

ORDINANCE No. 96- 26

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH TO BE KNOWN AS THE TOWN OF FORT MYERS BEACH VESSEL CONTROL AND WATER SAFETY ORDINANCE, PROVIDING AUTHORITY; TITLE AND CITATION; DEFINITIONS; AREA OF ENFORCEMENT; MEANS OF ENFORCEMENT; VESSEL REGULATION, SPEED; CAREFUL AND PRUDENT OPERATION REQUIRED; AREAS OF PROHIBITED WATER ACTIVITY; AREAS OF REGULATED WATER ACTIVITY; PROCEDURE TO DESIGNATE AREAS; EXEMPTIONS; PENALTY; SEVERABILITY; REPEALING CLAUSE 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. Title and Citation

This ordinance shall be know and cited as the "Town of Fort Myers Beach Vessel Control and Water Safety Ordinance"

SECTION 3. 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. "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.).

D. "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 merely necessary to effectively traverse breaking water for personal watercraft. For a non-motor propelled vessel, idle speed means that speed necessary for steerageway.

E. "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.

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

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

H. "Personal watercraft" means a small class A-1 or A-2 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.

I. "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.

J. "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.

K. "Town waters" are all waters within 1,000 feet of the shore line of Estero Island, Lee County, Florida.

L. "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.

M. "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.

SECTION 4. 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 Lee County maintained or marked channels.

SECTION 5. 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 requirements of this ordinance, all operators of a watercraft are subject to Florida Statutes Chapter 327.

SECTION 6. Vessel Regulation, Speed

Vessel speed shall not exceed reasonable speed under existing conditions. Nothing contained in this Ordinance shall be construed to authorize or approve any speed, greater than is reasonable and proper in consideration of local conditions, other water traffic, fishermen, water skiers or bathers in the area, or other hazards.

SECTION 7. Careful and Prudent Operation Required

Every person operating any vessel in, on or under any waters within the area of enforcement as set forth above shall do so in a careful and prudent manner, taking into consideration the weather conditions and range of visibility, water turbulence, proximity to fishermen, bathers, water skiers and other boats and watercraft, and all other attendant circumstances so as not to endanger the life, limb or property of any person. Failure to operate a vessel in such a careful and prudent manner shall constitute careless boating in violation of this Ordinance.

SECTION 8. Areas of Prohibited Water Activity

No owner, operator or person in command of any vessel shall permit or operate a vessel within 500 feet of a Town or County-park beach on littoral waters adjacent thereto and designated by posting as a "Swimming Only" - vessel exclusion area, or any other area that may be so designated by the Town Council pursuant to the procedures set forth in this Ordinance.

Floating vendors may not operate within the waters of the Town of Fort Myers Beach, except vendors with 1997, Lee County Floating Vendor licenses who are based in Fort Myers Beach and have only one boat.

SECTION 9. Areas of Regulated Water Activity

No owner, operator or person in command of any vessel shall permit or operate said vessel at a speed greater than, or in excess of, slow or idle speed, as posted, whenever the vessel is in an Area of Regulated Water Activity. Ingress and egress to the beaches shall be as nearly perpendicular to the shoreline as possible and parallel cruising of the shoreline shall be prohibited. The following areas are hereby designated as Areas of Regulated Water Activity:

(1) All waters within 500 feet offshore from all beaches and from any water-oriented structure, whether or not so designated with appropriate signs. With regard to the Fort Myers Beach Pier, it shall be within 100 feet of the pier or within 500 feet of the shore, whichever is the most restrictive; and,

(2) All waters within 100 feet of a bridge; and,

(3) Any area designated as an official "NO WAKE SLOW SPEED ONLY" area which is so posted in such a manner and place that it may be reasonably expected to be seen and read by a person in operation of a vessel within the area; and,

(4) Any other area that may be so designated by the Town Council according to the procedure set forth in this Ordinance;

SECTION 10. Procedure to Designate Areas

By Resolution adopted at a public hearing upon at least fifteen (15) days notice (excluding Sundays and legal holidays) published in a newspaper of general circulation in Lee County, Florida, the Town Council may designate specific areas as an "Area of Prohibited Water Activity", an "Area of Regulated Water Activity", or an "Area of Special Management". In designating such areas, the Town Council shall hear all testimony presented and make a finding that the designation is necessary for the safety and/or welfare of the citizens of the Town. Upon the adoption of such a Resolution, the Town Manager shall publish the Resolution one time in a newspaper of general circulation in Lee County, Florida, after which the designation of the area shall be complete and binding; provided, however, no person shall be convicted of a violation of this Section relating to such specified areas until signs designating the boundaries of the area so designated have been posted in such a manner and place that they may reasonably be expected to be seen and read by a person operating a vessel in that area.

SECTION 11. Exemptions

A. The provisions of this Ordinance shall not be construed to prohibit the running of racing or exhibition boats or personal watercraft during a publicly announced, properly authorized and supervised, and adequately patrolled regatta or speed trial or exhibition. "Properly authorized" shall require approval by the Town Council.

B. Florida Marine Patrol rescue craft, Lee County Sheriff's Department craft, other official craft and craft operating under emergency conditions shall be exempted from the provisions of

this Ordinance while performing their official duties or operating in an emergency.

SECTION 12. 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 provisions shall upon conviction thereof be fined (\$150.00) one hundred fifty dollars for the first violation and (\$300.00) three hundred dollars for the next two violations. Any subsequent violation after three will cause the Town to pursue license revocation and will be considered appropriate grounds for revocation of any watercraft license issued by the Town: and in addition shall pay all costs and expenses involved in the case.

SECTION 13. 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 14. Repealing Clause

All ordinances or parts thereof in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

SECTION 15. Effective Date.

This ordinance shall become effective immediately upon its adoption.

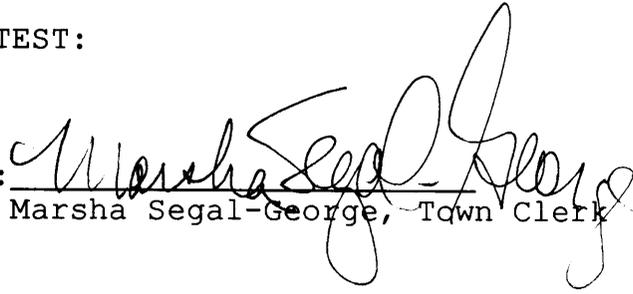
The foregoing ordinance was enacted by the Town Council upon a motion by Council Member Isler and seconded by Council Member Murphy and, upon being put to a vote, the result was as follows:

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

DULY PASSED AND ENACTED this 18th day of Nov., 1996.

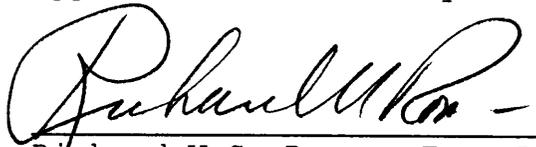
ATTEST:

TOWN OF FORT MYERS BEACH

By: 
Marsha Segal-George, Town Clerk

By: 
Anita T. Cereceda, Mayor

Approved as to form by:


Richard V.S. Roosa, Town Attorney