
DECLARATION OF EMERGENCY REGULATIONS No. 8

(COVID-19 State of Emergency – February 16, 2020)

WHEREAS, Novel Coronavirus Disease 2019 (COVID-19) is a severe acute respiratory illness that can spread among humans through respiratory transmission and other potential methods, and presents symptoms similar to those of influenza; and

WHEREAS, in December of 2019, a new and substantial outbreak of COVID-19 emerged in Wuhan, China, and has since spread rapidly to 150 countries and territories throughout the World, including the United States, and more specifically Lee County; and

WHEREAS, on March 11, 2020, the World Health Organization (WHO) declared COVID-19 a pandemic; and

WHEREAS, the Centers for Disease Control and Prevention (CDC) has predicted the widespread transmission of COVID-19 in the United States; and

WHEREAS, the CDC has issued guidelines for "community mitigation strategies" to limit the spread of COVID-19, including recommendations for social distancing, which has proven to be an effective method for containing COVID-19; and

WHEREAS, President Trump issued a Proclamation Declaring a National Emergency Concerning the Novel Coronavirus Disease - COVID-19 Outbreak; and

WHEREAS, COVID-19 threatens the Town of Fort Myers Beach because of the ability of the virus to spread rapidly, and COVID-19 thereby constitutes a clear and present threat to the health, safety, and welfare of the residents and visitors of the Town of Fort Myers Beach; and

WHEREAS, according to information from the Center for Disease Control and Prevention, Public Health Professionals, and the 2010 Federal Census the Town of Fort Myers Beach is an "at-risk" community for severe or critical reactions to COVID-19 infections; and

WHEREAS, on March 1, 2020, the Governor of Florida issued Executive Order Number 20-51, directing the State Health Officer and Surgeon General to declare a Public Health Emergency due to the discovery of COVID-19 in Florida; and

WHEREAS, on March 9, 2020, the Governor of Florida issued Executive Order Number 20-52, declaring a State of Emergency for the state of Florida related to COVID-

19 and this State of Emergency still exists; and

WHEREAS, the Governor of Florida has issued Executive Order 2020-83, directing Florida's Surgeon General and State Health Officer to issue a public health advisory to all persons over 65 years of age and to persons with certain underlying conditions that place them at high risk of serious illness from Covid-19 to urge them to take measures to limit their exposure to Covid-19; and

WHEREAS, the Governor of Florida has issued Executive Orders 2020- 112 (Phase 1: Safe. Smart. Step-by-Step. Plan for Florida's Recovery), 2020-120 (Expanding Phase 1: Safe. Smart. Step-by-Step. Plan for Florida's Recovery), 2020-123 (Full Phase I: Safe. Smart. Step-by-Step. Plan for Florida's Recovery), 2020-131 (Expanding Full Phase 1: Safe. Smart. Step-by-Step. Plan for Florida's Recovery), 2020-139 (Phase II: Safe. Smart. Step-by-Step. Plan for Florida's Recovery), and 2020-244 (Phase 3: Right to Work. Business Certainty. Suspension of Fines.) returning Florida to a measure of normality during the pandemic State of Emergency (the "Re-Opening Orders"); and

WHEREAS, conditions presented by the threat of COVID-19 continue to pose a threat to the public health that requires dynamic emergency response, including the maintenance of existing orders, as well as the imposition of additional directives and orders as conditions require; and

WHEREAS, the Centers for Disease Control (CDC) advises that COVID-19 spreads mainly from person to person through respiratory droplets produced when an infected person coughs, sneezes, or talks; and these droplets can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs; and studies and evidence on infection control report that these droplets usually travel around 6 feet (about two arms lengths); and

WHEREAS, the CDC advises that a significant portion of individuals with coronavirus lack symptoms ("asymptomatic") and that even those who eventually develop symptoms ("pre-symptomatic") can transmit the virus to others before showing symptoms. This means that the virus can spread between people interacting in close proximity — for example, speaking, coughing, or sneezing — even if those people are not exhibiting symptoms; and

WHEREAS, the CDC recommends wearing cloth face coverings in public settings where other social distancing measures are difficult to maintain in order to slow the spread of the virus and help people who may have the virus and do not know it from transmitting it to others; and

WHEREAS, the CDC does not recommend wearing cloth face covering for children under the age of 2, or anyone who has trouble breathing, or is unconscious, incapacitated or otherwise unable to remove the mask without assistance; and

WHEREAS, the CDC recommends only simple cloth face coverings for the general population and not surgical masks or N-95 respirators because these are critical supplies that must continue to be reserved for healthcare workers and other medical first responders; and

WHEREAS, cloth face coverings are relatively inexpensive and readily available as the CDC states they can be made from household items and provides online guidance for

making “do-it-yourself” coverings for people that cannot or do not want to buy one from the increasing sources producing and selling coverings; and

WHEREAS, the State of Florida has not preempted local governments from regulating in the field of minimum health requirements with respect to COVID-19; and

WHEREAS, the effective February 1, 2020, the CDC has mandated facial coverings for users of all forms of public transportation; and

WHEREAS, 28 C.F.R. 36.208, the implementing regulations for the Americans with Disabilities Act states that the ADA “does not require a public accommodation to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of that public accommodation when that individual poses a direct threat to the health or safety of others; and

WHEREAS, the Third District Court of Appeal has defined the term business establishment for purposes of tort liability to mean, “a location where business is conducted, goods are made or stored or processed or where services are rendered.” *Publix Supermarkets, Inc. v. Santos*, 118 So.3d 317 (Fla. 3d DCA 2013); and

WHEREAS, on June 25, 2020, the Florida Supreme Court concluded that a pandemic is a “natural emergency” within the meaning of § 252.34(8), *Fla. Stat.*, and thus the government may enact emergency orders pursuant to the State Emergency Management Act, see, *Abramson v. DeSantis*, SC20-646; and

WHEREAS, on January 27, 2021, the Fourth District Court of Appeal determined that Palm Beach County’s facial covering mandate was constitutional as it “is directed to protecting the health, vis-à-vis the coronavirus, of people in the proximity of the mask wearer, with facial coverings providing a “mitigating measure” to help prevent the respiratory droplets coming from the mask wearer’s mouth or nose from traveling in the air and “onto other people; and that “there are circumstances in which a public emergency, for instance . . . the spread of infectious or contagious diseases or other potential public calamity, presents an exigent circumstance before which all private rights must immediately give way under the government’s police power.” See, *Machovec v. Palm Beach County*, No. 4D20-1765 (Fla. 4th DCA 2021); and

WHEREAS, § 252.46(2), *Fla. Stat.* authorizes local governments to issue orders for emergency management purposes;

WHEREAS, in accordance with §§ 252.38 and 252.46, *Fla. Stat.*, and Sections 12-19 through 12-25 of the Code of Ordinances of the Town of Fort Myers Beach, Florida, the Town Council of the Town of Fort Myers Beach adopted Resolution 20-13, declaring a state of emergency regarding COVID-19, and authorizing the **“taking [of] whatever prudent action is necessary to ensure the health, safety, and welfare of the community”**;

WHEREAS, this Emergency Declaration is adopted pursuant to § 252.46, *Fla. Stat.*

NOW, THEREFORE IT IS ORDERED:

1. Emergency Declaration No. 1 of the Town of Fort Myers Beach (“Town”) closing the Town’s beaches and parks; cancelling all meetings of the Town; cancelling Town approval for all special events; prohibiting public gatherings of greater than 10 persons; and requiring all restaurants and other like entertainment facilities and businesses to adhere to the executive orders of Florida’s Governor is repealed.

2. Emergency Declaration No. 2 of the Town prohibiting the rental of public lodging establishments as defined in §509.013(4)(a), *Florida Statutes* as transient or non-transient lodging, and any vacation and timeshare accommodations as defined in §721.05(1), *Florida Statutes* is repealed.

3. Emergency Declaration No. 3 of the Town closing all non-essential retail and commercial establishments; recommending “sheltering in place”; prohibiting public and private gatherings outside a residence; restricting travel on foot, bicycle, scooter, motorcycle, automobile, or use of public transit; and requiring residents and visitors to adhere to social distancing practices is repealed

4. Emergency Declaration No. 4 of the Town amending the prohibition on the rental of public lodging establishments as defined in §509.013(4)(a), *Florida Statutes* as transient or non-transient lodging, and any vacation and timeshare accommodations as defined in §721.05(1), *Florida Statutes* is repealed.

5. Emergency Declaration No. 5 of the Town amending the beach closure regulations is repealed.

6. Emergency Declaration No. 6 of the Town further amending the prohibition on the rental of public lodging establishments as defined in §509.013(4)(a), *Florida Statutes* as transient or non-transient lodging, and any vacation and timeshare accommodations as defined in §721.05(1), *Florida Statutes* is repealed

7. Emergency Declaration No. 7 of the Town mandating facial coverings and observance of social distancing requirements in businesses, lodging establishments and other public places in the Town is still in effect.

8. Severability. Any provision(s) within this Emergency Declaration that conflict(s) with any State or Federal law or constitutional provision, or conflicts with or superseded by a current or subsequently-issued Executive Order of the Governor or the President of the United States, is deemed to be severed from this Emergency Declaration, with the remainder of the Emergency Declaration intact and enforceable.

9. Effective Date. This Emergency Declaration is effective upon adoption and shall stay in effect until rescinded by the Town Council.

Raymond P. Murphy, Mayor aye
Rexann Hosafros, Vice Mayor aye
Dan Allers, Council Member nay
Jim Atterholt, Council Member nay
Bill Veach, Council Member aye

TOWN OF FORT MYERS BEACH



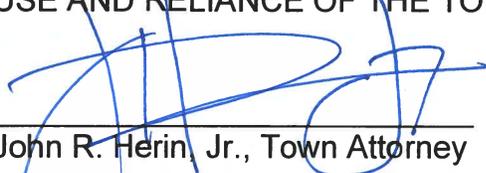
Raymond P. Murphy, Mayor

ATTEST:



Amy Baker, Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE
USE AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:



John R. Herin, Jr., Town Attorney

This Emergency Declaration was filed in the Office of the Town Clerk on this 18 day of
February 2021 [see, §252.46(2), Fla. Stat.].

Amy Baker, Town Clerk