

ORDINANCE No. 96- 27

AN ORDINANCE AMENDING THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE BY ADDING A CHAPTER TO BE NUMBERED 27, PROVIDING AUTHORITY; AMENDMENT; TITLE AND CITATION; DEFINITIONS; AREA OF ENFORCEMENT; MEANS OF ENFORCEMENT; REGULATIONS FOR OPERATION OF PERSONAL WATERCRAFT; REGULATIONS FOR LOCATIONS OF PERSONAL WATERCRAFT RENTALS; UNLICENSED RENTAL OF PERSONAL WATERCRAFT PROHIBITED; PWVL APPLICATION; REGULATORY FEE; PWVL RENEWAL; DISPLAY OF PWVL; CONDITIONS OF PWVL USE; TRANSFERABILITY OF PWVL: GRANDFATHER CLAUSE; INSURANCE; PENALTY; SEVERABILITY; EFFECT OF ORDINANCE 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. Amendment. That the Town of Fort Myers Beach Land Development Code is hereby amended to add CHAPTER 27, to read as follows:

27-1 -- 27-43 Reserved.

27-44 Title and Citation

This ordinance shall be known and cited as the Town of Fort Myers Beach Personal Watercraft Ordinance.

27-45 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 and not merely directory.

"Bather" means any person who is in the same water as a vessel, whether said person is swimming, wading or engaged in any other activity in the water.

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

"Business" shall mean any personal watercraft rental or parasailing activity business, including any commercial activity engaged in the rental, leasing, or bailment for consideration of personal watercraft or parasailing.

"EcoTour" shall mean an educational tour led by a guide knowledgeable in environmental and ecological preservation, where the guide can communicate with the tour members and offer commentary about the ecological, environmental and archaeological significance of Estero Bay..

Idle Speed means the lowest speed at which a vessel can operate and maintain steering control. The actual speed will depend upon the design the design of the vessel and on the vessel's load, wind direction and speed, and the sea conditions. Generally, it will be between 1 and 3 miles per hour for outboard and inboard/outboard vessels, between 2 and 5 miles per hour for fixed shaft/rudder vessels, and the minimum speed necessary to effectively traverse breaking water for personal watercraft. For a non-motor propelled vessel, idle speed means that speed necessary for steerageway.

"Littoral Waters" mean that part of the ocean or sea which abuts the shoreline and includes the shore to the ordinary high watermark. For purposes of this ordinance, the littoral right to use such waters shall be limited to the waters within the boundaries of the land based site as those boundaries extend into the water at right angles from the shoreline.

"Operate" means to navigate or otherwise use any vessel in, on or under the water.

"PWVL" shall mean Personal Watercraft Vendor's License, and shall also include parasailing activity.

"Person" means any individual, partnership, firm, corporation, association or other entity.

"Personal watercraft" means a small class A1 or A2 vessel as defined by state law which uses an outboard motor, or an inboard motor powering a water jet pump, as its primary source of motive

power and which is designated to be operated by a person sitting, standing, or kneeling on, or being towed behind the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

"Town Manager" shall include the designee(s) of the Manager of the Town of Fort Myers Beach.

"Site" means the plot or parcel of land or combination of contiguous lots or parcels of land.

"Slow speed" means no speed greater than that which is reasonable and prudent to avoid either intentionally or negligently disturbing, colliding with, or injuring manatees and which comports with the duty of all persons to use due care under the circumstances. A vessel in a slow speed zone that:

is operating on a plane is not proceeding at slow speed;

that is in the process of coming off plane and settling into the water, which action creates more than no or minimum wake, is not proceeding at slow speed;

that produces no wake or minimum wake is proceeding at slow speed;

that is completely off plane and which has settled into the water and is proceeding without wake or with minimum wake is proceeding at slow speed.

"Slow Speed" means any through-the-water speed slow enough that the boat is neither planing nor moving with an elevated bow. A vessel that is operating at slow speed shall not be emitting a wake.

"Slow speed zone" means a designated area within which all vessel operators shall proceed at slow speed not on a plane and producing no or minimum wake.

"Steerage way" means the minimum rate of motion required for the helm of the vessel to have effect.

"Vessel" means a motor propelled or artificially propelled vehicle and every other description of boat, watercraft, barge, and air boat other than a seaplane on the water, used or capable of being used as a means of transportation on water including personal watercraft. This term shall not include rafts, floats or floatation devices, whether of canvas, vinyl, rubber, Styrofoam or

other substance, intended or capable of assisting in the floatation of a person on or in the water.

"water oriented structure" shall mean and include without limitation, any fishing pier, pier, wharf, observation walkway, platform, boathouse, mooring pile, riprap, revetment, seawall, bulkhead, retaining wall, jetty, platform, boat lift, davit, boat ramp, or any other obstacle, obstruction or protrusion used primarily for the landing or launching of watercraft, erosion control and shoreline stabilization, or for water oriented activities.

27-46 Area of Enforcement

The area of enforcement of the provisions of this Ordinance shall be all public navigable waters, creeks, bayous, canals and channels, whether natural or man-made, located within the Town of Fort Myers Beach, including all public waters within the jurisdiction of the Town in which the tide ebbs and flows. This Ordinance does not apply to the county maintained or county marked channels.

27-47 Means of enforcement

The provisions of this ordinance shall be enforced by members of all duly authorized law enforcement agencies within the Town and by the Town Division of Codes and Building Services.

In addition to the regulations of this ordinance, any operator of a personal watercraft is subject to Florida Statutes Chapter 327.

27-48 Regulations for Operation of Personal Watercraft

(a) In addition to the regulations set forth above, all personal watercraft shall also be operated in the following manner:

(1) A person may not operate a personal watercraft unless each person riding on or being towed behind such vessel is wearing a type I, type II, type III or type V personal flotation device approved by the United States Coast Guard.

(2) A person operating a personal watercraft equipped by the manufacturer with a lanyard type engine cutoff switch must attach such lanyard to his person, clothing or personal

flotation device as is appropriate for the specific vessel.

(3) A person shall not operate a personal watercraft at any time between one half hour before sunset and one half hour after sunrise.

(4) A personal watercraft must at all times be operated in a reasonable and prudent manner. Maneuvers which unreasonably or unnecessarily endanger life, limb, or property, including, but not limited to, weaving through congested vessel traffic, jumping the wake of another vessel unreasonably or unnecessarily close to such other vessel or when visibility around such other vessel is obstructed, and swerving at the last possible moment to avoid collision shall constitute reckless operation of a vessel. Failure to operate a personal watercraft in such a careful and prudent manner shall constitute careless boating in violation of this Ordinance.

27-49 Regulations and Locations for Personal Watercraft Rentals

(a) Any person 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 person is required to obtain a County occupational license 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 access, 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 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 is issued until the personal watercraft travels beyond the 500 feet offshore slow speed limit.

(2) A person must have and maintain a telephone and an operable marine radio at its land based operations office.

(3) A person must have a manned, motorized chase vessel with operational marine radio in good running condition that meets all United States Coast Guard safety requirements and is within vision of where the personal watercraft are being operated during all hours of the persons operations.

(4) A person shall register each personal watercraft and have a Florida vessel registration number affixed thereon.

(5) A person may not lease, hire or rent a personal watercraft to any person who is under 16 years of age.

27-50 Unlicensed Rental of Personal Watercraft Prohibited

(a) 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 the Land Development Code and this ordinance.

(b) 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 Ordinance.

(c) 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.

27-51 PWVL Application; Regulatory Fee

(a) Application for a PWVL 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 business will operated;

b. If the applicant is not the owner of the property from which the personal watercraft 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 PWVL shall be considered received and binding upon the applicant or PWVL 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. A description of the chase vessel(s) to be kept at the place of business as well as the Florida Vessel registration number.

(4) PROOF OF INSURANCE Proof of required insurance.

(5) FIRE REPORT Prior to annual license renewal, the Fire Marshal will submit evidence of a fire safety inspection to the Town.

(6) CPR CERTIFICATION 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) \$60.00 for Town administrative processing costs; and
- b) \$30.00 for the right to offer for business, as herein provided, a rental of the personal watercraft; and
- c) \$80.00 for Town enforcement costs.

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

(d) The Town Manager may issue no more than (15) PWVL licenses outstanding at any point of time.

(1) Transferability of PWVL licenses to new conforming locations may only be allowed when licenses' fall below 15 and 6 respectively. If there are 15 PWVL licenses', then a license at a nonconforming location can move that license to a conforming location and surrender the nonconforming location which still results in 15 total licenses.

(2) PWVL's shall be issued on an annual basis coinciding with the Town's fiscal year, October 1 through September 30.

27-52 PWVL RENEWAL

(a) the Town Manager may renew the PWVL of any applicant who:

(1) Held a valid PWVL and operated the personal watercraft rental for at least nine months out of the previous year, and

(2) Has provided the Town with new or updated information, documents, and fees listed in Section Five and continues to meet the regulations set forth in the Land Development Code; and

(3) Pays a late processing fee of \$25.00 for any renewal application filed after October 1.

(b) Upon application, the Town Manager may renew any PWVL suspended under this Ordinance, hereof, but any remaining term of suspension shall be applied to the renewed license, and during said term the PWVL confers no rights to offer the rental of any personal watercraft.

(c) Any PWVL not renewed by October 15th shall be void and of no further use or effect whatsoever. No business deemed to be a nonconforming use in accordance with the provisions of this Ordinance or the provisions of the Fort Myers Beach Land Development Code, which fails to renew its license in a timely manner, shall again be issued a license except in conformity with the regulations then in effect.

27-53 DISPLAY OF PWVL

Any business offering the rental of personal watercraft shall display the PWVL in plain sight at the location from which the rental of personal watercraft are offered.

27-54 CONDITIONS OF PWVL USE

(a) Businesses holding a valid PWVL shall be situated together with their vessels upon a site authorized by the Land Development Code and this Ordinance 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;

(2) be located on any beach north of an imaginary line extending from the Sanibel Lighthouse and Bowditch Point on Estero Island; or east of Big Carlos Pass Bridge.

(3) allow their watercraft to be used above slow speed within 500 feet of swimmers, waders, or people floating in/on the water.

(4) Lease, hire or rent a personal watercraft to any person who is under 16 years of age;

(b) All personal watercraft rental businesses are required to comply with the Town Watercraft Safety Ordinance.

(c) A business shall have and maintain a telephone and an operable marine radio at its land based operations office.

(d) 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.

(e) A business must have and maintain comprehensive third party liability insurance in accordance with this Ordinance.

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

(g) Identification markings shall be placed on each personal floatation 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" x 5" in size and of a contrasting color to the personal floatation device.

(h) Personal watercraft may be moored in the water during the operating hours of the business, but under no circumstances may a person place or arrange any personal watercraft vessel or associated equipment in any manner which blocks pedestrian traffic on the beach.

(i) 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.

(j) 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.

(k) Fueling of personal watercraft on the beach or in the water shall require a spill proof nozzle or other acceptable device designed for prevention of fuel overflow.

(l) No billboards or free standing signs advertising the rental of personal watercraft are permitted on the beach.

(m) 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 (1/2) hour after sunset. The personal watercraft vendor must instruct each personal watercraft operator:

(1) To travel at slow speed until past said markers;

(2) To maintain a distance of not less than 500 feet from the shoreline while operating the personal watercraft; and,

(3) To travel at slow speed when returning to the shore.

(4) 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.

(n) Each operator shall provide a buoy lane consisting of six (6) buoys, with a minimum width of fifteen (15) feet and a maximum of seventy five (75) feet. However, in a congested area, a parasail captain may avoid hazard by approaching to the right or left of the buoy lane.

(o) Each PWVL (jet ski) operator is limited to eight (8) rentals per location plus one chase vehicle. When six (6) or more rentals are in use, the chase vehicle must be manned and in the water. Any operator may by application and review pursuant to the special permit process provided by Section 34-232 (c) of the Fort Myers Beach Land Development Code by complying with the standards of Section 34-145(e), request allowance for additional rentals per location.

(p) Each patron shall receive standardized rules provided by the operator and approved by the Town Manager translated in four languages. All owners, operators, PWVL license holders and employees will obey the same standardized rules. Such rules are attached to this ordinance as Exhibit A.

27-55 TRANSFERABILITY OF PWVL: GRANDFATHER CLAUSE

(a) Providing that this Ordinance has been complied with, the PWVL is transferable if:

- (1) The location of the business complies with the minimum separation requirements of this Ordinance, or is a "grand fathered in" accordance under subsection B below; and
- (2) The new business owner files an amended application with the Town providing the information required in this Ordinance.

(b) Personal watercraft vendors or that have established or commenced business at their existing locations on or before the effective date of this Ordinance, but may or may not comply with the location requirements set forth in this Ordinance and the Land Use Code, may continue to operate as a nonconforming use after the effective date of this Ordinance, unless terminated for failure to obtain the PWVL as required by this Ordinance, voluntary discontinuation of business for a period of 30 days or more, or revocation of the PWVL permit.

27-56 INSURANCE

(a) No person shall operate a personal watercraft business unless covered by a comprehensive general liability insurance policy insuring the public against bodily injury or property damage resulting from or incidental to the operation, use, or rental of personal watercraft . At a minimum, the policy shall provide coverage of not less than \$500,000 per occurrence and \$1,000,000 per aggregate. The policy shall list the Town of Fort Myers Beach as an additional insured, and shall provide that coverage not be canceled or materially altered except after 30 days' written notice has been received by the Town, and be written through insurers licensed and authorized to do business in the State of Florida. The Town shall also require a copy of the declaration page of the operator's insurance policy with a listing of all insured watercraft by serial number.

(b) Evidence of said coverage is subject to acceptance and approval by the Town Manager prior to issuance of PWVL.

(c) Coverage shall remain in full force during the entire time that the PWVL is valid and outstanding. Failure to provide such proof shall render the PWVL null and void, and of no further

use and effect. The holder's subsequent application for a new PWVL shall be subject to the regulations for a new business and shall lose the nonconforming status afforded under Section 27-52 (b) of this Ordinance.

27-57 PENALTY

Violation of the provisions of this Ordinance, or failure to comply with any of the requirements, shall constitute a civil infraction. Any person who violates this Ordinance or fails to comply with any provision shall upon conviction thereof be fined (\$150) one hundred and fifty dollars for the first violation; (\$300) three hundred dollars for the second and third violation and the Town shall consider license revocation for more than three violations of this ordinance, and in addition shall pay all costs and expenses involved in the case.

SECTION 3. 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 4. Effect of Ordinance. The provisions of this Ordinance shall be deemed cumulative and supplemental and shall have no legal effect upon the Town of Fort Myers Beach Land Development Code except as expressly provided.

SECTION 5. Effective Date. This ordinance shall become effective immediately upon its adoption.

The foregoing ordinance was enacted by the Town Council upon

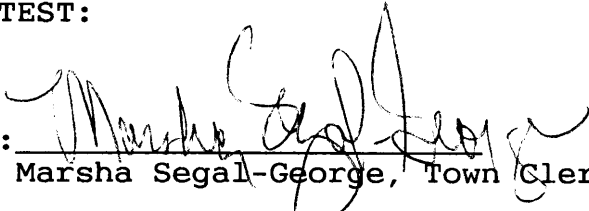
a motion by Council Member FitzSimons and seconded by Council Member Reynolds and, upon being put to a vote, the result was as follows:

| | |
|-----------------------|------------|
| Anita T. Cereceda | <u>aye</u> |
| Ted FitzSimons | <u>aye</u> |
| William (Rusty) Isler | <u>aye</u> |
| Garr Reynolds | <u>aye</u> |
| Ray Murphy | <u>aye</u> |

DULY PASSED AND ENACTED this 2nd day of December, 1996.

ATTEST:

TOWN OF FORT MYERS BEACH

By: 
Marsha Segal-George, Town Clerk

By: 
Anita T. Cereceda, Mayor

Approved as to form by:


Richard V.S. Roosa, Town Attorney

EXHIBIT A

RULES

1. Operator must go slow speed until past all idle speed buoys. Operator must travel perpendicular to shore when entering or leaving the marked idle speed zone.
2. Operator must remain 200 feet from any watercraft and 500 feet from swimmers, waders or people floating in the water. Operator must yield right of way to all other vessels.
3. All operators must be at least 16 years of age.
4. Operator may not be under the influence of drugs or alcohol.
5. Operator must stay in the boundaries set by the rental vendor and in sight of rental location at all times.
6. No operator shall operate watercraft in a hazardous manner.
7. Operators must listen to and obey all verbal and written rules. If any rules are broken, operators ride will be terminated. **NO REFUNDS!**

REGLAS

1. El operador tiene que ir a una velocidad despacia hasta que a pasado todas las marcas de velocidad. El operador tiene que viajar perpendicular a la costa cuando entrando o saliendo la zona marcada para una velocidad ociosa.
2. El operador tiene que quedarse 200 pies de cualquier bote y 500 pies de los nadadores o personas flotando en la agua. Operadores tienen que ceder a todos los buques.
3. Todos operadores tienen que ser a lo menos 16 años de edad.
4. Operadores no queden estar en la influencia de drogas o alcohol.
5. Operadores tienen que quedarce siempre en el limite hecho por las personal de alquiler y en la vista del lugar de alquiler.
6. Operadores no deben conducir el equipo en una manera dañoso o peligroso.
7. Operadores tienen que poner atención a todas las regulaciones oral y escritas. Si alguna regulacion no es seguida el alquiler va a ser terminado. El dinero no va hacer devuelto!

Vorschriften zur Mietung eines Wasserfahrzeuges

#1. Der Bediener muss mit langsamer Geschwindigkeit fahren, bis er alle weissen Bojen passiert hat. Beim Reinkommen oder Verlassen der markierten Geschwindigkeitszone muss er sich senkrecht zum strand bewegen.

#2. Der Bediener muss 60 m von Wasserfahrzeugen und 152 m von Schwimmern, Watvögeln und anderen Leuten, die sich im Wasser befinden, Abstand halten. Er muss allen Booten, die von rechts kommen, Vorfahrt gewähren.

#3. Der Bediener muss mindestens 16 Jahre alt sein.

#4. Der Bediener darf nicht unter Einfluss von Drogen oder Alkohol stehen.

#5. Der Bediener muss sich innerhalb der Grenze, die vom Vermieter gesetzt wird, und in der Sicht des Vermietungsstandes bleiben.

#6. Der Bediener soll das Fahrzeug nicht ordnungswidrig fahren.

#7. Der Bediener sollte alle mündlichen und schriftlichen regeln befolgen. Falls irgendeine Regel missbraucht wird, wird die Fahrt sofort beendet. Es erfolgt keine Kostenerstattung.

Regles Standart

Regle #1 • Vitesse

Chaque conducteur doit garder une vitesse ralentie **jusqu'au niveau** des bouees. La rentree ou la sortie du jet ski doit etre **perpendiculaire** a la plage et toujours effectuee au ralenti.

Regle #2 • Distance

Le conducteur doit se tenir a **60 metres des autres vehicules, a 150 metres des nageurs** et des matelats pneumatiques, ou bien des gens qui flottent. Le jet ski doit laisser la prioritee a droite.

Regle #3 • Age

Tout les conducteurs doivent avoir **16 ans** ou plus, sans exception!

Regle #4 • Drogue & Alcohol

Tout les conducteurs doivent etre **sobres!**

Regle #5 • Delimitation

Chaque conducteur doit rester a tout temps dans les **limites du territoire** imposees par la maison de location.

Regle #6 • Courtoisie

L'operateur doit toujours conduire avec **prudence**.

Regle #7 • Regle d'Or

L'operateur doit preter attention et obeir a tout conseil et reglementation ecrite. Si les regles ne sont pas suivies, le conducteur sera disqualifie(e), **sans etre rembourse(e)!!!**