

ORDINANCE No. 97-1

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH TO BE KNOWN AS THE TOWN OF FORT MYERS BEACH PUBLIC SERVICE TAX ORDINANCE, PROVIDING AUTHORITY; TITLE AND CITATION; DEFINITIONS; LEVY OF TAX; APPLICATION OF TAX; DUTY OF SELLER; REQUIRED RECORDS; DUTY TO COLLECT; EXEMPTION FROM TAX; BILLING PROCEDURES; PENALTY FOR VIOLATION; SEVERABILITY; REPEALING CLAUSE 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 as the "Town of Fort Myers Beach Public Service Tax Ordinance."

SECTION 3. Definitions.

(a) "Manufactured gas" is limited to manufactured natural gas and manufactured propane and excludes industrial gases.

(b) "Purchase" means every act or transaction whereby possession of, utilization of, control over title to telecommunication service, electricity, metered or bottled gas (natural, liquefied petroleum gas manufactured), becomes vested in the purchaser within the incorporated area of the Town for which payment is made pursuant to a duty and obligation therefor. "Manufactured gas" is limited to manufactured natural gas and manufactured propane and excludes industrial gases.

(c) "Purchaser" shall be construed to include, but shall not be limited to, any natural person, firm, corporation, partnership or joint venture who is legally liable for the payment of a taxable item or service.

(d) "Sale" shall be synonymous with "purchase," and vice versa.

(e) "Seller" shall mean every person delivering or rendering a taxable item or service as set forth herein to any purchaser thereof.

Section 4. Levy of Tax.

(a) There is hereby levied by the Town of Fort Myers Beach, on each and every purchase within the incorporated area of the

Town of taxable telecommunication services as defined by Section 203.012(5)(a) and (b), Florida Statutes (1995), which originates and terminates in this state, a tax of ZERO per cent (0%) of the total amount charged for any telecommunication service provided within the Town of Fort Myers Beach or, if the location of the telecommunication service provided cannot be determined, the total amount billed for such telecommunication service to a telephone or telephone number, a telecommunication number or device, or a customer's billing address located within the Town of Fort Myers Beach, excluding public telephone charges collected on site, charges for any foreign exchange service or any private line service except when such services are used or sold as a substitute for any telephone company switched service or dedicated facility by which a telephone company provides a communication path, access charges and any customer access line charges paid to a local telephone company. Purchase of telecommunication services as defined in Section 203.012(5)(b), Florida Statutes, shall be taxed only ,on the monthly recurring customer service charges excluding variable usage charges.

(b) Unless changed by amendment to this ordinance, there is hereby levied by the Town on each and every purchase within the incorporated area of the Town of Fort Myers Beach of electricity, metered or bottled gas (natural, liquefied, petroleum gas or manufactured), a tax at a rate of ZERO percent (0%) purchased by a purchaser during a monthly period.

The monthly period referenced to in this section is the monthly billing cycle of a seller. If a seller bills in any manner other than on a monthly basis, the tax rate for all sales shall be ZERO percent (0%) unless changed by amendment to this ordinance. The tax shall not be applied against any fuel adjustment charge, and such charge shall be separately stated on each bill. The term "fuel adjustment charge" means all increases in the cost of utility services to the ultimate consumer resulting from an increase in the cost of fuel to the utility subsequent to October 1, 1973.

#### SECTION 5. Application of Tax.

The tax levied hereby shall apply to all purchases of electricity, metered or bottled gas and telecommunication services shall apply to all taxable service provided as of the effective date of this ordinance.

#### SECTION 6. Duty of Seller

(a) It shall be the duty of every seller of telecommunication services, electricity, metered or bottled gas (natural, liquefied petroleum gas or manufactured), within the boundaries of the Town, to collect from the purchaser thereof for the use of the Town the taxes hereby levied at the time of collecting the selling price charged for each and every transaction; and to report and pay over on or before the fifteenth (15th) day of each

calendar month to the Town Manager all such taxes levied and collected during the preceding calendar month.

(b) It shall be unlawful for any seller to collect the price of any purchase of telecommunication services, electricity, metered or bottled gas (natural, liquefied petroleum gas or manufactured), sold within the incorporated area of the Town, without at the same time collecting such tax hereby Levied in respect to such purchase or purchases unless such seller shall elect to assume and pay such tax without collecting the same from the purchaser or consumer, providing, however, that the seller shall not be liable for the payment of such tax upon uncollected bills.

(c) Any seller failing to collect such tax at the time of collecting the price of any purchase and sale, as aforesaid, where the seller has not elected to assume and pay such tax shall be liable to the Town for the amount of such tax in like manner as if the same had actually been paid to the seller, and the Town shall bring and cause to be brought all such suits and actions and take such proceedings as may be necessary for the recovery of such tax.

(d) For the purpose of compensating the seller of telecommunication services, the seller of the telecommunication services shall be allowed one per cent (1%) of the amount of the tax collected in the form of a deduction from the amount collected for remittance. The deduction shall be allowed as compensation for keeping records and for collecting and remitting the tax.

#### SECTION 7. Required Records

(a) Each and every seller of telecommunication services, electricity, metered or bottled gas (natural, liquefied petroleum gas or manufactured), within the incorporated area of the Town of Fort Myers Beach, with respect to sales and purchases, on which the tax is hereby levied, shall keep full and complete records showing all purchases and sales of such telecommunication services, electricity, metered or bottled gas (natural, liquefied petroleum gas or manufactured), within the incorporated area of the Town, which records shall show the price charged upon each sale and purchase, the date and period of time covered thereby and the date of payment thereof.

(b) The records referred to in subsection 6(a) above shall with reasonable prior notice by the Town be open for inspection by duly authorized agents of the Town during regular business hours of the seller at a place designated by the seller at the sole expense of the Town. The agents of the Town shall have the right, power and authority to make such transcripts or copies thereof as they may desire. Records not prepared by the seller in the ordinary course of business may be provided at the Town's expense and as the Town and the seller may agree in writing. Such

audit shall be impartial and all audit findings, whether they decrease or increase payment to the Town, shall be reported to the seller. The Town's right to examine the records of the seller in accordance with this Section shall not be conducted by any third party employed by the Town whose fee for conducting such audit is contingent on findings of the audit.

(c) The Town shall provide to a telecommunication service provider who is responsible for collecting the tax, upon request of the telecommunication service provider, a printed alphabetical listing of all street names in the Town including block numbers and street numbers for streets which form the boundaries of the incorporated area of the Town for use by the provider of the telecommunication service in calculating the proper amount of tax payable to the Town. The Town shall be responsible for updating this listing as changes occur and providing this information to the telecommunication service provider. The Town shall be entitled to collect a fee from the telecommunication service provider requesting the listing of street names and block numbers, not to exceed the actual cost of providing the information to the telecommunication service provider. The telecommunication service provider shall be responsible for or charging the tax only to the service and billing addresses contained in this listing.

#### SECTION 8. Duty to Collect.

(a) The sellers of telecommunication services, electricity, metered or bottled gas (natural, liquefied petroleum gas or manufactured), within the incorporated area of the Town, shall act as the collection medium and collecting agency for the collection from the purchaser of the herein levied tax for the use of the Town. The Town may bring such legal action as in its discretion may appear advisable under the terms of this section.

(b) The sellers of telecommunication services, electricity, metered or bottled gas (natural, liquefied petroleum gas or manufactured), within the incorporated area of the Town, shall furnish to the Town a certification duly executed by one of the officials of the company certifying as to the accuracy and correctness of billings and collections required under the terms of this section; which certification shall accompany the remittance of such tax collected or paid for the preceding month.

#### SECTION 9. Exemption From Tax.

(a) The following purchasers are declared to be exempt from the tax imposed hereby: the purchase of any taxable item by the United States Government, the State of Florida, Lee County, or any other public body as defined in Section 1.01, Florida Statutes; the purchase of any taxable item by any recognized church within the State of Florida for use exclusively for church purposes; the purchase of gas (natural, liquefied petroleum gas or manufactured) by a public or private utility, either for

resale or for use as fuel in the generation of electricity; and the purchase of local telephone service or other telecommunication service for use in the conduct of a telecommunication service for hire or otherwise for resale.

(b) Residential users of electricity are exempted from the tax imposed by this ordinance in an amount up to and including the first 200 kilowatt hours of electricity purchased per month for residential use. Such exemption shall apply to each separate residential unit, regardless of whether such unit is on a separate meter or a central meter and shall be passed on to each individual tenant.

#### SECTION 10. Billing Procedures.

In all cases where the seller of the taxable commodity or service collects the price thereof in monthly periods, the tax hereby levied shall be computed on the aggregate amount of sales during each monthly period; providing that the amount of tax to be collected shall be the nearest whole cent to the amount computed. When a seller renders a bill to a purchaser to cover purchases made during the particular period of time to which a bill is applicable, the amount of the public service tax shall be stated separately from other governmental charges and taxes and shall not be levied on such taxes and charges.

#### SECTION 11. Penalty for Violation.

Any purchaser willfully failing or refusing to pay the tax hereby imposed, where the seller has not elected to assume and pay such tax, and any seller violating the provisions hereof, or any officer, agent, or employee of any seller violating the provisions hereof, may be punished by a fine not to exceed five hundred dollars (\$500.00) or by imprisonment for a period not exceeding sixty (60) days or by both such fines and imprisonment. The Town may further bring suit to restrain, enjoin, or otherwise prevent the violation of this ordinance, and shall be entitled to reasonable attorney's fees if it prevails in such suit.

#### SECTION 12. 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 13. Repealing Clause

All ordinances or parts thereof in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

SECTION 14. 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 Reynolds and seconded by Council Member FitzSimons and, upon being put to a vote, the result was as follows:

Anita T. Cereceda	<u>aye</u>
Ted FitzSimons	<u>aye</u>
William (Rusty) Isler	<u>aye</u>
Garr Reynolds	<u>aye</u>
Ray Murphy	<u>aye</u>

DULY PASSED AND ENACTED this 6th day of January, 1997.

ATTEST:

TOWN OF FORT MYERS BEACH

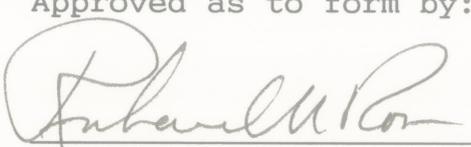
By:

  
Marsha Segal-George, Town Clerk

By:

  
Anita T. Cereceda, Mayor

Approved as to form by:

  
Richard V.S. Roosa, Town Attorney