

TOWN OF FORT MYERS BEACH
ORDINANCE NO. 10-08

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA ESTABLISHING PROCEDURES FOR THE DECLARATION OF A STATE OF LOCAL EMERGENCY; PROVIDING DEFINITIONS; PURPOSE AND INTENT; AUTHORITY TO DECLARE A STATE OF LOCAL EMERGENCY; METHOD OF DECLARING AND TERMINATING A STATE OF LOCAL EMERGENCY; AUTHORITY OF TOWN COUNCIL; EFFECT OF DECLARATION OF A STATE OF LOCAL EMERGENCY; PROHIBITIONS DURING DECLARED STATE OF LOCAL EMERGENCY; ACCESS TO EMERGENCY PREPAREDNESS FUND; PENALTIES FOR VIOLATIONS; REPEAL OF PRIOR ORDINANCES; CONFLICT AND SEVERABILITY; AND EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Fort Myers Beach, Florida, desires to establish procedures for the declaration of a state of local emergency in the event of a natural or manmade disaster or emergency that affects or threatens to affect the Town; and

WHEREAS, Chapter 252, Florida Statutes, authorizes municipalities to declare a state of local emergency and to waive procedures and formalities otherwise required of political subdivisions to take whatever prudent action is necessary to ensure the health, safety, and welfare of the Town in the event of a state of local emergency; and

WHEREAS, there may be instances when it is difficult or impossible to obtain a quorum of council members for the purpose of convening an emergency meeting to declare a state of local emergency; and

WHEREAS, the Town Council desires to designate certain Town officials, delegate to those officials the authority to declare a state of local emergency, and authorize certain actions by those officials to respond to the emergency when a quorum of the town council is physically unable to meet.

WHEREAS, because of the existing and continuing possibility of the occurrence of a natural or man-made disaster or emergency and potential damage and destruction resulting therefrom and, in order to ensure the readiness of the Town to manage such events and generally provide for the protection of the public health, safety and welfare, it is hereby determined to be in the best interests of the Town of Fort Myers Beach that the following Ordinance be adopted.

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

Section 1. Definitions.

For the purpose of this Ordinance, the term:

A. "Disaster" means any natural, technological, or civil emergency that causes damage of sufficient severity and magnitude to result in a declaration of a state of emergency by a county, the Governor, or the President of the United States. Disasters shall be identified by the severity of resulting damage, as follows:

(1) "Catastrophic disaster" means a disaster that will require massive state and federal assistance, including immediate military involvement.

(2) "Major disaster" means a disaster that will likely exceed local capabilities and require a broad range of state and federal assistance.

(3) "Minor disaster" means a disaster that is likely to be within the response capabilities of local government and to result in only a minimal need for state or federal assistance.

B. "Emergency" means any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property.

C. "Town" means the Town of Fort Myers Beach, Florida.

D. "Town Council" means the duly elected Town Council of the Town of Fort Myers Beach, Florida.

Section 2. Purpose and Intent

It is the intent of the Town Council to delegate to certain officials the authority to declare a state of local emergency in the event a natural or man-made emergency threatens the Town and to authorize those officials to take certain actions to respond to the emergency when a quorum of the Town Council is physically unable to meet.

Section 3. Authority to Declare a State of Local Emergency.

When an emergency has placed the citizens of the Town in danger of loss of life or property and a regular or special meeting of the Town Council cannot practically be convened due to lack of a quorum or otherwise, a local state of emergency may be declared by the Mayor of the Town; or the Vice Mayor, in the Mayor's absence; or by the Town Manager, in the absence of the Mayor and Vice Mayor; or by the Town Manager's designee, in the absence of the Mayor, Vice Mayor and Town Manager.

Section 4. Declaration of State of Local Emergency by Written Proclamation; Termination.

A state of local emergency shall be declared by written proclamation which is signed by the Mayor, or in his absence by the Vice Mayor, or by the Town Manager in the absence of the Mayor and Vice Mayor, or by the Town Manager's designee, in the absence of the Mayor, Vice Mayor and Town Manager. The state of local emergency shall continue until the Town Council determines that the threat or danger no longer exists and terminates the state of local emergency, provided, however, that the duration of any local state of emergency shall not exceed seven (7) days but may be extended, as necessary, by the issuance of additional proclamations, in seven (7) day increments. The state of local emergency shall continue until a meeting of a quorum of the Council is convened and terminates the state of local emergency by written proclamation. In the event a regular or special meeting of the Town Council cannot practically be convened due to lack of a quorum or otherwise, a local state of emergency may be terminated by the Mayor of the Town; or the Vice Mayor, in the Mayor's absence; or by the Town Manager, in the absence of the Mayor and Vice Mayor; or by the Town Manager's designee, in the absence of the Mayor, Vice Mayor and Town Manager.

Section 5. Authority of Town Council.

Nothing in this ordinance shall be construed to limit the authority of the Town Council to declare, extend or terminate a state of local emergency or take any action prescribed herein when convened in a regular or special meeting.

Section 6. Effect of Declaration of Local State of Emergency.

A declaration of state of local emergency shall activate applicable Town emergency plans and shall constitute authority for the following in lieu of the procedures and formalities otherwise required of the Town by law pertaining to:

- A. Performance of public work, and any other prudent action necessary to ensure the health, safety and welfare of the citizens of the Town.
- B. Entering into contracts.
- C. Incurring obligations.
- D. Employment of permanent and temporary workers.
- E. Utilization of volunteer workers.
- F. Rental of equipment
- G. Acquisition and distribution, with or without compensation, of supplies, materials and facilities.
- H. Appropriation and expenditure of public funds

Section 7. Prohibitions During Declared State of Local Emergency.

Whenever a state of local emergency declared pursuant to this Ordinance is in effect, the following prohibitions shall apply throughout the Town, unless and until one or more of such prohibitions have been waived or modified by action of the Town Council at a general, special or emergency meeting:

- A. It shall be unlawful and an offense against the Town for any person, firm, or corporation to use the Towns' potable water supply for any purpose other than cooking, drinking or bathing.
- B. It shall be unlawful for any person to be out on the public rights-of-way or other public areas of the Town between dusk and dawn, except for law enforcement officers, members of the Fort Myers Beach Fire Control District, emergency medical personnel, town council members, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs, provided that such employees have in their possession personal identification and identification of the business where they are employed.
- C. It shall be unlawful for a person or her or his agent or employee to rent or sell or offer to rent or sell at an unconscionable price within the Town, any essential commodity including, but not limited to, supplies, services, provisions, or equipment that is necessary for consumption or use as a direct result of the emergency. The evidentiary standards and defenses contained in

Section 501.160, Florida Statutes, as amended, shall be used to determine whether a price is unconscionable.

Section 8. Access to Emergency Preparedness Fund Upon Declaration of State of Local Emergency.

Upon declaration of a State of Local Emergency, the Town's Emergency Preparedness Fund may be accessed by the Town Manager for any purpose, provided, however, that the Town Council may restrict the Town Manager's access to such funds by the adoption of a Town Resolution specifying restrictions on access. 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 an affirmative vote of four (4) Councilmembers.

Section 9. Penalties for Violations.

Any person who violates any provision of this Ordinance shall, upon conviction, be guilty of a misdemeanor and shall be subject to a fine not exceeding Five Hundred Dollars (\$500.00) or by imprisonment not exceeding sixty (60) days in the Lee county jail, or both a fine and imprisonment.

Section 10. Repeal of Prior Ordinances, Conflict and Severability.

A. Town Ordinances 96-19, 99-06, 04-14, 05-16, 05-17, 5-23, 06-12, and 08-13 are hereby repealed in their entirety and have no force and effect. In addition, all sections or parts of section of any other Ordinance(s) or Resolution(s) of the Town in conflict herewith are hereby repealed to the extent of such conflict.

B. In the event any portion or section of this Ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this Ordinance which shall remain in full force and effect.

Section 11. Effective Date.


This Ordinance shall take effect immediately upon adoption by the Town.


The foregoing Resolution was adopted by the Town Council upon a motion by Council Member Mandel and seconded by Vice Mayor Raymond and upon being put to a vote, the result was as follows:

Larry Kiker, Mayor	aye	Bob Raymond, Vice Mayor	aye
Tom Babcock	aye	Jo List	aye
Alan Mandel	aye		

DULY PASSED AND ADOPTED THIS 2nd DAY OF AUGUST 2010, BY THE
TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH

ATTEST:

By: 
Larry Kiker, Mayor

By: 
Michelle D. Mayher, Town Clerk

Approved as to form and legal sufficiency:

By: 
Fowler White Boggs, Town Attorney