

ORDINANCE No. 98-3

AN ORDINANCE AMENDING THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE, PROVIDING AUTHORITY; AMENDING CHAPTER 14 ENVIRONMENT AND NATURAL RESOURCES, ARTICLE II, WILDLIFE AND HABITAT PROTECTION, DIVISION 2, SEA TURTLES PROVIDING PURPOSE AND APPLICABILITY OF DIVISION; DEFINITIONS; VIOLATIONS, ENFORCEMENT OF DIVISION, PENALTY; EXEMPTIONS FROM DIVISION; EXISTING DEVELOPMENT; NEW DEVELOPMENT; PUBLICLY OWNED LIGHTING; ADDITIONAL REGULATIONS AFFECTING SEA TURTLE NESTING HABITAT; GUIDELINES FOR MITIGATION AND ABATEMENT OF PROHIBITED ARTIFICIAL LIGHTING; SEVERABILITY; EFFECT OF ORDINANCE 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. Sec. 14-71. Purpose and applicability of division, is amended to read:

Sec. 14-71. Purpose and applicability of division.

(a) The purpose of this division is to protect the endangered and threatened sea turtles which nest along the Gulf of Mexico beaches in the Town of Fort Myers Beach ~~unincorporated areas of the county, by safeguarding the~~ This division protects nesting sea turtles and sea turtle hatchlings from the adverse effects sources of artificial lighting, provides overall improvement in nesting habitat degraded by light, and increases successful nesting activity and production of hatchlings on the beaches within the jurisdictional boundaries as defined by in this division.

~~(b) The scope of this division shall be limited to that area defined in this division as the jurisdictional boundary.~~

SECTION 3. Sec. 14-72. Definitions is amended to read:

Sec. 14-72. Definitions.

When used in this division, The the following words, terms and phrases, ~~when used in this division,~~ shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Administrator means the town manager ~~county administrator~~ or his designee, who is responsible for administering the provisions of this division.

Artificial lighting or illumination means light emanating from a manmade device ~~which includes at least one lamp.~~ point source (see Point source of light, below)

Beach means that area of unconsolidated material that extends landward from the mean low-water line to the place where there is a marked change in material or physiographic form, or to the line of permanent vegetation, usually the effective limit of storm waves, as is ~~defined in chapter 16B-33, Florida Administrative Code.~~ More particularly described in appendix B.

Bug type light means any yellow colored incandescent light bulb that is specifically treated in such a way so as to reduce the attraction of bugs to the light, but does not include bug killing devices.

Construction means the carrying out of any building, clearing, filling, excavating or substantial improvement in the size or use of any structure or the appearance of any land. When appropriate to the context, the term "construction" refers to the act of constructing or the result of construction, and includes reconstruction or remodeling of existing buildings or structures.

Decorative lighting means lighting used for aesthetic reasons, primarily landscaping.

DEP means Florida Department of Environmental Protection or successor agency.

Directly illuminated means illuminated by one or more point sources of light directly visible to an observer on the beach, dune, or other sea turtle nesting habitat.

Development has the same meaning stated in Section 34-2.

Dune means a mound or ridge of loose sediments, usually sand-sized, lying landward of the beach and deposited by any natural or artificial mechanism.

Existing development means completed development having received official approval in the form of a certificate of compliance, final building permit inspection or other final governmental approval as of January 31, 1998, or development that was completed prior to the adoption of those requirements.

Footcandle means a measure of light intensity equal to one lumen per square foot.

Ground-level barrier means any vegetation, natural feature or artificial structure rising from the ground intended to prevent beachfront lighting from shining directly or indirectly onto the beach, dune or other sea turtle nesting habitat.

Hatchling means any of a individual species of sea turtle, within or outside of a nest, which has recently hatched from an egg.

Jurisdictional boundary means the area of the beach and land extending to 200 feet landward from the beach along land adjacent to the Gulf of Mexico, as those beaches are more particularly described in appendix B.

Indirectly illuminated means illuminated by one or more point sources of light not directly visible to an observer on the beach, dune, or other sea turtle nesting habitat.

Low-profile lighting means a light fixture which places the low wattage source of light no higher than 48 inches off the ground, above grade and which is designed in such a way that light is directed downward from a hooded light source. So that a point source of light does not directly or indirectly illuminate sea turtle nesting habitat.

Mechanical raking beach cleaning means the act of raking cleaning the beach with a motor-powered vehicle and beach cleaning equipment that does not penetrate deeper than two (2) inches into the surface of the beach a rake with prongs that are greater than three inches long, or what may be allowed approved by the state department of environmental protection DEP following a storm.

Nest means an area where sea turtle eggs have been naturally deposited or subsequently relocated by an authorized permittee of the DEP.

Nesting season means from 9:00 p.m. until 7:00 a.m. during the period of May 1 through October 31 of each year.

New development means new construction, of new buildings or remodeling of existing structures as well as renovation or when such remodeling of existing development and includes alteration of exterior lighting , occurring after January 31, 1998.

Lamp Point of source of light means a manmade device source emanating light, including but not limited to incandescent, tungsten-iodine (quartz), mercury vapor, fluorescent, metal halide, neon, halogen, high-pressure sodium and low-pressure sodium devices light sources, as well as torches, camp and bonfires.

Photometrics means charts, which are normally provided with lighting sales literature, that describe the characteristics of the illumination cast by the lamps discussed in that literature.

Post emergent hatchling means a hatchling sea turtle that has successfully emerged from its incubation site and must traverse the open beach and surf.

Sea turtle means any species of marine-dwelling reptile of the families Cheloniidae or Dermochelyidae found in Florida waters or using the beach as nesting habitat turtle, including Caretta caretta (loggerhead turtle), Chelonia mydas (green turtle) and Dermochelys coriacea (leatherback turtle), Eretmochelys imbricata (hawksbill) and Lepidochelys kempfi (Kemp's ridley). using county gulf beaches as a nesting habitat. For purposes of this division, sea turtle is synonymous with marine turtle.

Sea turtle nesting habitat means the beach, any adjacent dunes or areas landward of the beach used by sea turtles to deposit sea turtle eggs.

Tinted glass means any glass treated to achieve an industry-approved, inside-to-outside light transmittance value of 45% or less.

SECTION 4. Sec. 14-73. Violations, enforcement of division; penalty is amended to read:

14-73. Violations, eEnforcement of division; penalty.

If the administrator shall find that any of the provisions of this division are being violated, he shall notify the property owner or occupant of such violations, in writing, indicating the nature of the violation and ordering any action necessary to correct it. Any person found guilty of violating any provisions of this division, after a first written warning, shall be punished in accordance with section 1-5. Each day the violation continues shall be deemed a separate offense. In addition to any other remedies, whether civil or criminal, violations of this division may be enforced by the code enforcement board of the county, and may be restrained by injunction, including a mandatory injunction, and otherwise abated in any manner provided by law.

(a) Violations.

(1) Failing in any respect to comply with the provisions of this division.

(2) A rebuttable presumption that there is a violation of this division exists when:

a. a shadow is created or cast by artificial lighting directly or indirectly illuminating an opaque object in sea turtle nesting habitat during the nesting season; or

b. the disorientation or mortality of a nesting sea turtle or sea turtle hatchling is caused by artificial lighting directly or indirectly illuminating sea turtle nesting habitat during the nesting season.

(b) Enforcement and Penalty. Violations of this division will be prosecuted in accordance with Chapter 2, Article VII. The Town of Fort Myers Beach may take action against the property owner, occupant or person

otherwise responsible for causing the violation. In addition to code enforcement action, the town may pursue other legal means of obtaining compliance, including civil and criminal remedies, that are available by law.

SECTION 5. Sec. 14-74. Exemptions from division is amended to read:

Sec. 14-74. Exemptions from division.

~~(a) Research or patrol vehicles. Bona fide research or patrol vehicles may operate at night with no more artificial lighting than reasonably necessary for safe operation on the unincorporated beaches of the county; provided, however, that the operators of such vehicles are Only authorized permittees of the DEP, and state department of environmental protection or law or code enforcement officers conducting bona fide research or investigative patrols, may operate a motor vehicle on the beach or in sea turtle nesting habitat during the nesting season, so long as appropriate red-colored filters are used to ensure no more artificial lighting than that necessary for the safe operation of their vehicles is visible.~~

~~(b) Temporary lighting during nonnesting season. During the nonnesting season (November 1 through April 30 of each year), temporary lighting may occur.~~

~~(c) Temporary lighting for emergency repairs. Temporary lighting utilized by public service agencies for emergency repairs may occur.~~

~~(d) Mechanical raking. In the aftermath of a natural event, such as a major storm or red tide, mechanical raking may occur if the beach area affected has been a part of a sea turtle monitoring program and a bona fide research agency, with a state department of environmental protection turtle permit, has certified that mechanical raking will not disturb any identified sea turtle nest and a copy of the required state department of environmental protection field permit for mechanical raking has been filed with and approved by the county division of codes and building services or its successor.~~

~~(b) Mechanical beach cleaning. During the nesting season mechanical beach cleaning requires a valid DEP beach cleaning permit, and must not occur before 10:00 a. m., or disturb any sea turtle nest.~~

~~(c) Jet-Ski Transport. During the nesting season jet-ski transport requires a valid DEP permit authorizing jet-ski transport within the riparian line of the licensed property to the water, and must not occur before 10:00 a.m., or disturb any sea turtle nest.~~

~~(d) (e) Administrative exemptions. The Town Manager may authorize, in writing, any activity or use of lighting otherwise prohibited by this division for a specified location and period of time. The authorization must be for the minimum duration and amount of lighting from a point source(s) of light.~~

~~(1) Authority to grant exemptions. It is the policy of the Board of County Commissioners to minimize artificial light illuminating within the jurisdictional boundaries of this division so as to reduce artificial light on the beaches. However, the Board of County Commissioners recognizes that the protection of sea turtles must be balanced with health, safety and welfare interests of persons which may warrant more light or additional beach activity along some beaches. In recognition of the need to balance the interests of the sea turtle with interests of public safety, the administrator shall have the authority to exempt any lighting or activities affected by this division from any or all provisions of this division upon written application in accordance with subsection (e)(3) of this section.~~

~~(2) Criteria for granting exemption. In reaching a decision on a written application for exemption, the administrator shall consider the following:~~

- ~~a. It shall be determined that there will be no significant adverse effect upon the surrounding lands and waters.~~
- ~~b. It shall be determined that there will be no significant adverse effect upon the environmental quality of the area.~~
- ~~c. It shall be determined that public safety will be adversely affected to a significant degree should the exemption not be granted.~~
- ~~d. The exemption, if granted, shall be the minimum exemption that will make possible reasonable protection of both the sea turtles and the public safety concerns.~~
- ~~(3) Application. Application for exemption under subsection (d) of this section shall be made in writing on a form provided by the administrator, and shall include:~~
 - ~~a. A plan which shall depict the site, the location of all buildings or structures on the site, and the location of all lighting on site.~~
 - ~~b. An aerial photograph at a scale of one inch equals 300 feet.~~
 - ~~c. The nature of the exemption requested.~~
 - ~~d. Written reasons why the exemption should be approved.~~
 - ~~e. Any additional necessary or appropriate items which the administrator may require.~~
- ~~(4) Denial. If the administrator denies the exemption, the applicant may file an appeal of the administrator's written decision in accordance with procedures set forth in chapter 34 for appeals of administrative decisions.~~

SECTION 6. Sec. 14-75. Existing development is amended to read:

Sec. 14-7675. Existing development.

~~It is policy of the Board of County Commissioners to minimize artificial light illuminating within the jurisdictional boundaries of this division so as to reduce artificial light on the beaches. To meet this intent, lighting of all structures which illuminate the beach shall be in compliance with the following by May 1, 1989:~~

- ~~(1) Artificial lighting shall conform to the provisions of section 14-75(a); or~~
- ~~(2) Artificial lighting used to illuminate buildings and grounds which directly or by refraction or reflection illuminates the beach above the levels established in section 14-75(a) shall be turned off from 9:00 p.m. until 7:00 a.m. every day during the period of May 1 to October 31 of each year. Automatic timers may be used to provide consistent compliance.~~

Existing development must ensure that sea turtle nesting habitat is not directly or indirectly illuminated by lighting originating from the existing development during the nesting season. Artificial lighting from existing development must not directly or indirectly illuminate sea turtle nesting habitat during the nesting season.

SECTION 7. Sec. 14-76 New development is amended to read:

Sec. 14-7576 New development.

~~(a) It is the policy of the Board of County Commissioners to minimize artificial light illuminating within the jurisdictional boundaries of this division so as to reduce artificial light on the beaches. To meet this intent,~~

~~building and electrical plans associated with parking lots, dune walkovers or other outdoor lighting for real property within the jurisdictional boundaries shall be in compliance with the following:~~

- ~~———— (1) ———— Except as set forth in subsection (a)(2) of this section, no more than 0.5 footcandle of artificial illumination shall be cast upon the beach as defined by this division. Appropriate techniques for reducing artificial illumination include but are not limited to fitting lights with hoods or shields, screening artificial light with vegetation or other devices, directing light away from the beach area, utilizing low profile lighting, and lowering the light intensity of the lamps.~~
- ~~———— (2) ———— No more than two footcandles of artificial illumination shall be cast upon the beach when the spectral distribution of the light bandwidths are between 560 and 620 nanometers. Commercially available lighting that satisfies the spectral criteria include low pressure sodium lamps.~~
- ~~———— (3) ———— No lamp shall be directly visible from the beach. The use of opaque materials for screening and hooding the lamps are techniques which may be used to limit visibility from the beach.~~
- ~~———— (4) ———— Parking lots where vehicle headlights may cast light onto the beach so as to be in violation of this division shall be screened to eliminate excess light on the beach.~~
- ~~———— (5) ———— At the time building and electrical plans are submitted for public review, appropriate photometries of the artificial lighting used shall be provided by the applicant. Photometries shall include horizontal isolux charts and spectral distribution charts if appropriate.~~

~~———— (b) The provisions of this section shall not apply to any structure for which a building permit or development order has been issued prior to the effective date of the ordinance from which this division is derived.~~

New development must comply with the following requirements:

(a) Artificial lighting must conform to the requirement of section 14-75;

(b) A lighting plan must be submitted for review prior to the earlier of building permit or development order issuance for all new development, as follows:

(1) for new development seaward of the coastal construction control line, as defined in sec. 6-333 (CCCL), a copy of a DEP approved lighting plan is required;

(2) for new development landward of the CCCL, a lighting plan is required for all commercial and industrial development, and for all multi-story developments in multi-family zoning districts.

The location, number, wattage, elevation, orientation, and all types of proposed exterior artificial light sources must be included on the lighting plan. An approved lighting plan is required before final inspections for a certificate of occupancy or certificate of compliance will be performed by the town; and

(c) Prior to the issuance of a Certificate of Occupancy (CO), the exterior lighting of new development must be inspected after dark by the town, with all exterior lighting turned on, to determine compliance with an approved lighting plan and this division.

SECTION 8. Sec. 14-77. Publicly owned lighting is amended to read:

Sec. 14-77. Publicly owned lighting.

Streetlights and lighting at parks and other publicly owned beach access areas ~~within the jurisdictional boundaries of this division shall be~~ are subject to the following requirements:

(1) ~~All new and replaced lamps shall not be directly visible from the beach.~~

- (a) The beach must not be directly or indirectly illuminated by newly installed or replaced point sources of light.
- (b) Artificial lighting at parks or other public beach access points must conform to the provisions of section 14-75.

~~(2) Artificial lighting at parks or other public beach access points shall conform to the provisions of section 14-75(a).~~

~~(3) Artificial lighting used to illuminate buildings and grounds which directly or by refraction or reflection illuminates the beach above the levels established in section 14-75(a) shall be turned off from 9:00 p.m. until 7:00 a.m. every day during the period of May 1 to October 31 of each year. Automatic timers may be used to provide consistent compliance.~~

SECTION 9. Sec. 14-78. Beach activities Additional regulations affecting sea turtle nesting habitat is amended to read:

14-78. Beach activities Additional regulations affecting sea turtle nesting habitat.

~~(a) Fires. Fires shall be prohibited within the jurisdictional boundaries of this division when such fires are visible from the beach from 9:00 p.m. until 7:00 a.m. during the period of May 1 to October 31 of each year.~~

~~(b) Mechanical raking. Mechanical raking of the beach within the jurisdictional boundaries of this division shall be prohibited during the period of May 1 to October 31 of each year, except as exempted under section 14-74(d).~~

(a) Fires. Fires that directly or indirectly illuminate sea turtle nesting habitat are prohibited during the nesting season.

(b) Driving on the beach. Driving on sea turtle nesting habitat, specifically including the beach, is prohibited during the nesting season, except as allowed under section 14-74(a) and (b).

(c) Parking. Vehicle headlights in parking lots or areas on or adjacent to the beach must be screened utilizing ground-level barriers to eliminate artificial lighting directly or indirectly illuminating sea turtle nesting habitat.

SECTION 10. Sec. 14-79. Guidelines for mitigation and abatement of prohibited artificial lighting is added to read:

Sec. 14-79. Guidelines for mitigation and abatement of prohibited artificial lighting.

(a) Appropriate techniques to achieve lighting compliance include, but are not limited to: fitting lights with hoods or shields, utilizing recessed fixtures with low wattage bulbs, screening light with vegetation or other ground-level barriers, directing light away from sea turtle nesting habitat, utilizing low-profile lighting, turning off artificial light during the nesting season, motion detectors set on the minimum duration, and lowering the light intensity of the lamps, preferably to 25 watt, but no more than 40 watt yellow bug lights. Although plastic sleeves for fluorescent bulbs may help to reduce the amount of artificial light to an acceptable level if the bulbs are of sufficiently low wattage, in most instances additional shielding is needed as sea turtles are more sensitive to the wavelengths of fluorescent light.

(b) Opaque shields for lights covering an arc of at least 180 degrees and extending an appropriate distance below the bottom edge of the fixture on its seaward side may be installed so that the light source or any reflective surface of the light fixture is not visible from sea turtle nesting habitat.

(c) Floodlights, uplights, spotlights, and decorative lighting directly or indirectly visible from sea turtle nesting habitat should not be used during the nesting season.

(d) Appropriate techniques to eliminate interior lighting directly or indirectly illuminating the beach, include, but are not limited to: applying window tint film to windows, using tinted glass, moving light fixtures away from windows, closing blinds or curtains, and turning off unnecessary lights.

SECTION 11. 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 12. Effect of Ordinance. The provisions of this Ordinance shall be deemed cumulative and supplemental and shall have no legal effect except as expressly provided.

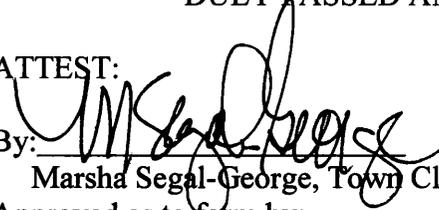
SECTION 13. Effective Date. This ordinance shall become effective immediately upon its adoption.

The foregoing ordinance was enacted by the Town Council upon a motion by Council Member Mulholland 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>
John Mulholland	<u>aye</u>
Garr Reynolds	<u>aye</u>
Ray Murphy	<u>aye</u>

DULY PASSED AND ENACTED this 6th day of April, 1998.

ATTEST:

By: 
Marsha Segal-George, Town Clerk
Approved as to form by:

TOWN OF FORT MYERS BEACH

By: 
Anita T. Cereceda, Mayor


Richard V.S. Roosa, Town Attorney