

**ORDINANCE No. 04-08**

AN ORDINANCE AMENDING CHAPTER 34, ARTICLE III, DIVISION 5. REDEVELOPMENT ZONING DISTRICTS. SUBDIVISION II. DOWNTOWN ZONING DISTRICT; AMENDING SECTION 34-677 (C) OUTDOOR SALES AND RETITLING IT SECTION 34-678 OUTDOOR DISPLAY AND SALES OF MERCHANDISE AND FOOD; REPEALING SECTION 34-677 (D) SANDWICH SIGNS; PROVIDING SEVERABILITY; AND ESTABLISHING AN 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, Chapters 163 and 166, Florida Statutes, and other applicable provisions of law.

**SECTION 2. AMENDING CHAPTER 34, ARTICLE III, DIVISION 5, SUBDIVISION II, DOWNTOWN ZONING DISTRICT.** The amendments to Chapter 34 are contained in the attached **Exhibit A**. Entirely new language is indicated with underlining and language being repealed from the regulations is indicated with strike-throughs. The previous language for Outdoor Sales that was found in Section 34-677 (c) is now being amended and moved to Section 34-678 and titled Outdoor Display and Sales of Merchandise and Food. The previous language for Sandwich Signs that was found in Section 34-677(d) is now being repealed.

**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 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.

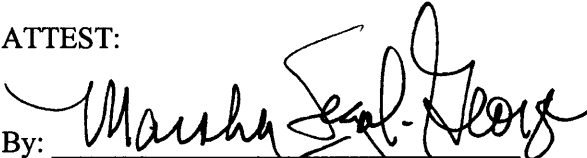
**SECTION 4. EFFECTIVE DATE.** This ordinance shall take effect immediately upon its adoption.

The foregoing ordinance was enacted by the Town Council upon a motion by Council Member Rynearson and seconded by Council Member Reynolds; upon being put to a vote, the result was as follows:


Bill Thomas	AYE
Garr Reynolds	AYE
Howard Rynearson	AYE
W. H. "Bill" Van Duzer	NAY
Don Massucco	NAY

DULY PASSED AND ENACTED this 30th day of June, 2004.

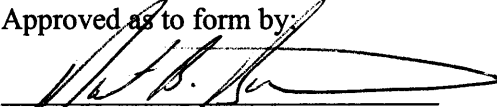
ATTEST:

By:   
Marsha Segal-George, Town Clerk

TOWN OF FORT MYERS BEACH

By:   
Bill Thomas, Mayor

Approved as to form by:

  
Richard V.S. Roosa, Town Attorney

By: Robert B. Burandt  
Florida Bar #434477

# EXHIBIT A

## FORT MYERS BEACH LAND DEVELOPMENT CODE

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### CHAPTER 34 ZONING DISTRICTS, DESIGN STANDARDS, AND NONCONFORMITIES

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#### ARTICLE III. ZONING DISTRICT REGULATIONS

#### DIVISION 5. REDEVELOPMENT ZONING DISTRICTS

##### *Subdivision II. DOWNTOWN Zoning District*

##### **Sec. 34-677. Additional requirements.**

(a) **Commercial design standards.** The commercial design standards (§§ 34-991–1010) shall apply to all commercial and mixed-use buildings, or portions thereof, that are being newly built, and to “substantial improvements” to such buildings as defined in § 6-405.

(b) **Open space and buffers.** There are no minimum open space and buffer requirements in the DOWNTOWN district comparable to the standards found in ch. 10, except in three instances:

- (1) Portions of properties that lie east of Palermo Circle and more than 300 feet beyond the north edge of the Estero Boulevard right-of-way shall retain 50% of that portion as open space. This open space may be a stabilized sodded area useable for overflow parking.
- (2) Residential buffers are required between commercial or mixed-use buildings and single-family residential lots for properties on the north side of Estero Boulevard east of Palermo Circle. These buffers shall be constructed in accordance with the buffer requirements of ch. 10 of this code.
- (3) Buffers are required between any off-street parking lot and a public street in accordance

with the buffer requirements of ch. 10 of this code.

##### **Sec. 34-678. (c) Outdoor display and sales of merchandise and food.**

(a) **Generally.** Merchandise, food, and beverages may be displayed or sold outdoors in the DOWNTOWN zoning district only in accordance with this subsection.

(b) **Purpose.** The purpose of these regulations is to enhance the pedestrian environment of the town’s business district through the creative use of outdoor spaces by providing businesses the opportunity to display a sample of their products and to sell food and beverages in a manner that enhances the public realm, creates an interesting and comfortable shopping and dining district, and maintains and improves the town’s sense of place and property values.

- (1) Outdoor display of merchandise allows retailers an opportunity to inform and interest the public by offering a small sample of the products that are available inside. Outdoor display can also be appropriate for small retail products that are meant to be used outside, such as garden ornaments, windsocks, and beach toys.
- (2) Outdoor display of merchandise is not intended to expand retail space or to assist in liquidating clearance or discarded items. The principal purpose of outdoor display in the DOWNTOWN district is to enliven sidewalks and pedestrian plazas by promoting pedestrian-oriented businesses, not to expand businesses or provide locations for freestanding businesses or for mobile vendors (which are regulated in § 34-3002).
- (3) Restaurants are encouraged by this code to provide outdoor dining. Outdoor dining between a restaurant and a street is regulated by this section. The sale of alcoholic beverages outdoors is also regulated by state liquor laws and by § 34-1264 of this code.
- (4) See separate regulations for temporary outdoor displays during special events at § 34-2441 et seq.

(c) Allowable locations for outdoor activities. Table 34-4 summarizes the allowable locations for outdoor display of merchandise and outdoor dining in the DOWNTOWN zoning district.

<b>Table 34-4 — Outdoor Activities in the DOWNTOWN Zoning District</b>			
<i>Display Type</i>	<i>Location</i>	<b>PRIVATE PROPERTY (between store &amp; street)</b>	<b>PUBLIC PROPERTY (Times Square pedestrian plaza)</b>
		<i>On porch</i>	<i>On patio</i>
<b>MERCHANDISE, as further limited by other provisions of § 34-678:</b>			
<i>Vending carts – see (d)(1)</i>		no	YES
<i>Clothing racks – see (d)(2)</i>		YES	no
<i>Specialized displays – see (d)(3)</i>		YES	YES
<i>Mannequins – see (d)(4)</i>		YES	YES
<i>Tables/shelves – see (d)(5)</i>		YES	no
<i>Freestanding displays – see (d)(6)</i>		YES	YES
<b>DINING:</b>			
<i>Vending carts – see (d)(1)</i>		no	YES
<i>Dining tables – see (d)(7)</i>		YES	YES

**(d) Types of outdoor displays.**

**(1) Vending carts** are limited to 2 wheels, must have integral roofs or umbrellas, and may use traditional or creative designs. Vending carts that have been manufactured to be secured at night, with fitted side panels, may be left outside when a business is closed. All other vending carts must be moved indoors when the business is not open. Within 48 hours of the issuance of a hurricane watch for the town by the National Hurricane Center, all vending carts must be moved indoors, removed from the county, or placed within an approved off-island storage area. Figure 34-9.1 shows two suggested vending cart designs.

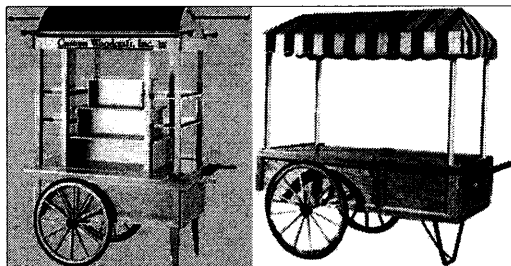


Figure 34-9.1

**(2) Clothing racks** are limited to one support rod up to 6 feet long on which clothing is hung. Similar displays whose principle function is for the display of clothing, swimwear, and other garments shall be considered a clothing rack. Clothing racks are often mounted on wheels. Figure 34-9.2 shows a typical clothing rack.

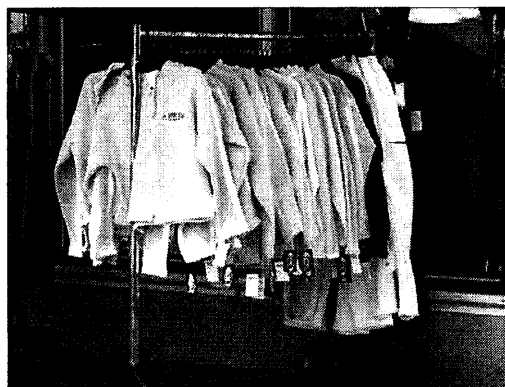


Figure 34-9.2

- (3) Specialized display racks are unique displays for a specific type of product. An example is a rack to hold beach toys or accessory items. Specialized display racks are limited to a 2-foot by 8-foot area or a 4-foot by 4-foot area. Figure 34-9.3 shows a specialized display rack.

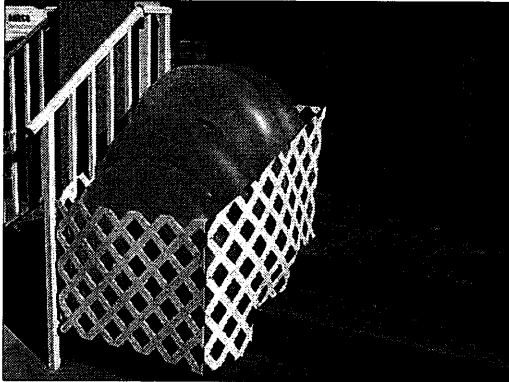


Figure 34-9.3

- (4) Freestanding mannequins are used to display clothing or swimwear. Figure 34-9.4 shows a typical freestanding mannequin.

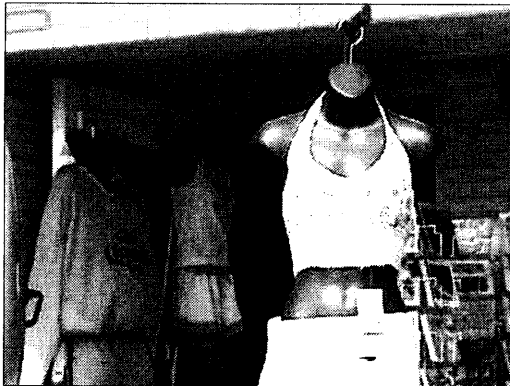


Figure 34-9.4

- (5) Tables or freestanding shelves are limited to a 2-foot by 8-foot area or a 4-foot by 4-foot area, and may not be more than 3 feet in height. Figure 34-9.5 shows a typical freestanding table with merchandise.

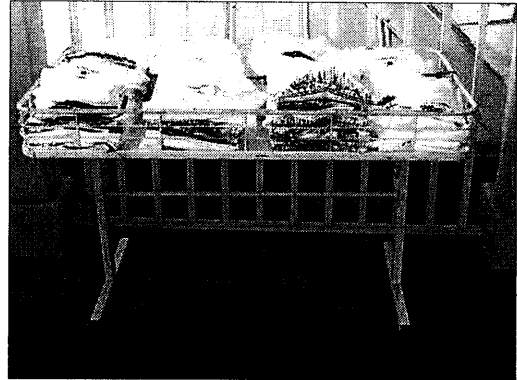


Figure 34-9.5

- (6) Freestanding product displays can be used for products such as lawn and garden accessories or windsocks that are appropriately displayed on their own. These types of products may be displayed within a 4-foot by 8-foot area or with a maximum of 7 individual products. Figure 34-9.6 shows typical freestanding product displays.



Figure 34-9.6

- (7) Dining tables are used to serve food and beverages to the public. Figure 34-9.7 shows typical dining tables on the Times Square pedestrian plaza.



Figure 34-9.7

(e) (1) On PRIVATE PROPERTY: number, location, and types of outdoor displays and dining tables. Retail businesses may sell their regular merchandise outdoors on private property between their stores and a street right-of-way only if the merchandise is placed on a raised porches or a patio, as defined in this subsection. No business may have more than two outdoor displays of merchandise, as defined in subsection (d). For example, a business may qualify for two vending carts, or one vending cart and one clothing rack, or one mannequin and one table, etc. Multiple occupancy structures with two or more businesses are limited to one outdoor display for each business up to a maximum of four outdoor displays per multiple occupancy structure, on up to two wheeled vending carts that meet the following criteria:

- a. Carts may contain no signage whatever;
- b. Carts must be non-motorized, moveable by hand, and no taller than 10 feet;
- c. Carts must be moved indoors during any hours that the business is not open; and
- d. Carts shall have integral roofs or umbrellas and use traditional or creative designs. Figure 34-9 shows two suggested cart designs:

(1) Porches and patios. Subsection (c) also indicates whether the outdoor display is permitted on a porch, patio, or either. For purposes of this section, porches and patios are defined as follows:

- a. Porch is a wooden or concrete structure that is elevated off of the ground and has

a railing at least 42 inches tall. A porch must be covered or covered with an awning, roof, or umbrellas. Wood must be painted or stained. Businesses with existing porches are encouraged to utilize them for outdoor display. New or expanded porches must comply with all chapters of this code.

- b. Patio is an area covered with paver bricks, concrete, wood, or similar material and located at ground level immediately adjacent to the front of the building. Asphalt or earthen spaces are not considered a patio. Patios are encouraged to be shaded with an awning or umbrella or with a roof that is an integral part of the outdoor display. Businesses without porches are encouraged to use patios. New or expanded patios must comply with all chapters of this code.

(2) Permitted merchandise and types of outdoor display. The following types of merchandise may be displayed outdoors using the display type described in subsection (d):

- a. Art (prints, sculpture, etc.): 1, 3, 5, 6
- b. Bathing suits and swimwear: 1, 2, 4
- c. Beach accessories (umbrellas, chairs, etc.): 1, 6; rental of beach equipment on the beach is regulated in § 14-5 of this code.
- d. Beach towels: 1, 2, 3, 5
- e. Beach toys, rafts, and floats: 1, 3, 5
- f. Clothing: 1, 2, 4, 5
- g. Clothing accessories (jewelry, purses, etc.): 1, 3, 4, 5
- h. Kites and windsocks: 1, 6
- i. Lawn and garden accessories: 1, 6
- j. Small retail items (souvenirs, suntan lotion, flowers, books, etc.): 1, 5
- k. Merchandise not specifically listed: 1, or on permitted display type for the most similar item.
- l. Personal services including tattoos, temporary tattoos, hair braiding, and hair wrapping are not permitted outdoors.

(3) Additional rules for outdoor displays of merchandise.

- a. A retail store wishing to display merchandise outdoors in the DOWNTOWN zoning district must obtain a permit for this use (see

- subsection (e)(5)) in addition to meeting all other requirements of this code.
  - b. Merchandise that is displayed outdoors must be available for sale inside the store.
  - c. All outdoor displays must be brought indoors during any hours that the business is not open, except as provided for vending carts in subsection (d)(1).
  - d. Outdoor displays may contain no business or product identification signage whatever; each display may have one 4 inch by 6 inch sign to display prices.
  - e. All outdoor displays must be non-motorized and movable by hand and may be no taller than 10 feet.
  - f. Merchandise may not be attached to the building or to a railing unless incorporated into an approved type of outdoor display, such as a specialized display rack, mannequin, or freestanding product display (see subsection (d)).
- (4) **Outdoor dining.** A restaurant wishing to provide outdoor seating between the restaurant and a street must obtain a permit for this use (see subsection (e)(5)) in addition to meeting all other requirements of this code. The seating must be located on a porch or patio as defined in this subsection. The sale of alcoholic beverages outdoors is regulated by state liquor laws and by § 34-1264 of this code.
- (5) **Permit required.** A permit is required for each business wishing to display merchandise outdoors or to place outdoor seating in conformance with this section.
- a. Permits may be issued for up to one year and shall expire each year on September 30.
  - b. Permit applications may be filed at any time using forms available from town hall. Applications should be accompanied by photographs or drawings that clearly indicate the type, character, number, and size of outdoor displays or dining tables that are being proposed.
  - c. Permits may be issued by the town manager. The town manager may also choose to refer an application to the town council for its consideration in lieu of administrative issuance or rejection.
  - d. Permits may include modifications to the standards in this section to better accomplish the purposes set forth in

- subsection (b). Other reasonable conditions may also be imposed regarding the layout and physical design of porches, patios, vending carts, specialized display racks, shelves, tables, and umbrellas.
- e. Outdoor display and dining permits may be suspended by the town manager for noncompliance with the permit. Suspensions may be appealed to the town council in accordance with procedures set forth in § 34-86 for appeals of administrative decisions. Suspension of a permit does not preclude the town from pursuing any of the other enforcement mechanisms provided in this code (for example, § 1-5, or article V of ch. 2).

(f) ~~(2)~~ **PUBLIC PROPERTY:** No merchandise may be displayed outdoors on public property. Retail businesses Restaurants may extend their operations onto public sidewalks and plazas only as follows:

- (1) **General location.** a: These provisions are limited to the Times Square pedestrian plaza (see Figure 34-6), along both sides of Old San Carlos Boulevard, and other locations if explicitly approved by the town council.
- (2) **Who may operate.** b: Vending rights are available only to the owner or primary lessee of the private property that immediately abuts the sidewalk or pedestrian plaza, or in the case of leased property, only to the primary lessee; vending rights may not be further sub-leased.
- (3) **Specific location.** c: Vending rights can be used only in the area directly in front of the private property and lying between 90-degree extensions of the side property lines.
- (4) **Outdoor dining.** d: No fixed or moveable equipment may be placed on a public sidewalk or plaza to sell or serve food except that as follows: 1. tables, umbrellas, and chairs may be placed by restaurants for the use of their customers; no signage is permitted except lettering on umbrellas up to 8 inches in height.
  - 2. ~~Wheeled food carts are permitted if they meet the following criteria:~~
    - ~~a- Carts must meet the criteria found in § 34-677(c)(1)b-d;~~

~~b-~~ Not more than one chair or stool may be provided for the employee; and

~~c-~~ One sign per side of cart may be displayed, with each sign limited to 3 square feet in area.

~~3-~~ Along Old San Carlos Boulevard, all tables and carts shall be placed only on the 5-foot bricked furnishing zone adjoining the curb and shall not otherwise block pedestrian movement along the sidewalk.

~~e-~~ No merchandise may be displayed on a public sidewalk or plaza except when placed on tables or shelves that are moved indoors during any hours the business is not open and that do not exceed the following dimensions:

- ~~1-~~ Maximum height: 3 feet
- ~~2-~~ Maximum width parallel to right-of-way line: 8 feet
- ~~3-~~ Maximum depth: may not extend more than 2 feet beyond the right-of-way line onto the sidewalk or plaza.

(5) Permit required. ~~f.~~ Vending rights for dining on public property may be exercised only upon issuance of a permit by the town that sets forth the conditions of private use of a public sidewalk or plaza, including:

- ~~a.~~ 1. Additional restrictions on the degree which tables, umbrellas, chairs, and carts may interfere with pedestrian movement;
- ~~b.~~ 2. Restrictions on the extent to which food ~~or merchandise~~ not available in the abutting business may be sold;
- ~~c.~~ 3. Requirements for keeping the area surrounding the tables or carts from debris and refuse at all times;
- ~~d.~~ 4. Insurance requirements;
- ~~e.~~ 5. Payment of fees established by the town for vending rights;
- ~~f.~~ 6. Limitations on leasing of vending rights, if any; and
- ~~g.~~ 7. Other reasonable conditions as determined by the town, including full approval rights over the design of umbrellas, carts, tables, etc.

Permitting procedures and enforcement shall be the same as provided in subsection (e)(5).

(d) ~~Sandwich signs.~~ Sandwich signs may be placed in the DOWNTOWN zoning district despite the general prohibition in § 30-4 of sandwich signs;

~~“A” signs, or other types of portable signs which are portable and readily movable from place to place. A business may place a single- or double-faced sandwich sign on the same premises or on a sidewalk directly in front of the premises provided that the sign is placed indoors after business hours, is not illuminated, and does not exceed 24 inches in width and a total of 6 square feet per side.~~

~~[this subject is now addressed in § 30-5(a)(18)]~~