

ORDINANCE No. 99-6

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH DESIGNATING OFFICIALS AND AUTHORIZING ACTION IN THE EVENT OF IMMINENT THREAT OF EMERGENCY; PROVIDING AUTHORITY; DEFINITIONS; DECLARATION OF STATE OF EMERGENCY; AUTHORITY OF RESPONSIBLE OFFICIAL; PROHIBITIONS DURING STATE OF EMERGENCY; COUNCIL AUTHORITY NOT WAIVED; AUTHORITY OF RESPONSIBLE OFFICIAL--TO DECLARE STRIKE TIME; AUTHORITY OF RESPONSIBLE OFFICIAL--TO ORDER EVACUATION; RESTRICTED ACCESS TIMETABLE; HURRICANE EMERGENCY ACCESS PASSES; 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. Definitions. It is the intent of this article to designate a series of town officials who may, in the event of a natural or man-made disaster or emergency, or facing the imminent threat thereof, declare a state of local emergency, and to authorize certain actions and regulations relating thereto when a quorum of the town council is unable to meet and take action.

For purposes of this article, the following terms shall have the meanings hereinafter specified:

a. Emergency. Means any occurrence, or imminent threat, of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including, but not limited to, enemy attack, sabotage or other hostile military or para-military action, fire, flood, earthquake, hurricane, windstorm, wave action, volcanic activity, epidemic, air contamination, water contamination, blight, drought, infestation, explosion, accident involving radiation byproducts, riot, criminal activity, or other similar disaster.

- b. Essential emergency personnel. All those persons carrying an official pass issued by the town manager, as specified and authorized by the town council, to be performing a public function connected with hurricane evacuation, preparedness, damage assessment or cleanup, or those persons carrying an official pass issued by Lee County government or the Fort Myers Beach Chamber of Commerce for similar purposes.
- c. Owners and managers of businesses. The holders of each valid, outstanding town occupational license and a person designated by each license holder as primary manager or supervisor.
- d. Residents of the Town of Fort Myers Beach. All persons then occupying a dwelling unit or other living accommodations, either temporarily or permanently, on Estero Island. Such term shall not include persons who have reservations for living accommodations on the island but who have not yet occupied such accommodation.
- e. Responsible official. Means the town manager of the Town of Fort Myers Beach; or, when such town manager is unavailable or unable to be contacted, any designated acting town manager; or when the town manager and any designated acting town manager are unavailable or unable to be contacted, such official or officials, in order of preference, as may have been designated by the town manager.

SECTION 3. Declaration of state of emergency; authority of responsible official.

- a. Whenever an emergency exists within the town, a quorum of the town council may, upon such public notice as is reasonable under the circumstances, declare a state of local emergency. Whenever a quorum of the town council is unavailable or unable to meet within a time reasonable under the circumstances to safely and properly react to such emergency, a state of local emergency may be declared by the following officials in the event all those listed precedent to each of such officials are unavailable or unable to be contacted: the mayor, the vice-mayor, any town council member, the responsible official.
- b. Whenever a state of local emergency has been declared pursuant to this article, and until such time as the state of local emergency is terminated, the responsible official shall have the following authority:
 - (1) To activate and administer any emergency plans and procedures as have been adopted by the town council;
 - (2) To perform such public work and take whatever action is necessary to ensure the

health, safety, and welfare of the residents and visitors to the town;

- (3) To enter into such contracts and incur such obligations as are necessary to reasonably react to and control an emergency situation;
- (4) To employ such workers, and to utilize such volunteer workers, as are necessary to reasonably react to and control an emergency situation;
- (5) To rent or otherwise acquire such equipment and to acquire and distribute, with or without compensation, such supplies, materials, and facilities as are necessary to reasonably and properly react to an emergency situation;
- (6) To declare areas of the town to be off limits to unnecessary vehicles or persons and to prevent access thereto;
- (7) To prohibit the sale of alcoholic beverages;
- (8) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials, on any public property and any volunteered private property;
- (9) To establish new and additional emergency operating centers and refuges;
- (10) To call on any other public agency for assistance in the mitigation of an emergency, through rescue operations, maintenance of security, law enforcement, traffic control, or otherwise; and
- (11) To waive any or all of the prohibitions set forth in the following section of this article, when such prohibition is unreasonable or unnecessary in consideration of the particular emergency which occurs.

SECTION 4. Prohibitions during state of emergency. Whenever a state of local emergency has been declared pursuant to this article, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived by a quorum of the town council or by the person declaring the state of local emergency:

(1) It shall be unlawful for any person to use fresh water supplied by the public water system for any purpose other than cooking, drinking, bathing or other sanitary or health purpose.

(2) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the hours of 7:00 p.m. and 7:00 a.m.,

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 responsible official, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.

(3) It shall be unlawful for any person in the town to charge more than the normal average retail price or rent for any merchandise or space sold or rented. The average rent or retail price means that rent or price at which similar merchandise or space was being sold or rented during the ninety (90) days immediately preceding the state of emergency, or at a markup which is no larger a percentage over wholesale cost than was being added to wholesale cost prior to the state of emergency. Exempted from this limitation are commercial and residential rents in accordance with leases which preexisted the declaration of a state of local emergency.

SECTION 5. Council authority not waived. Nothing in this article shall be construed to limit the authority of the town council to declare or terminate a state of local emergency or to take any action authorized by law when sitting in regular or special session.

SECTION 6. Authority of responsible official--To declare strike time.

The responsible official is hereby authorized and delegated the authority to determine (from all weather information and warnings from appropriate weather forecasting agencies, the Lee County Disaster Preparedness Agency, and other sources) that a hurricane is expected to strike Estero Island within fifty (50) hours from such determination, and to specify the expected hurricane strike time.

SECTION 7. Authority of responsible official--To order evacuation.

Upon a determination having been made in accordance with the preceding section, the responsible official is hereby authorized and delegated the authority to order an evacuation of all persons within the town when an expected hurricane strike is less than twenty-four (24) hours away and a quorum of the town council cannot be assembled. Such order may be made when it appears to the responsible official that weather forecasts and warnings of an expected hurricane strike are reliable and that existing traffic

conditions, the number of vehicles and persons within the town and the time of the expected hurricane strike, would not permit a full and orderly evacuation if it is delayed.

SECTION 8. Restricted access timetable. Upon a determination being made as specified in Section 7. above, the following regulations and restrictions may be placed in effect and enforced by the responsible official or his authorized officers and employees:

(a) Beginning forty-eight (48) hours before the specified hurricane strike time, recreational vehicles, trailered boats, and campers may be denied access to the town, as well as any other vehicle (or vehicle and trailer combination) exceeding twenty (20) feet in length, except those being driven by residents of the town and essential emergency personnel, as those terms are defined herein.

(b) Beginning forty (40) hours before the specified expected hurricane strike time, all traffic may be prohibited access to the town except for vehicles driven by residents of the town, owners and managers of businesses or their identified essential personnel, and essential emergency personnel, as those terms are herein defined.

(c) Beginning twenty-seven (27) hours before the specified expected hurricane strike time, the responsible official may restrict all traffic seeking access to the town at intermittent periods to allow two (2) and possibly three (3) lanes of traffic to exit if it appears that such action is necessary to complete the evacuation prior to the expected hurricane strike time.

(d) Beginning twenty-seven (27) hours before the specified expected hurricane strike time, recreational vehicles, trailered boats, and campers may be prohibited entering onto the town, as well as any other vehicle (or vehicle and trailer combination) exceeding twenty (20) feet in length, except those being driven by essential emergency personnel as defined herein.

SECTION 9. Emergency access passes. The town manager is hereby authorized and directed to have prepared official passes for emergency access, and to distribute sufficient numbers of such passes to appropriate governmental agencies, utility companies, disaster preparedness organizations, and other groups or organizations involved in the planning and execution of evacuation, preparedness, damage assessment, or cleanup in relation to a hurricane strike in the town.

SECTION 10. 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 11. 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 12. 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 Cereceda and seconded by Council Member Reynolds and, upon being put to a vote, the result was as follows:

Anita T. Cereceda	<u>aye</u>
Daniel Hughes	<u>aye</u>
John Mulholland	<u>aye</u>
Garr Reynolds	<u>aye</u>
Ray Murphy	<u>aye</u>

DULY PASSED AND ENACTED this 17th day of May, 1999.

ATTEST:

By: Marsha Segal-George
Marsha Segal-George, Town Clerk

Approved as to form by:

Richard V.S. Roosa
Richard V.S. Roosa, Town Attorney

TOWN OF FORT MYERS BEACH

By: Raymond P. Murphy
Raymond P. Murphy, Mayor