



# MINUTES

**Monday, April 16, 2012**

**FORT MYERS BEACH TOWN COUNCIL  
TOWN HALL – COUNCIL CHAMBERS  
2523 ESTERO BOULEVARD  
FORT MYERS BEACH, FLORIDA 33931**

## **I. CALL TO ORDER**

Mayor Kiker called to order the April 16, 2012 Regular Meeting of the Town Council at 6:30 p.m. Present along with Mayor Kiker: Vice Mayor Raymond, Council Members Kosinski, List, and Mandel. Also Present: Town Manager Stewart, Town Attorney Miller, Finance Director Wicks, Public Works Director Lewis, Community Development Director Fluegel, and Town Clerk Mayher.

## **II. INVOCATION – Deacon Scoop Kiesel**

## **III. PLEDGE OF ALLEGIANCE**

## **IV. YOUTH COUNCIL– Fort Myers Beach Elementary School**

Mayor Kiker announced that the FCATs were scheduled for this week; therefore, the students would be unavailable tonight for the Youth Council.

## **V. APPROVAL OF FINAL AGENDA**

Council Member Mandel requested the removal of Agenda Item VIII, Image of Fort Myers Beach, due to Public Hearing.

Consensus approved the requested change to the Agenda.

## **VI. PUBLIC COMMENT**

Mayor Kiker noted Public Comment time was scheduled for discussion of items that were not on the agenda.

Public Comment opened.

Larry Yax, Edison Beach Hotel, thanked the Town Council for the new road and beach. He offered the Council to come and see his new units.

Suzanne Ziemer, resident, thanked the Council for looking into a kayak launch site at the Bay Oaks Recreational Center because she believed it was needed for youth and family activities. She submitted a written comment to the Town Clerk and Council and read about how she learned that at the April 5, 2012 BORC Meeting their intention of a creating a public bay access for non-motorized watercraft launch at Bay Oaks. She urged Council to allocate funds for the project. She noted her concern that there would not be a survey for the back bay accesses to the Estero Preserve because she believed there should be documented surveys of where the public rights-of-way exist. She gave a brief history on the last bay access donated to the Town, and pointed out that most accesses were not accessible or user-friendly. She discussed her concerns regarding public accesses on both the bay and beach.

Public Comment closed.

## **VII. LOCAL ACHIEVEMENTS & RECOGNITIONS**

### A. Fort Myers Beach Kiwanis Club Foundation

Parks and Recreation Director Evans announced that last month her department received a contribution of \$1,000 toward the Parks and Recreation Department's Summer Day Camp Program. The funds would be used to offset the travel expenses for our youth, 'tweens and teens' to attend Sun Splash Water Park, Zoomer's Amusement Park, and the Fort Myers "Skatium".

Bill Pearson, President of Kiwanis, announced that the Club was working on additional funds for the Town's swimming pool. He discussed the success of the Kiwanis Thrift Shop; and noted other fund raising efforts of the Kiwanis such as but not limited to the Beach Elementary School and the Children's Center at the Library.

## **VIII. IMAGE OF FORT MYERS BEACH**

Mayor Kiker explained the purpose of the new agenda item "Image of Fort Myers Beach".

## **IX. ADVISORY COMMITTEES & REPORTS**

No speakers.

## **X. APPROVAL OF MINUTES**

- A. March 5, 2012 Town Council Meeting
- B. March 5, 2012 Town Council Work Session
- C. March 7, 2012 Joint Session, Town Council and LPA

D. March 7, 2012 Joint Session, Town Council and BORCAB

**MOTION:** Motion by Council Member Kosinski to approve all the minutes as presented; second by Vice Mayor Raymond.

**VOTE:** Motion approved, 5-0.

**XI. CONSENT AGENDA**

A. Acceptance of Town of Fort Myers Beach Annual Audit and Adoption of Resolution 12-06

Town Manager Stewart explained that at the Work Session earlier in the day the Town Auditor officially presented the Town with the Audit documents, which were for the Town Funds and Water Utility Funds; and noted this would be the last year the two would be separate. He added that the Council would be accepting the audit, and then they could forward it to the Audit Committee for review and comments.

Public Comment opened.

No speakers.

Public Comment closed.

**MOTION:** Motion by Council Member Mandel to adopt Resolution 12-06 accepting the Basic Financial Statements and Audit for the Fiscal Year 2010-2011 as presented by the Town manager and further move that the Town Manager be authorized to fulfill any administrative functions in filing these documents with the State of Florida as required by Florida Statute; second by Council Member Kosinski.

**VOTE:** Motion approved, 5-0.

**MOTION:** Motion by Council Member Mandel to give the Audit Committee a copy of the audits; that they review them; and get back to Council within 30 days so the Council may have the audit back for the May 21, 2012 meeting; second by Council Member Kosinski.

**VOTE:** Motion approved, 5-0.

Mayor Kiker asked the Town Manager to forward the documents to the Audit Committee and make them aware of Council's request.

Town Manager Stewart reported the documents were forwarded to the Audit Committee via email and that he would inform the Audit Committee of the Council's request according to the motion.

Mayor Kiker explained that the Town Council had organized a committee to assist with audits. He described the benefits the Town was receiving from the Committee.

## **XII. PUBLIC HEARING**

### **A. Second and Final Public Hearing, Ordinance 12-03, Amendment to the LDC for Consumption on Premises in the EC Zone**

Town Clerk Mayher read the title of the Ordinance:

AN ORDINANCE AMENDING CHAPTER 34, ARTICLE III, DIVISION 4 IN THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE, "CONVENTIONAL ZONING DISTRICTS" AMENDING SECTION 34-652, "EC (ENVIRONMENTALLY CRITICAL) ZONING DISTRICT" BY ADDING "EXPANSION OF AREA DESIGNATED FOR SERVICE OF ALCOHOLIC BEVERAGES" AS PERMITTED USE; AMENDING CHAPTER 34, ARTICLE IV, DIVISION 5 IN THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE, "ALCOHOLIC BEVERAGES", AMENDING SECTION 34-1261, DEFINITIONS: AMENDING SECTION 34-1264, "SALE OR SERVICE FOR ON-PREMISES CONSUMPTION" BY ADDING REGULATIONS GOVERNING THE EXPANSION OF ON-PREMISES CONSUMPTION INTO THE EC ZONING DISTRICT; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

Town Manager Stewart reviewed the chronological background of COP and noted the issue had an extensive history and began in 2008. He briefly reviewed staff's extensive work on the issue and how the matter had been discussed at a number of public hearings with the LPA who in turn voted on the topic and had made recommendations to the Town Council. He pointed out that the Council had the COP as Work Session item, and on April 2, 2012 at the Regular Council Meeting the first public hearing was held on the COP.

Community Development Director Fluegel gave an overview of the staff's report on *COP in EC Zoning District* and a summary of the ordinance as proposed. He explained how staff had prepared the report due to a lack of a comprehensive body of research on the topic; the type of research conducted; and how the research took about 300-400 hours of research. He highlighted the following COP timelines and information:

- The Town and County (prior to incorporation) had a history of approving COP in EC on a case-by-case basis with no regulatory framework.
- Staff identified 12 establishments with COP in EC.
- No Special Exception for COP in EC has ever been denied by prior Town Councils.
- Special Exception has been the preferred method of approval, with 7 of 12 being approved by Special Exception.
- COPs are concentrated in the Downtown District.
- Outside of Downtown District, 4 of 5 COPs are at resorts.
- 7 of 12 were approved for COP directly upon the sandy beach.
- 6 have no restrictions on outdoor entertainment.
- 6 are located at resorts.
- The number of historic approvals of COP in EC by prior Town Councils suggested that COP in REC was deemed a permissible use.

- The Recreation Future Land Use category appeared to have been primarily intended as a means of effectively restricting densities along the beach by eliminating density seaward of the 1978 CCCL.

He summarized the conclusions of the COP Report as it pertained to existing establishments and compliance, the current lack of consistency regarding approval methods, hours of operation, entertainment, terms, dominion and control, and how staff recommended that an appropriate regulatory framework be established. Staff recommended that an appropriate regulatory framework be developed. He reported that on January 10, 2012 the LPA reviewed the proposed ordinance and recommended with a vote of 4-2 for approval to the Town Council of the ordinance. He continued his presentation and provided an overview of the proposed ordinance.

The proposed ordinance will establish procedures – how to deal with existing establishments, how to deal with establishments approved for COP adjacent to EC but not approved for service or consumption in the EC, and how to deal with new establishments that had no form of COP approved previously.

- For existing establishments the ordinance would allow for an administrative approval process inside and outside the downtown district.
- For existing establishments currently approved for COP adjacent to EC but not for service or consumption in the EC, the administrative approval process would be limited to downtown and outside the downtown it would be CPD rezoning for resorts only.
- New establishments in the downtown would require special exception and outside the downtown it would be CPD rezoning for resorts only. Resorts by definition would mean 100 guest units minimum.

Proposed Standard conditions for inside and outside the downtown, except where noted:

- The area of expansion in the EC is limited to one third the distance from EC zoning line and/or rear building or deck line seaward to the mean high water or ECL line up to a maximum of one hundred feet.
- The area of extension of premises in the EC must be enclosed on three sides by rope & post extending from the rear of the building or deck to the seaward allowed distance.
- One six foot wide pedestrian access opening is allowed per one hundred feet of rope and post along the side parallel to the water line.
- Each pedestrian access point shall contain a two foot by one foot sign that indicates no alcohol is allowed beyond that point. Refuse containers shall be provided at each access point to the beach.
- Parking requirements for the area of expansion in the EC surrounded by rope and post; there is none required.
- All beverages served within the area of extension of premise in the EC must be served in plastic cups bearing the establishment's name. No glass bottles or aluminum cans will be allowed.
- Hours of service and consumption in the EC are limited to between the hours of eleven AM and one hour after sunset except for that extensions of time granted by special exception or special event permit unless previously granted by special exception.

- The area of expansion in EC must be under same ownership as the licensed premise and must be immediately adjacent to the upland licensed premise.
- Patrons may not bring their own coolers into the area of expansion and no entertainment shall be allowed in the EC except for that granted by special exception or special event permit unless it was previously granted by special exception approval.
- The area of expansion must be maintained free of litter and debris

Town Manager Stewart reviewed what the ordinance was and was not:

- The ordinance was not an approval of the consumption of alcohol on the entire length of the beach, anywhere and everywhere. It was specifically targeted and limited.
- The ordinance was not an approval of allowing people to serve or consume alcohol on the public beach. It was on the property of the businesses that abuts the beach; and it was within the property that was outlined on the business property deed, and it must stay within that area. Also, it would not be on property owned by the Town, County, or State.

Mayor Kiker asked if there was a member of the LPA present and if they had any comments at this time. LPA Member Kakatsch stated he had no comment.

Mayor Kiker opened the Public Hearing at 7:05 p.m.

### **Public Comment Opened**

Barbara Manzo, Lee County Parks & Recreation Director, discussed the concerns of the Lee County Parks and Recreation Department and cautioned the Town on the constant use of special exceptions in the Environmentally Critical Zone. She described the County's efforts to preserve environmentally critical land over the years; the importance of keeping the Town as 'family-friendly'; and how she believed that expansion of the COP was not consistent with the family atmosphere consistent throughout the parks. She questioned how consumption would be controlled and she asked who would control it.

Rochelle Kay, former LPA member, discussed her experience as an LPA member as it related to the COP. She discussed her opposition to the proposed ordinance.

Bill Van Duzer, resident, requested removal of any reference to an administrative approval in any Town code. He gave a brief overview of the Town's LDR code which was a zoning code for the Town, and how it was developed by the citizens and the LPA, and then approved by Town Council. He suggested the area covered by the proposed ordinance the Downtown Zone. He discussed his belief that a business who wanted this expansion, that they show documentation that they own the property to the mean high water line. He asked the Council to restrict the area to 1,600 square feet and no further than 50 feet beyond the EC line, and retain 100 feet from the water line. He discussed his recommendations for the proposed ordinance such as but not limited to the business name on plastic cups, and ropes and posts.

Mayor Kiker noted that Council had received and read Mr. Van Duzer's letter today pertaining to the proposed ordinance.

Dennis Boback, resident, explained how businesses that obtain a liquor license had to submit a floor plan indicating the service area which could be enforceable by the Bureau of Alcohol Tobacco and Firearms. He addressed the claim of 'fairness' and noted that business owners who bought on the beach knew what the rules were at that time. He discussed his opposition to the ability for an 'administrative approval' as described in the proposed ordinance. He asked if the ordinance was violated, what the consequence was; and what was the cost of enforcement. He suggested COP be placed on a referendum for the residents to vote. He discussed his belief that former Town Councils and LPA members were not supportive of the COP expansion.

Rexann Hosafros, resident, described how she educated herself on the issue of COP; and her belief that the 'inequities' reported had risen to such a level that they needed to be addressed. She asked the Council to continue working on the issue, re-word the ordinance, and vote against the proposed ordinance.

Frank Schilling, resident, asked the Council to consider how the proposed ordinance would impact the 6,900 residents and not just 16 business owners. He questioned the impact of the COP, the square footage limitations of the proposed ordinance, and what were the differences between the old ordinance and the proposed ordinance. He discussed the basis for his opposition to the proposed ordinance and suggested the proposed ordinance be sent back to committee or put on a referendum.

Bob Miller, resident, told of his recent experience at the beach and how he came to the decision about his image of Fort Myers Beach as it pertained to the ropes and posts or series of "corrals" indicating COP. He questioned if "corrals" were the image that the Town wanted to portray. He asked the Council to consider the proposed ordinance carefully.

Joann Shamp, LPA Chair but speaking as a private citizen, explained it was her understanding that the intention of the proposed ordinance was to allow for an equal playing field and enforcement; however, she noted it was her belief that this was not the right ordinance if that was what the Town intended. She discussed her view that the proposed ordinance created huge inequities. She referred to a newspaper article about the recent decision by the LPA to approve additional parking for an existing business, and what steps the applicant had agreed to for the additional parking. She explained why she did not support the 'administrative approval' process contained in the proposed ordinance because she felt it was giving away the Town's right to negotiate property rights.

Tom Babcock, resident, discussed his opinion that the proposed ordinance would not create a level playing field for businesses in the EC Zone. He questioned if the sale and consumption of alcohol should be considered a 'recreational' use such as but not limited to boating, fishing, and swimming. He agreed that the COP in the EC Zone had to be regulated due to the special exceptions granted prior to the Town's incorporation; however, creating a level playing field should not mean expanding COP in the EC Zone, particularly onto the sandy beach. He suggested and discussed how the proposed ordinance should define ways to minimize the expansion or to regulate existing exceptions.

Frances Santini, resident, stated she opposed the already designated area for alcohol consumption.

Scott Van Selow, resident, explained that there were no controls over people bringing coolers to the beach, and suggested that if a resort had a designated area their guests would stay in that area with their coolers. He noted there were business on the beach that made large investments in their business and they would make every effort to maintain their areas. He pointed out that it was the property of the business and they should be able to use it.

Jeanette Swenson, resident, discussed her belief that there was not enough enforcement in controlling drinking; and that if not controlled residents would leave and the Town would deteriorate. She explained why she was in opposition to the proposed ordinance. She suggested a police station on the island.

Artis Chester, resident, stated she strongly opposed the COP, and asked the Council not to pass the proposed ordinance.

Bill Waichulis, Senior Vice President of Operations for the Pink Shell Resort and Spa, reported that his resort was one of the 12 businesses already approved to serve on the beach. He noted his reluctance for the rope and post requirement. He reported Pink Shell was in support of the proposed ordinance, as well as the Best Western Hotel.

Pat Smith, resident, reported she strongly opposed the proposed ordinance. She stated she could not 'buy' the equity issue, and questioned why equity only dealt with the alcohol issue. She questioned how the COP would be addressed for other businesses further down the beach; why expand the COP when the Town seemed to want to promote a 'family' atmosphere; and how the LCSO would perform enforcement. She noted her view that it would be this Council's legacy if they approved expansion of COP. She urged the Council to not pass the proposed ordinance as presented.

Doris Grant, resident, noted that she was not in favor of COP or alcohol sales and consumption on the beach. She explained her belief that this was not a 'fairness' issue and questioned the fairness to the businesses on the bay side of Estero Boulevard. She questioned enforcement issues and recounted her experience last week when she saw dogs on the beach and people with beer walking up and down the beach. She questioned if business owners who did not live on the beach actually had the Town's best interest; her fear of plastic cups going into the Gulf; and loud music. She asked the Council to vote "no" on the proposed ordinance.

Kelly Leary, resident, explained the basis for her opposition to the proposed COP ordinance such as but not limited to her marine biodegradable degradation list of items (i.e. plastic bags, glass bottles, Styrofoam cups, etc.).

Tracey Gore, resident, addressed staff comments as it related to the LPA's recommendations on COP. She stated she researched the residential status of business owners. She discussed her ideas about private property rights. She reviewed past actions by staff, Council, and the LPA as it pertained to the proposed ordinance. She discussed the basis for her opposition to the proposed ordinance.

Bill Shenko, Jr., resident, asked the Council not to support the proposed ordinance. He explained that he wanted to see each application regarding COP discussed, studied, allowed to have public input, and to be voted on by the LPA and Council. He expressed his opposition to the 'administrative approval'

process. He stated his belief that if the proposed ordinance was passed that the family atmosphere in the Town would disappear.

John Albion, Fort Myers Beach Chamber of Commerce, stated that the Chamber's Board of Directors had not taken an official position on this matter. He discussed his opinion regarding potential problems with ropes and posts, labeling the plastic cups, and potential liability problems and unintended consequences. He reviewed his opinion with the problem of trying to do things on a case-by-case basis and how the Council should determine where the commercial zone was and what it should look like.

Robert Young, resident, discussed his opposition to the proposed ordinance, and explained how this proposed ordinance was really about the residents. He noted his concerns as it related the post and rope requirement; mentioned that he contacted the DEP; and reported that he did not believe information regarding the proposed ordinance was forwarded to the DEP. He explained that the DEP would have the final decision on whether there could be rope and posts on the beach, and questioned if the DEP denied them, how the Town could control the COP.

David Ennis, resident, recounted how he saw on the news that Fort Myers Beach was voted #8 on the list of "Trashiest Beaches"; and how when he went to the Lani Kai he saw people with t-shirts saying "We know we're the trashiest and we don't care". He noted his concerns regarding the image of Fort Myers Beach and how the proposed ordinance would damage it. He suggested the matter be placed on a referendum.

Garr Reynolds, resident, read an email he sent to the Town Council prior to the April 2, 2012 Regular Meeting which requested the Council not approve the proposed ordinance. He read the response from a Council Member he received in response to his email and subsequent communication. He suggested the Council request speakers to state their name and identify where they live on such an important matter.

Tom Merrill, resident, discussed his concerns with the expansion of COP; and his suggestions for handling COP. He noted the staff's study was very good; but questioned where the follow-up study describing what was needed to do the expansion; where were the visuals; and where was the consideration of the Town's image. He believed there was a balance on the beach between family and party and the proposed ordinance would tip the scales in favor of the partying. He questioned intensity and density as it related to the proposed ordinance.

Anita Cereceda, resident, apologized for her comments at the last meeting and explained her comments were intended to make the Council see the issue clearly. She stated she was the fourth former Mayor to tell Council that the proposed ordinance was a bad idea, it was not good legislation, and for them to think twice and not approve it. She discussed her belief that the proposed ordinance would change the character of the community. She agreed with previous comments by Ms. Shamp, and discussed how her type of retail business would be prejudiced when it came to an expansion request versus the COP in the proposed ordinance. She asked for 'administrative approval' to be eliminated from the ordinance completely.

Nancy Lynn Van Oyen, resident, discussed the basis for her support of the proposed ordinance and how it created a regulated area for the businesses that already had consumption on premises.

Matthew Pleskovic, resident and business owner, stated he supported the proposed ordinance and reviewed the how he based his support upon safety issues, environmental benefit through increase patrol of the business property, and the assured business effort.

Bonnie Ennis, resident, stated she was not in favor of the proposed ordinance and discussed the basis for her opposition which included but was not limited to additional expenditures by the Town for additional Code Enforcement Officers to patrol the beaches. She recounted her experience at the beach near the Mermaid Club.

John Kakatsch, member of the LPA but spoke as a private citizen. He reported when he collected the rent on April 1<sup>st</sup> at the properties he owned he took a little survey by passing out 40 surveys regarding COP. He stated he received back 28 responses; and only 4 of the 28 supported COP. He added that the four positive responses were from employees of the businesses currently have COP. He recommended that the Council listen to what the residents wanted, and he believed the residents did not want the proposed ordinance approved.

Neil Hopgood, General Manager of the Diamond Head Beach Resort, reported he attended the LPA and Council meetings when COP was discussed in order to get a sense of support and opposition from people. He addressed comments made and stories told about people on the beach with boorish manners. He explained that regulating COP would allow the Town to have 'checks and balances' in place so everyone was on the same page, and it would force business establishments to maintain and police their beach area. He added that putting the ordinance in place it would allow for the Code Enforcement officers to hold all establishments accountable for maintaining the beach portion of their property. He noted his concerns regarding liability issues pertaining to the rope and posts, and the cost of logos on the cups.

Leslie Donovan, resident, stated she agreed with the comments made by Mr. Hopgood. She noted her support of the proposed ordinance, and hoped the Council voted to approve the ordinance.

Ray Murphy, resident, stated he was a former Mayor of the Town. He reported he agreed with Mr. Shenko's comments. He explained that if the proposed ordinance was approved it would damage the family image of the Town that everyone had worked so hard to maintain over the years. He noted that he opposed the proposed ordinance and the proposed 'administrative review' process included in it.

Eric O'Gilvie, co-owner of Wicked Wings, reported that approximately 80% of their business came right off the beachfront and he did not believe they were taking any business from the front streets. Also, he mentioned that he did not believe that the majority of people coming onto the beach who were making the mess came from the businesses. He stated that he believed the proposed ordinance was a positive thing.

Lucinda Keller, resident, explained her belief that the proposed amendment to the LDR was unenforceable; that the Town could not afford to enforce it; and that she felt the COP was ethically wrong.

Dean Sena, property owner, recounted how his house was recently broken into and how he had to board up the house. He suggested if the businesses wanted the COP then the Town should impose a fifty cent per glass tax to pay for extra policing.

Paula Kiker, resident, suggested that the three establishments that were allowed to have COP are not necessarily where she would take her family; however, the additional establishments that might be allowed to serve alcohol on the sand, deck or patio might be places that allowed for that. She explained by opening up the opportunities for other establishments it would help families to go to the beach and enjoy themselves.

Annie Babcock, resident, explained the proposed ordinance was about rules and not behavior. She noted the importance of the concerns stated earlier by the Lee County Parks and Recreation Director. She questioned enforcement issues with the proposed ordinance. She discussed her concern regarding the COP in an environmentally critical area; and how the majority of the speakers tonight were opposed to the proposed ordinance.

Public Comment closed.

Mayor Kiker asked for a show of hands from members of the audience who did not speak and were in favor of the proposed ordinance. He reported there were 13 people who raised their hand. He then asked for a show of hands for members of the audience who did not speak and were in opposition of the proposed ordinance. He reported there were 10 people who raised their hand.

Recess at 8:40 p.m. – Reconvened at 8:50 p.m.

Council Member Kosinski questioned on Page 12, Section (iv)(4), *“The permit holder must provide refuse containers at each pedestrian access point onto the beach to ensure that no outside alcoholic beverage containers are brought onto the licensed premise, and that no alcoholic beverage cups are taken off of the licensed premise onto the beach”* if this meant that people could not take even an empty cup off the premise.

Community Development Director Fluegel stated a person could not take a cup off the premise at the beach access to insure it does not leave with any alcohol and also due to environmental concerns.

Council Member Kosinski discussed his concerns with how to enforce that requirement, and questioned the intent of having the business name on the cup.

Community Development Director Fluegel explained how staff met with the BATF and LCSO regarding this requirement and potential enforcement issues. He noted that if LCSO determined there was an on-going problem with an establishment then there was a revocation process as it pertained to a licensed premise.

Discussion was held regarding people who wanted to take cups off a premise as a souvenir.

Vice Mayor Raymond asked if there was a problem with the DEP as it pertained to the rope and post requirement.

Community Development Director Fluegel responded in the negative; and added how staff had researched if there had ever been rope and post allowed across the EC line in the past and it was determined that the DEP had permitted this in the past for both businesses and residences. He noted that each business would have to obtain a permit from the DEP.

Discussion was held regarding obtaining a permit from the DEP and the requirement of the ordinance for a rope and post area; existing vegetation location and installation of a rope and post; the beach access points; and the total square footage allotment for signage as it pertained to signage on the beach and in the front of the premises.

Council Member List asked if the ordinance addressed enforcement.

Community Development Director Fluegel stated in the current alcohol ordinance there was a revocation process and these would all fall under that process.

Council Member List questioned if the Director had language that addressed the square footage limitation.

Community Development Director Fluegel responded in the affirmative; and noted the language was ready if the Council wanted to insert it into the ordinance.

Council Member List questioned if there was anything in the proposed ordinance to address enforcement with the existing businesses that could serve in the EC Zone.

Community Development Director Fluegel explained there would be no requirement for the business to come into compliance; however, there were incentives in the proposed ordinance for the business to come into compliance through the administrative approval process and they would be subject to the conditions. He noted that if they did not come into compliance the business would then become 'existing non-conforming' after six months from the effective date of the ordinance.

Council Member Mandel asked if there were establishments that were given the ability to create a deck to serve over the EC line and were they approved.

Community Development Director Fluegel responded in the affirmative; and in some instances there were decks that extended over the sand.

Mayor Kiker asked if there was a provision to take down the ropes and posts in the evening.

Community Development Director Fluegel responded in the negative.

Discussion was held concerning the DEP and the rope and post requirement; that the DEP would require a permit for the rope and post but the DEP would look to the Town to indicate the rope and post was a

permitted use; and there might be some specific sites that the DEP could have an issue with regarding rope and post.

Discussion was held regarding parking requirements.

Mayor Kiker explained that the Council could deny, adopt, adopt with changes, or table the proposed ordinance, and they could also do a trial on 2-3 establishments, or place it on a referendum.

Town Attorney Miller stated if the proposed ordinance was placed on a referendum the Supervisor of Elections would charge the Town for the election because the matter would not be placed on a general election ballot.

Vice Mayor Raymond asked why the ordinance used 100 feet and not 40 feet.

Community Development Director Fluegel reported it was the LPA's recommendation.

Vice Mayor Raymond noted his concerns regarding the proposed dimension and suggested not going past 40 feet. He questioned why was the measurement starting from the end of the deck; and suggested that if there was a deck on the sand that the measurement should be from the building.

Town Attorney Miller clarified that *"the area of expansion for a COP licensed premises extending seaward into the EC zoning district, shall be limited to no more than 33% of the land area between the landward EC zoning district boundary..."*.

Discussion was held concerning the defined area measurements.

Community Development Director Fluegel read from the ordinance *"In instances where an existing licensed establishment has an existing deck and/or building seaward of the EC Zone line, the measurement of the allowable area of expansion, shall commence from the most seaward point of the rear deck or building"*.

Discussion was held regarding no extra service area even if renourishment was done; and future renourishment projects and establishing the Erosion Control Line.

Vice Mayor Raymond stated he did not like the idea of outdoor entertainment on the beach side. He asked if the food and alcohol split required of the businesses now would change for the COP license if the area was extended.

Community Development Director Fluegel stated the business would still have to meet the requirement of their license.

Vice Mayor Raymond questioned package liquor sales from the businesses.

Community Development Director Fluegel stated it would not allow package liquor sales, and that the licenses were only for sale and consumption on premises.

Town Manager Stewart added that if a business had a “package liquor sale” license they could still do so according to their license out of the front of the premises and not the back.

Vice Mayor Raymond noted his belief that the biggest wine and beer consumption was due to the “cooler pub” where people were bringing their own alcohol in their coolers. He explained how he had suggested doing the COP in the downtown district; how he could not support taking COP away from businesses that already were granted it; and how he would not approve one more establishment out of the downtown district. He reported that at this time he would like to see COP in the downtown district, and everything outside of the downtown district, if it was not an established COP permitted business now, that no more could be added.

Discussion ensued regarding Vice Mayor Raymond’s desire to have no additional COP sites approved than already existed in the area outside of the downtown district.

Council Member Kosinski discussed his opinion for the need to ‘*set standards*’ and explained how the ordinance, if approved, would not be set in stone and it could be changed/amended as needed and when needed.

Council Member Mandel noted that, if approved, he would support a minimum square footage and would support the suggestion to measure square footage from the building. He noted his concern regarding environmental issues; and reported he cared less about the business name on the cups and more about a requirement to have the cups and straws to be biodegradable. He noted his concern regarding a ‘quality of life’ issue which was noise, and the ability for residents to have quiet enjoyment.

Council Member List expressed her concern regarding the minimum square footage and using 100 feet as a measurement. She explained that after listening to public input she too questioned the inclusion of an ‘administrative approval’ process. She mentioned that when she first campaigned for office years ago she had said there was a problem with the COP. She summarized that her concerns included the administrative approval process, square footage measurement, and enforcement.

Mayor Kiker asked the Town Attorney to clarify whether or not COP could go to referendum since prior to this evening he was under the impression due to a State law passed about a year ago land use matters could not go to referendum.

Town Attorney Miller explained her recommendation would be a *non-binding* referendum because she felt the Mayor’s concern that the Hometown Democracy referendum had not passed last year was a valid point.

Mayor Kiker reported, if the ordinance was approved, he had priority issues which included how far from the water; measuring from the back of the building if there was a patio; having an administrative process that goes through the Council; rules that needed to be enforced; and to ‘measure and revisit’. He stated he wanted to be sure that the DEP was ‘*on board*’ with the proposed ordinance pertaining to rope and post; and suggested that an approval of the proposed ordinance could be contingent upon having a written approval/confirmation from the DEP.

Town Manager Stewart explained that the DEP only opined on an individual basis. He explained how staff found similar types of installations that had been approved by the DEP.

Mayor Kiker asked if an Attorney General opinion could be used.

Town Attorney Miller explained her belief that the most that would be obtained from the DEP would be that they would look at each one on a case-by-case basis. She suggested the Council may want to add language for a condition to be that the applicant must obtain the approval. She stated it would behoove any applicant to obtain the DEP approval prior to applying for the permit.

Discussion was held concerning the Town process and the DEP process timelines for the applicants.

Mayor Kiker suggested the Council may want to consider offering a trial for 2-3 businesses and then offer a referendum.

Discussion ensued regarding the unique environment of each business on the island; limitations of the currently proposed administrative approval process; measurements using boundary lines (i.e. Erosion Control Line; and approving the Downtown zone going south with those establishments that currently had COP would be able to do so, but no new COPs would be approved.

Council Member List asked how would a trial-basis work.

Town Attorney Miller explained the Council could ‘*sunset*’ the ordinance for a trial period, but she did not believe that specific businesses could be selected.

Town Manager Stewart cautioned that if there was a trial period, the businesses would have to go through all the same ‘*hoops*’ as if it were for a continuing basis (i.e. DEP process, names on cups).

Discussion was held concerning a trial period.

**MOTION:** Motion by Council Member Kosinski to adopt Ordinance 12-03, amendment to LDC Section 34-1264 with the stipulation that the start point begin at the EC Line and extend out 50 feet regardless of the structures that were there now.

Town Attorney Miller explained there might be a couple of areas where the 50 feet would bring it out to mean high water; and she recommended that they leave the percentage.

Motion maker stated that was his intent.

Town Attorney Miller noted on Page 11, they would change the “*up to a maximum of 100 feet to 50 feet*”; and on the same page delete the sentence “*In instances where an existing licensed establishment has an existing deck and/or building seaward of the EC Zoning line, the measurement of the allowable area of expansion, shall commence from the most seaward point of the rear deck or building.*”.

Motion maker stated that was correct.

Town Attorney Miller noted there was no limitation on square footage.

Motion maker stated that was correct.

Town Attorney Miller pointed out the business could extend according to the width of the property.

**AMENDED MOTION:** Motion maker amended the motion to stipulate that the 50 feet would be the width of the building and not the property; therefore, they would take the footprint of the building from each corner and go out 50 feet from the EC Line leaving the one-third maximum distance up to a maximum of 50 feet limited by the width of the building; second by Vice Mayor Raymond.

Discussion ensued regarding the 50 foot measurement stipulation.

Vice Mayor Raymond requested the Motion Maker amend the motion to include the restriction to the Downtown zone.

Town Attorney Miller suggested that the word “new” be deleted from Page 13, (c)(1) Commercial Planned Development.

Community Development Director Fluegel suggested removing the paragraph (c)(1).

Discussion ensued concerning zoning regulations for resorts outside of the Downtown zoning; and deletion of (c)(1) Commercial Planned Development on Page 13.

Town Manager Stewart explained that the requested amendment would mean that if a site currently abutted the beach and had a COP, then they could apply for approval to serve out on the sand; and if they do not currently have a license to serve, for example, if a new resort was to come along, then no new resorts or any kind of approvals would be made outside of the Downtown zoning other than those that currently had a COP license.

**AMENDED MOTION:** Motion maker stated he agreed to the proposed amendment by Vice Mayor Raymond; and second agreed.

Council Member Mandel asked if there would be any businesses that would be able to extend with the proposed measurement of 50 feet.

Community Development Director Fluegel responded in the affirmative.

Council Member Mandel questioned what would be the impact according to the motion and amendments to the existing 16 businesses. He stated he would like to see the inclusion of biodegradable cups and straws, and no amplification music/noise.

Town Attorney Miller noted that the proposed ordinance included language that made amplification of music by special exception; and she suggested they could change it to “*no entertainment*”. He explained how he would like to see what this all would mean for the 16 existing establishments.

Discussion ensued regarding how the ordinance could later be reviewed.

Town Manager Stewart noted that if 50 feet was used, there would be some instances where it would not impact the business. He suggested the Council could approve the distances or mix in a maximum amount of square footage.

Community Development Director Fluegel explained that the combination of the measurement from the EC zoning line and the 50 feet in the instance of the Holiday Inn. He pointed out that they would not get much of an extension and any would be stacked at the southern end of the property.

Discussion continued concerning the square footage measurement and limitation.

**WITHDRAWN MOTION:** Motion maker withdrew his motion.

Recess at 10:25 p.m. – Reconvened at 10:45 p.m.

Mayor Kiker noted how the Council worked very hard on the COP issue, and pointed out that COP was a complicated matter. He suggested that the Council could table the matter; look into what a referendum would look like; or go to locations and set it up as to how it would look if the ordinance was approved to see what it would look like. He reported that he had been approached by residents willing to serve on a task force to sponsor how a site might look.

Discussion was held regarding sending the matter back to a Work Session and/or an ‘in-field’ Work Session.

**MOTION:** Council Member List moved to move Ordinance 12-03, amendment to LDC Section 34-1264 to a Work Session; second by Council Member Kosinski.

Discussion ensued regarding a date for the Work Session.

**AMENDED MOTION:** Council Member List restated her motion that it was to move Ordinance 12-03 to the Work Session of May 21, 2012; second agreed.

Town Manager Stewart asked for the deliverables Council would want from staff to prepare them for that Work Session meeting.

Discussion continued regarding a Work Session date.

**AMENDED MOTION:** Council Member List amended her motion from May 21, 2012 to May 14, 2012 at 9:00 a.m.; second agreed.

Town Clerk Mayher noted that May 14<sup>th</sup> was the same date as the meeting of the Audit Committee.

Discussion continued regarding a Work Session date; and the suggestion for an ‘*in-field*’ site visit.

Town Attorney Miller reminded the Council the site visit would need to be advertised as a meeting.

Discussion ensued regarding which measurements to use on the site visit.

Discussion continued concerning a Work Session date.

Discussion was held concerning potential sites to visit; and it was consensus to visit one restaurant in the Downtown, one resort, and one other site staff felt was important.

Mayor Kiker pointed out to the Community Development Director highlights of the input received tonight regarding administrative approval, code enforcement (i.e. how to enforce and cost).

Discussion was held regarding the advertising time frame between the May 14<sup>th</sup> Work Session and the following two Regular Meetings.

Mayor Kiker requested that public comments be sent to [ideas@fortmyersbeachfl.gov](mailto:ideas@fortmyersbeachfl.gov) . He questioned the requirements for public hearings.

Town Attorney Miller explained if substantial changes were made to the proposed ordinance she would recommend two hearings.

**VOTE:** Motion approved, 5-0.

Public Hearing closed at 11:00 p.m.

### **XIII. ADMINISTRATIVE AGENDA**

### **XIV. PUBLIC COMMENT**

Public Comment opened.

Garr Reynolds, resident, commented that why “did these five residents here” think they knew what was better for the community than most of the people who were here tonight.

Public Comment closed.

### **XV. TOWN MANAGER’S ITEMS**

#### **A. National Volunteer Recognition Week**

Town Manager Stewart reported Volunteer Week started April 15 through 21, 2012; and if someone had an opportunity to thank a volunteer to please do so.

Town Manager Stewart reported he was approached by the Film Festival group to borrow the popcorn machine.

Consensus was to allow the Film Festival to use the Town's popcorn machine.

## **XVI. TOWN ATTORNEY'S ITEMS**

Town Attorney Miller stated Town Attorney Humphrey asked her to report that the Mound House grant which was approved by the Legislature and was sitting on the Governor's desk did not make it on the "turkey" list.

Town Manager Stewart asked that the Town send a communication to the Governor noting the grant was not on the Tax Watch's "turkey" list, and ask him to sign the Bill.

Consensus was to have the Town Manager prepare the communication as requested.

## **XVII. COUNCILMEMBER ITEMS AND REPORTS**

Council Member Mandel – reported that at the Condominium Association meeting someone gave a presentation on Seafarer's and how they thought the Town was going to put in a parking lot. He stated that was not his vision for the Town and would not support it. He reported today he was contacted by one of the owners in the Seafarer's area, and based on that conversation, he believed there were things happening such as assembling the property. He stated he spoke with Attorney Humphrey who suggested, given the information received and that the Town was engaged in obtaining a Traffic Engineer for Estero Boulevard, that the Engineer focused in on the Seafarer's area first and in coordination with the County. He explained it was also suggested to obtain two appraisals of the sites officially called the Huntingburg Parking Limited; and continue to work at getting the TIF circle drawn. Council Member Mandel suggested the Council give direction to staff to accomplish what was suggested to him.

Discussion ensued; and consensus approved Council Member Mandel's request regarding the engineer, and obtaining the appraisals

Council Member Mandel – reported the Audit Committee would meet on April 30<sup>th</sup> to prepare a matrix to use when evaluating the auditing firms. Also, the Audit Committee would like to have Member Rodwell work with the Finance Director on the software acquisition; and Member Steele did some work on the water utility manual and requested to continue a review of the manual to determine if it needed an update or to be totally re-written, and to review operations.

Discussion ensued regarding the Audit Committee requests; and it was consensus to approve the requests by the Audit Committee as described by Council Member Mandel.

Council Member List – announced the Film Festival was this Saturday and there would be a family opportunity to learn how to make 3-minute movies. She thanked everyone who had offered input on the COP issue.

Vice Mayor Raymond – no items to report.

Council Member Kosinski – no items to report.

Mayor Kiker – reported he attended the “State of the Union” at the Chamber of Commerce last week. He discussed the work that was occurring on the task force for public safety, and asked if they could put a group together now, and when they finally get the ordinance done they could assign people but in the mean time they could be getting some work done.

Discussion was held concerning the Mayor’s request; and consensus was to approve the request and that the Mayor would take care of it.

Mayor Kiker – referred to the earlier suggestion of a task force regarding the COP and to get four or five people to work with staff to decide on the site visit locations and demonstration.

Discussion was held regarding the Mayor’s request; and consensus was to approve the Mayor’s request and that Council Member Kosinski would take care of it.

Town Manager Stewart asked for clarification on the appraisals.

Consensus of Council was that the appraisals were for the “*whole commercial property*”.

Town Manager Stewart explained that the appraisals could cost as much as \$10,000 each.

Discussion was held regarding the appraisals.

Town Attorney Miller explained that for appraisals over \$500,000, if they wanted to keep the appraisals confidential there needed to be two, per statute. She noted that if appraisals were not kept confidential, it could hinder negotiations.

Discussion was held regarding the cost of the appraisals; and Town Attorney Humphrey’s recommendations regarding Seafarer’s.

Consensus was to approve the appraisals.

## **XVIII. AGENDA MANGEMENT**

Mayor Kiker noted the change to Agenda Management with the addition of the May 14<sup>th</sup> Work Session.

Discussion ensued regarding the Council’s schedule and the May 14<sup>th</sup> Work Session date.

Consensus was to move the COP to the May 21<sup>st</sup> Work Session and take the noise ordinance scheduled for May 21<sup>st</sup> off the agenda.

**MOTION:** Council Member List moved to have the COP Work Session at 9:00 a.m. on May 21<sup>st</sup>; second by Council Member Kosinski.

**VOTE:** Motion approved, 5-0.

**XIX. RECAP OF ACTION ITEMS**

Town Manager Stewart recapped the Action Items added during the meeting:

- Staff would establish the Work Session for the COP on May 21<sup>st</sup>
- Staff would work with the two new task forces (COP and public safety)

**XX. ADJOURNMENT**

Motion by Council Member List, seconded Council Member Mandel to adjourn. Meeting adjourned at 11:25 p.m.

Adopted \_\_\_\_\_ With/Without changes. Motion by \_\_\_\_\_

Vote: \_\_\_\_\_

\_\_\_\_\_  
Michelle D. Mayher, Town Clerk

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