

ORDINANCE No. 99- 3

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH PROHIBITING LOITERING AND PROWLING PROVIDING AUTHORITY; DEFINITIONS; SCHOOL LOITERING; GENERAL LOITERING; PUBLIC PLACE LOITERING; SOLICITING OR PROCURING; PENALTY; SEVERABILITY 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. Definitions: As used in this ordinance:

- a. "known prostitutes or panderer" Means a person who within three (3) years previous to the date of arrest for violation of this section, has within the knowledge of the arresting officer been convicted of an offense involving prostitution.
- b. "loiter" also means, to prowl, stand, sit or lie in or upon any public or quasi-public sidewalk, street, curb, crosswalk, walkway area, mall or that portion of private property utilized for public use, so as to hinder or obstruct unreasonably the free passage of pedestrians or vehicles.
- c. "public place" is an area generally visible to public view and includes streets, sidewalks, bridges, alleys, plazas, parks, driveways, parking lots, automobiles (whether moving or not) , and buildings open to the general public including those which serve food or drink, or provide entertainment, and the doorways and entrances to buildings of dwellings and the grounds enclosing them;

SECTION 3. School Loitering. It shall be unlawful for any person to loiter on the premises of any school within the Town of Fort Myers Beach without permission of the school authorities.

SECTION 4. General Loitering. It shall be unlawful for any person to loiter in a place, at a time or in a manner not usual for law-abiding individuals, under circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity.

a. Among the circumstances which may be considered in determining whether such alarm or immediate concern is warranted is the fact that the person takes flight upon appearance of a law enforcement officer, refuses to identify him/herself, or manifestly endeavors to conceal him/herself or any object. Unless flight by the person or other circumstance makes it impracticable, a law enforcement officer shall, prior to any arrest for an offense under this section, afford the person an opportunity to dispel any alarm or immediate concern which would otherwise be warranted by requesting him/her to identify him/herself and explain his/her presence and conduct.

b. No person shall be convicted of an offense under this section if the law enforcement officer did not comply with this procedure or if it appears at trial that the explanation given by the person is true and if believed by the officer at the time, would have dispelled the alarm or immediate concern.

SECTION 5. Public Place Loitering. It shall be unlawful for any person, after first being warned by a law enforcement officer, or where a "no loitering" sign or signs have been posted, to loiter thereon; nor shall any person block or obstruct, or prevent the free access to the entrance to any building open to the public.

SECTION 6. Soliciting or Procuring. It shall be unlawful for any person to loiter in or near any thoroughfare or place open to the public in a manner and under circumstances manifesting the purpose of inducing, enticing, soliciting or procuring another to commit an act of prostitution.

a. Among the circumstances which may be considered in determining whether such purpose is manifested; that such person is a known prostitute or panderer, repeatedly beckons to, stops or attempts to stop, or engages male or female passersby in conversation, or repeatedly stops or attempts to stop motor vehicle operators by hailing, waiving of arms or any other bodily gesture. The violator's conduct must be such as to demonstrate a specific intent to induce, entice, solicit or procure another to commit an act of prostitution.

b. No arrest shall be made for a violation of this subsection unless the arresting officer first affords such persons an opportunity to explain such conduct, and no one shall be convicted of violating this subsection if it appears at trial that the explanation given was true and disclosed a lawful-purpose.

SECTION 7. Penalty. Any person found guilty of violating this section shall, upon conviction, be sentenced to a definite term of imprisonment not to exceed 60 days or fined \$500.00 or both imprisonment and fine.

SECTION 8. 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 9. 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 Murphy and seconded by Council Member Reynolds and, upon being put to a vote, the result was as follows:

Anita T. Cereceda	<u>aye</u>
Daniel Hughes	<u>aye</u>
John Mulholland	<u>aye</u>
Garr Reynolds	<u>aye</u>
Ray Murphy	<u>aye</u>

DULY PASSED AND ENACTED this 1st day of march, 1999.

ATTEST:

TOWN OF FORT MYERS BEACH

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

By: Ray Murphy
Ray Murphy, Mayor

Approved as to form by:

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