

ORDINANCE 05-23

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH RELATING TO THE PROVISIONS OF A DECLARED STATE OF LOCAL EMERGENCY; PROVIDING THE PURPOSE AND INTENT OF THE ORDINANCE; PROVIDING FOR THE PROHIBITION OF PRICE GOUGING INVOLVING ESSENTIAL COMMODITIES IN THE TOWN OF FORT MYERS BEACH DURING AN EMERGENCY; PROVIDING FOR OFFENSES AND PENALTIES INCLUDING BUT NOT LIMITED TO CRIMINAL PENALTIES PURSUANT TO LAW; TERRITORY EMBRACED, PROVIDING AUTHORITY; 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, Chapter 252, Florida Statutes, Chapter 252, Florida Statutes and other applicable provisions of law.

SECTION 2. Purpose and intent. During a state of local emergency as the same may be declared by the State of Florida, the Board of County Commissioners of Lee County, Florida, the Town Council of Fort Myers Beach or the responsible official of the Town of Fort Myers Beach (as set forth in Ordinance 99-6 of the Town of Fort Myers Beach, Florida, inclusive of subsequent amendments), it shall be unlawful for any person or his or her agent(s) or employee(s) within the geographical area of the Town of Fort Myers Beach for which a state of emergency is declared, to rent or sell, or offer to rent or sell, at an unconscionable price any essential merchandise, goods, services or housing as defined herein, during a declared emergency.

SECTION 3. Definitions.

(a) Average retail price shall be defined herein as the price at which the same or similar commodity had been sold during the thirty-day period immediately preceding the declaration of the local emergency.

(b) Essential merchandise shall be defined herein as that merchandise, goods, and services as defined to mean but not be limited to: food, water, ice, chemicals, petroleum products, lumber, supplies, services, provisions, or equipment, or the rental or lease of any dwelling unit, (which includes the rental of hotel, motel or other transient lodging) or facilities or self-storage facility, that is necessary for consumption or use as the direct result of the declared emergency. The prohibition shall remain in effect until the declaration expires or is terminated as set out further herein.

(c) Essential Commodities Survey shall be defined herein as that countywide survey of the prices of Essential Merchandise, conducted on an

annual basis prior to the annual Hurricane Season (June 1 through November 30), by the Emergency Management of the Division of Public Safety of Lee County, Florida, as set forth in Section Three of Lee County Ordinance No. 04-24, Lee County, Florida (enacted 12-14-04) and in Exhibit "A" to said Ordinance.

(d) Unconscionable price shall be defined herein as:

(1) The amount charged for the goods or services grossly exceeds the average price charged, or at which the same or similar commodity was readily obtainable in the effected area during the thirty (30) days immediately prior to a declaration of a state of emergency, and the increase in the amount charged is not directly attributable to additional costs incurred in connection with the market availability or the obtaining of the commodity.

(2) The amount charged represents a gross disparity between the price of the commodity or rental or lease of any dwelling unit or self-storage facility that is the subject of the offer or transaction, and the average price at which that commodity or dwelling unit or self-storage facility was rented, leased, sold, or offered for rent or sale in the usual course of business during the thirty (30) days immediately prior to a declaration of a state of emergency, and the increase in the amount charged is not attributable to additional costs incurred in connection with the market availability or the obtaining of the commodity.

SECTION 4. Essential Commodities Survey. For purposes of determining a baseline from which to investigate price-gouging complaints and to prosecute offenders when a State of Local Emergency is declared, and in accordance with Section 252.38 (2) of Florida Statutes, the Town of Fort Myers Beach shall utilize the Essential Commodities Survey compiled by Emergency Management of the Division of Public Safety of Lee County, Florida, as such is defined elsewhere herein. A sample copy of such survey is attached to this Ordinance as Exhibit "A" and hereby incorporated by reference.

SECTION 5. Offenses and penalties.

a) Any person, or his or her agent(s) or employee(s), or firm, company or corporation who offers for sale, sells or refuses to comply with or violates any section of this article with respect to the sale of goods and/or services as described herein, or the emergency measures which may be made effective pursuant to this article, shall upon conviction, be found guilty of a misdemeanor of the second degree, shall be punished by a fine not to exceed five hundred dollars (\$500.00) or by imprisonment not to exceed sixty (60) days in the Lee County Jail, or both, at the discretion of the court. Each day of continued non-compliance or violation shall constitute a separate offense.

b) Nothing contained herein shall prevent the Town from taking all other lawful actions in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful actions shall include but shall not be limited to, equitable actions for injunctive relief or other actions at law for actual and punitive damages.

SECTION 6. Territory Included. All of the incorporated area within the Town of Fort Myers Beach, Lee County, Florida shall be regulated by the provisions of this Ordinance.

SECTION 7. Conflict and Severability. In the event that this Ordinance conflicts with any other ordinance or other applicable law, the more restrictive shall apply. 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 8. Effect of Ordinance. The provisions of this Ordinance shall be deemed cumulative and supplemental and shall have no legal effect upon the ordinance establishing the Town of Fort Myers Beach Recovery From Disaster Ordinance, except as expressly provided.

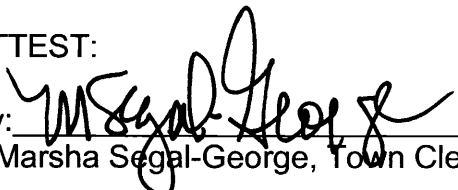
SECTION 9. Effective Date. This ordinance shall become effective immediately upon its adoption.

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

| | |
|------------------------|------------|
| Howard Rynearson | <u>Aye</u> |
| Don Massucco | <u>Aye</u> |
| Ken Katcko | <u>Aye</u> |
| W. H. "Bill" Van Duzer | <u>Aye</u> |
| Garr Reynolds | <u>Aye</u> |

DULY PASSED AND ENACTED this 27th day of June, 2005.

ATTEST:

By: 
Marsha Segal-George, Town Clerk

TOWN OF FORT MYERS BEACH

By: 
W. H. "Bill" Van Duzer, Mayor

Approved as to form by:


Anne Dalton, Town Attorney

EXHIBIT "A"
 LEE COUNTY, FLORIDA
 AVERAGE COST OF ESSENTIAL COMMODITIES

SURVEY DATE: _____

| Item | Category | Size | Average Price |
|-----------|--------------------|---------------|---------------|
| Baby Food | Consumables | 4 oz. jar | |
| Batteries | Household Supplies | 6 volt - 1 PK | |
| Batteries | Household Supplies | 9 volt - 1 PK | |
| Batteries | Household Supplies | 9 volt - 2 PK | |
| Batteries | Household Supplies | 9 volt - 4 PK | |
| Batteries | Household Supplies | AA - 2 PK | |
| Batteries | Household Supplies | AA - 4 PK | |
| Batteries | Household Supplies | AA - 8 PK | |
| Batteries | Household Supplies | AAA - 2 PK | |
| Batteries | Household Supplies | AAA - 4 PK | |
| Batteries | Household Supplies | AAA - 8 PK | |

| | | | |
|--|--------------------|------------|--|
| Batteries | Household Supplies | C - 2 PK | |
| Batteries | Household Supplies | C - 4 PK | |
| Batteries | Household Supplies | C - 8 PK | |
| Batteries | Household Supplies | D - 2 PK | |
| Batteries | Household Supplies | D - 4 PK | |
| Batteries | Household Supplies | D - 8 PK | |
| Bleach | Household Supplies | 1 gal. | |
| Can Opener (manual) | Household Supplies | Each | |
| Charcoal | Consumables | 10 lb. Bag | |
| Charcoal | Consumables | 20 lb. Bag | |
| Coolers | Household Supplies | 36 qt. | |
| Coolers | Household Supplies | 16 qt. | |
| Diapers | Personal Hygiene | 40 - PK | |
| Drinks (Gatorade, Power Aid, Hawaiian Punch) | Consumables | 64 oz. | |
| Drinks (Gatorade, Power Aid, Hawaiian Punch) | Consumables | 1 gal. | |
| | | | |

| | | | |
|----------------------------------|---|----------------|--|
| First Aid Kits | Personal Hygiene | Kit | |
| Flashlights | Household Supplies | Each | |
| Gasoline | See current AAA prices at http://www.fuelguagereport.com/FImetro.asp | | |
| Generators | Household Supplies | 1,850 Watts | |
| Generators | Household Supplies | 3,000 Watts | |
| Generators | Household Supplies | 5,500 Watts | |
| Generators | Household Supplies | 7,000 Watts | |
| Ice | Consumables | Bag (7-20 lb.) | |
| Lanterns (Battery) | Household Supplies | Each | |
| Masking Tape | Home Shelter Supplies | 1 inch | |
| Masking Tape | Home Shelter Supplies | 2 inch | |
| Milk | Consumables | 1 gal. | |
| Pain Relievers (adult) - 250 ct. | Medicines | Box | |
| (adult) - 165 ct. | Medicines | Box | |
| (adult) - 150 ct. | Medicines | Box | |
| (adult) - 100 ct. | Medicines | Box | |
| | | | |

| | | | |
|---------------------------------------|-----------------------|---------------|--|
| (adult) - 50 ct. | Medicines | Box | |
| (adult) - 20 ct. | Medicines | Box | |
| Pain Relievers (children) - 30 ct. | Medicines | Box | |
| (children) - 24 ct. | Medicines | Box | |
| (children) - 4 oz. | Medicines | Bottle | |
| (children) - 1 oz. | Medicines | Bottle | |
| Plastic Sheeting (various/lengths) | Household Supplies | 4 mil | |
| Plastic Sheeting (various/lengths) | Household Supplies | 6 mil | |
| Plastic Sheeting (various/lengths) | Household Supplies | 3.5 mil | |
| Plywood | Home Shelter Supplies | 1/2 inch | |
| Plywood | Home Shelter Supplies | 3/4 inch | |
| Plywood | Home Shelter Supplies | 5/8 inch | |
| Power Drills (cordless) | Household Supplies | Each | |
| Power Drills (with cord) | Household Supplies | Each | |
| Power Saws (with cord) | Household Supplies | Circular | |
| Soda | Consumables | Reg. - 2 ltr. | |
| Soda | Consumables | Diet - 2 ltr. | |

| | | | |
|----------------------------|-----------------------|---------|--|
| Water | Consumables | 1 gal. | |
| Wet/Dry Vacs (purchase) | Household Supplies | 16 gal. | |
| Wet/Dry Vacs (purchase) | Household Supplies | 12 gal. | |
| Wet/Dry Vacs (purchase) | Household Supplies | 10 gal. | |

The cost of the above commodities is based on an average price of a representation of all of the commodities surveyed within their own specific category.