

RESOLUTION OF THE LOCAL PLANNING AGENCY OF THE
TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 2011-15
AMENDMENT TO PERSONAL WATERCRAFT AND PARASAILING
ARTICLE IV OF CHAPTER 27
TOWN LAND DEVELOPMENT CODE

WHEREAS, the existence of the Local Planning Agency (LPA) is mandated by Florida Statutes Section 163.3174; and

WHEREAS, the Local Planning Agency (LPA) is statutorily responsible under Chapter 163, Florida Statutes, and the Town of Fort Myers Land Development Code (LDC) Section 34-120 for the review of proposed land development regulations, land development codes, or amendments thereto, and for making recommendations to the Town Council with regard thereto and performing such other reviews as are requested by the Town Council; and

WHEREAS, following proper notice and as required under Florida Statute and the LDC, the LPA conducted a public hearing on March 23, 2010 to consider a proposed Town Ordinance, which is attached hereto as Exhibit A and is hereby incorporated by reference; and

WHEREAS, the aforesaid Ordinance, if passed, would amend the regulation of personal watercraft and parasailing businesses within Town municipal limits, as is more fully set forth in the draft Ordinance; and

NOW THEREFORE BE IT RESOLVED, that the LPA recommends that Town Council approve and adopt the proposed Town Ordinance to amend the Personal Watercraft and Parasailing, Article IV, of Chapter 27 of the Town Land Development Code and recommends the following findings of fact and conclusions with regard thereto:

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. The proposed amendments are in the best interests of the health, safety and welfare of the citizens, residents, visitors, and business owners of the Town of Fort Myers Beach and the LPA hereby recommends that the Town Council adopt the proposed amendments to the Land Development Code. .

The foregoing Resolution was adopted by the LPA upon a motion by LPA Member Bill Van Duzer and seconded by LPA Member John Kakatsch and upon being put to a vote, the result was as follows:

Joanne Shamp, Chair aye
John Kakatsch aye
Bill Van Duzer aye
Al Durrett

Hank Zuba, Vice Chair aye
Jane Plummer aye
Alan Smith aye

DULY PASSED AND ADOPTED THIS 11th day of October, 2011.

LPA of the Town of Fort Myers Beach

By: 
Joanne Shamp, LPA Chair

Approved as to legal sufficiency:

ATTEST:

By: 
Fowler White Boggs
LPA Attorney

By: 
Michelle Mayher, Town Clerk

ORDINANCE -11

AN ORDINANCE AMENDING CHAPTER 27, ARTICLE IV OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE, "ADDITIONAL RULES AND PROCEDURES APPLYING TO BOTH PERSONAL WATERCRAFT AND PARASAILING," AMENDING SECTION 27-52, "PWVL AND PAL APPLICATIONS; REGULATORY FEES," TO CLARIFY THE NUMBER OF PWVL AND PAL LICENSES THAT ARE PERMITTED; AMENDING SECTION 27-55, "TRANSFERABILITY OF PWVL AND PAL LICENSES; GRANDFATHER CLAUSE," TO CLARIFY THE CONDITIONS UNDER WHICH SUCH LICENSES MAY BE TRANSFERRED TO A DIFFERENT LOCATION; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

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

Section 1. Section 27-52 of the Fort Myers Beach Land Development Code is hereby amended as follows:

Sec. 27-52. PWVL and PAL applications; regulatory fees.

...

(d) **Cap on number of licenses.** PWVLs and PALs and license renewals shall be issued on an annual basis coinciding with the town's fiscal year, October 1 through September 30.

(1) ~~The town manager may issue~~ There shall be no more than ten (10) PWVL licenses outstanding at any point of in time.

(2) ~~The town manager may issue~~ There shall be no more than seven (7) ~~6~~ PAL licenses outstanding at any point of in time.

(3) See § 27-55 for regulations on transfers of existing PWVLs and PALs.

Section 2. Section 27-55 of the Fort Myers Beach Land Development Code is hereby amended as follows:

Sec. 27-55. Transferability of PWVL and PAL licenses; ~~grandfather clause.~~

(a) **Transferability.** Provided that this chapter has been complied with, the PWVL or PAL is transferable to a new owner and/or to a different location if:

(1) The location of the business will be transferred to complies with the minimum separation requirements of this chapter, ~~or is "grandfathered in" under subsection (b) below;~~ and

(2) The new business owner files an amended application with the town providing the information required in this chapter; and

(3) ~~Transferability of a PALs to a new conforming locations may is only be allowed when there are seven (7) or fewer licenses fall below 6 outstanding. If there are 6 or fewer PALs issued, then a license at a nonconforming location can move that license to a conforming location and surrender the nonconforming location which still results in 6 or fewer total licenses.~~

(4) ~~Transferability of a PWVLs to a new conforming locations may is only be allowed when there are ten (10) or fewer licenses fall below 10. If there are 10 or fewer PWVLs issued, then a license at a nonconforming location can move that license to a conforming location and surrender the nonconforming location which still results in 10 or fewer total licenses.~~

(b) ***Nonconforming PWVLs.*** Personal watercraft vendors that have who established or commenced business at their existing a locations on or before December 2, 1996, but ~~which may or may~~ that does not comply with the location requirements set forth in this chapter and ~~the remainder of this code~~ may continue to operate as a nonconforming use after December 2, 1996, unless terminated for failure to obtain the a PWVL or renewal as required by this chapter, voluntary discontinuation of business for a period of thirty (30) days or more, or revocation of the PWVL permit.

(c) ***Nonconforming PALs.*** Parasail operators that have who established or commenced business at their existing a locations on or before January 21, 1997, and ~~which are in conformity with the location requirements of this code, but which may or may~~ that does not comply with the location requirements set forth in this chapter, may continue to operate as a nonconforming use after January 21, 1997, unless terminated for failure to obtain the a PAL or renewal as required by this chapter, voluntary discontinuation of business for a period of thirty (30) days or more, or revocation of the PAL permit.

Section 3. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 4. Effective Date. This ordinance shall take effect immediately upon adoption by the Town Council.

The foregoing Ordinance was adopted by the Town Council upon a motion by _____ and seconded by _____ and upon being put to a vote, the result was as follows:

Larry Kiker, Mayor
Joe Kosinski
Alan Mandel

Bob Raymond, Vice Mayor
Jo List

DULY PASSED AND ADOPTED THIS ____ DAY OF _____ 2011, BY THE
TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH

ATTEST:

By: _____
Larry Kiker, Mayor

By: _____
Michelle D. Mayher, Town Clerk

Approved as to form and legal sufficiency:

By: _____
FOWLER WHITE BOGGS, Town Attorney