

**ORDINANCE No. 04-08**

AN ORDINANCE AMENDING CHAPTER 34, ARTICLE III, DIVISION 5. REDEVELOPMENT ZONING DISTRICTS. SUBDIVISION II. DOWNTOWN ZONING DISTRICT; AMENDING SECTION 34-677 (C) OUTDOOR SALES; PROVIDING SEVERABILITY; AND ESTABLISHING AN 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, Chapters 163 and 166, Florida Statutes, and other applicable provisions of law.

**SECTION 2. AMENDING CHAPTER 34, ARTICLE III, DIVISION 5, SUBDIVISION II, DOWNTOWN ZONING DISTRICT.** The amendments to Chapter 34 are contained in the attached **Exhibit A**. Entirely new language is indicated with underlining and language being repealed from the regulations is indicated with strike-throughs. The Amendments are found in Sec. 34-677 (c) Outdoor Sales.

**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. EFFECTIVE DATE.** This ordinance shall take effect immediately upon its 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:

Howard Rynearson \_\_\_\_\_  
Don Massucco \_\_\_\_\_  
Bill Thomas \_\_\_\_\_  
W. H. "Bill" Van Duzer \_\_\_\_\_  
Garr Reynolds \_\_\_\_\_

DULY PASSED AND ENACTED this \_\_\_\_ day of \_\_\_\_, 2004.

ATTEST:

TOWN OF FORT MYERS BEACH

By: \_\_\_\_\_  
Marsha Segal-George, Town Clerk

By: \_\_\_\_\_  
Bill Thomas, Mayor

Approved as to form by:

\_\_\_\_\_  
Richard V.S. Roosa, Town Attorney

# EXHIBIT A

## FORT MYERS BEACH LAND DEVELOPMENT CODE

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### CHAPTER 34 ZONING DISTRICTS, DESIGN STANDARDS, AND NONCONFORMITIES

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#### ARTICLE III. ZONING DISTRICT REGULATIONS

#### DIVISION 5. REDEVELOPMENT ZONING DISTRICTS

##### *Subdivision II. DOWNTOWN Zoning District*

##### **Sec. 34-677. Additional requirements.**

(a) *Commercial design standards.* The commercial design standards (§§ 34-991–1010) shall apply to all commercial and mixed-use buildings, or portions thereof, that are being newly built, and to “substantial improvements” to such buildings as defined in § 6-405.

(b) *Open space and buffers.* There are no minimum open space and buffer requirements in the DOWNTOWN district comparable to the standards found in ch. 10, except in three instances:

- (1) Portions of properties that lie east of Palermo Circle and more than 300 feet beyond the north edge of the Estero Boulevard right-of-way shall retain 50% of that portion as open space. This open space may be a stabilized sodded area useable for overflow parking.
- (2) Residential buffers are required between commercial or mixed-use buildings and single-family residential lots for properties on the north side of Estero Boulevard east of Palermo Circle. These buffers shall be constructed in accordance with the buffer requirements of ch. 10 of this code.
- (3) Buffers are required between any off-street parking lot and a public street in accordance

with the buffer requirements of ch. 10 of this code.

(c) *Outdoor sales.* Merchandise may be sold outdoors in the DOWNTOWN zoning district only in accordance with this subsection:

(1) *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 their products 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.

- a. Outdoor displays allow retailers an opportunity to attract the public by offering a sample of the products which are available inside.
- b. Outdoor display is also appropriate for small retail products which are meant to be used outside, such as garden ornaments, windsocks, and beach toys.
- c. The principal purpose of outdoor display is not to provide additional retail space or locations for clearance and discarded items; allowable types of outdoor displays are defined below and are equally limited for each business.

(2) *Limitations for all outdoor display.* Each business may have a maximum of two outdoor displays, as defined in subsection (c)(5). For example, a business may have two vending carts, or one vending cart and one clothing rack, or one mannequin and one table, etc. Multiple occupancy structures with three businesses or more are limited to one outdoor display for each business. Subsection (c)(5) lists the types of outdoor displays that are allowed. Subsection (c)(6) indicates whether the outdoor display is permitted on a raised porch (RP), patio (P), or either. Subsection (c)(7) indicates the permitted types of merchandise that may be displayed

outdoors and the corresponding choices of outdoor displays.

(3) ~~(+)~~ **Outdoor display on private property.**

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 porches or a patio, as defined below: ~~on up to two wheeled vending carts that meet the following criteria:~~

- ~~a. Carts may contain no signage whatever;~~
- ~~b. Carts must be non-motorized, moveable by hand, and no taller than 10 feet;~~
- ~~c. Carts must be moved indoors during any hours that the business is not open; and~~
- ~~d. Carts shall have integral roofs or umbrellas and use traditional or creative designs. Figure 34-9 shows two suggested cart designs.~~

**Raised Porch (RP)** is a wooden or concrete deck which is elevated off of the ground and has a railing of no less than 42 inches in height. A porch may be uncovered or covered with an awning, roof, or umbrellas. Businesses with existing porches are encouraged to utilize them for outdoor display. New or expanded porches must comply with all chapters of this code.

**Patio (P)** 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.

(4) **Rules for outdoor displays in general.**

- a. All outdoor displays must be brought indoors during any hours that the business is not open.
- b. Outdoor displays may contain no business or product identification signage whatever; each display may have one 4 inch by 6 inch sign to display prices.
- c. All outdoor displays must be non-motorized and movable by hand and may be no taller than 10 feet.
- d. 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 (c)(5)).

(5) **Types of outdoor displays.**

- a. **Vending carts** are limited to 2 wheels, must have integral roofs or umbrellas, and may use traditional or creative designs. Vending carts which 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.a shows two suggested vending cart designs.



Figure 34-9.a

- b. **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 34-9.b shows a typical clothing rack.



Figure 34-9.b

- c. **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 34-9.c shows a specialized display rack.



Figure 34-9.c

- d. **Freestanding mannequins** are used to display clothing or swimwear. Figure 34-9.d shows a typical freestanding mannequin.



Figure 34-9.d

- e. **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 34-9.e shows a typical freestanding table with merchandise.



Figure 34-9.e

- f. **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 34-9.f shows typical freestanding product displays.



Figure 34-9.f

- (6) **Allowable locations for outdoor displays.** The six types of outdoor display types may be located on raised porches or patios as follows (RP = Raised Porch; P = Patio):
- Vending carts:** RP or P
  - Clothing racks :** RP only
  - Specialized display holders or racks:** RP or P
  - Freestanding mannequins:** RP or P
  - Tables or freestanding shelves:** RP only
  - Freestanding product displays:** RP or P
- (7) **Permitted merchandise and types of outdoor display.** The following types of merchandise may be displayed outdoors using the display type described in subsection (c)(5):
- Art** (prints, sculpture, etc.): a, c, e, f
- Bathing suits and swimwear:** a, b, d
- Beach accessories** (umbrellas, chairs, etc.):
- a, f. Rental of beach equipment on the beach is regulated in § 14-5 of this code.
- Beach towels:** a, b, c, e
- Beach toys, rafts, and floats:** a, c, e
- Clothing:** a, b, d, e
- Clothing accessories** (jewelry, purses, etc.):
- a, c, d, e
- Kites and windsocks:** a, f
- Lawn and garden accessories:** a, f
- Small retail items** (souvenirs, suntan lotion, flowers, books, etc.): a, e

**Merchandise not specifically listed:** a, or on permitted display type for the most similar item.

**Personal services** such as tattoos, temporary tattoos, hair braiding, and hair wrapping are not permitted outdoors.

- (8) (2) **Outdoor displays on public property.** Retail businesses may extend their operations onto public sidewalks and plazas only as follows:
- General location.** These provisions are limited to the Times Square pedestrian plaza (see Figure 34-6), along both sides of Old San Carlos Boulevard, and other locations if explicitly approved by the town council.
  - Who may operate.** Vending rights are available only to the owner or primary lessee of the private property that immediately abuts the sidewalk or pedestrian plaza; vending rights may not be further sub-leased.
  - 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.
  - Food.** No fixed or moveable equipment may be placed on a public sidewalk or plaza to sell or serve food except as follows:
    - Tables, umbrellas, and chairs may be placed by restaurants for the use of their customers; no signage is permitted except lettering on umbrellas up to 8 inches in height.
    - Wheeled food carts are permitted if they meet the following criteria:
      - Carts must meet the criteria found in § 34-677(c)(1)b-d § 34-677(c)(4) and (c)(5)a;
      - Not more than one chair or stool may be provided for the employee; and
      - One sign per side of cart may be displayed, with each sign limited to 3 square feet in area.
    - Along Old San Carlos Boulevard, all tables and carts shall be placed only on the 5-foot bricked furnishing zone adjoining the curb and shall not

otherwise block pedestrian movement along the sidewalk.

e. ~~No merchandise may be displayed on a public sidewalk or plaza except when placed on tables or shelves that are moved indoors during any hours the business is not open and that do not exceed the following dimensions:~~

1. ~~Maximum height: 3 feet~~
2. ~~Maximum width parallel to right-of-way line: 8 feet~~
3. ~~Maximum depth: may not extend more than 2 feet beyond the right-of-way line onto the sidewalk or plaza.~~

e. **Merchandise.** In addition to all other rules pertaining to outdoor display of merchandise found in this section:

1. Within the Times Square pedestrian plaza (see Figure 34-6), merchandise may be displayed only as would be allowed on patios, as indicated in subsection (c)(6).
2. Along Old San Carlos Boulevard, merchandise may be displayed only on vending carts, which must be located within the 5-foot bricked furnishing zone adjoining the curb. Vending carts must also be located between parked vehicles so as to not interfere with the opening of vehicle doors and may not block pedestrian movement along the sidewalk.

f. **Permit required.** Vending rights for food or merchandise 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:

1. Additional restrictions on the degree which tables, umbrellas, chairs, and carts may interfere with pedestrian movement;
2. Restrictions on the extent to which food or merchandise not available in the abutting business may be sold;
3. Requirements for keeping the area surrounding the tables or carts from debris and refuse at all times;
4. Insurance requirements;
5. Payment of fees established by the town for vending rights;
6. Limitations on leasing of vending rights, if any; and

7. Other reasonable conditions as determined by the town, including full approval rights over the design of umbrellas, carts, tables, etc.

(d) **Sandwich signs.** Sandwich signs may be placed in the DOWNTOWN zoning district despite the general prohibition in § 30-4 of sandwich signs, “A” signs, or other types of portable signs which are portable and readily movable from place to place. A business may place a single- or double-faced sandwich sign on the same premises or on a sidewalk directly in front of the premises provided that the sign is placed indoors after business hours, is not illuminated, and does not exceed 24 inches in width and a total of 6 square feet per side.