

## **MINUTES**

### **REGULAR MEETING OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH**

Town Hall -Council Chambers  
2523 Estero Boulevard  
Fort Myers Beach, FL 33931

July 23, 2007  
6:30 PM

Mayor Boback called the meeting to order. Present along with Mayor Dennis Boback were Vice Mayor Larry Kiker, Councilmember Bill Shenko, Councilmember Charles Meador, and Councilmember Herb Acken. Also in attendance, Town Manager Gary Parker, Town Attorney Anne Dalton, Town Clerk, Michelle Mayher, Public Works Director, Jack Green and Community Development Director, Jerry Murphy.

All stood and pledged to the flag.

Opened Public Comment.  
Public Comment was heard  
Closed Public Comment

Town Clerk Michelle Mayher read a letter from Jeff Hendry, Executive Director, Florida Institute of Government recognizing Vice Mayor Larry Kiker for completing the John Scott Dailey Institute for Elected Municipal Officials and presented a certificate.

Councilmember Meador pulled item D from the Consent Agenda, and moved to approved the balance of the consent agenda.

Councilmember Meador called for a point of order, to return the discussion to the benefit of the full council.

Councilmember Acken asked the Mayor to consider a second motion by which council would have two weeks after minutes are presented for adoption by which changes to the minutes could be made.

Councilmember Meador called for a point of order, the motion maker was arguing his motion and the motion had not been seconded.

Mayor Boback called the question as to the primary motion. Motion to pass consent agenda items A, B and C carried 4-1 with Vice Mayor Kiker dissenting.

Councilmember Acken called for a point of order; his vote was mis-stated, he voted against the motion to pass the balance of the consent.

As to the Consent Agenda item D, appointment to the Anchorage Advisory Committee, Councilmember Meador moved to postpone this appointment indefinitely  
Councilmember Acken called for a point of order to speak again to this issue. Motion passed 3-2 with Councilmember Acken and Vice Mayor Kiker dissenting.

Town Attorney Dalton read the Title to **Ordinance 07-06,**  
**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH AMENDING THE CHARTER, PROVIDING AUTHORITY; AMENDMENT –REPEAL OF REQUIREMENT OF MAJORITY VOTE; AMENDMENT – REPEAL OF QUALIFICATION FOR SPECIFIC CONUNCIL SEAT; INITIATIVE AND REFERENDUM; SEVERABILITY; REPEALING CLAUSE AND EFFICTIVE DATE.**

Opened Public Comment  
None  
Closed Public Comment

Attorney Dalton indicated that this Ordinance was being introduced and she was seeking amendments to the ordinance if that were the will of Council.

Vice Mayor Kiker moved to go forward to public hearing. Vice Mayor Kiker moved to amend the writing of the referendum to not take effect until the year 2010.  
Councilmember Acken moved to amend Section 5 to provide an effective date. Motion fails 3-2 with Mayor Boback, Councilmember Meador and Councilmember Shenko dissenting.

Councilmember Meador proposed two amendments to the ordinance. Amendment to section 5.01, which would strike from the charter, “If necessary, a runoff election will be held on the second Tuesday in April.”;

Section 5.07, to avoid the ambiguity, to read as follows:

In the event that more ~~than two~~ candidates qualify for election than there are open council seats, to a single office those candidates shall participate in the regular election and the candidate or candidates receiving the most a majority of votes cast shall be elected to the open council seat or seats. ~~If no candidate receives a majority, then the two candidates receiving the most votes shall participate in a runoff election established in Section 5.01 to decide the winner for that office.~~

Third amendment is striking entire section 6 of the proposal provided in the Ordinance 07-06.

Motion passed 3-2 with Councilmember Acken and Mayor Boback dissented. Councilmember Meador called for a point of order to vote on the pending motion, to move the ordinance forward to a public hearing. Motion passed 4-1 with Mayor Boback dissented.

Dr. Lisa Beever, Director, Charlotte Harbor National Estuaries Program, made a presentation on the program and the water quality of the Estero Bay and waters surrounding Estero island.

Mayor Boback announced that Administrative Item, B. South Florida Water Management District Grant Agreement, had been pulled.

Recess 7:55 Reconvene 8:05 PM

Administrative Agenda Item C, Referenda Items produced no action on the part of the Council.

As to Administrative Item D, Town Manager Evaluation Process, Councilmember Acken moved to accept the Waynesville evaluation form. Motion died for lack of a second.

Mayor Boback moved to adopt the Pasco city manager performance evaluation as presented, combining it with the Waynesville items 10-16, and adopting Waynesville rating system of 1-4, versus the 1-3 “meets and exceeds” of the Pasco form. Motion passed 5-0 in favor.

Administrative Agenda Item E, Discussion regarding Matchbox Tattoo License, Councilmember Acken requested of council to suspend the rule of the three minute time limit on public comment for this item.

Councilmember Meador asked if Councilmember Acken was making a motion to suspend the rules, not seconded yet discussed. Acken that’s correct.

Withdrew motion to request a suspension of the rules for the time require

Councilmember Meador moved an objection to consideration of the question; this motion does not require a second, but does require a two third’s vote.

Councilmember Acken called for a point of order, stating Councilmember Meador’s motion was out of order and he requested that the Town Attorney and the Town Clerk consult Robert’s Rules of Order for clarification.

Recess

Attorney Dalton opined that the motion was properly made, that Robert’s Rules of Order clarified this motion is not debatable, not amendable does not require a second, and

requires a 2/3<sup>rd</sup>'s vote in favor of the motion, the motion is in order and takes precedence over any main motion.

Councilmember Acken called a point of order, as this council has already adopted this agenda.

Attorney Dalton stated that the purpose of a motion of an objection to consideration of the question is to enable the assembly to avoid a main motion which may be undesirable from coming before the assembly.

Councilmember Meador reminded Council that his motion was not debatable and called the question.

Councilmember Acken called a point of order, that this was not an action item, only a discussion.

Vice Mayor Kiker called the question.

As to the motion of an objection for consideration, motion carried 4-1 with Councilmember Acken dissenting.

Opened Public Comment  
Public Comment was heard  
Closed public comment

Administrative Agenda Item F. Citizens Advisory Committees Seminar, Town Clerk Michelle Mayher was directed to contact the members of the advisory boards for additional registrants.

Administrative Agenda Item G, Town Manager Parker suggested due to the hour and the upcoming budget special meeting, that the zoning fee schedule be heard at the July 26, 2007 budget meeting. Council was in agreement.

Town Manager's Items, Laguna Shores Assessment Process, Councilmember Shenko moved exploring getting costs from three different law firms, not just Nabors, Giblin, and amended his motion to include the firms of Edwards Cohen, and Fowler, White. Motion passed 5-0 in favor.

Town Manager Gary Parker explained the position classification and pay plan. Councilmember Meador requested a written, legal opinion from the Town Attorney as to whether Council consideration of this pay plan is an intrusion into the Manager's authority and violation of charter. Council agreed to move this item to the budget meeting of July 26, 2007.

Town Attorney's Items, Attorney Dalton requested an executive session for August 6, 2007 at 5:30 PM as to Czulewicz vs. Town to discuss litigation strategy and other matters

as an exception to the sunshine law, anticipating the session to last approximately one hour, and in attendance would be the Town Manager, Town Council, Town Attorney and a court reporter.

Attorney Dalton informed Council that she was contacted by a closing agent as to refinancing of the Wilker property, interpreting Council direction to do a follow up memo to Council, and letter to [Counsel for the Wilkers] Mr. Moran stating the Town's anticipation of notice of compliance.

#### Councilmembers Items and Reports

Vice Mayor Kiker proposed a shift in policy, that when the Council contemplates changing the charter, in lieu of referendum, that council would require two public hearings. Vice Mayor Kiker asked to have it as an agenda item for discussion for August 6, 2007.

Councilmember Acken moved to instruct the LPA to draft a legislative path for Council's consideration to allow an addition to the special exception process. Motion failed for lack of a second.

Mayor Boback requested that staff invite Mr. Bill Grace to attend a Council meeting to discuss the Newton property as to historic designation. He asked that this be an agenda item for August 6, 2007.

Opened final public comment  
Public comment was heard  
Closed public comment

Council adjourned at 10:24 PM.

Adopted 8-16-07 With/Without Changes. Motion Meador/Hentz  
(Date)

  
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Michelle Mayher  
Town Clerk

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