

Town of Fort Myers Beach
Agenda Item Summary

Blue Sheet Number: **2012-024**

1. Requested Motion: Motion to introduce Ordinance 12-02 and set a Public Hearing date for April 2, 2012.

Meeting Date: 3/19/12

Why the action is necessary: State law provides that prior to adoption of an ordinance, it must be read by title at a public meeting at least once prior to the date when it is adopted.

What the action accomplishes: Introduces the ordinance by reading the title and sets a public hearing date for the ordinance.

2. Agenda:

Consent
 Administrative

3. Requirement/Purpose:

Resolution
 Ordinance
 Other

4. Submitter of Information:

Council
 Town Staff
 Town Attorney

5. Background: The parasail and personal watercraft regulations are being amended to clear up some inconsistencies and conflicting provisions. The cap on the number of Parasailing vendor license is being increased from 6 to 7, to be consistent with the number of existing vendors. Further, the revisions will allow existing vendors to move their license from one property to another, as may be necessary to accommodate changes in property rental arrangements. These revisions will not change any location or other performance standards. The proposed amendments were reviewed by the LPA in a public hearing and they have recommended approval. Copies of Ordinance 12-02, LPA Resolution and Staff Report are attached.

6. Alternative Action: Decline to introduce the proposed ordinance and set a public hearing date.

7. Management Recommendations: Introduce the ordinance and set a public hearing date.

8. Recommended Approval:

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Cultural Resources Director	Town Clerk
						

9. Council Action:

Approved Denied Deferred Other

ORDINANCE 12-02

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 _____ 2012, 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

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	Hank Zuba, Vice Chair	aye
John Kakatsch	aye	Jane Plummer	aye
Bill Van Duzer	aye	Alan Smith	aye
Al Durrett			

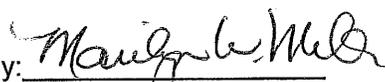
DULY PASSED AND ADOPTED THIS 11th day of October, 2011.

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

**FORT MYERS BEACH, FLORIDA
DEPARTMENT OF COMMUNITY DEVELOPMENT
ORDINANCE STAFF REPORT**

LAND DEVELOPMENT CODE SECTION: Chapter 27, Article IV- Personal Watercraft and Parasailing

LPA HEARING DATE: October 11, 2011

LPA HEARING TIME: 9:00am

I. SUMMARY:

The proposed changes to the Parasail Activity License (PAL) and Personal Watercraft Vendor License (PWVL) sections of the Land Development Code are to clarify language in Chapter 27 Personal Watercraft and Parasailing, Article IV, regarding non-conforming uses, caps on numbers of license, and an enforcement provision. These language changes have no effect on any existing vendors.

II. BACKGROUND AND ANALYSIS

History of Public Hearings:

Town Council requested that the Marine Resources Task Force review proposed changes to Chapter 27. The Marine Resource Task Force reviewed and approved these proposed changes on January 12, 2011 during their regular meeting.

Background:

Town Council reviewed a request from a parasail license holder (PAL) to move their license to a new location on October 4, 2010. This request to move was due to a change in ownership of the property where the license was located. During analysis of this request, Town staff, and attorneys for the PAL vendor discovered conflicting language in Chapter 27 regarding the cap on licenses (currently six) and the conditions under which a vendor could move their business to a new location. The ambiguities in Chapter 27 were substantial enough to require Town Council to interpret the Land Development Code to approve or deny the request. After interpreting the code and approving the license transfer, Town Council directed the Town Attorney and staff to review Chapter 27, propose amendments to clarify existing language, and remove any conflicts or

ambiguities. The Town attorney and staff are proposing these changes to ameliorate these issues.

Analysis:

The first proposed change is to Sec. 27-51 (a) (1) to remove a reference in to Section 27-54 (e).

“(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 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”

Section 27-54 (e) of the LDC does not exist. Section 27-54 simply describes that PWVL and PAL license must be displayed to the public and Section 27-54 is unchanged with these amendments.

The second change replaces the word “grandfather” for “legal non-conforming” in multiple locations in Section 27-55.

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

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

(1) The location of the business complies with the minimum separation requirements of this chapter, or is ~~grandfathered~~ nonconforming under subsection (b) or (c) below; and

(b) Nonconforming PWVLs. Personal watercraft vendors that have established or commenced with a business at their existing locations that was in existence on or before December 2, 1996, and which are in conformity with that conformed to the location requirements of this code that existed before that date, but which may or may 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 PWVL as required by this chapter, voluntary discontinuation of business for a period of 30 days or more, or revocation of the PWVL permit.

(c) Nonconforming PALs. Parasail operators that have established or commenced with a business at their existing locations that was in existence on or before

January 21, 1997, and which are in conformity with that conformed to the location requirements of this code that existed before that date, but which may or may does not comply with the location requirements of this code, but which may or may 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 PAL as required by this chapter, voluntary discontinuation of business for a period of 30 days or more, or revocation of the PAL permit."

This is to avoid future ambiguities with the term "grandfathered" in reference to whether or not a business can change location. Please see exhibit "B". This in no way impairs the ability of a business to move locations beyond the restrictions already in Chapter 27. This change simply replaces the word "grandfathered" for "conforming".

Other changes are to clarify the language regarding the cap on licenses. This change simply clarifies what the total number is. This in no way affects or alters the cap on licensees, it simply clarifies the math.

(3) Transferability of PALs to new conforming locations may only be allowed when licenses fall below 6. If there are ~~6~~ 5 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 PWVLs to new conforming locations may only be allowed when licenses fall below 10. If there are ~~10~~ 9 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.

Notably this change does not affect the ability of a vendor to transfer a license to a new location.

Finally, the enforcement language in Section 27-57 is changed to allow Town staff to clarify code enforcement mechanisms.

Sec. 27-57. Penalty.

~~*Violation of the provisions of this chapter, or failure to comply with any of the requirements, shall constitute a civil infraction. Any person who violates this chapter or fails to comply with any provision shall upon conviction thereof be fined \$150 for the first violation; \$300 for the second and third violation; and the town shall consider license revocation for more than three violations of this*~~

~~chapter, and in addition the violator shall pay all costs and expenses involved in the case.~~

The town manager or their designee is authorized to pursue any one or a combination of the enforcement mechanisms provided in this code (for example, § 1-5, or article V of ch. 2) for any violation of this article. Violation of the provisions of this chapter, or failure to comply with any of the requirements, shall constitute a civil infraction and the town shall consider license revocation for more than three violations of this chapter. Periodic compliance inspections will be conducted to insure compliance with the permit conditions and this ordinance.

The current language uses the term “conviction” and allows for an instant fine. “Conviction” is associated with criminal trials as opposed to “civil” which is a code enforcement matter. Civil infractions are violations of Town Land Development Code. A “conviction” is strictly a criminal matter over which Town Code Enforcement staff have no authority. Certified law enforcement officers are capable of citing someone under criminal codes. Civil infractions also allow for the code enforcement process which includes a process for notifying the owner of the property about the violation and allowing them and opportunity to abate the violation. The code enforcement process also allows for a public code enforcement hearing and a finding of fact that there has been a violation before a fine can be assessed.

III. RECOMMENDATION

Staff recommends **APPROVAL** of these proposed changes. These changes will clarify existing language and does not have any negative impact on current or future vendors.

Exhibits:

“A” - Proposed amendments to Chapter 27

“B” - Town Attorney memo from October 10, 2010 Town Council meeting