

RESOLUTION OF THE LOCAL PLANNING AGENCY OF
THE TOWN OF FORT MYERS BEACH FLORIDA
RESOLUTION NUMBER 2014-005
AMENDMENTS TO OUTDOOR DISPLAY REGULATIONS IN THE LAND DEVELOPMENT CODE
CHAPTER 34, ARTICLE III, DIVISION 5

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 March 11, 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 outdoor display and sales of merchandise and food in the DOWNTOWN zoning district, as is more fully set forth in the proposed Ordinance; and

NOW THEREFORE BE IT RESOLVED, that the LPA recommends that Town Council **APPROVE/DENY** and adopt the proposed Town Ordinance amending Chapter 34, Article I, Section 34-2, "Definitions," and Article III, Division 5, Subdivision II, "DOWNTOWN Zoning District," Section 34-678 in 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 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:

[Insert any recommended changes]

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

Hank Zuba, Chair	AYE/NAY	Joanne Shamp, Vice Chair	AYE/NAY
Al Durrett, Member	AYE/NAY	John Kakatsch, Member	AYE/NAY
Jane Plummer, Member	AYE/NAY	Open, Member	AYE/NAY
Jim Steele, Member	AYE/NAY		

DULY PASSED AND ADOPTED THIS **11th** day of **MARCH, 2014**

Local Planning Agency of the Town of Fort Myers Beach

By: _____
Hank Zuba, LPA Chair

Approved as to legal sufficiency:

ATTEST:

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

By: _____
Michelle Mayher
Town Clerk

Town of Fort Myers Beach
ORDINANCE NO. 14-__

AN ORDINANCE AMENDING CHAPTER 34, ARTICLE I, IN THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE, "IN GENERAL" AMENDING SECTION 34-2, "DEFINITIONS" BY ADDING DEFINITIONS FOR "ENCLOSED DINING AREA" AND "ENCLOSED MERCHANDISE AREA;" AMENDING CHAPTER 34, ARTICLE III, DIVISION 5, SUBDIVISION II, "DOWNTOWN ZONING DISTRICT;" AMENDING SECTION 34-678, "OUTDOOR DISPLAY AND SALES OF MERCHANDISE AND FOOD;" BY DELETING AND REVISING VARIOUS REQUIREMENTS RELATING TO SIZE, LOCATION AND NUMBER OF OUTDOOR DISPLAY ITEMS; BY PROVIDING REGULATIONS FOR "ENCLOSED MERCHANDISE AREAS" AND "ENCLOSED DINING AREAS;" BY REVISING REQUIREMENTS FOR PORCHES AND PATIOS UTILIZED FOR OUTDOOR DISPLAY AND DINING; AND BY PROVIDING REGULATIONS RELATING TO EXISTING NONCONFORMING OUTDOOR DISPLAY BUSINESSES; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

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

Section 1. This Ordinance is enacted pursuant to the provisions of Chapter 95-494, Laws of Florida, Chapters 163 and 166, Florida Statutes and other applicable provisions of law.

Section 2. Adoption of Amendments to Chapter 34 of the Town of Fort Myers Beach Land Development Code. Chapter 34 of the Town of Fort Myers Beach Land Development Code, entitled "Zoning Districts, Design Standards and Nonconformities," is hereby amended as set forth in Exhibit "A," attached hereto and incorporated herein by reference. Entirely new language is indicated with underlining. Language being repealed from the existing code is indicated with strikethroughs. Existing language being retained is shown without underlining or strikethrough.

Section 3. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance, or application hereof, is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion or application shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion or application hereof.

Section 4. Effective Date. this Ordinance shall be effective immediately upon adoption. The foregoing ordinance was enacted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____ and, upon being put to a vote, the result was as follows:

Alan Mandel, Mayor
Joe Kosinski, Vice Mayor
Dan Andre

AYE/NAY
AYE/NAY
AYE/NAY

Bob Raymond
Jo List

AYE/NAY
AYE/NAY

DULY PASSED AND ENACTED by the Council of the Town of Fort Myers Beach, Florida, this ____ day of _____, 2014.

ATTEST:

TOWN OF FORT MYERS BEACH

BY: _____
Michelle D. Mayher, Town Clerk

BY: _____
Alan Mandel, Mayor

Approved as to legal sufficiency by:

Fowler White Boggs, Town Attorney

EXHIBIT “A”

Section 34-2. *Definitions.*

Enclosed dining area. Enclosed dining area means that area within a conventional building including the area adjacent and accessory to a conventional building where the building and adjacent area are under a common engineered roof and which are is secured from entry during non-operating hours. Securing the adjacent area by shutters and doors open to the air during operating hours is sufficient to qualify as an enclosed dining area. The design of the adjacent area shall be consistent with the land Development Code Commercial Design Standards 34-677.

Enclosed merchandise area. Enclosed merchandise area means that area within a conventional building including that area adjacent and accessory to a conventional building where the conventional building and adjacent area are under a common engineered roof and which area is secure from entry during non-operating hours. Securing the adjacent area by shutters and doors open to the air during operating hours is sufficient to qualify as enclosed merchandise area. The design of the adjacent areas shall be consistent with Land Development Code Commercial Design Standards Section 34-677.

Sec. 34-678. Outdoor display and sales of merchandise and food.

(a) **Generally.** Merchandise, food, and beverages may be displayed or sold outdoors in the DOWNTOWN zoning district only in accordance with this section.

(b) **Purpose.** The purpose of these regulations is to enhance the pedestrian environment of the town’s business district through the creative use of outdoor spaces by providing businesses the opportunity to display a sample of their products and to sell food and beverages in a manner that enhances the public realm, creates an interesting and comfortable shopping and dining district, and maintains and improves the town’s sense of place and property values.

- (1) Outdoor display of merchandise allows retailers an opportunity to inform and interest the public by offering a small sample of the products that are available inside. Outdoor display can also be appropriate for small retail products that are meant to be used outside, such as garden ornaments, windsocks, and beach toys.
- (2) Outdoor display of merchandise is not intended to expand retail space or to assist in liquidating clearance or discarded items. The principal purpose of outdoor display in the DOWNTOWN district is to enliven sidewalks and pedestrian plazas by promoting pedestrian-oriented businesses, not to expand businesses or provide locations for freestanding businesses or for mobile vendors (which are regulated in § 34-3002).
- (3) Restaurants are encouraged by this code to provide outdoor dining. Outdoor dining between a restaurant and a street is regulated by this section. The sale of alcoholic beverages outdoors is also regulated by state liquor laws and by § 34-1264 of this code.
- (4) See separate regulations for temporary outdoor displays during special events at § 34-2441 et seq.

(c) **Allowable locations for outdoor activities.** Table 34-4 summarizes the allowable locations for outdoor display of merchandise and outdoor dining in the DOWNTOWN zoning district.

Display Type	Location		
	PRIVATE PROPERTY (between store & street)	PROPERTY	PUBLIC PROPERTY (Times Square pedestrian plaza and Old San Carlos Blvd.)
	On porch	On patio	see (f)
MERCHANDISE , as further limited by other provisions of § 34-678:			
Vending carts – see (d)(1)	no	YES <u>no</u>	no
Clothing racks – see (d)(2)	YES	no	no
Specialized displays – see (d)(3)	YES	YES <u>no</u>	no
Mannequins – see (d)(4)	YES	YES <u>no</u>	no
Tables/shelves – see (d)(5)	YES	no	no
Freestanding displays – see (d)(6)	YES	YES <u>no</u>	no
DINING:			
Vending carts – see (d)(1)	no	YES <u>no</u>	no
Dining tables – see (d)(7)	YES	YES	YES

(d) Enclosed merchandise areas. Enclosed merchandise areas are exempt from this section except for the requirement that all merchandise and materials must be removed from the adjacent accessory area into the conventional building within twelve (12) hours of issuance of a tropical storm or hurricane watch that includes the DOWNTOWN District. Retail store and personal services uses (permitted uses in the DOWNTOWN District) are permitted in the enclosed merchandise area.

(e) Enclosed dining areas. Enclosed dining areas are exempt from this section except for the requirement that all tables, seats and materials must be removed from the adjacent accessory area into the conventional building within twelve (12) hours of issuance of a tropical storm or hurricane watch that includes the DOWNTOWN District. “Restaurant” (permitted use in the DOWNTOWN District) is permitted in the enclosed dining area. Serving of alcoholic beverages is permitted subject to compliance with LDC Sections 34-1261-1264.

(f) Types of outdoor displays.

(1) **Vending carts** are limited to 2 wheels, must have integral roofs or umbrellas, and may use traditional or creative designs. Vending carts that have been manufactured to be secured at night, with fitted side panels, may be left outside when a business is closed. All other vending carts must be moved indoors when the business is not open. Within 48 hours of the issuance of a hurricane watch for the town by the National Hurricane Center, all vending carts must be moved indoors, removed from the county, or placed within an approved off island storage area. Figure 34-9 shows two suggested depicts vending cart designs.



Figure 34-9

- (2) **Clothing racks** are limited to one support rod up to 6 feet long on which clothing is hung. Similar displays whose principle function is for the display of clothing, swimwear, and other garments shall be considered a clothing rack. Clothing racks are often mounted on wheels. Figure 34-10 ~~shows~~ depicts a typical clothing rack.



Figure 34-10

- (3) **Specialized display racks** are unique displays for a specific type of product. An example is a rack to hold beach toys or accessory items. Specialized display racks are limited to a 2 foot by 8-foot area or a 4 foot by 4 foot area. Figure 34-11 ~~shows~~ depicts a specialized display rack.

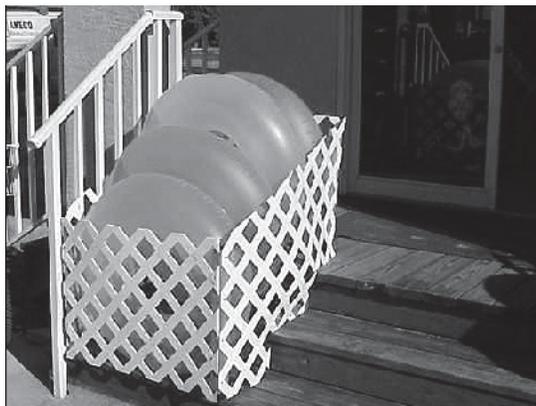


Figure 34-11

- (4) **Freestanding mannequins** are used to display clothing or swimwear. Figure 34-12 ~~shows~~ depicts a typical freestanding mannequin.



Figure 34-12

- (5) ~~Tables or freestanding shelves are limited to a 2-foot by 8-foot area or a 4-foot by 4-foot area, and may not be more than 3 feet in height.~~ Figure 34-13 ~~shows~~ depicts a typical freestanding table with merchandise.



Figure 34-13

- (6) ~~Freestanding product displays can be used for products such as lawn and garden accessories or windsocks that are appropriately displayed on their own. These types of products may be displayed within a 4-foot by 8-foot area or with a maximum of 7 individual products.~~ Figure 34-14 ~~shows~~ depicts typical freestanding product displays.



Figure 34-14

(7) **Dining tables** are used to serve food and beverages to the public. Figure 34-15 shows ~~shows~~ depicts typical dining tables on the Times Square pedestrian plaza.



Figure 34-15

(g) **PRIVATE PROPERTY: number, location, and types of outdoor displays and dining tables.** Retail businesses may sell their regular merchandise outdoors on private property between their stores and a street right-of-way only if the merchandise is placed on a raised porch ~~or~~ (but not on a patio), as defined in this subsection. ~~No business may have more than two outdoor displays of merchandise, as defined in subsection (d). For example, a business may qualify for two vending carts, or one vending cart and one clothing rack, or one mannequin and one table, etc. Multiple occupancy structures with two or more businesses are limited to one outdoor display for each business up to a maximum of four outdoor displays per multiple occupancy structure.~~

(1) **Porches and patios.** Subsection (c) also indicates whether the outdoor display is permitted on a porch, patio, or either. For purposes of this section, porches and patios are defined as follows:

- a. **Porch** is a wooden or concrete structure that is elevated off of the ground and has a railing at least 42 inches tall. ~~A porch must be covered with an awning, roof, or umbrellas. Porches are encouraged to be shaded with an awning or umbrella or with a roof.~~ Wood must be painted or stained. Businesses with existing porches are encouraged to utilize them for outdoor display. New or expanded porches must comply with all chapters of this code.
- b. **Patio** is an area covered with paver bricks, concrete, wood, or similar material and located at ground level immediately adjacent to the front of the building. Asphalt or earthen spaces are not considered a patio. Patios are encouraged to be shaded with an awning or umbrella or with a roof ~~that is an integral part of the outdoor display.~~ Businesses without porches are

encouraged to use patios. New or expanded patios must comply with all chapters of this code.

- (2) **Permitted merchandise and types of outdoor display.** The following types of merchandise may be displayed outdoors using the display types described in subsection (d):
- a. **Art** (~~prints, sculpture, etc.~~): 1, 3, 5, 6
 - b. **Bathing suits and swimwear**: 1, 2, 4
 - c. **Beach accessories** (umbrellas, chairs, etc.): 1, 6; rental of beach equipment on the beach is regulated in § 14-5 of this code.
 - d. **Beach towels**: 1, 2, 3, 5
 - e. **Beach toys, rafts, and floats**: 1, 3, 5
 - f. **Clothing**: 1, 2, 4, 5
 - g. **Clothing accessories** (jewelry, purses, etc.): 1, 3, 4, 5
 - h. **Kites and windsocks**: 1, 6
 - i. **Lawn and garden accessories**: 1, 6
 - j. **Small retail items** (souvenirs, suntan lotion, flowers, books, etc.): 1, 5
 - k. **Merchandise not specifically listed**: 1, or on permitted display type for the most, but similar item to listed merchandise.
- (3) **Personal services** including tattoos, temporary tattoos, hair braiding, and hair wrapping are not permitted outdoors.
- (4) **Additional rules for outdoor displays of merchandise.**
- a. A retail store wishing to display merchandise outdoors in the DOWNTOWN zoning district must obtain a permit for this use (see subsection (e)(5)) in addition to meeting all other requirements of this code.
 - b. Merchandise that is displayed outdoors must be available for sale inside the store and the point of sale must be indoors.
 - c. All outdoor displays must be brought indoors during any hours that the business is not open, ~~except as provided for vending carts in subsection (d)(1).~~
 - d. Outdoor display may not be subleased to a separate business and is only allowed for the principal tenant of the building.
 - ~~d.~~ e. Outdoor displays may contain no business or product identification signage whatsoever; each display may have one 4 inch by 6 inch sign to display prices.
 - e. f. All outdoor displays must be non-motorized and movable by hand and may be no taller than 10 feet.
 - ~~f.g.~~ Merchandise may not be attached to the building or to a railing unless incorporated into an approved type of outdoor display, such as a specialized display rack, mannequin, or freestanding product display (see subsection (d)).
- (4) **Outdoor dining.** A restaurant wishing to provide outdoor seating between the restaurant and a street must obtain a permit for this use (see subsection (e)(5)) in addition to meeting all other requirements of this code. The seating must be located on a porch or patio as defined in this subsection. The sale of alcoholic beverages outdoors is regulated by state liquor laws and by § 34-1264 of this code.
- (5) **Permit required.** A permit is required for each business wishing to display merchandise outdoors or to place outdoor seating in conformance with this section.
- a. Permits may be issued for up to one year and shall expire each year on September 30.
 - b. Permit applications may be filed at any time using forms available from town hall. Applications should be accompanied by photographs or drawings that clearly indicate the type, character, number, and size of outdoor displays or dining tables that are being proposed.
 - c. Permits may be issued by the town manager. The town manager may also choose to refer an application to the town council for its consideration in lieu of administrative issuance or rejection.

- d. Permits may include modifications to the standards in this section to better accomplish the purposes set forth in subsection (b). Other reasonable conditions may also be imposed regarding the layout and physical design of porches, patios, vending carts, specialized display racks, shelves, tables, and umbrellas.
- e. Outdoor display and dining permits may be suspended by the town manager for noncompliance with the permit. Suspensions may be appealed to the town council in accordance with procedures set forth in § 34-86 for appeals of administrative decisions. Suspension of a permit does not preclude the town from pursuing any of the other enforcement mechanisms provided in this code (for example, § 1-5, or article V of ch. 2).

(f) **PUBLIC PROPERTY:** No merchandise may be displayed outdoors on public property. Restaurants may extend their operations onto public sidewalks and plazas only as follows:

- (1) **General location.** These provisions are limited to the Times Square pedestrian plaza (see Figure 34-6), Old San Carlos Boulevard, and other locations if explicitly approved by the town council.
- (2) **Who may operate.** Vending rights are available only to the owner of the private property that immediately abuts the sidewalk or pedestrian plaza, or in the case of leased property, only to the primary lessee; vending rights may not be further sub-leased.
- (3) **Specific location.** Vending rights can be used only in the area directly in front of the private property and lying between 90-degree extensions of the side property lines. Vending rights may extend onto public property only as far as specified in the annual permit and may be further modified by the town as necessary to provide adequate room for pedestrian movement and to ensure fair treatment for restaurants located on opposite sides of the Time Square pedestrian plaza.
- (4) **Outdoor dining.** No fixed or moveable equipment may be placed on a public sidewalk or plaza to sell or serve food except that tables, umbrellas, and chairs may be placed by restaurants for the use of their customers; no signage is permitted.
- (5) **Permit required.** Vending rights for dining on public property may be exercised only upon issuance of a permit by the town that sets forth the conditions of private use of a public sidewalk or plaza, including:
 - (6) Additional restrictions on the degree which tables, umbrellas, chairs, and carts may interfere with pedestrian movement;
 - (7) Restrictions on the extent to which food not available in the abutting business may be sold;
 - (8) Requirements for keeping the area surrounding the tables or carts from debris and refuse at all times;
 - (9) Insurance requirements;
 - (10) Payment of fees established by the town for vending rights;
 - (11) Limitations on leasing of vending rights, if any; and
 - (12) Other reasonable conditions as determined by the town, including full approval right over the design of umbrellas, carts, tables, etc.
- (13) Permitting procedures and enforcement shall be the same as provided in subsection (e)(5).

(g) Existing Nonconforming Outdoor Display Businesses. Businesses located in the Downtown Zoning District that were in existence on or before January 1, 2014 and did not meet the technical requirements for an Outdoor Display Permit shall be permitted to continue in business regardless of whether they previously or currently meet the specific requirements for outdoor display outlined above, subject to the following conditions:

- (1) The business must demonstrate that it was in existence at its current location on or before January 1, 2014;
- (2) The business must apply for and be issued and pay for an annual permit;
- (3) The business must remain at its current location and may only move or relocate to a legally

conforming location:

(4) The business can only be sold or transferred to another person or entity if the business is either brought into compliances with all requirements in this Section or if the business is relocated to a conforming location and otherwise meets all requirements for Outdoor Display;

(5) The business cannot increase in area or number of displays; and

(6) If the business is closed or ceases to do business for a period of nine (9) months or more, the business can only re-open in a conforming location.