



## **MINUTES**

### **FORT MYERS BEACH TOWN COUNCIL**

Town Hall – Council Chambers

2523 Estero Boulevard

Fort Myers Beach, FL 33931

### **REGULAR TOWN COUNCIL MEETING**

**MARCH 3, 2008**

#### **I. CALL TO ORDER**

Mayor Boback called to order the meeting of the Town Council at 6:34 PM. In addition to Mayor Boback, present was Vice Mayor Kiker, Councilmember Acken, Councilmember Shenko, Town Manager David Sallee, Town Attorney Anne Dalton, Town Clerk Michelle Mayher and Public Works Director Jack Green. Councilmember Meador was not present.

#### **II. PLEDGE OF ALLEGIANCE**

All stood and recited the pledge to the flag.

#### **III. PUBLIC COMMENT**

**Opened Public Comment**

None

**Closed Public Comment**

#### **IV. CONSENT AGENDA:**

A. Approval of Minutes: February 11, 2008

B. Approval of Minutes: February 19, 2008

**MOTION:** Councilmember Shenko moved the adoption of the consent agenda. Councilmember Acken seconded the motion.

**VOTE:** Motion passed 4-0, with Councilmember Meador absent.

#### **V. RESOLUTIONS:**

A. Resolution 08-11, Notice of Qualification of Candidates

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA RESOLUTION NUMBER 08-11**

**A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA,  
PROVIDING NOTICE OF QUALIFICATION OF CANDIDATES FOR SEATS  
THREE, FOUR AND FIVE; AND PROVIDING AN EFFECTIVE DATE**

**MOTION:** Councilmember Shenko moved adoption of resolution 08-11.  
Councilmember Acken seconded the motion.

**VOTE:** Motion passed 4-0, with Councilmember Meador absent.

**B. Resolution 08-12, Notice of Election**

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT  
MYERS BEACH, FLORIDA, CALLING FOR ELECTION; APPLICABLE  
LAW; POLLING PLACES, NOTICE; CANVASSING; DECLARATION AND  
PROVIDING AN EFFECTIVE DATE**

**MOTION:** Councilmember Shenko moved the approval of resolution 08-12. Vice  
Mayor Kiker seconded the motion.

**VOTE:** Motion passed 4-0, with Councilmember Meador absent.

**C. Resolution 08-13, Policies and Procedures Manual**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT  
MYERS BEACH, FLORIDA, AMENDING THE TOWN COUNCIL  
POLICIES AND PROCEDURES MANUAL TO PROVIDE FOR INCLUSION  
OF WRITTEN COMMUNICATIONS IN QUASI-JUDICIAL TOWN  
COUNCIL HEARINGS AND LEGISLATIVE TOWN COUNCIL HEARINGS;  
AND PROVIDING AN EFFECTIVE DATE**

**MOTION:** Councilmember Shenko moved the approval of resolution 08-12. Vice  
Mayor Kiker seconded the motion.

Discussion included distinguishing between legislative hearings, quasi-judicial hearings, whether council should consider letters notarized, letters signed under oath anonymous or otherwise. Council considered having a policy for quasi-judicial hearings.

**AMENDED MOTION:** Councilmember Shenko amended his motion to send the resolution back to the attorney to look at differentiation between legislative and quasi-judicial hearings and matters that would come before the legislative process, and bring it back to Council. Vice Mayor Kiker amended his second.

**VOTE:** Motion passed 3-1, with Councilmember Acken dissenting and Councilmember Meador absent.

**VI. ADVISORY COMMITTEE ITEMS AND REPORTS:**

No items.

**VII. ADMINISTRATIVE AGENDA:**

A. Introduction of 08-04, Animal Control Emergency Ordinance  
**AN ORDINANCE AMENDING TOWN OF FORT MYERS BEACH  
ORDINANCE NUMBER 00-08, ALSO KNOWN AS THE TOWN ANIMAL  
CONTROL ORDINANCE, ON AN EMERGENCY BASIS; FINDING OF  
EMERGENCY; PROVIDING FOR ENFORCEMENT BY TOWN AND TOWN  
DESIGNEES; MODIFYING LEASH PROVISIONS FOR DOGS ON THE  
BEACH; EFFECT OF ORDINANCE; EXPIRATION OF EMERGENCY  
ORDINANCE; AND EFFECTIVE DATE**

Attorney Dalton read the title.

**Opened Public Comment**

**Public Comment was heard:**

- Ronn James offered to donate to the Town signage showing prohibition for dogs not retained by leashes.
- Pat DeVincent agrees that we need signage, and recommends registering all dogs.
- Brad Hill referenced the restrictions of placement of signs prohibiting dogs.

**Closed Public Comment**

**MOTION:** Vice Mayor Kiker moved to bring ordinance 08-04 forward to a hearing.

Motion died for lack of a second.

**Opened Public Comment**

**None**

**Closed Public Comment**

**MOTION:** Councilmember Acken moved to remove this item from consideration.

Motion died for lack of a second.

**MOTION:** Vice Mayor Kiker moved to send ordinance 08-04 to the LPA with direction for them to look at short term and long term objectives and utilize other committees as they deem necessary. Councilmember Shenko seconded the motion.

**VOTE:** Motion passed 3-1, with Councilmember Acken dissenting, and Councilmember Meador absent.

B. Introduction of 08-02, Mandatory Recycle Ordinance  
**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH REGARDING  
MANDATORY RECYCLING OF COMMERCIAL AND MULTI-FAMILY  
RESIDENTIAL SOLID WASTE AND CONSTRUCTION AND DEMOLITION  
DEBRIS; PROVIDING FOR PURPOSE AND SCOPE OF ORDINANCE;  
PROVIDING FOR DEFINITIONS; PROVIDING FOR BUSINESS**

**RECYCLING REQUIREMENTS; PROVIDING FOR MULTI-FAMILY RECYCLING REQUIREMENTS; PROVIDING FOR CONSTRUCTION AND DEMOLITION DEBRIS RECYCLING REQUIREMENTS; PROVIDING FOR CHANGES TO FEES AND PENALTIES; PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, AND EFFECTIVE DATE.**

**Opened Public Comment**

None

**Closed Public Comment**

Council suggested an economic impact study be conducted when new ordinances are introduced. As it relates to this ordinance, the cost to the Town was discussed. Public Works Director, Jack Green indicated that noncompliance by businesses would result in a discontinuation of service, thereby creating a health concern.

**MOTION:** Councilmember Acken moved to send ordinance 08-02 to public hearing, with the request for staff to provide a cost structure for various size businesses, condos and to include an implementation plan (time table, county management plan). Vice Mayor Kiker seconded the motion.

**AMENDED MOTION:** Councilmember Acken amended his motion to bring back ordinance 08-02 for discussion in order to review staff information as requested, and then schedule the ordinance for the first public hearing. Vice Mayor Kiker amended his second.

**VOTE:** Motion passed 4-0, with Councilmember Meador absent.

C. Right of Way CDS Use Agreement

Attorney Dalton introduced this item, requesting direction from Council regarding inclusion of license fee(s) provisions in the standard form right of way agreement/ CDS where use of habitable space and/or commercial use of surface area is desired by applicant.

**Opened Public Comment**

None

**Closed Public Comment**

Council questioned whether this proposed agreement addressed parking. Staff identified that this agreement is only for use of the town owned right of way, particularly the downtown area. A different agreement for parking with have different parameters, and not applicable for this redevelopment area. At present, there is no direction from Council whether the Town should charge for use of surface area, and whether to establish a formula or a set fee to charge for use over the right of way.

**MOTION:** Councilmember Acken moved that the Town not charge an additional fee should someone choose to build habitable space over ROW. Vice Mayor Kiker seconded the motion.

**VOTE:** Motion passed 4-0, with Councilmember Meador absent.

**MOTION:** Vice Mayor Kiker moved to send the right of away agreement forward to the LPA to address the surface use of public areas. Councilmember Shenko seconded the motion.

**VOTE:** Motion passed 3-1, with Councilmember Acken dissenting and Councilmember Meador absent.

### **VIII. TOWN MANAGER'S ITEMS:**

#### **A. Emergency Communications Trailer**

Town Manager David Sallee addressed this item, indicating in the course of staff doing its due-diligence, additional information came to staff's attention, and as such other options are being presented. Council discussed emergency management and the manner it has been handled in the past, and addressed the technical aspects of emergency management and a proposed interlocal agreement. Public Works Director Jack Green responded to Council that the Town's Information Technology Committee recommended the emergency communications trailer with the technical equipment. The consensus of the Council was to stay with the current vote to proceed with the purchase of the communications trailer, and not consider the additional options as presented.

Town Manager David Sallee introduced a potential policy for the Council in a motion to reconsider, reading as such:

*"Reconsideration of an item shall be allowed in accordance with the following: Resubmittal of issues previously acted upon is discouraged. However, requests will be considered by a majority vote of the council. A motion for reconsideration must be made by a member of the prevailing majority when the previous vote was taken. The Fort Myers Beach Town Council determines that a vote on reconsideration shall be taken no later than two weeks of the previous action, with a request for consideration at the meeting following the original vote. No motion for reconsideration will be entertained after this deadline unless the Town Council determines that significant new information has arisen which warrants such action."*

Town Manager Sallee outlined the design of a float for the shrimp festival parade.

Mr. Sallee reminded the Council of the V.O.I.C.E. Luncheon is scheduled for March 14, 2008.

The DEP will assist the Town with the purchase of a larger pump-out vessel.

The new town manager begins Wednesday, March 5, 2008.

**IX. TOWN ATTORNEY'S ITEMS:**

**A. Tezak Family Trust versus Town of Fort Myers Beach**

Attorney Dalton indicated that the Town has until March 17, 2008 to file a response of pleading. Attorney Dalton requested the assistance of outside council in this particular case.

**MOTION:** Councilmember Shenko moved to direct the Town Attorney to contact Ted Tripp; John Nolan of Henderson/ Franklin; Bill Stockman; Jeff Rice; and any other "A" rated attorney and bring to the next executive session, with their rate and availability. Vice Mayor Kiker seconded the motion.

**AMENDED:** The motion was amended to include the law firm of Fowler/White. The second was amended.

**VOTE:** Motion passed 4-0 with Councilmember Meador dissenting.

Attorney Dalton requested an executive session on Monday, March 10, 2008 at 2:30 PM

**X. COUNCILMEMBERS ITEMS AND REPORTS**

Councilmember Shenko praised the ribbon-cutting of the Dingy Dock, the anchorage advisory committee, he has heard nothing but praise for the anchorage, staff and management.

MPO joint meeting w/ Collier on April 18, 2008, also MPO on March 28 that he will not be attending. Mayor Boback asked that a delegate to the MPO be an item for Council consideration at the next town council meeting.

Vice Mayor Kiker expressed the same praise for the anchorage advisory committee and the dingy dock. Vice Mayor Kiker praised the beach school and bay oaks commenting what a great jewel we have there as a community.

Vice Mayor Kiker commented that the minutes on the web are getting behind.

Vice Mayor Kiker referenced the council meeting on the 17<sup>th</sup>, that that is St. Patrick's Day and is in favor of moving that meeting date.

Mayor Boback added praise to Matanzas Inn for their efforts in the management of Mantanzas Harbour.

**PUBLIC COMMENT:**

**Opened Public Comment:**

Public Comment was heard:

- Eddie Foster spoke to safety issues on the beach, dogs, stingrays, tractors raking the sand.

- Brad Hill indicated he is a member of the Marine Resources Task Force and that this committee is updating the flyer.

**Closed Public Comment**

**ADJOURNMENT**

The meeting adjourned at 9:18 PM.

Adopted 4-7-08 With Without Changes Motion by Kelley / Acker  
(Date)

Vote: 5-0

  
Michelle D. Mayher  
Town Clerk

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