

ORDINANCE No. 04-15

AN ORDINANCE ESTABLISHING AN EMERGENCY; AMENDING THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE CHAPTER 30, SECTION 30-56. NON-CONFORMING SIGNS; PROVIDING AUTHORITY; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Town of Fort Myers Beach, Florida was established under the Laws of Florida, Chapter 95-494 which provides in Section 10.02 Adoption of ordinances, sub-section (b): To meet a public emergency affecting life, health, property, or the public peace, the council, by a two-thirds vote of those present as required by general law, may adopt an emergency ordinance without complying with the requirements of notice expressed in the foregoing paragraph. An emergency ordinance may not levy taxes; grant, renew, or extend a franchise; set service or user charges for any municipal services; or authorize the borrowing of money. An emergency ordinance shall become effective upon adoption and automatically stand repealed as of the 61st day following the date on which it was adopted. This shall not prevent reenactment of such an ordinance under regular procedures.

WHEREAS, Subsection 30-1(b) of the Land Development Code provides that the purpose of the Fort Myers Beach Sign Code is to encourage signs which are integrated with and harmonious to the buildings and sites which they occupy, to eliminate excessive and confusing sign displays, to preserve and improve the appearance of the Town as a place in which to live and work and as an attraction to nonresidents who come to visit or trade, and to restrict signs which increase the probability of accidents by distracting attention or obstructing vision; and

WHEREAS, Subsection 30-1(c) of the Land Development Code provides that the Fort Myers Beach Sign Code provides minimum standards to safeguard life, safety, property, and public welfare by reviewing design and by regulating size, construction, location, electrification, operation, and maintenance of all signs and sign structures exposed to public view within the Town; and that the visual appearance and traffic safety of the Town cannot be achieved by measures less restrictive than the procedures and standards of this chapter; and

WHEREAS, Subsection 30-56(a) of the Land Development Code provides that as of September 13, 1999, every sign that is a permitted legally existing sign was deemed a legal non-conforming sign; and

WHEREAS, Subsection 30-56(c) of the Land Development Code provides that a legal non-conforming sign becomes an illegal sign if repair or refurbishing exceeds 50 percent of the value of the sign in its preexisting state; and

WHEREAS, Subsection 30-56(d) of the Land Development Code provides that all sign must be brought into compliance with the Land Development Code standards upon any alteration and no later than September 13, 2007; and

WHEREAS, Town Council finds that it is a fact that a large number of the legally non-conforming signs in the Town limits sustained damages as a result of the hurricanes experienced during the current tropical storm season; and

WHEREAS, Town Council finds that the danger posed by the damage to these signs by tropical storm force winds is an issue of concern for public safety; and

WHEREAS, Town Council finds that within less than 24 months all these non-conforming signs must be brought into compliance; and

WHEREAS, Town Council finds that permitting the repair of these damaged non-conforming signs would subject the Town to unnecessary dangers.

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. Establishing An Emergency. It is the finding of the Town Council that to meet a public emergency affecting life, health, property, or the public peace, an emergency exists justifying the need to adopt this ordinance.

SECTION 3. AMENDING LAND DEVELOPMENT CODE CHAPTER 30. SECTION 30-56. NON-CONFORMING SIGNS. The amendments to Chapter 30 are contained in the attached **Exhibit A**. Entirely new language is indicated with underlining and language being repealed from the regulations is indicated with strikethroughs.

SECTION 4. 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 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 Rynearson and seconded by Council Member Reynolds and, upon being put to a vote, the result was as follows:

Howard Rynearson	<u>Aye</u>
Don Massucco	<u>Aye</u>
Bill Thomas	<u>Aye</u>
W. H. "Bill" Van Duzer	<u>Aye</u>
Garr Reynolds	<u>Aye</u>

DULY PASSED AND ENACTED this 27th day of September, 2004.

ATTEST:

TOWN OF FORT MYERS BEACH

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

By: Bill Thomas
Bill Thomas, Mayor

Approved as to form by:
Richard V.S. Roosa
Richard V.S. Roosa, Town Attorney

FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 30 SIGNS

part or full, except upon full compliance with this chapter.

Sec. 30-56. Non-conforming signs.

For further clarification, see land development code §§ 34-3201 through 34-3277.

(a) **Status.** Every sign, as of the effective date of the chapter (September 13, 1999) which is a permitted legally existing sign shall be deemed a legal non-conforming sign. A permitted sign means a sign that was constructed or is in place with a valid permit from the Town of Fort Myers Beach. All non-conforming signs shall be subject to the provisions of this section. All existing signs which are not legal non-conforming signs must comply with the terms of this chapter.

- (1) A non-conforming sign may not be enlarged or altered in a way which increases its nonconformity.
- (2) Nothing in this section shall relieve the owner or user of a legal non-conforming sign or owner of the property on which the legal non-conforming sign is located from the provisions of this chapter regarding safety, maintenance and repair of signs. Any repair or refurbishing of a sign that exceeds 50 percent of the replacement value of the sign in its preexisting state shall be considered as an act of placing a new sign and not an act of customary maintenance. It shall be the responsibility of the permittee to provide the division of community development with adequate proof of the cost of such work in the form of an itemized statement of the direct repair cost whenever such information is requested by the division,
- (3) If any non-conforming sign is destroyed to an extent exceeding 50 percent or more of its replacement value at the time of destruction, the sign shall not be replaced or repaired, in

(b) **Designation of historically significant and/or landmark signs.** Pursuant to the Fort Myers Beach Comprehensive Plan, the town's vision for preserving its history is set out in chapter 13. This historic preservation element has two major goals. The first is to preserve "the best of the old" as the community evolves and redevelops over time. The second goal is to share the legacy left by previous residents with today's visitors and the broader community and to do so in a way that preserves the local culture and environment and enriches visitors' experiences. The local planning agency is designated to serve as the historic preservation board by this code.

- (1) A sign may be nominated for designation as historically significant or having landmark status to the local planning agency.
- (2) A nomination letter would be prepared documenting the historical background of the sign and listing reasons for possible landmark status. The historic preservation element sets out historic and archaeological criteria that should be incorporated into a nomination letter.
- (3) The local planning agency will hold a public hearing on any nomination requests received and will use the historic preservation element as a guideline for approving or denying such requests.
- (4) The town council will serve as the appeal board for signs that are denied historical and/or landmark status
- (5) A sign that is designated as historical or having landmark status will receive a legal non-conforming status for as long as the sign remains. If the sign is destroyed in any way, it may be re-constructed to its legal non-conforming historical and/or landmark status. Similarly, if the underlying business is sold, or "copy" or "use" is changed, the sign continues to hold its legal non-conforming designation and remains as a historical or landmark designated sign.

(c) **Loss of legal nonconformity.**

- (1) A legal non-conforming sign shall become an illegal sign which must comply with this chapter if:
 - a. More than 50 percent of the sign is removed or unassembled for a period of more than six months.
 - b. The sign is altered or relocated in any manner which increases its nonconformity or causes it to be less in compliance with the provisions of this chapter.
 - c. Any change of use or change of ownership of a sign loses legal non-conformity and must comply with current regulations.
 - d. Repair or refurbishing exceeds 50 percent of the value of the sign in its preexisting state.
 - e. The sign is ~~replaced~~damaged in a natural disaster.
- (2) When a sign face remains blank, which as defined as void of advertising for a period of 12 months it loses its non-conforming status and must be treated as a sign which must comply with all the requirements of this chapter. Signs displaying an "available for lease" message or similar message and partially obliterating signs which do not identify a particular product, service or facility are considered to be blank signs.
- (3) A non-conforming sign that has lost its legal non-conforming status shall be immediately brought into compliance with this chapter, or the sign shall be removed.
- (4) The existence of an illegal sign or a legal non-conforming sign does not constitute a hardship warranting the issuance of a variance from the provisions of this chapter.

(d) **Time for compliance.** All signs shall be brought into compliance with the standards of this section according to the following schedule which follows:

- (1) **Real estate signs** shall be removed or made lawful hereunder within 24 months after the effective date of this chapter (September 13, 1999).
- (1) The town finds that in view of the inexpensive nature of these signs and the administrative burden which would be imposed by elaborate procedural prerequisites prior to removal, any

procedure other than summary removal of these signs when unlawfully erected and maintained would defeat the purpose of regulating such signs. Therefore, the building official is hereby authorized summarily to remove such signs when unlawfully erected and maintained, subject to the provisions contained in subsection (3) of this section.

- (2) After summary removal of a sign pursuant to this section, the building official shall notify, either in person or by first class postage, prepaid, the occupant of the property from which the sign was removed, and if the sign identified a party other than the occupant of the property, the party so identified. The notice shall advise that the sign has been removed, and shall state that the sign may be retrieved within 30 days of the date of the notice and that if the sign is not retrieved within 30 days it will be disposed of by the town. If the sign is removed from public property, the party, if any identified on the sign shall be notified; if no party is identified on the sign, then no notice prior to disposition is required. The town shall dispose of all unclaimed signs after the expiration of the 30-day period.
- (2) Signs damaged in a natural disaster must not be repaired or replaced and must be removed within sixty days of the adoption date of this ordinance (September 27, 2004). Temporary sign permits may be issued for properties associated with such damaged signs for one period not to exceed 180 calendar days. One additional temporary permit may be issued for an addition period not to exceed 180 days on a showing of continued hardship. At the expiration of the temporary sign permit, the temporary sign and the non-conforming sign must be removed or brought into compliance with the requirements of this chapter.
- (2) **Other non-conforming signs.** Any other non-conforming sign shall be brought in compliance with this chapter upon any alteration (but not routine maintenance) of the sign, or 8 years after the effective date of this chapter (September 13, 1999), whichever comes first.