

Town of Fort Myers Beach
Agenda Item Summary

Blue Sheet Number: 2012-045

1. **Requested Motion:** Motion to approve ordinance 12-02, Amendment to the LDC, PAL and PWVL.

Meeting Date: Jun 4, 2012

Why the action is necessary: Ordinances must be approved by a roll call vote of the Town Council.

What the action accomplishes: Adopts amendments to the LDC concerning PAL and PWVL licenses and the transferability of those licenses..

2. **Agenda:**

Consent
 Administrative
 Public Hearing

3. **Requirement/Purpose:**

Resolution
 Ordinance
 Other

4. **Submitter of Information:**

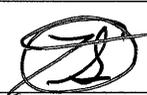
Council
 Town Staff
 Town Attorney

5. **Background:** The amendments proposed address ambiguities in the LDC concerning the transfer of PAL and PWVL licenses. Since the previous public hearing, the Town Attorney and Keith Laakkonen met with representatives of the two types of businesses and the ordinance language was further clarified concerning the ability to transfer ownership and location. Attached is a copy of the ordinance as proposed (dated 3/12/12) and another with the revisions prepared by the Town Attorney (dated 5/23/12) after meeting with the business owners.

6. **Alternative Action:** Decline to adopt the Ordinance.

7. **Management Recommendations:** Adopt the Ordinance.

8. **Recommended Approval:**

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Parks & Recreation 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 Bob Raymond, Vice Mayor
Joe Kosinski Jo List
Alan Mandel

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

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(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 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 (b) (c) or (d) 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 PALs to new conforming locations may only be allowed when licenses fall below 6. 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 PWVLs to new conforming locations may only be allowed when 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) *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 for 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 a PWVLs to a new conforming location is only allowed when there are ten (10) or fewer PWVL licenses outstanding.

(c) *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 not~~ 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.

(e)(d) *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 not~~ 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.

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