

ORDINANCE NO. 20-09

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA REPEALING ARTICLE II OF CHAPTER 32 OF THE FORT MYERS BEACH LAND DEVELOPMENT CODE, AND SECTION 18-34 OF THE CODE OF ORDINANCES OF FORT MYERS BEACH CONCERNING VESSEL CONTROL AND WATER SAFETY; AND ESTABLISHING A NEW ARTICLE V OF CHAPTER 16 OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH ENTITLED “BOATING RESTRICTED AREAS, VESSEL CONTROL AND WATER SAFETY”, PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER’S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE.

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, the Town of Fort Myers Beach, Florida (“Town”) recognizes restrictions of vessel speeds and vessel traffic are necessary to protect the safety of the public, and therefore subject to reasonable regulations as proposed herein; and

WHEREAS, §327.46 (1) (b), *Florida Statutes* authorizes the Town to establish idle speed, no wake boating safety zones by ordinance within 500 feet of any boat ramp, hoist, marine railway, or other launching or landing facility available for use by the general boating public on waterways more than 300 feet in width or within 300 feet of any boat ramp, hoist, marine railway, or other launching or landing facility available for use by the general boating public on waterways not exceeding 300 feet in width; and

WHEREAS, §327.46 (1) (b), *Florida Statutes* authorizes the Town to establish idle speed, no wake boating safety zones by ordinance, within 500 feet of fuel pumps or dispensers at any marine fueling facility that sells motor fuel to the general boating public on waterways more than 300 feet in width or within 300 feet of the fuel pumps or dispensers at any licensed terminal facility that sells motor fuel to the general boating public on waterways not exceeding 300 feet in width; and

WHEREAS, §327.46 (1) (b), *Florida Statutes* authorizes the Town to establish slow speed minimum wake boating safety zones by ordinance, within 300 feet of any bridge fender system and within 300 feet of any bridge span presenting a vertical clearance of less than 25 feet or a horizontal clearance of less than 100 feet; and

WHEREAS, §327.46 (1) (b), *Florida Statutes* authorizes the Town to establish slow speed minimum wake boating safety zones by ordinance, on a canal, or similar linear waterway if the waterway is less than 75 feet in width from shoreline to shoreline; and

WHEREAS, §327.46 (1) (b), *Florida Statutes* authorizes the Town to establish vessel exclusion zone by ordinance in an area designated as a public bathing beach or swim area; and

WHEREAS, on March 13, 2020 the Town Council held a first reading of this proposed Ordinance; and

WHEREAS, on April 6, 2020 the Town Council held a second reading of this proposed Ordinance.

NOW THEREFORE IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH, FLORIDA:¹

Section 1. The above recitals are true and correct, and incorporated herein by this reference and are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. Article II of Chapter 32 of the Town of Fort Myers Beach Land Development Code, and Section 18-34 of the Code of Ordinances of Fort Myers Beach, a copy of which are attached hereto as Exhibit “A” are hereby repealed.

Section 3. A new Article V of Chapter 16 of the Code of Ordinances of the Town of Fort Myers Beach entitled “Boating Restricted Areas, Vessel Control and Water Safety” hereby adopted to read as follows:

CHAPTER 16 – WATERWAYS AND BEACHES

Article V – Boating Restricted Areas, Vessel Control and Water Safety

Sec. _____ - Purpose and Objectives.

The purpose of this Article is to protect public safety in the Town of Fort Myers Beach (“Town”) by ensuring the adequate regulation of vessel speeds, vessel traffic and personal watercraft on the Town’s nearshore waters. The objective of this Article is to ensure the safe operation, safe speed and safe traffic of vessels and personal watercraft to protect the users of the Town’s nearshore waters and adjacent upland property owners.

^{1/} Additions to existing text are shown by underline, changes to existing text on second reading are shown by double underline, and deletions are shown as ~~strikethrough~~.

Sec. _____ - Applicability.

The provision of this Article shall apply to all waterways within the Town's jurisdiction.

Sec. _____ - Definitions.

Bather means any person who is in the same water as a vessel, whether that 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.

Floating vendor means a vessel, represented as a place of business, a professional or other commercial enterprise, used to solicit, conduct or canvass for the sale or rental of any merchandise, services, goods or property of any kind or character. The term "floating vendor" does not include the following types of vessels:

- (1) A vessel which in and of itself is rented;
- (2) Any parasail operation using self-contained operational equipment so that launching or landing does not occur on land;
- (3) A vessel maintained in a permanent location, over privately owned or leased submerged bottom lands; or
- (4) A vessel used for hire (i.e., charter boat, dive boat, dinner cruise boat, tour boat, water taxi, etc.) not used in any parasail operation.

Idle Speed means the lowest speed a vessel must maintain to sustain steerageway and headway. At no time is any vessel required to proceed so slowly that the operator is unable to maintain control over the vessel or any other vessel or object under tow. "Idle Speed No Wake" and "Idle Speed" are interchangeable.

Littoral waters means that part of the ocean or sea which abuts the shoreline and includes the shore to the ordinary high-water mark. For purposes of this article, 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.

Personal watercraft means a vessel less than 16 feet in length which uses an inboard motor powering a water jet pump, as its primary source of motive power and which is designed to be operated by a person sitting, standing or kneeling on the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

Slow Speed means a vessel must be fully off plane and completely settled into the water, and operating at a prudent and reasonable speed under the prevailing circumstances to avoid intentionally or negligently disturbing, colliding with, or injuring manatees, creating an excessive wake or other hazardous condition, or other persons using the waterway. At no time is any vessel required to proceed so slowly that the operator is unable to maintain control over the vessel or any other vessel or object under tow. "Slow Speed" and "Slow Speed Minimum Wake" are interchangeable.

Slow speed zone means a designated area within which all vessel operators shall proceed at slow speed.

Town waters means all waters within 1,000 feet of the shoreline of Estero Island in the county.

Vessel means and is synonymous with the term "boat," as referenced in the state Constitution, art. VII, § 1(b) and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on the water. The term "vessel" does not include rafts, floats or flotation devices, whether made of canvas, vinyl, rubber, styrofoam or other substances, intended or capable of assisting in the flotation of a person on or in the water.

Water-oriented structure means and includes without limitation, any fishing pier, dock, 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 vessels, erosion control and shoreline stabilization, or for water-oriented activities.

Sec. _____ - Establishment of Special Idle Speed Boating Safety Zones.

(a) The following described Town Waters or portions of Town Waters, as properly marked and permitted through the Florida Fish and Wildlife Commission, are hereby established as Idle Speed Zones within 500 feet of a boat ramp, or other launching or landing facility available for use by the general boating public on a waterway more than 300 feet in width:

- (1) Matanzas Pass waterway within 500 feet of the Bowditch Point Park paddle-craft launch (26°27'48.48"N, 81°57'56.74"W).
- (2) Matanzas Pass waterway within 500 feet of the Pink Shell Marina paddle-craft launch (26°27'41.05"N, 81°57'52.91"W).
- (3) Matanzas Pass waterway within 500 feet of the Miramar Street boat ramp (26°27'16.67"N, 81°56'54.81"W).
- (4) Matanzas Pass waterway within 500 feet of the Matanzas Pass Preserve paddle-craft landing (26°27'5.67"N, 81°56'11.04"W).
- (5) Matanzas Pass waterway within 500 feet of the Mound House paddle-craft launch (26°26'48.70"N, 81°55'39.88"W).
- (6) Matanzas Pass waterway within 500 feet of the Coconut Drive boat ramp (26°26'27.36"N, 81°55'21.13"W).

(b) The following described Town Waters or portions of Town Waters, as properly marked and permitted through the Florida Fish and Wildlife Commission, are hereby established as Idle Speed Zones within 500 feet of fuel pumps or dispensers at any marine fueling facility that sells motor fuel to the general boating public on waterways more than 300 feet in width, or the Littoral Waters within 300 feet of the beach:

- (1) Matanzas Pass waterway within 500 feet of the Moss Marina Fuel Facility (26°27'48.48"N, 81°57'21.63"W).

- (2) Matanzas Pass waterway within 500 feet of the Diversified Yacht Services Fuel Facility (26°27'29.05"N, 81°57'15.84"W).
- (3) Matanzas Pass waterway within 500 feet of the Snook Bight Fuel Facility (26°26'20.65"N, 81°55'7.15"W).
- (4) The canal within 500 feet of the Fish Tale Fuel Facility (26°24'48.59"N, 81°53'52.65"W).

Sec. _____ - Establishment of Special Slow Speed Boating Safety Zones.

- (a) The following described Town Waters or portions of Town Waters, as properly marked and permitted through the Florida Fish and Wildlife Commission, are hereby established as Slow Speed zones within 300 feet of any bridge fender system:
 - (1) Matanzas Pass waterway within 300 feet of the Matanzas Pass Bridge fender system (26°27'26.54"N, 81°57'13.08"W).
 - (2) Matanzas Pass waterway within 300 feet of the Big Carlos Pass Bridge fender system (26°24'15.51"N, 81°52'51.57"W).
- (b) All canals and linear waterways less than 75 feet in width from shoreline to shoreline are hereby established as Slow Speed zones.

Section _____ - Establishment of Vessel Exclusion Area.

- (a) The following described Town Waters or portions of Town Waters, as properly marked and permitted through the Florida Fish and Wildlife Commission, are hereby established as Vessel Exclusion Zones:
 - (1) On the Littoral Waters within 500 feet of a Any Town or county park beach posted as "swimming only" vessel exclusion area. Official patrol rescue craft, other official craft, and craft operating under emergency

conditions are exempt from the provisions of this article while performing their official duties or operating in an emergency.

- (2) Vessels propelled by use of propellers, fans or blades and the movement of air (commonly known as an air boat) are prohibited within the back bay area of the Town described as lying between the mainland and Estero Island south of the northern boundary of the Matanzas Pass Wilderness Preserve to the waters north of the bridge at Big Carlos Pass.

Sec. ____ - Vessel control.

- (a) Vessel operation and safety. Every person operating any vessel on Town waters shall do so in a careful and prudent manner, taking into consideration the weather conditions and range of visibility, water turbulence, proximity to anglers, bathers, water-skiers and other vessels, and all other attendant circumstances so as not to endanger the life, limb or property of any person. Operators shall comply with all federal and state laws and local ordinances providing for rules of the waterway and operation and safety of vessels. Failure to operate a vessel in a careful and prudent manner as required herein shall constitute careless boating.
- (b) Launching/retrieval of vessels. No person shall launch or retrieve a vessel from any park property not designated specifically for that purpose.
- (c) Public docks. No person shall use the public docks for dockage or other purpose without first making arrangements for such accommodation with the town manager or his/her designee, who shall assign space and collect reasonable rental charges in conformity with established regulations and fees.
- (d) Prohibition during closed hours. No person shall launch, retrieve, dock or operate any vessel within a park or littoral waters after the park is closed.

Sec. ____ - Exemptions.

- (a) The provisions of this article shall not be construed to prohibit the running of racing or exhibition boats or personal watercraft during a publicly announced, properly authorized and supervised, and adequately patrolled regatta or speed trial or exhibition. To be properly authorized, approval by the town council shall be required.
- (b) Florida Marine Patrol rescue craft, the county sheriff's department craft, other official craft and craft operating under emergency conditions shall be exempted from the provisions of this article while performing their official duties or operating in an emergency.

Sec. _____ - Penalties.

- (a) Any violation of this article may be prosecuted in accordance with the provisions set out in Section 1-12 of the Code of Ordinances, Section 1-5 and Chapter 2, Article V of the Land Development Code.
- (b) This article may be enforced by any duly authorized law enforcement officer, Town code enforcement officer or town designee.
- (c) Any person in violation of this Article that fails to cure such violation after proper notice, shall be subject to the maximum fine as allowed by Florida Statute. All penalties incurred as a result of a violation of this Article shall continue to accrue until such violations are cured.
- (d) Nothing contained herein will prevent the Town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this Article. Such other lawful action will include, but will not be limited to, an equitable action for injunctive relief or an action at law for damages.

Section 4. The Town Council intends that the provisions of this ordinance be made a part of the Fort Myers Beach Code of Ordinances, and that sections herein may be renumbered or re-lettered and the words or phrases herein may be changed to accomplish codification; regardless, typographical errors that do not affect intent may be corrected with notice to and authorization of the Town Manager without further process.

Section 5. Whenever the requirements or provisions of this ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive shall apply.

Section 6. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the ordinance as a whole, or any part thereof, other than the part so declared.

Section 7. This ordinance shall become effective upon adoption by the Town Council.

The foregoing Ordinance was adopted by the Town Council upon a motion by Vice Mayor Hosafros and seconded by Council Member Atterholt and TRY upon being put to a roll call vote, the result was as follows:

Raymond P. Murphy, Mayor	aye
Rexann Hosafros, Vice Mayor	aye
Dan Allers, Council Member	aye
Jim Atterholt, Council Member	aye
Bill Veach, Council Member	aye

ADOPTED this ____ day of _____, 2020 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Raymond P. Murphy, Mayor

ATTEST:

Michelle D. Mayher, Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:

John R. Herin, Jr., Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this ____ day of _____2020.