

RESOLUTION OF THE LOCAL PLANNING AGENCY OF
THE TOWN OF FORT MYERS BEACH FLORIDA
RESOLUTION NUMBER 2014-007
AMENDMENTS TO PAL-PWVL REGULATIONS IN
LAND DEVELOPMENT CODE, CHAPTER 27

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 the LDC, the LPA conducted a public hearing on April 8, 2014 to consider a proposed Town Ordinance amending certain sections of the LDC, which is attached hereto as *Exhibit A* and is hereby incorporated by reference; and

WHEREAS, the aforesaid Ordinance, if passed, would amend regulations relating to Personal Watercraft and Parasailing, as is more fully set forth in the proposed Ordinance; and

NOW THEREFORE BE IT RESOLVED, that the LPA recommends that Town Council **APPROVE** and adopt the proposed Town Ordinance amending Section 27-47, "means of enforcement" by adding designated Town code enforcement officers as persons who can enforce the provisions of this Chapter; amending Section 27-49 by adding provisions relating to soliciting and picking up customers; amending Section 27-50 by adding provisions relating to solicitation of customers and by providing that PAL operators may not anchor in any "no wake" zone; amending Section 27-51 by clarifying how the 500 foot separation is to be measured and by providing that PAL and PWVL businesses may also rent paddleboards, kayaks and other non-motorized watercraft; amending Section 27-52 by changing the number of PWVL licenses that can be outstanding any point in time from ten (10) to eleven (11); amending section 27-55 by providing that a PWVL may be transferred to a new conforming location when there are eleven (11) or fewer PWVL licenses outstanding and recommends the following findings of fact and conclusions with regard thereto:

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. The proposed ordinance is in the best interest 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 ordinance with changes as noted below.
2. The LPA hereby recommends the following revision(s) to the proposed ordinance:

a. Revise Section 27-49(1)(f) and Section 27-50 (a)(5) by adding language to clarify that the prohibition on solicitation of customers does not apply to the dissemination of brochures and web-based advertising by PWVL and PAL businesses.

b. Delete proposed amendment in Section 27-50(g) that parasail operators are prohibited from anchoring in "no wake" zones.

c. Revise proposed amendment in Section 27-51 to clarify how the 500 feet separation will be measured. LPA recommends measurement be taken from the property line at the point where the width of the property is the narrowest.

d. Add a new amendment to Section 27-51(c)(3) to require that no portion of any flag, sign, booth, or equipment may extend to or be located within 12' of the wet sand.

e. Delete Section 27-51(c)(6) because it is outdated.

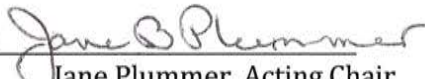
f. Revise proposed amendment in Section 27-51(d) by deleting "...and PAL..."

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

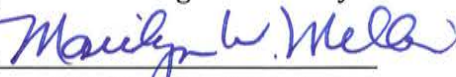
Hank Zuba, Chair	ABSENT	Joanne Shamp, Vice Chair	ABSENT
Chuck Bodenhafer	AYE	Al Durrett, Member	AYE
John Kakatsch, Member	AYE	Jane Plummer, Member	AYE
Jim Steele, Member	AYE		

DULY PASSED AND ADOPTED THIS **8th** day of **APRIL, 2014**

Local Planning Agency of the Town of Fort Myers Beach

By: 
Jane Plummer, Acting Chair

Approved as to legal sufficiency:

By: 
Fowler White Boggs, P.A.
LPA Attorney

ATTEST:

By: 
Michelle Mayher
Town Clerk

ORDINANCE 14-

AN ORDINANCE AMENDING CHAPTER 27 OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE, "PERSONAL WATERCRAFT AND PARASAILING;" AMENDING SECTION 27-47, "MEANS OF ENFORCEMENT" BY ADDING DESIGNATED TOWN CODE ENFORCEMENT OFFICERS AS PERSONS WHO CAN ENFORCE THE PROVISIONS OF THIS CHAPTER; AMENDING SECTION 27-49 BY ADDING PROVISIONS RELATING TO SOLICITING AND PICKING UP CUSTOMERS; AMENDING SECTION 27-50 BY ADDING PROVISIONS RELATING TO SOLICITATION OF CUSTOMERS AND BY PROVIDING THAT PAL OPERATORS MAY NOT ANCHOR IN ANY "NO WAKE" ZONE; AMENDING SECTION 27-51 BY CLARIFYING HOW THE 500 FOOT SEPARATION IS TO BE MEASURED AND BY PROVIDING THAT PAL AND PWVL BUSINESSES MAY ALSO RENT PADDLEBOARDS, KAYAKS AND OTHER NON-MOTORIZED WATERCRAFT; AMENDING SECTION 27-52 BY CHANGING THE NUMBER OF PWVL LICENSES THAT CAN BE OUTSTANDING ANY POINT IN TIME FROM TEN (10) TO ELEVEN (11); AMENDING SECTION 27-55 BY PROVIDING THAT A PWVL MAY BE TRANSFERRED TO A NEW CONFORMING LOCATION WHEN THERE ARE ELEVEN (11) OR FEWER PWVL LICENSES OUTSTANDING; 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 27-47 of the Town of Fort Myers Beach Land Development Code is hereby amended as follows:

Sec. 27-47. Means of enforcement.

The provisions of this chapter shall be enforced by designated town code enforcement officers or members of all duly authorized law enforcement agencies within the town and through any enforcement mechanisms established by this code.

Section 2. Section 27-49 of the Town of Fort Myers Beach Land Development Code is hereby amended as follows:

Sec. 27-49. Regulations and locations for personal watercraft rentals.

Any business engaged in the rental, leasing, bailment for consideration, or otherwise providing transportation for remuneration, of personal watercraft for use by the public on any waters of the Town of Fort Myers Beach, must meet the following requirements:

- (1) A business is required to obtain a ~~Lee County occupational license~~ business tax receipt which shall be issued to the personal watercraft operations office.

- a. The operations office shall be located at a land-based site; and,
 - b. The land-based site shall have direct access to the beach. Direct access shall not include public rights-of-way, county-owned or town-owned beach accesses, or any residentially zoned land that must be traversed to gain beach access. That direct access will be used for all necessary business-related beach access that is customary in the course and operation of the personal watercraft business at the particular licensed land-based site; and,
 - c. All business transactions such as the exchange of consideration or remuneration for the rental, leasing, bailment, or any other type of transaction between the commercial rental operator and customer shall occur on the land-based site for which the occupational license business tax receipt is issued; and,
 - d. The personal watercraft shall only be rented or operated on the littoral waters offshore of the land-based site for which the occupational license business tax receipt is issued until the personal watercraft travels beyond the 500 feet offshore slow speed limit.
 - e. The business must provide the town with a list of those PAL vendors who are permitted to pick up customers at the PWVL location, provided, however, that such activity may take place only for customers who have made a prior reservation and appointment for such pick up.
 - f. PWVL businesses are prohibited from soliciting customers at any location other than their land-based site.
- (2) A business must have and maintain a telephone and an operable marine radio at its land-based operations office.
 - (3) A business may not knowingly lease, hire, or rent a personal watercraft to any person who is under 18 years of age (see also F.S. § 327.54)). No person under the age of 14 may operate any personal watercraft.
 - (4) During the sea turtle nesting season (May 1 through October 31), personal watercraft may not be moved across the beach unless:
 - a. any state permits that may be required for this activity have been issued;
 - b. such movement begins only after 9:00 AM, or after completion of daily monitoring for turtle nesting activity by a FWCC-authorized marine turtle permit holder, whichever occurs first; and
 - c. the movement does not disturb any sea turtle or sea turtle nest (see also § 14-74(c)).
 - (5) Businesses may not allow their personal watercraft to be used above slow speed within 500 feet of swimmers, waders, or people floating in/on the water.
 - (6) Personal watercraft rental businesses shall have a motorized chase vessel with an operational marine radio in good running condition that meets all United States Coast Guard safety requirements kept at the personal watercraft launching site during all hours of the business operation. The chase vessel may be a personal watercraft reserved for this purpose.
 - (7) Each personal watercraft must be registered in the name of the business and have a Florida vessel registration number affixed thereon.
 - (8) Identification markings shall be placed on each personal flotation device worn by operators of the personal watercraft which distinguishes the business from other

businesses engaged in the rental of personal watercraft. Said marking shall also be located where the personal watercraft are launched. The identification marking, which will be assigned to the business by the town upon issuance of the PWVL, shall be not less than 9" by 5" in size and of a contrasting color to the personal flotation device.

- (9) Personal watercraft may be moored in the water during the operating hours of the business, or on the beach during operating hours in accordance with the following: Personal watercraft must be set back 12 feet landward from the edge of wet sand. Between the hours of 9:00 PM and 7:00 AM from May 1 until October 31, all personal watercraft and associated equipment, including but not limited to mooring lines, must be removed from the beach and placed behind the dune line.

- a. If there is no dune line and the beach is wide, personal watercraft and associated equipment must be moved to a point that is at least 200 feet from the water line at all times.
- b. If there is no dune line and the beach is less than 200 feet wide, personal watercraft and associated equipment must be moved to the adjacent permanent structure and landward of any seawall.

Where compliance with the foregoing provision would cause an undue hardship, the town manager may designate a different storage location after determining the minimum changes from the requirements of this subsection.

- (10) In order to adequately monitor the operation of the personal watercraft, one employee per five personal watercraft actually rented must be located so as to observe the operation of the vessel by the party renting the personal watercraft.
- (11) Fuel tanks may not be stored on the beach but may be stored at the business location provided all applicable federal, state, and local fire, safety, and environmental regulations are met.
- (12) Fueling of personal watercraft on the beach or in the water shall require a spillproof nozzle or other acceptable device designed for prevention of fuel overflow. Any spillage of fuel onto the beach or into the water is a violation of this code.
- (13) Except in locations which have permanent 500-foot markers, the personal watercraft vendor shall place temporary markers in the water not less than 500 feet seaward from the beach to which the personal watercraft are to be launched during each day of personal watercraft operations. All such markers shall be removed each day by the personal watercraft vendor no later than a half hour after sunset. The personal watercraft vendor must instruct each personal watercraft operator:
- a. To travel at slow speed until past said markers;
 - b. To maintain a distance of not less than 500 feet from the shoreline while operating the personal watercraft;
 - c. To travel at slow speed when returning to the shore; and
 - d. To not travel within environmentally sensitive areas (within the 1000-foot territorial limits of the town) except with an eco-tour operator or guide associated with a business with a valid PWVL permit.
- (14) Each operator shall provide a buoy lane consisting of 6 buoys, with a minimum width of 15 feet and a maximum of 75 feet.

- (15) Each PWVL (jet ski) operator is limited to 8 rentals per location plus one chase vehicle. When 6 or more rentals are in use, the chase vehicle must be manned and in the water. An operator may request a variance to allow additional rentals per location by using the standards and procedures in ch. 34.
- (16) *Safe handling instructions.*
 - a. Each patron shall receive standardized rules provided by the operator translated in four languages. All owners, operators, PWVL license holders, and employees will obey the same standardized rules. Such rules are included in § 27-58.
 - b. If the FWCC adopts safe handling instructions in accordance with F.S. § 327.39(6)(b), operators must comply with those regulations, which shall be deemed as equivalent to complying with the previous subsection, provided the state instructions are translated into the same four languages.
- (17) Operators must also comply with all other applicable boating and personal watercraft provisions of state law such as those found in F.S. § 327.39.
- (18) No person shall offer for rent, lease, or bailment for consideration, a personal watercraft within the Town of Fort Myers Beach except from a personal watercraft rental business which fully complies with the regulations set forth in this code and this chapter.
- (19) No person shall conduct any personal watercraft rental business within the Town of Fort Myers Beach except from a business holding a valid PWVL and which fully conforms to the terms of this chapter.
- (20) No person shall offer for rent, lease, or bailment for consideration a personal watercraft which is not registered in the name of the business and which does not have a valid Florida vessel registration number affixed thereon.

Section 3. Section 27-50 of the Town of Fort Myers Beach Land Development Code is hereby amended as follows:

Sec. 27-50. Regulations and locations for parasail activities.

Any person engaged in parasail activities for consideration or remuneration by the public on any waters of the Town of Fort Myers Beach, must meet the following requirements:

- (a) A person is required to obtain a ~~Lee County occupational license~~ business tax receipt which shall be issued to the parasailing activities operations office.
 - (1) The operations office shall be located at a land-based site; and,
 - (2) The land-based site shall have direct access to the beach. Direct access shall not include public rights-of-way, county-owned or town-owned beach accesses, or any residentially zoned land that must be traversed to gain beach access; and,
 - (3) All business transactions such as the exchange of consideration or remuneration or any other type of transaction between the PAL and customer shall occur on the land-based site for which the ~~occupational license~~ business tax receipt is issued: and,
 - (4) A person must have and maintain a telephone and an operable marine radio at its land-based operations office.

(5) PAL businesses are prohibited from soliciting customers at any PWVL location unless it is an authorized joint location.

(b) No person shall offer a ride on a parasail within the Town of Fort Myers Beach except at a parasail activities site which fully complies with the regulations set forth in this code and this chapter.

(c) No person shall have a parasailing operation within the Town of Fort Myers Beach except from a business holding a valid PAL and which fully conforms to the terms of this chapter.

(d) No person shall use a vessel for parasailing activity which is not registered in the name of the business and which does not have a valid Florida vessel registration number affixed thereon.

(e) Each parasailing vessel must be registered in the name of the business and have a Florida vessel registration number affixed thereon.

(f) Parasail operations must have a primary location at a site in conformance with this code or which otherwise specifically permits parasail activity. Parasail operators may pick up and return customers at other sites provided that the parasail operator has obtained written permission on a form provided by the town from the landowner where a PWVL has been issued. Written permission shall be kept on file at the PAL's primary location. In no event shall a parasail operator or his agents or employees solicit at the beach where they are picking up and returning customers.

(g) Parasail operators will pick up and drop off customers at the beach location pursuant to (2) above. This process will be accomplished through buoy lanes within the 500-foot zone consisting of 6 buoys, with a minimum width of 15 feet and a maximum of 75 feet. In a congested area, a parasail captain may avoid hazard by approaching to the right or left of the buoy lane. Parasail operators may not anchor within any "no wake" zone.

(h) Operators must be at least 1,000 feet from shore when they inflate the chute or deflate the chute and while flying.

(i) Operators must limit the length of the line to 1,200 feet and may not fly the chute over or within 500 feet of the pier or within 1,000 feet of the beach. Further, all parasail and all operations must cease at sunset.

(j) Operators must also comply with all applicable boating and parasailing provisions of state law such as those found in F.S. § 327.37.

Section 4. Section 27-51 of the Town of Fort Myers Beach Land Development Code is hereby amended as follows:

Sec. 27-51. Additional rules applying to both PWVL and PAL businesses.

(a) Businesses holding a valid PWVL or PAL shall be situated together with their vessels where appropriate upon a site authorized by the remainder of this code plus the provisions of this chapter to have such business and shall not:

- (1) be located within 500 feet, as measured along the street frontage of the property, of any other business offering personal watercraft for rent or lease or parasailing activities, except for businesses that are co-located in accordance with § 27-54(e); or
- (2) be located on any beach or land north of or beyond an imaginary line extending from the Sanibel Lighthouse and Bowditch Point on Estero Island; or inland of the Big Carlos Pass Bridge.

(b) Businesses holding both a valid PWVL and a valid PAL may rent personal watercraft and operate a parasailing activity business from a single location provided the location meets all requirements for both licenses.

(c) Businesses holding a valid PWVL or PAL must meet the following requirements:

- (1) **Other boating regulations.** All businesses and their vessels are required to comply with the town's Vessel Control and Water Safety Ordinance (Ordinance 96-26 as amended) and with Florida Statutes Chapter 327.
- (2) **Insurance.** A business must have and maintain comprehensive third-party liability insurance in accordance with § 27-56.
- (3) **Structures on the beach.** During its regular business hours only, a business may place one free-standing structure on the beach at its land-based site to conduct business with the public.
 - a. This structure may be a table, podium, booth, or storage box.
 - b. The total horizontal dimension of this structure may not exceed a horizontal dimension of 4 feet by 6 feet, except for any awning, umbrella, or integral roof whose sole purpose is to provide shade.
 - c. This structure must be portable and never be left on the beach before or after regular business hours.
- (4) **Signs on the beach.** This structure may contain a maximum of three identification or promotional signs painted on or mounted flat against the structure, no one of which can exceed 8 square feet as measured in accordance with § 30-91.
 - a. Any rate charts or state-mandated informational signs smaller than 2 square each shall not be counted as part of the signage limitation above.
 - b. No signs or other advertising for the business are permitted on the beach other than the signage permitted on a table, podium, booth, or storage box.
- (5) **Signs off the beach.** A business may also have one portable sandwich-board sign displayed at its land-based site during regular business hours if such signs are otherwise permitted by ch. 30 of this code at that site. However, any such sign:
 - a. must be placed indoors after business hours;

- b. must not be illuminated; and
- c. must not be placed on the beach at any time.
- (6) **Removing nonconforming structures from the beach.** Any legal nonconforming tables, podiums, booths, storage boxes, signs, or other structures on the beach as of September 24, 2001, may remain for up to twelve additional months but immediately thereafter must be removed or modified to be in conformance with this section.
- (d) Licensed PWVL and PAL businesses may also rent paddleboards, kayaks and other non-motorized watercraft from their land-based location.

Section 5. Section 27-52 of the Town of Fort Myers Beach Land Development Code is hereby amended as follows:

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

- (a) Application for a PWVL or PAL license shall be made to the town manager on a form provided by the town.
- (b) Information to be provided by the applicant shall include, at a minimum:
 - (1) **Business location:**
 - a. The STRAP number and street address from which the personal watercraft or parasailing activity business will operate;
 - b. If the applicant is not the owner of the property from which the business will be operated, the applicant shall submit a notarized letter of authorization from the owner of the property to the applicant.
 - (2) **Ownership information:**
 - a. Business owner's name, home address, local address, telephone number;
 - b. Manager's name, home address, local address, telephone number;
 - c. Mailing address at which notice of any town information pertinent to any personal watercraft rental or parasailing activity business shall be considered received and binding upon the applicant or PWVL or PAL holder, on the fifth day after first-class mail is posted to said address;
 - d. State sales tax number.
 - (3) **Business equipment information:**
 - a. The number of, and a description of, the vessels to be used by the business, including model, year, manufacturer, color, and Florida vessel registration number(s).
 - b. For PWVL applications only, a description of the chase vessel(s) to be kept at the place of business as well as the Florida vessel registration number(s).
 - (4) **Proof of insurance:** Proof of required insurance.
 - (5) **Fire report:**
 - a. For PWVL applications: Prior to annual license renewal, the fire marshal will submit evidence of a fire safety inspection to the town.
 - b. For PAL applications: Proof of compliance with fire regulations.

(6) **CPR certification:** For PWVL applications only, proof of CPR certification of sufficient persons so that there will be one in attendance at all times of operation.

(7) **Annual fee:** Pays an annual fee of:

- a. \$60 for town administrative processing costs; and
- b. \$30 for the right to offer for business, as herein provided, the rental of personal watercraft or the right to operate a parasailing activity business; and
- c. \$80 for town enforcement costs.

(c) **Misrepresentation.** Applicants who misrepresent information provided under this section shall not be issued a PWVL or PAL, or if issued, may suffer suspension or revocation of the PWVL or PAL.

(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) There shall be no more than ~~ten~~ eleven (10~~1~~) PWVL licenses outstanding at any point in time.
- (2) There shall be no more than seven (7) PAL licenses outstanding at any point in time.
- (3) See § 27-55 for regulations on transfers of existing PWVLs and PALs.

Section 6. Section 27-55 of the Town of Fort Myers Beach Land Development Code is hereby amended as follows:

Sec. 27-55. Transferability of PWVL and PAL licenses.

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

- (1) The location of the business complies with the minimum separation requirements of this chapter, or is "grandfathered in" under subsection (c) or (d) below; and
- (2) The new business owner files an amended application with the town providing the information required in this chapter.

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

(1) The new location of the business complies with the minimum separation requirements of this chapter;

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

(3) Transfer of a PAL to a new conforming location is only allowed when there are seven (7) or fewer PAL licenses outstanding.

(4) Transfer of PWVL to a new conforming location is only allowed when there are ~~ten~~ eleven (101) or fewer PWVL licenses outstanding.

(c) **Nonconforming PWVLs.** Personal watercraft vendors who established or commenced business at a location on or before December 2, 1996, that does not comply with the location requirements set forth in this chapter may continue to operate as a nonconforming use after December 2, 1996, unless terminated for failure to obtain 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.

(d) **Nonconforming PALs.** Parasail operators who established or commenced business at a location on or before January 21, 1997, 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 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.

Section 7. 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 8. 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:

Anita Cereceda, Mayor
Alan Mandel
Summer Stockton

Dan Andre, Vice Mayor
Rexann Hosafros

DULY PASSED AND ADOPTED THIS ____ DAY OF _____ 2014, BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH

ATTEST:

By: _____
Anita T. Cereceda, Mayor
Clerk

By: _____
Michelle D. Mayher, Town

Approved as to form and legal sufficiency:

By: _____
FOWLER WHITE BOGGS, Town Attorney