

TOWN OF FORT MYERS BEACH  
ORDINANCE NO. 06-12

AN ORDINANCE PROVIDING FOR PROCEDURES FOR DECLARING A STATE OF EMERGENCY AND RELATED ACTIONS; AUTHORITY OF TOWN COUNCIL, DEFINITIONS OF EMERGENCY; PROVIDING FOR PREPARATION OF EMERGENCY DISASTER PLAN; PROVIDING FOR ACTIVATION OF EMERGENCY DISASTER PLAN; PROVIDING FOR EMERGENCY MEASURES; PROVIDING FOR PROHIBITIONS DURING STATE OF EMERGENCY; VIOLATIONS; REPEALING ORDINANCES 96-19, 99-06, 04-14, 05-16 AND 05-17; PROVIDING FOR CONFLICT, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Town of Fort Myers Beach ("Town") is vulnerable to the occurrence of a natural, man-made or technological emergency resulting in a disaster within the Town; and

WHEREAS, Chapter 252, Florida Statutes, authorizes the waiver of procedures and formalities, otherwise required of political subdivisions, to take whatever prudent action is necessary to ensure the health, safety, and welfare of the community in the event of a state of emergency, and

WHEREAS, Florida Statute 252.38 authorizes and encourages municipalities to create municipal emergency management programs, and requires that such programs coordinate their activities with those of the county emergency management agency; and

WHEREAS, Article VIII, Section 2 of the State Constitution and Chapter 166 of the Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, the measures set forth in this Ordinance are necessary to provide for the protection of public health, safety, and welfare and to preserve the lives and property of the people of the Town.

NOW, THEREFORE, IT IS ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AS FOLLOWS:

**Section 1. Authority of Town Council**

Nothing in this Ordinance shall be construed to limit the authority of the Town Council to take any action authorized by law when sitting in regular or special session, including but not limited to declaring, extending or terminating a state of local emergency and ordering or terminating an order for mandatory evacuation in the Town.

## **Section 2. Definitions.**

A. **Disaster** means any natural, technological, or civil emergency that causes damage of sufficient severity and magnitude to result in a declaration of a state of emergency by Lee County, the Governor, or the President of the United States. Disasters shall be identified by the severity of resulting damage, as follows: "catastrophic disaster" means a disaster that will require massive state and federal assistance, including immediate military involvement; "major disaster" means a disaster that will likely exceed local capabilities and require a broad range of state and federal assistance; "minor disaster" means a disaster that is likely to be within the response capabilities of local government and to result in only a minimal need for state or federal assistance.

B. **Emergency** means any occurrence, or threat thereof in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property. Emergencies shall be identified by type, as follows: "manmade emergency" means an emergency caused by an action against persons or society, including, but not limited to, enemy attack, sabotage, terrorism, civil unrest, or other action impairing the orderly administration of government; "natural emergency" means an emergency caused by a natural event, including, but not limited to, a hurricane, a storm, a flood, severe wave action, a drought, or an earthquake; "technological emergency" means an emergency caused by a technological failure or accident, including, but not limited to, an explosion, transportation accident, radiological accident, or chemical or other hazardous material incident.

C. **Responsible Official** means the following Town Officials in the order indicated: first, the Mayor of the Town Council; secondly, in the absence, unavailability, or incapacity of the Mayor, the Vice-Mayor of the Town Council; thirdly, in the absence, unavailability, or incapacity of the Mayor and the Vice-Mayor, the Town Manager; fourthly, in the absence, unavailability, or incapacity of the Mayor, the Vice-Mayor and the Town Manager, such designee(s) as may be appointed by the Town Manager.

## **Section 3. Preparation of Emergency Response Plan.**

The Town Manager is hereby authorized to coordinate the development of a Town emergency management plan ("the plan"). The plan shall include procedures to implement the policies set forth in this Ordinance and shall be consistent with county emergency management plans, in accordance with the requirements of Florida Statute. The plan shall be subject to review and approval by Town Council.

**Section 4. Proclamation of State of Emergency, Extension and Rescission of State of Emergency.**

A. Whenever an emergency exists within the Town, a quorum of the Town Council, shall, upon such public notice as is reasonable under the circumstances, issue a proclamation of state of local emergency. If 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, such proclamation shall be declared by the Responsible Official.

B. In the event that the emergency affects only the Town, the duration of such proclamation of state of local emergency is limited to seven (7) days, and may be extended for successive periods of seven (7) days upon issuance of additional proclamation(s) of a state of local emergency, as set forth in F.S. 252.38 (3)(a)(5), as amended from time to time.

C. Such state of emergency shall continue until the earliest of (i) expiration of the proclamation pursuant to Section 3 (B) above, if applicable; or (ii) rescission of such state of emergency by proclamation, issued by a quorum of the Town Council meeting in a general meeting or special meeting; or, (iii) if such a quorum is unavailable within a reasonable time, rescission of such state of emergency by proclamation issued by the Responsible Official. Such proclamation shall find that the threat or danger no longer exists.

**Section 5. Activation of Disaster Emergency Plan.**

A proclamation declaring a state of local emergency shall activate the Town's disaster emergency plan(s) and shall also be the authority for use or distribution of any supplies, equipment, materials, and/or facilities assembled or arranged to be made available pursuant to such plan(s).

**Section 6. Emergency Measures.**

In addition to any other powers conferred by law, upon the declaration of a state of local emergency pursuant to this Ordinance, the Town Manager or designee(s) shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the Town Manager or designee(s) may deem appropriate to protect the Town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the Town by law pertaining to these measures:

A. To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including

emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.

B. To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers;

C. To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.

D. To assign and make available for duty the offices and agencies of the Town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the Town.

E. To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.

F. To waive any procedures and formalities otherwise required of the Town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the Town.

G. To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.

H. To utilize all available resources of the Town government as reasonably necessary to cope with the emergency occasioned by the disaster.

I. To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.

J. Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard, or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue, and traffic control.

## **Section 7. Prohibitions During State of Emergency**

Whenever a state of local emergency has been declared pursuant to this ordinance, 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 or modified by a quorum of the Town Council at a general, special or emergency meeting:

A. It shall be unlawful and an offense against the Town for any person, firm, or corporation to use the fresh water supplied by the County or local water company for any purpose other than cooking, drinking or bathing.

B. 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 dusk and dawn, 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 Town Manager, 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.

### **Section 8. Violations of Ordinance.**

Any person, firm or corporation who refuses to comply with or violates any section of this Ordinance, or the emergency measures which may be made effective pursuant to this Ordinance, shall be guilty of a misdemeanor and upon conviction for such offense, 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 county jail, or both, in the discretion of the court. Each day of continued non-compliance or violation shall constitute a separate offense.

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

### **Section 9. Repeal of Prior Ordinances, Conflict and Severability.**

A. Town Ordinances 96-19, 99-06, 04-14, 05-16 and 05-17 are hereby repealed in their entirety and have no force or effect. In addition, all sections or parts of sections of any other Ordinance(s) and/or Resolution(s) of the Town in conflict herewith are hereby repealed to the extent of such conflict.

B. If any phrase or portion of this Ordinance is held invalid or unconstitutional by any court of competent jurisdiction, such invalidity will not affect the remaining provisions that can be implemented without the invalid provision, and, to this end, the provisions of this ordinance are declared to be severable.

### **Sec. 10. Effective Date.**

This Ordinance shall take effect immediately upon adoption by the Town.

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

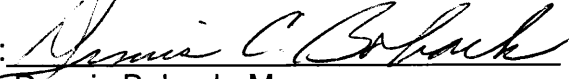
Dennis Boback , Mayor	aye
Don Massucco, Vice Mayor	aye
Charles Meador, Jr.	aye
Garr Reynolds	aye
William Shenko, Jr.	aye

DULY PASSED AND ENACTED this 19th day of June, 2006.

ATTEST:

TOWN OF FORT MYERS BEACH

By:   
Michelle Mayher, Town Clerk

By:   
Dennis Boback, Mayor

Approved as to legal sufficiency by:

  
Anne Dalton, Town Attorney