ORDINANCE No. 97- 2

AN ORDINANCE AMENDING THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE BY ADDING A CHAPTER TO BE NUMBERED 28, PROVIDING AUTHORITY; AMENDMENT; TITLE AND CITATION; DEFINITIONS; AREA OF ENFORCEMENT; MEANS OF ENFORCEMENT; REGULATIONS AND LOCATIONS FOR PARASAIL ACTIVITIES; UNLICENSED PARASAILING PROHIBITED; PAL APPLICATION; REGULATORY FEE; PAL RENEWAL; DISPLAY OF PAL; CONDITIONS OF PAL USE; TRANSFERABILITY OF PAL: GRANDFATHER CLAUSE; INSURANCE; PENALTY; 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. Amendment. That the Town of Fort Myers Beach Land Development Code is hereby amended to add CHAPTER 28, to read as follows:

28-1 -- 28-43 Reserved.

28-44 Title and Citation

This ordinance shall be known and cited as the Town of Fort Myers Beach Parasailing Ordinance.

28-45 Definitions

For the purposes of this Ordinance, the following terms, phrases, words and derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and the words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

A. "Bather" means any person who is in the same water as a vessel, whether said person is swimming, wading or engaged in any other activity in the water.

B. "Beach" means the soft sand portion of land lying seaward of a seawall or line of permanent vegetation and seaward of the mean high water line.

C. "Business" shall mean any parasailing activity business, including any commercial activity engaged in the rental, leasing, or bailment for consideration of parasailing.

D. "EcoTour" shall mean an educational tour led by a guide knowledgeable in environmental and ecological preservation, where the guide can communicate with the tour members and offer commentary about the ecological, environmental and archaeological significance of Estero Bay.

E. "Floating Vendor" means a vessel represented as a place of business a professional or other commercial enterprise which is used to solicit conduct or canvass for the sale or rental of any merchandise, services, goods or property of any kind or character. This term does not include the following types of vessels:

1. A vessel which in and of itself is rented;

2. Any parasail operation using self contained operational equipment so that launching or landing does not occur on land;

3. A vessel maintained in a permanent location over privately owned or leased submerged bottom lands; or,

4. A vessel used for hire (i.e., charter boat, dive boat, dinner cruise boat, tour boat, water taxi etc.)

F. Idle speed means the lowest speed at which a vessel can operate and maintain steering control. The actual speed will depend upon the design of the vessel and on the vessel's load, wind direction and speed, and the sea conditions. Generally, it will be between 1 and 3 miles per hour for outboard and inboard/outboard vessels, between 2 and 5 miles per hour for fixed shaft/rudder vessels, and the minimum speed necessary to effectively traverse breaking water for personal watercraft. For a non-motor propelled vessel, idle speed means that speed necessary for steerageway.

G. "Littoral Waters" mean that part of the ocean or sea which abuts the shoreline and includes the shore to the ordinary high watermark. For purposes of this ordinance, the littoral right to use such waters shall be limited to the waters within the boundaries of the land based site as those boundaries extend into the water at right angles from the shoreline.

H. Parasailing or Parasailing Activity shall mean the act of towing a person or object over the water, suspended beneath a parachute, kite, or other similar contrivance.

I. PAL shall mean Parasailing Activity License.

J. "Operate" means to navigate or otherwise use any vessel in, on or under the water.

K. "PWVL" shall mean Personal Watercraft Vendor's License

L. "Person" means any individual, partnership, firm, corporation, association or other entity.

M. "Personal watercraft" means a small class A1 or A2 vessel as defined by state law which uses an outboard motor, or an inboard motor powering a water jet pump, as its primary source of motive power and which is designated to be operated by a person sitting, standing, or kneeling on, or being towed behind the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

N. "Town Manager" shall include the designee(s) of the Manager of the Town of Fort Myers Beach.

O. "Site" means the plot or parcel of land or combination of contiguous lots or parcels of land.

P. "Slow speed" means no speed greater than that which is reasonable and prudent to avoid either intentionally or negligently disturbing, colliding with, or injuring manatees and which comports with the duty of all persons to use due care under the circumstances. A vessel in a slow speed zone that:

(1) is operating on a plane is not proceeding at slow speed;

(2) that is in the process of coming off plane and settling into the water, which action creates more than no or minimum wake, is not proceeding at slow speed;

(3) that produces no wake or minimum wake is proceeding at slow speed;

(4) that is completely off plane and which has settled into the water and is proceeding without wake or with minimum wake is proceeding at slow speed.

"Slow Speed" means any through-the-water speed slow enough that the boat is neither planing nor moving with an elevated

bow. A vessel that is operating at slow speed shall not be emitting a wake.

Q. "Slow speed zone" means a designated area within which all vessel operators shall proceed at slow speed not on a plane and producing no or minimum wake.

R. "Steerage way" means the minimum rate of motion required for the helm of the vessel to have effect.

S. "Vessel" means a motor propelled or artificially propelled vehicle and every other description of boat, watercraft, barge, and air boat other than a seaplane on the water, used or capable of being used as a means of transportation on water including personal watercraft. This term shall not include rafts, floats or floatation devices, whether of canvas, vinyl, rubber, Styrofoam or other substance, intended or capable of assisting in the floatation of a person on or in the water.

T. "water oriented structure" shall mean and include without limitation, any fishing pier, pier, wharf, observation walkway, platform, boathouse, mooring pile, riprap, revetment, seawall, bulkhead, retaining wall, jetty, platform, boat lift, davit, boat ramp, or any ether obstacle, obstruction or protrusion used primarily for the landing or launching of watercraft, erosion control and shoreline stabilization, or for water oriented activities.

28-46 Area of Enforcement

The area of enforcement of the provisions of this Ordinance shall be all public navigable waters, creeks, bayous, canals and channels, whether natural or man-made, located within the Town of Fort Myers Beach, including all public waters within the jurisdiction of the Town in which the tide ebbs and flows. This Ordinance does not apply to the county maintained or county marked channels.

28-47 Means of enforcement

The provisions of this ordinance shall be enforced by members of all duly authorized law enforcement agencies within the Town and by the Town Division of Codes and Building Services.

In addition to the regulations of this ordinance, any operator of any type of watercraft is subject to the provisions of the Fort Myers Beach Watercraft Safety Ordinance and Florida Statutes Chapter 327.

28-48 Regulations and Locations for Parasail Activities

Any person engaged in parasail activities for consideration or remuneration by the public on any waters of the Town of Fort Myers Beach, must meet the following requirements:

A. A person is required to obtain a County occupational license which shall be issued to the parasailing activities operations office.

(1) The operations office shall be located at a land based site; and,

(2) The land-based site shall have direct access to the beach. Direct access shall not include public rights of way, County owned or Town owned, beach access, or any residentially zoned land that must be traversed to gain beach access; and,

(3) All business transactions such as the exchange of consideration or remuneration or any other type of transaction between the PAL and Customer shall occur on the land-based site for which the occupational license is issued: and,

B. A person must have and maintain a telephone and an operable marine radio at its land based operations office.

28-49 Unlicensed Parasailing Prohibited

A. No person shall offer a ride on a parasail within the Town of Fort Myers Beach except at a parasail activities site which fully complies with the regulations set forth in the Land Development Code and this Ordinance.

B. No person shall have a parasailing operation within the Town of Fort Myers Beach, except from a business holding a valid PAL and which fully conforms to the terms of this Ordinance.

C. No person shall use a vessel for parasailing activity which is not registered in the name of the business and which does not have a valid Florida vessel registration number affixed thereon.

28-50 PAL Application; Regulatory Fee

A. Application for a PAL shall be made to the Town Manager on a form provided by the Town.

B. Information to be provided by the applicant shall include, at a minimum:

1. BUSINESS LOCATION

a. The STRAP number and street address from which the parasailing business will operate;

b. If the applicant is not the owner of the property from which the parasailing business will be operated, the applicant shall submit a notarized letter of authorization from the owner of the property to the applicant.

2. OWNERSHIP INFORMATION

a. Business Owner's name, home address, local address, telephone number;

b. Manager's name, home address, local address, telephone number;

c. Mailing address at which notice of any Town information pertinent to any parasailing business shall be considered received and binding upon the applicant or PAL holder, on the fifth day after First Class Mail is posted to said address;

d. State sales tax number.

3. BUSINESS EQUIPMENT INFORMATION- The number of, and a description of, the vessels to be used by the business, including model, year, manufacturer, color and Florida Vessel registration number(s).

4. PROOF OF INSURANCE - Proof of insurance required.

5. FIRE REPORT - Proof of compliance with fire regulations.

6. ANNUAL FEE-Pays an annual fee of:

a) $60.00 for Town administrative processing costs; and
b) $30.00 for the right to offer for business, as herein provided, the right to operate a parasailing activity; and

c) $80.00 for Town enforcement costs.

Applicants who misrepresent information provided under this Section shall not be issued a PAL, or if issued, may suffer suspension or revocation of the PAL.

7. The Town Manager may issue no more than (6) PAL licenses outstanding at any point of time. PAL's shall be issued on an annual basis coinciding with the Town's fiscal year, October 1 through September 30.

28-51 PAL RENEWAL

A. Except as provided in this Ordinance, upon application, the Town Manager may renew the PAL of any applicant who:

1. Held a valid PAL and operated the parasailing activity business for at least nine months out of the previous year, and
2. Has provided the Town with new or updated information, documents, and fees listed in this Ordinance and continues to meet the regulations set forth in the Land Development Code; and
3. Pays a late processing fee of $25.00 for any renewal application filed after October 1.

B. Upon application, the Town Manager may renew any PAL suspended under this Ordinance, hereof, but any remaining term of suspension shall be applied to the renewed license, and during said term the PAL confers no rights to offer the rental of any parasailing operation.

C. Any PAL not renewed by October 15th shall be void and of no further use or effect whatsoever. No business deemed to be a nonconforming use in accordance with this Ordinance, which fails to renew it's license in a timely manner, shall again be issued a license except in conformity with the regulations then in effect.

28-52 DISPLAY OF PAL

Any business offering parasailing activities shall display PAL in plain sight at the location from which the rental of personal watercraft are offered.

28-53 CONDITIONS OF PAL USE

A. Businesses holding a valid PAL shall be situated together with their vessels upon a site authorized by the Land Development Code and this Ordinance to have such business and shall not:

1. be located within 500 feet of any other business offering personal watercraft for rent or lease or parasailing activities;

2. be located on any beach north of an imaginary line extending from the Sanibel Lighthouse and Bowditch Point on Estero Island; or east of a line formed by Big Carlos Pass Bridge.

B. A business shall have and maintain a telephone and an operable marine radio at its land based operations office.

C. A business must have and maintain comprehensive third party liability insurance in accordance with Section Eleven.

D. Each parasailing vessel must be registered in the name of the business and have a Florida vessel registration number affixed thereon.

E. Fuel tanks may not be stored on the beach but may be stored at the business location provided all applicable federal, state and local fire, safety, and environmental regulations are met.

F. No billboards or free standing signs advertising the business are permitted on the beach.

G. Parasail operations must have a primary location at a site in conformance with this Ordinance or at a business located in a zoning district which specifically permits Transportation Services - Group I - Water-Oriented Uses. Parasail operators may pick up and return customers at other sites provided that the parasail operator has obtained written permission on a form provided by the Town from the landowner where a PWVL has been issued. Written permission shall be kept on file at the PAL's primary location. In no event shall a parasail operator or his agents or employees solicit at the beach where they are picking up and returning customers.

H. Parasail operators will pick up and drop off customers at the beach location pursuant to G, above. This process will be accomplished through buoy lanes within the 500 foot zone consisting of six (6) buoys, with a minimum width of fifteen (15) feet and a maximum of seventy five (75) feet. In a congested area, a parasail captain may avoid hazard by approaching to the right or left of the buoy lane.

I. Operators must be at least 1000 feet from shore when they inflate or deflate the chute.

J. Operators may not fly the chute over or within 500 feet of pier or beach and all operations must cease at sunset.

28-54 TRANSFERABILITY OF PAL: GRANDFATHER CLAUSE

A. The PAL is transferable provided that the number of outstanding PAL's issued by the Town is less than six (6) and:

1. The location of the business complies with the minimum separation requirement of this Ordinance, or is a "grand fathered in" accordance under subsection B below; and

2. The new business owner files an amended application with the Town providing the information required in this Ordinance.

B. Parasail operators that have established or commenced business at their existing locations on or before the effective date of this Ordinance, and which are in conformity with the location requirements of the Fort Myers Beach Land Use Code, but may or may not comply with the location requirements set forth in this Ordinance, may continue to operate as a nonconforming use after the effective date of this Ordinance, unless terminated for failure to obtain the PAL as required by this Ordinance, voluntary discontinuation of business for a period of 30 days or more, or revocation of the PAL permit.

28-55 INSURANCE

A. No person shall operate a parasailing activity business unless covered by a comprehensive general liability insurance policy insuring the public against bodily injury or property damage resulting from or incidental to the operation, use, or rental of parasailing activity. At a minimum, the policy shall provide coverage of not less than $500,000 per occurrence and $1,000,000 per aggregate. The policy shall list the Town of Fort Myers Beach as an additional insured, and shall provide that coverage not be canceled or materially altered except after 30 days' written notice has been received by the Town, and be written through insurers licensed and authorized to do business in the State of Florida. The Town shall also require a copy of the declaration page of the operator's insurance policy with a listing of all insured watercraft by serial number

B. Evidence of said coverage is subject to acceptance and approval by the Town Manager prior to issuance of PAL.

C. Coverage shall remain in full force during the entire time that the PAL is valid and outstanding. Failure to provide such proof shall render the PAL null and void, and of no further use and effect. The holder's subsequent application for a new PAL shall be subject to the regulations for a new business and shall lose the nonconforming status afforded under the terms of this Ordinance.

28-56 PENALTY

Violation of the provisions of this Ordinance, or failure to comply with any of the requirements, shall constitute a civil infraction. Any person who violates this Ordinance or fails to comply with any provision shall upon conviction thereof be fined ($150) one hundred and fifty dollars for the first violation; ($300) three hundred dollars for the second and third violation and the Town shall consider license revocation for more than three violations of this ordinance, and in addition shall pay all costs and expenses involved in the case.

SECTION 3. 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 beheld 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 4. Effect of Ordinance. The provisions of this Ordinance shall be deemed cumulative and supplemental and shall have no legal effect upon the Town of Fort Myers Beach Land Development Code except as expressly provided.

SECTION 5. 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 Isler and, upon being put to a vote, the result was as follows:

Anita T. Cereceda	aye
Ted FitzSimons	absent
William (Rusty) Isler	aye
Garr Reynolds	aye
Ray Murphy	aye

DULY PASSED AND ENACTED this 21st day of January, 1997.

ATTEST:

By: _____
Marsha Segal-George, Town Clerk

TOWN OF FORT MYERS BEACH

By: _____
Anita T. Cereceda, Mayor

Approved as to form by:

_____
Richard V.S. Roosa, Town Attorney