regular or special Town Council meeting. Supermajority for purposes of this ordinance shall be defined as affirmative vote of four (4) Councilmembers.

**Section 4. Implementation of Ordinance By Annual Resolution.** In order to implement the provisions of this Ordinance, a Town Resolution shall be passed each year in conjunction with passage of the annual Town Operating and Capital Improvement Budgets. The Resolution shall specify the total final funding of this reserve for the upcoming budget year; the methodology for rebuilding the initial amount of this fund during the course of the budget year if necessary; restrictions, if any, on the Town's usage of such funds, and such other specifics as Town Council may determine necessary for the upcoming funding year.

**Section 5. Repeal of Prior Ordinances, Conflict and Severability.**

A. All sections or parts of sections of any other Ordinance(s) and/or Resolution(s) of the Town in conflict herewith are hereby repealed to the extent of such conflict.

B. If any phrase or portion of this Ordinance is held invalid or unconstitutional by any court of competent jurisdiction, such invalidity will not affect the remaining provisions that can be implemented without the invalid provision, and, to this end, the provisions of this ordinance are declared to be severable.

**Section 6. Effective Date.** This Ordinance shall take effect immediately upon adoption by the Town.

The foregoing ordinance was enacted by the Town Council upon a motion by Council Member Babcock and seconded by Council Member List and, upon being put to a vote, the result was as follows:

Larry Kiker, Mayor     aye  
Tom Babcock           aye  
Bob Raymond          aye

Herb Acken, Vice Mayor     aye  
Jo List                    aye

DULY PASSED AND ENACTED this 3rd day of September, 2008.

TOWN OF FORT MYERS BEACH

BY: Larry Kiker  
Larry Kiker, Mayor

Approved as to legal sufficiency:

Anne Dalton  
Anne Dalton, Esquire  
Town Attorney

ATTEST:

Michelle D. Mayher  
Michelle D. Mayher, Town Clerk