

ORDINANCE No. 00-10

AN ORDINANCE ESTABLISHING THE FORT MYERS BEACH, BEACH AND DUNE MANAGEMENT ORDINANCE; PROVIDING AUTHORITY; TITLE AND CITATION; DEFINITIONS; PURPOSE AND INTENT OF THE ORDINANCE; DESTRUCTION OR DIMINISHMENT OF DUNE OR BEACH SYSTEM; TRASH AND LITTER ON THE BEACH; BEACH FURNITURE; BEACH RAKING AND WRACK LINE POLICY; VEHICULAR TRAFFIC ON THE BEACH; DUNE SYSTEMS; SEVERABILITY AND EFFECTIVE DATE.

IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

Section 1. Authority. This Ordinance is enacted pursuant to the provisions of Chapter 95-494, Laws of Florida, Chapter 166, Florida Statutes, and other applicable provisions of law.

Section 2. Title and Citation. This ordinance shall be known and cited as the "Town of Fort Myers Beach, Beach and Dune Management Ordinance".

Section 3. Definitions. For the purposes of this Ordinance, the following terms, phrases, words and derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and the words in the singular number include the plural number. The word "shall" is always mandatory.

"Beach" means the soft sand portion of land lying seaward of a seawall or seaward line of vegetation and land-ward of the mean low water line.

"Beach Equipment". Any man-made, apparatus or paraphernalia designed or manufactured for use or actually used on the beach or in the adjacent tidal waters. Examples include: chairs and lounges, umbrellas, sailing vessels up to 16 feet in length, personal watercraft, canoes, kayaks, paddles vessels, sailboards, surfboards, fishing gear, sporting equipment, floatables, tents and bicycles.

"Dune". A mound, bluff or ridge of loose sediment, usually sand-sized sediment, lying upland of the beach and deposited by any natural or artificial mechanism, which may be bare or covered with vegetation, and is subject to fluctuations in configuration and location (Reference 161.54 Fla. Stats., 62B-33.002 F.A.C.) It encompasses those ecological zones characterized by the presence of dune vegetation. As to areas restored or renourished pursuant to a permit issued by the Town or State, it encompasses the area specified in the permit as a dune or any area specified as suitable for establishment of dune vegetation. In the absence of a discernible dune structure, the seaward boundary of a dune will be deemed to be the seaward line of vegetation.

"Dune vegetation, or common native dune vegetation". Vegetation which, if left undisturbed by manmade forces, is typically to be found on a dune.

“Seaward Line of Vegetation”. The location closest to the mean high water line containing, or suitable for, dune vegetation. If there is no such vegetation upon a parcel or portion of a parcel, it shall encompass a line alongshore projected from the closest areas on each side where such vegetation does exist.

“Wrack”. Natural organic marine material cast on the shore, including seaweed and other vegetative and animal debris, but excluding manmade material.

Section 4. Purpose and intent of the Ordinance. The Town council finds and declares:

- (A) The purpose of the Dune & Beach Management Plan is to encourage a steward-like attitude toward our most valuable asset, our beach. To preserve and improve the condition of that asset as a place for recreation, solitude, and preservation of our beach vegetation and marine wildlife.
- (B) The Dune & Beach Management Plan provides minimum standards to safeguard the beach.

Section 5. Destruction or diminishment of Dune or Beach System.

(a) It is unlawful and prohibited for any person to do, conduct or permit any of the following on a beach, upon a dune, or in the water adjacent to a beach;

1. harass, molest or disturb wildlife
2. plant vegetation other than dune vegetation
3. destroy or harm a dune or remove dune vegetation
4. maintain a dump of, or discard or leave litter, garbage, trash or refuse, vegetative clippings or debris; See Section 6
5. deposit and leave human or animal waste; See Section 6
6. destroy or grossly interfere with the natural wrack line as by grooming or non-selective raking except as authorized in Section 8;
7. operate any air powered or any engine powered non-watercraft vehicle, machine or implement, including any battery or electrical powered vehicle, machine or implement, except for a wheelchair or approved conveyance for a person with a disability which is actually being used by the person with a disability or as authorized in Section 9;
8. excavate, mine and remove or haul sand or soil from the beach or dune except in emergency situations as declared by the Town Council;

9. detonate any explosive devices, including fireworks;
10. discharge any firearms;
11. Light or maintain any open fire on Little Estero Island.
12. Temporarily reside, camp or sleep overnight.

(b) Permits may be issued by the Town Manager for activities otherwise prohibited by this section, which are found to be necessary for reasonable accommodation of persons with disabilities; adjunct to a lawfully existing activity; for the conduct of a civic or educational activity; for the conduct of scientific research; or for any purpose otherwise necessary to protect or to promote the public welfare, for such periods of time as appropriate for the circumstances. To the extent that a permit is allowed under the land development code for any of the above activities, the standards and procedures for issuance shall be governed by the land development code.

Section 6. Trash and Litter on the Beach.

(a) Pursuant to Ordinance 99-5, dogs on a leash are allowed on the beaches within the Town, but owners must properly dispose of any type of dog waste off the beach. However, no pets shall be allowed within the confines of the Critical Wildlife Area (CWA)/Little Estero Island whose territory is defined as follows; This area includes the island itself and the wetlands and lagoons that have formed behind the island- the northern boundary is the Holiday Inn's southern riparian line-the easterly line is the mean high water line of the old developed shoreline.

(b) Pursuant to Ordinance 99-7. Trash and litter must be deposited within trash receptacles and not left on the beach.

(c) Any person wishing to light an open fire on the beach, except as prohibited by Section 5 (a) 11, is limited to a 12 inch by 12 inch cooking fire that must be applied for as a Special Permit through Town Hall. The special permit will require a \$30.00 deposit for cleanup.

Section 7. Beach Furniture.

- (a) From May 1 until October 31, all beach furniture and equipment must be removed from the beach as follows;
 1. All furniture and equipment must be removed from the beach between the hours of 9:00 PM until 7:00 AM.
 2. The furniture and equipment must be moved either behind the dune line; or where no dune line is present and the beach is wide, then 200 feet from the water line; or where the beach is narrow to the adjacent permanent structure.

Where compliance with the foregoing provisions would cause an undue hardship, the Town Manager may, after determining the minimum variance from the requirements of this ordinance, designate the storage location.

3. Furniture that is removed from the beach as specified in 7 (a) 2 shall then be safely stacked in areas no larger than 10 ft. by 10 ft. and each stack must be at least 50 feet removed or apart from the next stack.
- (b) Trash containers are not included in the definition of beach furniture and equipment and may be left in place on the beach between the hours of 9:00 PM and 7:00 AM.
 - (c) No later than the first day of June, beach properties that have more than 5 cabanas or offer equipment for use shall file a hurricane action plan with the Town each year prior to the beginning of hurricane season and provide a contact person with current phone number.

Section 8. Beach Raking and Wrack Line Policy.

- (a) The use of boxblades on the beach or dune is prohibited. In an emergency and/or storm event resulting in a build-up of sand against seawalls, the use of a boxblade may be allowed with the approval of DEP and upon filing the approval with the Town Manager.
- (b) Under normal circumstances, the raking of the wrack line is prohibited. Town approval is necessary for determination that health or safety issues have been confirmed that would allow:
 1. A larger than normal wrack line resulting from extraordinary circumstances may be raked if the wrack line is at least 10 feet landward of the normal high tide line.
 2. If health or safety issues are present such as a large fish kill or a red tide event, the wrack line may be raked up to 10 feet landward of the normal high tide line.

Section 9. Vehicular Traffic on the Beach.

- (a) All engine powered vehicles, except law enforcement, code enforcement, EMS, Fire Department and scientific monitoring, shall obtain a DEP Permit prior to driving a vehicle on the beach. The DEP Permits must specify that the tires create a maximum pressure of ten (10) p.s.i. where the tire makes contact with the sand.
- (b) Handicap access to the beach is encouraged through use of wheelchairs equipped with special beach friendly tires that are available for rent or purchase.

Section 10. Dune Systems.

Consistent with the Town Comprehensive Plan Objective 5-D BEACHES AND DUNES- "Conserve and enhance the shoreline of Estero Island by increasing the amount of dunes, renourishing beaches to counter natural erosion, and reducing negative man-made impacts on beaches and dunes." The Town adopts the following:

- (a) In areas where the beach has experienced erosion, on public land or with the consent of the owner, the Town will establish a dune system consisting of sea oat plantings, a minimum of 10 feet wide, to be planted adjacent to the existing upland vegetation line, and to be planted at existing elevations.

- (b) In areas that have not experienced erosion, the Town will encourage the establishment of a dune system but will not require same.

Section 11. Severability. If any one of the provisions of this ordinance should be held contrary to any express provision of law or contrary to the policy of express law, although not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such provision shall be null and void and shall be deemed separate from the remaining provisions of this ordinance, and in no way affect the validity of all other provisions of this ordinance.

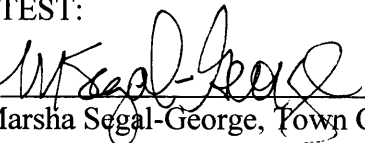
Section 12. Effective Date. This ordinance shall become effective immediately upon its adoption.

The foregoing ordinance was enacted by the Town Council upon a motion by Council Member Cereceda and seconded by Council Member Cain and, upon being put to a vote, the result was as follows:

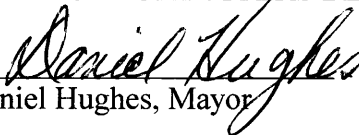
Anita T. Cereceda	aye
Daniel Hughes	aye
Garr Reynolds	aye
Ray Murphy	aye
Terry Cain	aye

DULY PASSED AND ENACTED this 19th day of June, 2000.

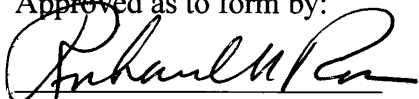
ATTEST:

By: 
Marsha Segal-George, Town Clerk

TOWN OF FORT MYERS BEACH

By: 
Daniel Hughes, Mayor

Approved as to form by:


Richard V.S. Roosa, Town Attorney