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MEMORANDUM

TO: Fort Myers Beach Town Council
FROM: Bill Spikowski
DATE: June 1, 2004
SUBJECT: LAND DEVELOPMENT CODE, CHAPTER 34 – OUTDOOR DISPLAY AND DINING
INTRODUCTION OF ORDINANCE 04-08: JUNE 7, 2004
FIRST PUBLIC HEARING: JUNE 21, 2004, AT 6:30 P.M.
FINAL PUBLIC HEARING: JUNE 30, 2004, AT 3:00 P.M.

Attached is backup material for the introduction of Ordinance 04-08 that would amend Chapter 34 of the Land Development Code. These amendments would modify the rules for outdoor display of merchandise and outdoor dining in the DOWNTOWN zoning district.

This material is for your June 7, June 21, and June 30 meetings.

On May 18, the Local Planning Agency began its formal public hearing on this ordinance. After extensive discussion, the hearing was continued until June 8 to consider a number of changes proposed by LPA members. These changes included:

- Add a permitting procedure for all outdoor displays.
- Expand on the “purpose” statement and make it apply to the permitting process.
- Clarify that outdoor display is not to become an expansion of retail stores.
- Lower the number of outdoor displays for multiple occupancy structures.
- Clarify whether the property owner or primary tenant qualifies for outdoor display.
- Allow for suspension of outdoor display permits for noncompliance.

The attached draft of this ordinance, dated June 1, 2004, includes all of these changes plus significant reformatting for clarity. The LPA will review this draft on June 8 and make its formal recommendation to you at that time. Behind the ordinance are a series of memos that document the origin and development of these amendments.

With consent of the Town Council, public hearings on this ordinance will be scheduled for June 21, 2004 at 6:30 P.M. and June 30, 2004 at 3:00 P.M.

Attachments: *Proposed Ordinance 04-08 amending Chapter 34, dated June 1, 2004*
Prior memos from Dan Folke explaining the origin and development of this ordinance

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 AND RETITLING IT SECTION 34-678 OUTDOOR DISPLAY AND SALES OF MERCHANDISE AND FOOD; REPEALING SECTION 34-677 (D) SANDWICH SIGNS; 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 previous language for Outdoor Sales that was found in Section 34-677 (c) is now being amended and moved to Section 34-678 and titled Outdoor Display and Sales of Merchandise and Food. The previous language for Sandwich Signs that was found in Section 34-677(d) is now being repealed.

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

CHAPTER 34 ZONING DISTRICTS, DESIGN STANDARDS, AND NONCONFORMITIES

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.

Sec. 34-678. (c) 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 subsection.

(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.

Table 34-4 — Outdoor Activities in the DOWNTOWN Zoning District				
<u>Display Type</u>	<u>Location</u>	PRIVATE PROPERTY <i>(between store & street)</i>	TIMES SQUARE <i>pedestrian plaza</i>	OLD SAN CARLOS <i>public sidewalk</i>
		<i>On porch</i>	<i>On patio</i>	<i>see (f)</i>
MERCHANDISE , as further limited by other provisions of § 34-678:				
<i>Vending carts – see (d)(1)</i>	–	YES	YES	bricked area only
<i>Clothing racks – see (d)(2)</i>	YES	–	–	–
<i>Specialized displays – see (d)(3)</i>	YES	YES	YES	–
<i>Mannequins – see (d)(4)</i>	YES	YES	YES	–
<i>Tables/shelves – see (d)(5)</i>	YES	–	–	–
<i>Freestanding displays – see (d)(6)</i>	YES	YES	YES	see (f)(5)
DINING:				
<i>Vending carts – see (d)(1)</i>	–	YES	YES	bricked area only
<i>Dining tables – see (d)(7)</i>	YES	YES	YES	bricked area only

(d) 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 34-9.1 shows two suggested vending cart designs.



Figure 34-9.1

(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 34-9.2 shows a typical clothing rack.



Figure 34-9.2

- (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 34-9.3 shows a specialized display rack.



Figure 34-9.3

- (4) **Freestanding mannequins** are used to display clothing or swimwear. Figure 34-9.4 shows a typical freestanding mannequin.



Figure 34-9.4

- (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 34-9.5 shows a typical freestanding table with merchandise.



Figure 34-9.5

- (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 34-9.6 shows typical freestanding product displays.



Figure 34-9.6

- (7) **Dining tables** are used to serve food and beverages to the public. Figure 34-9.7 shows typical dining tables on the Times Square pedestrian plaza.



Figure 34-9.7

(e) ~~(1)~~ **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 porches or 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, or 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:~~

- (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 or covered with an awning, roof, or umbrellas. 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 type 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 similar item.
- l. **Personal services** including tattoos, temporary tattoos, hair braiding, and hair wrapping are not permitted outdoors.

- (3) **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.
 - 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 displays may contain no business or product identification signage whatever; each display may have one 4 inch by 6 inch sign to display prices.
 - e. All outdoor displays must be non-motorized and movable by hand and may be no taller than 10 feet.
 - f. 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) ~~(2)~~ ***On PUBLIC PROPERTY: number, location, and types of outdoor displays and dining tables.*** Retail businesses and restaurants may extend their operations onto public sidewalks and plazas only as follows:
- (1) ***General location.*** ~~α.~~ 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.
 - (2) ***Who may operate.*** ~~β.~~ Vending rights are available only to the owner or primary lessee 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.*** ~~γ.~~ 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.
 - (4) ***Outdoor display of merchandise.*** In addition to all other rules pertaining to outdoor display of merchandise found in this section:
 - a. Within the Times Square pedestrian plaza (see Figure 34-6), merchandise may be displayed only as would be allowed on patios as indicated in subsections (c)–(e).
 - b. Along Old San Carlos Boulevard, merchandise may be displayed only as follows:
 - 1. On vending carts, which must be located within the 5-foot bricked furnishing zone adjoining the curb. Vending carts may not block

- pedestrian movement along the sidewalk and must be located so as to not interfere with the opening of vehicle doors or the use of parking meters, benches, bicycle racks, or other public conveniences; or
2. Up to 3 freestanding products (see subsection (d)(6)) may be displayed within the first 2 feet of sidewalk that immediately adjoins a retail store.
- (5) **Outdoor dining.** ~~†~~ No fixed or moveable equipment may be placed on a public sidewalk or plaza to sell or serve food except as follows:
- a. ~~†~~ 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.
 - b. ~~‡~~ Wheeled food carts are permitted if they meet the following criteria:
 1. ~~‡~~ Carts must meet the criteria found in ~~§ 34-677(c)(1)~~ subsection (d)(1);
 2. ~~‡~~ Not more than one chair or stool may be provided for the employee; and
 3. ~~‡~~ One sign per side of cart may be displayed, with each sign limited to 3 square feet in area.
 - c. ~~‡~~ Along Old San Carlos Boulevard, all tables and food 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. Tables and food carts must also be located between parked vehicles so as to not interfere with the opening of vehicle doors or the use of parking meters, benches, bicycle racks, or other public conveniences.
 - 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.~~

- (6) **Permit required.** ~~f~~ Vending rights for dining or merchandise 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:
 - a. ~~†~~ Additional restrictions on the degree which tables, umbrellas, chairs, and carts may interfere with pedestrian movement;
 - b. ~~‡~~ Restrictions on the extent to which food or merchandise not available in the abutting business may be sold;
 - c. ~~‡~~ Requirements for keeping the area surrounding the tables or carts from debris and refuse at all times;
 - d. ~~‡~~ Insurance requirements;
 - e. ~~‡~~ Payment of fees established by the town for vending rights;
 - f. ~~‡~~ Limitations on leasing of vending rights, if any; and
 - g. ~~‡~~ Other reasonable conditions as determined by the town, including full approval rights over the design of umbrellas, carts, tables, etc.Permitting procedures and enforcement shall be the same as provided in subsection (e)(5).

~~(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. [this subject is now addressed in § 30-5(a)(18)]~~



Memo

To: Fort Myers Beach Town Council

From: Dan Folke, Community Development Coordinator

Date: June 24, 2003

Re: Update on Outdoor Display Regulations

On March 3, 2003 the Town Council adopted new rules which allow the outdoor display and sales of merchandise. We have been enforcing the rules and working with property owners to explain what is allowed and what is not. As is often the case with new regulations, staff has had to apply some interpretation to the rules. The purpose of this update is confirm that staff is applying the rules as envisioned by the council.

There are two sections of Chapter 34 which deal with outdoor sales and display on private property. Section 34-677(c) establishes the rules for outdoor sales in the downtown zoning district. It permits outdoor sales in two ways, on a raised porch or from a vending cart which complies with the criteria found in the section.

Raised Porch

The first interpretation staff has had to make is what is a “raised porch”. We are requiring two elements to a raised porch, a deck and a railing. The deck may be wood, concrete or some other material, however it must be raised from grade elevation. The deck must also have a railing or solid wall which encloses the area. A railing needs to have some type of vertical “picket”. Staff believes the purpose of the elevated deck is to create a clearly defined area and to provide some type of visual screening of the displayed materials.

The way merchandise is displayed on porches is not specified or limited in area by the code. Therefore, clothing racks, tables or other displays are allowed on porches and staff cannot arbitrarily create a limitation as to the amount or square footage of the porch, although it must comply with the setbacks, building code and other applicable development regulations. We are not requiring additional parking for outdoor display areas. Staff is not allowing outdoor display of merchandise hanging

on doors or on the outside of buildings, whether a porch exists or not. Merchandise must be displayed on the porch itself.

Outdoor Display of Beach Floats

Section 34-3004 outlines the rules for other types of outdoor display and sales which apply in all zoning districts, including commercial areas outside the downtown zoning district. This section lists specific types of products which are customarily displayed outside, such as bicycles, lawn and garden ornaments and beach furniture. When applying the new outdoor regulations, staff realized popular items to display outdoors are beach toys such as inflatable rafts and floats. Staff believes beach floats and rafts are similar to other permitted items in that they have been traditionally displayed outside and are part of the ambiance of a beach community.

However, because they are not specifically allowed in Section 34-3004, staff recommends a future amendment be considered by the LPA and Town Council which will allow this type of merchandise in a limited sized area, perhaps 4' by 8', similar to lawn and garden ornaments. In the mean time, current rules only allow outdoor display of beach floats on a raised porch or vending cart in the downtown district and will only be allowed in this manner.

Request to Allow Additional Vending Carts

Tim Anglim, owner of Winds retail store, has four vending carts along his store on Old San Carlos. In a May 28, 2003 letter to the Town Manager, Mr. Anglim explains he purchased the carts prior to the adoption of the new code in March. The old rules did not allow outdoor vending carts. Although staff was anticipating the adoption of the new allowance, the adopted criteria and limitation on vending carts was introduced in 2002 and have been available since that time. There are two issues with Mr. Anglim's situation, the number of carts and leaving them outside. The rules for the downtown district limit the number of vending carts to two, and require them to be brought inside when the business is not open. In order to operate the four carts the code needs to be amended or a variance would have to be approved.

Mr. Anglim has indicated he will seek a variance and has agreed to only operate two carts, pending the outcome of the variance. At the same time as the variance, council may consider a condition which would allow the carts to remain outside. Planning staff wants to be clear that we are not suggesting a variance is appropriate in this situation, but the owner has a right to seek one. In staff's opinion, if the justification for allowing more vending carts is based on the size of the parcel, then it would be better addressed through an amendment to the land development code.

Notes from August 13, 2003 & August 27, 2003

Outdoor Display Workshops

Why is Outdoor Display Important?

- Helps small businesses
- Provides visibility of merchandise
- Certain types of merchandise need outdoor display
- Provides a taste of what is inside
- Draws people to different parts of the town
- Attracts people inside the business/will spend more money

Ideas for Outdoor Display Standards

- Provide a standard vending cart
- Who can have outdoor display: business owner or sub-lessee
- Rules for different locations: Times Square, OSC, CCCL, Estero Blvd.
- Define Raised Porch: covered/open, size, type of merchandise/how much, railings
- Provide Incentives
- Provide Options
- Allow flexibility: case by case
- Consider cost of required improvement: porch vs. carts
- Rules for types of merchandise/service
- List of can and cant's
- Allow vending carts in leased areas/will fill gaps between leased seating areas
- Provide administrative review
- Allow patios and decks instead of raised porches
- Provide options: choose from list 'A' or list 'B'
- Provide options within existing conditions
- Provide public markings/flags/sign poles to identify downtown shopping district
- Create shopping guide/directory
- Improve public lighting
- Provide list of allowed merchandise
- Identify businesses at beach accesses/on beach side



Memo

To: Fort Myers Beach Local Planning Agency

From: Dan Folke, AICP

Community Development Director

Date: February 11, 2004

Re: Proposed Changes to Rules on Outdoor Display

With the adoption of Chapter 34 last March, the Town adopted new rules on the outdoor display of merchandise. After a grace period and attempt to educate retailers about the new rules, staff began enforcement and encountered many complaints about the changes and questions regarding interpretation of the rules. Some of the issues were explained to the Town Council in the attached memo dated June 24, 2003. Town Council instructed staff to explore changes to the rules, to try and address concerns expressed by retailers and to clarify some of the issues.

Staff held two workshops with local retailers in August, 2003. The purpose was to understand why outdoor display is important to the local businesses and try to come up with ideas on how to improve the existing regulations. Staff summarized the comments from the workshop and attached them to this memo. Staff then attempted to draft new regulations which would allow businesses to meet the purpose they expressed and provide a choice of alternatives which take into account the differences of individual locations.

A third workshop was held on December 16, 2003 to review the draft rules. While the general reaction to the approach seemed positive, many comments were directed at the number of allowable displays and the desire for administrative allowances of displays which did not comply with the proposed rules.

Attached are the existing regulations on outdoor display and the proposed changes. Staff is looking for suggestions from the LPA on whether you like the new approach and specific changes you would like to see. If you decide you want to proceed, staff will take the draft and put it in ordinance form and proceed with public hearings.



Memo

To: Fort Myers Beach Town Council

From: Dan Folke, AICP

Community Development Director

Date: April 18, 2004

Re: Changes to Outdoor Display Regulations

A public hearing to consider an ordinance amending the rules for outdoor display of merchandise will be held on April 20, 2004. The ordinance will include the proposed changes reviewed by the LPA at their February 17, 2004 meeting. A number of items have come up since that meeting which staff would like to include.

The town has seen a sudden increase in the vending of personal services outside retail shops. These services are primarily temporary tattoos, hair braiding and hair wrapping. The draft regulations proposed to allow personal services from a vending cart or on an elevated porch. The town has received a number of complaints regarding these services and has had a very difficult time with the vendors.

Locations offering temporary tattoos have large display boards, usually attached to carts, buildings and porches, multiple chairs and groups of people waiting, which has interfered with neighboring retail stores. The town continues to receive complaints about tattoos being applied on parts of the body which often require the customer to bend over and expose areas usually covered by clothing. Regarding hair braiding, state statute 477.0132 requires persons conducting hair braiding and hair wrapping to be licensed by the state and complete a 16 hour course to include training on HIV/AIDS, sanitation and sterilization, diseases of the scalp, and laws affecting hair braiding. Inspectors from the Department of Business and Professional Regulation conducted a site visit last week and found a number of operators were not licensed. The inspector also recommended this type of service is best conducted indoors for health and safety reasons. Many of the vendors offering personal services are not employees of the adjacent retail business but lease space specifically for their service.

Current outdoor display rules allow retail businesses to sell their regular merchandise outdoors. Table 34-1 of the Land Development Code lists personal services and retail sales as separate uses. Therefore, retail sales, but not personal services, are permitted outdoors. Because of the volume of operators and the difficulty staff has had trying to enforce issues dealing with displays, signage and other related issues, staff has begun to require all personal services be conducted indoors. It is staff's recommendation that the new rules also require personal services be conducted indoors. In addition, staff is recommending no signs or displays be allowed, other than the permitted 2' by 3' sandwich sign allowed for each business.

The February 11, 2004 draft and existing regulations are attached for your review.



Memo

To: Local Planning Agency
From: Dan Folke, AICP
Community Development Director
Date: May 10, 2004
Re: Ordinance 04-08 Amending Outdoor Display Rules

Attached is the proposed ordinance to amend the existing rules on outdoor display. The LPA has reviewed and discussed these changes at previous meetings and the suggestions made have been included in the attached document. The ordinance also includes the latest recommended changes on personal services and signage. Attached are previous memos which provide additional background on these proposed regulations, dated June 24, 2003; February 11, 2004; and April 18, 2004.

Staff believes the proposed changes accomplish the following:

- Define raised porch and patio
- Encourage the use of patios instead of additions to non-conforming buildings
- Equally limit the number of outdoor displays to two for each business, or one display for each business in multiple occupancy complexes with more than 3 businesses. The existing rules have no limitations on the size of porches or number of displays.
- Provide flexibility and encourage creativity from merchants with specific needs for specialty products and site limitations
- Encourage the creation of a vibrant, interesting place in the Town's primary pedestrian oriented downtown district