

ORDINANCE 14-05

AN ORDINANCE AMENDING CHAPTER 34, ARTICLE I, IN THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE, "IN GENERAL" AMENDING SECTION 34-2, "DEFINITIONS" BY ADDING A DEFINITION FOR "ENCLOSED MERCHANDISE AREA", "PATIO" AND "PORCH;" AMENDING CHAPTER 34, ARTICLE III, DIVISION 5, SUBDIVISION II, "DOWNTOWN ZONING DISTRICT;" AMENDING SECTION 34-678, "OUTDOOR DISPLAY AND SALES OF MERCHANDISE AND FOOD;" BY DELETING AND REVISING VARIOUS REQUIREMENTS RELATING TO SIZE AND LOCATION OF OUTDOOR DISPLAY ITEMS; BY PROVIDING REGULATIONS FOR "ENCLOSED MERCHANDISE AREAS;" BY REVISING REQUIREMENTS FOR PORCHES AND PATIOS UTILIZED FOR OUTDOOR DISPLAY; AND BY PROVIDING REGULATIONS RELATING TO EXISTING NONCONFORMING OUTDOOR DISPLAY BUSINESSES; AMENDING CHAPTER 34, ARTICLE III, DIVISION 7, "COMMERCIAL DESIGN STANDARDS;" AMENDING SECTION 34-993, "DEFINITIONS;" BY DELETING THE DEFINITION OF "PORCH;" PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

Section 1. This Ordinance is enacted pursuant to the provisions of Chapter 95-494, Laws of Florida, Chapters 163 and 166, Florida Statutes and other applicable provisions of law.

Section 2. Adoption of Amendments to Chapter 34 of the Town of Fort Myers Beach Land Development Code. Chapter 34 of the Town of Fort Myers Beach Land Development Code, entitled "Zoning Districts, Design Standards and Nonconformities," is hereby amended as set forth in Exhibit "A," attached hereto and incorporated herein by reference. Entirely new language is indicated with underlining. Language being repealed from existing code is indicated with ~~strikethroughs~~. Existing language being retained is shown without underlining or ~~strikethroughs~~.

Section 3. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 4. Effective Date. This ordinance shall take effect immediately upon adoption by the Town Council.

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The foregoing Ordinance was adopted by the Town Council upon a motion by Councilmember Rexann Hosafros and seconded by Councilmember Summer Stockton and upon being put to a vote, the result was as follows:

Anita Cereceda, Mayor	Abstain	Dan Andre, Vice Mayor	Aye
Alan Mandel	Nay	Rexann Hosafros	Aye
Summer Stockton	Aye		

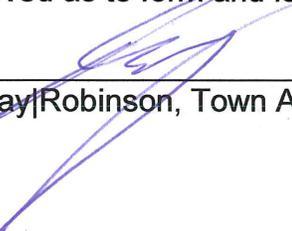
DULY PASSED AND ADOPTED THIS 17th DAY OF NOVEMBER 2014, BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH

By:   
Anita T. Cereceda, Mayor

ATTEST:

By:   
Michelle D. Mayher, Town Clerk

Approved as to form and legal sufficiency:

By:   
Gray Robinson, Town Attorney

## EXHIBIT "A"

### Section 34-2. *Definitions.*

**Enclosed merchandise area.** Enclosed merchandise area means that area within a conventional building including that area adjacent and accessory to a conventional building where the conventional building and adjacent area are under a common engineered roof and which area is secure from entry during non-operating hours. Securing the adjacent area by shutters and doors open to the air during operating hours is sufficient to qualify as enclosed merchandise area. The design of the adjacent areas shall be consistent with Land Development Code Commercial Design Standards Section 34-677.

**Patio** is an area covered with paver bricks, concrete, wood, or similar material and located at ground level immediately adjacent to the front of the building. Asphalt or earthen spaces are not considered a patio.

**Porch** is a wooden or concrete structure that is elevated off of the ground and has a railing at least 42 inches tall. A porch must be covered with an awning, roof, or umbrellas. Wood must be painted or stained.

### **Sec. 34-678. Outdoor display and sales of merchandise and food.**

(a) *Generally.* Merchandise, food, and beverages may be displayed or sold outdoors in the DOWNTOWN zoning district only in accordance with this section.

(b) *Purpose.* The purpose of these regulations is to enhance the pedestrian environment of the town's business district through the creative use of outdoor spaces by providing businesses the opportunity to display a sample of their products and to sell food and beverages in a manner that enhances the public realm, creates an interesting and comfortable shopping and dining district, and maintains and improves the town's sense of place and property values.

- (1) Outdoor display of merchandise allows retailers an opportunity to inform and interest the public by offering a small sample of the products that are available inside. Outdoor display can also be appropriate for small retail products that are meant to be used outside, such as garden ornaments, windsocks, and beach toys.
- (2) Outdoor display of merchandise is not intended to expand retail space or to assist in liquidating clearance or discarded items. The principal purpose of outdoor display in the DOWNTOWN district is to enliven sidewalks and pedestrian plazas by promoting pedestrian-oriented businesses, not to expand businesses or provide locations for freestanding businesses or for mobile vendors (which are regulated in § 34-3002).
- (3) ~~Restaurants are encouraged by this code to provide outdoor dining.~~ Outdoor dining may be permitted between a restaurant and a street, and is regulated by this section. The sale of alcoholic beverages outdoors is also regulated by state liquor laws and by § 34-1264 of this code.
- (4) See separate regulations for temporary outdoor displays during special events at § 34-2441 et seq.

(c) *Allowable locations for outdoor activities.* Table 34-4 summarizes the allowable locations for outdoor display of merchandise and outdoor dining in the DOWNTOWN zoning district.

Display Type	Location		
	PRIVATE PROPERTY (between store & street)	PUBLIC PROPERTY (Times Square pedestrian plaza & Old San Carlos)	
	On porch	On patio	see (f)(g)
<b>MERCHANDISE</b> , as further limited by other provisions of § 34-678:			
Vending carts — see (d)(1)	no	YES <u>no</u>	no
Clothing racks — see (d)(2)(e)(1)	YES	no	no
Specialized displays — see (d)(3)(e)(2)	YES	YES <u>no</u>	no
Mannequins — see (d)(4)(e)(3)	YES	YES <u>no</u>	no
Tables/shelves — see (d)(5)(e)(4)	YES	<u>no</u>	no
Freestanding displays — see (d)(6)(e)(5)	YES	YES <u>no</u>	no
<b>DINING:</b>			
Vending carts — see (d)(1)	no	YES <u>no</u>	no
Dining tables — see (d)(7)(e)(6)	YES	YES	YES

(d) **Enclosed merchandise areas.** Enclosed merchandise areas are exempt from this section except for the requirement that all merchandise and materials must be removed from the adjacent accessory area into the conventional building within twelve (12) hours of issuance of a tropical storm or hurricane watch that includes the DOWNTOWN District. Retail store and personal services uses (permitted uses in the DOWNTOWN District) are permitted in the enclosed merchandise area.

**(e) Types of outdoor displays.**

(1) **Vending carts** are limited to 2 wheels, must have integral roofs or umbrellas, and may use traditional or creative designs. Vending carts that have been manufactured to be secured at night, with fitted side panels, may be left outside when a business is closed. All other vending carts must be moved indoors when the business is not open. Within 48 hours of the issuance of a hurricane watch for the town by the National Hurricane Center, all vending carts must be moved indoors, removed from the county, or placed within an approved off-island storage area. Figure 34-9 shows two suggested vending cart designs.



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Figure 34-9

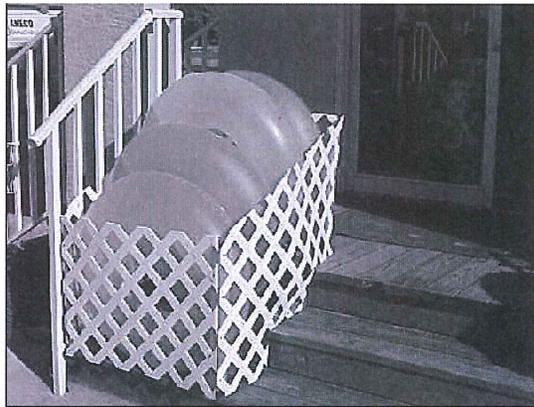
- (1) **Clothing racks** are limited to one support rod up to 6 feet long on which clothing is hung. Similar displays whose principle function is for the display of clothing, swimwear, and other garments shall be considered a clothing rack. Clothing racks are often mounted on wheels. Figure 34-10 shows a typical clothing rack.



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*Figure 34-10*

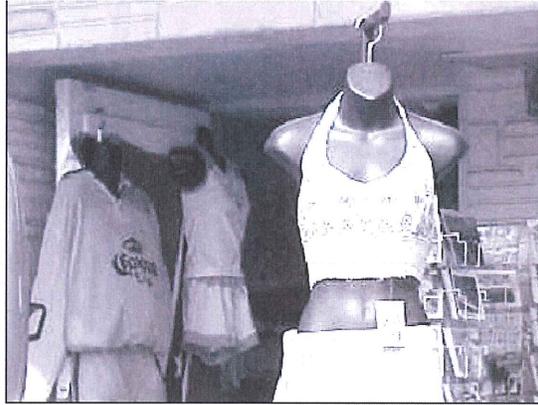
- (2) **Specialized display racks** are unique displays for a specific type of product. An example is a rack to hold beach toys or accessory items. ~~Specialized display racks are limited to a 2-foot by 8-foot area or a 4-foot by 4-foot area. Figure 34-11 shows depicts a specialized display rack.~~



(image to be removed)

*Figure 34-11*

- (3) **Freestanding mannequins** are used to display clothing or swimwear. ~~Figure 34-12 shows a typical freestanding mannequin.~~



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*Figure 34-12*

- (4) **Tables or freestanding shelves** are limited to a 2-foot by 8-foot area or a 4-foot by 4-foot area, and may not be more than 3 feet in height. **Figure 34-13** shows a typical freestanding table with merchandise.



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*Figure 34-13*

- (5) **Freestanding product displays** can be used for products such as lawn and garden accessories or windsocks that are appropriately displayed on their own. ~~These types of products may be displayed within a 4 foot by 8 foot area or with a maximum of 7 individual products.~~ **Figure 34-14** shows typical freestanding product displays.



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Figure 34-14

- (6) Dining tables are used to serve food and beverages to the public. Figure 34-15 shows typical dining tables on the Times Square pedestrian plaza.



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Figure 34-15

(f) **PRIVATE PROPERTY: ~~number, location, and types of outdoor displays and dining tables.~~** Retail businesses may sell their regular merchandise outdoors on private property between their stores and a street right-of-way only if the merchandise is placed on a raised porch or (but not on a patio), as defined in this subsection. ~~No business may have more than two outdoor displays of merchandise, as defined in subsection (d). For example, a business may qualify for two vending carts, or one vending cart and one clothing rack, or one mannequin and one table, etc. Multiple occupancy structures with two or more businesses are limited to one outdoor display for each business up to a maximum of four outdoor displays per multiple occupancy structure.~~

- (1) **~~Porches and patios.~~** Subsection (c) also indicates whether the outdoor display is permitted on a porch, patio, or either. For purposes of this section, ~~porches and patios are defined as follows:~~
- ~~a. **Porch** is a wooden or concrete structure that is elevated off of the ground and has a railing at least 42 inches tall. A porch must be covered with an awning, roof, or umbrellas. Wood must be painted or stained.~~
  - ~~b. **Patio** is an area covered with paver bricks, concrete, wood, or similar material and located at ground level immediately adjacent to the front of the building. Asphalt or earthen spaces are not considered a patio.~~
- (2) **~~Permitted merchandise and types of outdoor display.~~** The following types of merchandise may be displayed outdoors using the display types described in subsection ~~(d)~~(e):
- a. **Art** (prints, sculpture, etc.): 1, 3, 5, 6
  - b. **Bathing suits and swimwear:** 1, 2, 4
  - c. **Beach accessories** (umbrellas, chairs, etc.): 1, 6; rental of beach equipment on the beach is regulated in § 14-5 of this code.
  - d. **Beach towels:** 1, 2, 3, 5
  - e. **Beach toys, rafts, and floats:** 1, 3, 5
  - f. **Clothing:** 1, 2, 4, 5
  - g. **Clothing accessories** (jewelry, purses, etc.): 1, 3, 4, 5
  - h. **Kites and windsocks:** 1, 6
  - i. **Lawn and garden accessories:** 1, 6
  - j. **Small retail items** (souvenirs, suntan lotion, flowers, books, etc.): 1, 5

~~k. Merchandise not specifically listed: 1, or on permitted display type for the most similar item.~~

(3) **Personal services** including tattoos, temporary tattoos, hair braiding, and hair wrapping are not permitted outdoors.

(4) **Additional rules for outdoor displays of merchandise.**

a. A retail store wishing to display merchandise outdoors in the DOWNTOWN zoning district must obtain a permit for this use (see subsection ~~(e)(5)(f)(6)~~) in addition to meeting all other requirements of this code.

b. Merchandise that is displayed outdoors must be available for sale inside the store and the point of sale must be indoors.

c. All outdoor displays must be brought indoors during any hours that the business ~~is~~ is not open, ~~except as provided for vending carts in subsection (d)(1).~~

d. Outdoor display may not be subleased to a separate business and is only allowed for the principal tenant of the building.

~~d.~~ e. Outdoor displays may contain no business or product identification signage whatsoever; each display may have one 4 inch by 6 inch sign to display prices.

e. f. All outdoor displays must be non-motorized and movable by hand and may be no taller than 10 feet.

f.g. Merchandise may not be attached to the building or to a railing unless incorporated into an approved type of outdoor display, such as a specialized display rack, mannequin, or freestanding product display (see subsection ~~(d)(e)~~).

(5) **Outdoor dining.** A restaurant wishing to provide outdoor seating between the restaurant and a street must obtain a permit for this use (see subsection ~~(e)(5)(f)(6)~~) in addition to meeting all other requirements of this code. The seating must be located on a porch or patio as defined in this subsection. The sale of alcoholic beverages outdoors is regulated by state liquor laws and by § 34-1264 of this code.

(6) **Permit required.** A permit is required for each business wishing to display merchandise outdoors or to place outdoor seating in conformance with this section.

a. Permits may be issued for up to one year and shall expire each year on September 30.

b. Permit applications may be filed at any time using forms available from town hall. Applications should be accompanied by photographs or drawings that clearly indicate the type, character, number, and size of outdoor displays or dining tables that are being proposed.

c. Permits may be issued by the town manager. The town manager may also choose to refer an application to the town council for its consideration in lieu of administrative issuance or rejection.

d. Permits may include modifications to the standards in this section to better accomplish the purposes set forth in subsection (b). Other reasonable conditions may also be imposed regarding the layout and physical design of porches, patios, ~~vending carts~~, specialized display racks, shelves, tables, and umbrellas.

~~e. Outdoor display and dining permits may be suspended by the town manager for noncompliance with the permit. Suspensions may be appealed to the town council in accordance with procedures set forth in § 34-86 for appeals of administrative decisions. Suspension of a permit does not preclude the town from pursuing any of the other enforcement mechanisms provided in this code (for example, § 1-5, or article V of ch. 2).~~

(g) **PUBLIC PROPERTY:** No merchandise may be displayed outdoors on public property. Restaurants may extend their operations onto public sidewalks and plazas only as follows:

(1) **General location.** These provisions are limited to the Times Square pedestrian plaza (see Figure 34-6) and other locations if explicitly approved by the town council.

(2) **Who may operate.** Vending rights are available only to the owner of the private property that

immediately abuts the sidewalk or pedestrian plaza, or in the case of leased property, only to the primary lessee; vending rights may not be further sub-leased.

- (3) **Specific location.** Vending rights can be used only in the area directly in front of the private property and lying between 90-degree extensions of the side property lines. Vending rights may extend onto public property only as far as specified in the annual permit and may be further modified by the town as necessary to provide adequate room for pedestrian movement and to ensure fair treatment for restaurants located on opposite sides of the Time Square pedestrian plaza.
- (4) **Outdoor dining.** No fixed or moveable equipment may be placed on a public sidewalk or plaza to sell or serve food except that tables, umbrellas, and chairs may be placed by restaurants for the use of their customers; no signage is permitted.
- (5) **Permit required.** Vending rights for dining on public property may be exercised only upon issuance of a permit by the town that sets forth the conditions of private use of a public sidewalk or plaza, including:
  - a. Additional restrictions on the degree which tables, umbrellas, chairs, and carts may interfere with pedestrian movement;
  - b. Restrictions on the extent to which food not available in the abutting business may be sold;
  - c. Requirements for keeping the area surrounding the tables or carts from debris and refuse at all times;
  - d. Insurance requirements;
  - e. Payment of fees established by the town for vending rights;
  - f. Limitations on leasing of vending rights, if any; and
  - g. Other reasonable conditions as determined by the town, including full approval right over the design of umbrellas, carts, tables, etc.

Permitting procedures and enforcement shall be the same as provided in subsection ~~(e)(5)~~ (f)(6).

(h) Existing Nonconforming Outdoor Display Businesses. Businesses located in the Downtown Zoning District that were in existence on or before January 1, 2014 and did not meet the technical requirements for an Outdoor Display Permit shall be permitted to continue in business regardless of whether they previously or currently meet the specific requirements for outdoor display outlined above, subject to the following conditions:

- (1) The business must demonstrate that it was in existence at its current location on or before January 1, 2014;
- (2) The business must apply for and be issued and pay for an annual permit;
- (3) The business must remain at its current location and may only move or relocate to a legally conforming location;
- (4) The business can only be sold or transferred to another person or entity if the business is relocated to a conforming location and otherwise meets all requirements for Outdoor Display;
- (5) The business cannot increase in area or number of displays; and
- (6) If the business is closed or ceases to do business for a period of six (6) months or more, the business can only re-open in a conforming location.

### **Sec. 34-993. Definitions.**

*Porch* means a covered entrance to a building.