

1. Requested Motion:

Meeting Date: April 20th, 2009

MRTF has requested that Town Council consider amending the LDC to include the proposed Section 14-12. Initiating the LDC amendment process is a policy decision for Town Council or the Town Manager.

Why the action is necessary:

Response to a resolution passed by MRTF addressing the Town Council.

What the action accomplishes:

Exercise of Town Council authority under LDC Section 34-82.

2. Agenda:

- Consent
- Administrative

3. Requirement/Purpose:

- Resolution
- Ordinance
- Other

4. Submitter of Information:

- Council
- Town Staff
- Town Attorney
- MRTF

5. Background:

On April 2, 2007, Town Council adopted Ordinance 07-03, which modified several sections of the LDC, including parts of Chapters 14 and 27 by a vote of 5-0. Town Council voted 3-2 to exclude the proposed Section 14-12 regarding beach furniture and equipment licensing from the ordinance, however. MRTF is requesting that Town Council consider amending Chapter 14 of the LDC to add the proposed Section 14-12. The proposed amendment will need to go before the LPA for hearing if the Town Council or the Town manager initiates the LDC amendment process.

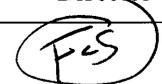
6. Alternative Action:

Take no action.

7. Management Recommendations:

Initiating the LDC amendment process is a policy decision for Town Council under LDC Section 34-82.

8. Recommended Approval:

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Cultural Resources Director
					

9. Council Action:

- Approved
- Denied
- Deferred
- Other

EXHIBIT C

FORT MYERS BEACH LAND DEVELOPMENT CODE

The vote on this Ordinance was taken in two steps. The first vote (as codified previously in this Ordinance) approved passage of Ordinance 07-03 without considering whether to add a proposed new Section 14-12 into Chapter 14. The second vote considered whether to exclude Section 14-12 entirely from Ordinance 07-03. Proposed Section 14-12, as considered during the public hearing, read as follows:

Sec. 14-12. Beach furniture and equipment licenses.

(a) Businesses and/or properties that offer a beach chair service on the beach for rent or complimentary use must apply for one of the following licenses:

- (1) *Beach Furniture Complimentary Use License:* this license applies to properties that offer a beach chair service that is not open to the general public.**
- (2) *Beach Furniture Vending License:* this license applies to businesses and individual properties that offer beach furniture for rental to the general public.**

(b) The following regulations apply to both licenses:

- (1) Beach furniture and equipment shall be set back at least 12 feet landward from the edge of wet sand.**
- (2) Adequate portable garbage receptacles must be located on site during the hours that beach chairs are available for use and must be removed entirely from the beach every night, with the contents legally disposed of.**

(c) The following additional regulations apply to the beach furniture vending license:

- (1) The amount of beach furniture vending licenses is limited to 14.**
- (2) A business is required to obtain a Lee County occupational license**
- (3) If the applicant is not the owner of the property from which the business will be operated, the applicant shall submit a notarized letter of authorization from the owner of the property to the applicant.**
- (4) No person shall operate a beach chair vending business unless covered by a comprehensive general liability insurance policy insuring the public against bodily injury or property damage resulting from or incidental to the operation, use, or rental of beach furniture. At a minimum, the policy shall provide coverage of not less than \$500,000 per occurrence and \$1,000,000 per aggregate. The policy shall list the Town of Fort Myers Beach as an additional insured, and shall provide that coverage can not be canceled or materially altered except after 30 days' written notice has been received by the town, and be written through insurers licensed and authorized to do business in the State of Florida.**

Secs. 14-~~13~~ 12--14-70. Reserved.

A motion was made by Council Member Meador and seconded by Council Member Shenko to exclude Section 14-12 from Ordinance 07-03. Upon being put to a vote, the motion passed, with the vote being as follows:

Herb Acken	aye
Dennis Boback	nay
Larry Kiker	nay
Charles Meador, Jr.	aye
Bill Shenko, Jr.	aye

Accordingly, draft Section 14-12 has been excluded from Ordinance 07-03 as adopted on April 2, 2007.

VOTE: 5-0

ADMINISTRATIVE AGENDA:

A. ORD. 07-03, AMENDMENTS TO LDC CHAPTERS 14 AND 27, BEACH RAKING AND BEACH VENDORS

Attorney Dalton read the ordinance title.

Mayor Boback opened the public hearing.

PUBLIC COMMENT:

Dennis Kovach, resident of Fort Myers Beach and Vice Chairperson for the Marine Resources Task Force. He thanked all participants who had contributed to the recommended amendments to the Land Development Code. He expressed dissatisfaction with the recommendation relating to manual removal of debris from the water line to five feet above wet sand combined with mechanical removal of debris above five foot wet sand. DEP restrictions approve raking below the rack line. Mechanic raking is toward the water. MRTF is asking not to allow raking over sand dollars, shells, etc., and destroy the integrity of the sand at the waterline.

Eve Haverfield, Turtle Time, has been monitoring sea turtles on the island since 1989. She would like Fort Myers Beach to be part of the solution in the recovery of sea turtles, allowing sea turtles to nest; allowing access to healthy habitat. By moving and stacking beach furniture, we allow sea turtles access to the healthiest part of the beach.

Gabrielle Hickey, Beach vendor. Ms. Hickey expressed her feeling of how it is very important for these changes to pass, as, advisory committee members as well as beach vendors spent many hours and put forth a lot of work in the hopes that this will be approved. Vendors see these as guidelines, not as restrictions. She expressed her appreciation for all the time put in by the MRTF.

Tom Babcock, Williams Drive. He opined that at the last hearing, Council rejected most of the recommendations of the experts, the MRTF and the LPA. The wording is very similar to an alternative that was rejected by MRTF and LPA. As stewards of our environment, he asks for consideration as to whether the wording in this code is appropriate for the intent of the comp plan.

Public comment is closed.

DISCUSSION:

Councilmember Meador began the discussion by pointing out that no definition for mechanical raking exists in the LDC, adding that any raking under our code is

mechanical and is prohibited. He went on further to express his dislike for more taxation; he feels that that's what more licensing is. He would like to eliminate that concept. Councilmember Meador further expressed his opinion that regulations for protecting turtles with chairs' storage and stacking already exists; this amendment will require that they be chained at night.

If this amendment keeps the licensing aspect, he would like to propose that in reference to smaller businesses, in section 14-12, subsection A, businesses and or properties that offer beach chairs, that we fashion an exemption for smaller properties, such as "complementary use" for businesses of 10 units or less "shall be exempt from the licensing requirements" of this part.

Councilmember Shenko expressed his desire to see a budget impact statement with every new proposed change in ordinances. He does not see a benefit in regulating beach chairs. He further opined that people want a clean beach, and so would propose we having raking as a budget item.

Vice Mayor Kiker asked for clarification regarding the process for bringing forward this ordinance.

Attorney Dalton explained that the Land Development Code requires two hearings but if Council is not ready to move it forward, they may continue, send it back to the advisory committees, table it, or take whatever action they choose.

Vice Mayor Kiker agrees that licensing and regulating needs to be less not more; agrees that beach raking should be a budgeted item. He is concerned that there's some good info not being considered, and suggests sending it back to the LPA with public comment, and one more shot at it.

Councilmember Acken expressed his desire to make the timing of the approval not a necessity, that is, would like to allow the Town Manager to approve beach raking while waiting for the DEP to approve same. He would also like to give the town manager the authority to rake when he deems necessary, and not require council approval in the event that any such raking will result in an unreimbursed expenditure of town funds in excess of currently budgeted funds. Councilmember Acken believes that the beach vendors would accept licensing if so imposed, but are not overwhelmingly in favor. He would like to change the language from "must" to "may" regarding licensing; and should licensing be required, he would like consideration to expand their work area from 4x6 to 10x10.

Mayor Boback expressed his gratitude to the Marine Resources Task Force and the Local Planning Agency. Under 14 – 6, (B), that budgeted funds must first be approved by Town Council, Mayor Boback is not in favor of changing that language. He feels that if it is Town expended funds, it should be a line item in the budget. Mayor Boback is uncertain whether residents are willing to pay for this added service, and feels that this is an item that should go to the voters via referendum.

MOTION: Councilmember Meador moved to approve Ordinance 07-03 as presented with the exception of item 14-12, and to discuss it separately.

Councilmember Shenko seconded the motion.

AMENDED MOTION: Councilmember Shenko would like to amend the motion to remove page one definition of beach chair service, as well as remove 14-5, D, as it refers to 14-12. Councilmember Meador amended and Councilmember Shenko seconded.

ROLL CALL VOTE:

Motion maker, Councilmember Meador:	aye
Councilmember Shenko:	aye
Mayor Boback	aye
Vice Mayor Kiker	aye
Councilmember Acken	aye

VOTE: Vote passes unanimously, 5-0

MOTION: Councilmember Meador moved to delete section 14-12 from Ordinance 07-03. Councilmember Shenko seconded the motion.

VOTE: 3-2 Mayor Boback, Vice Mayor Kiker dissenting.

RECESS: 8:00 pm RESUME: 8:06 pm

APPOINTMENT TO ADVISORY COMMITTEES:

MOTION: Councilmember Shenko moved, and Councilmember Acken seconded the motion to appoint all advisory committees as presented in the packet, excluding the Local Planning Agency, and for the LPA to be acted upon separately.

VOTE: 5-0

Appointment to the Local Planning Agency. Five appointments needed to be made; four for two year terms and one for a one-year term, which is the completion of the term held by Randy Brown.

The votes came in with 5 votes each for Rochelle Kay, Alan Mandel and Dennis Weimer; four votes for Bob Simon and three votes each for Evie Barnes and Carrie Doine. A revote was cast between Barnes and Doine, with Evie Barnes receiving three votes to Doine's two. Therefore Evie Barnes will fill the remaining one year term vacated by the resignation of Randy Brown.

NEWTON PARK CULTURAL RESOURCES MANAGEMENT PLAN

A. *First Public Hearing, Ordinance 07-03; amending regulations in LDC Chapters 14 and 27*

Mayor Boback opened the Public Hearing. Attorney Dalton read the title to Ordinance 07-03; amending regulations in the Land Development Code Chapters 14 and 27.

Mayor Boback opens public comment:

- Gabrielle Hickey vendor on the beach expressed her support for Chapter 14.
- Terry Cain resident and former member of MRTF expressed her support raking 5-feet from the wet sand.
- Joe Yerkes representative of MRTF expressed his concerns regarding the Red Drift Algae and asked Council members to find a way to get this matter resolved.
- Eve Haverfield expressed her concerns regarding beach furniture and securing them in order to protect the nesting sea turtles.

Mayor Boback closes public comment:

- Charles Hester, member of MRTF, referred to section 14-6 beach raking and wrack line; and reiterated the Ordinance was vague and needed clarifications and they have broadened the health and safety provisions to include the excessive accumulation clause. Mr. Hester referred to Section B-2 where MRTF added provisions governing the raking procedure to ensure raking was minimally invasive with the least amount of harm to the environment. Mr. Hester referred to Section 14-12 beach furniture & equipment licenses.
- Tom Babcock, LPA member, pointed out that Council did not have the approved minutes from the LPA meeting which forwarded this Ordinance to them; adding the LPA has approved essentially what MRTF had provided. Mr. Babcock addressed the concerns which were raised regarding issues on beach raking, and pointed out that MRTF added definitions which would be an easier task on how to rake the beach.

Vice Mayor Massucco commended both MRTF and LPA members for the efforts they have put into this issue, and added that this will be an ongoing problem as the solution is not within their hands. Vice Mayor Massucco expressed that with the information gathered by MRTF and LPA members, there will be great strides for the future.

Councilman Reynolds questioned Mr. Babcock whether or not they will be getting a permit from DEP in order to proceed with the beach raking.

Mr. Babcock responded that one of the requirements for an emergency raking would be getting a permit from DEP.

Councilman Reynolds questioned the feasibility of enforcing raking by private businesses. Mr. Babcock responded that they have discussed enforcement and concerns, stating that it would be an education on how they should rake.

Councilman Reynolds questions if there are any restrictions regarding hand raking.

Mr. Hester responded that the proposed Ordinance is that mechanical raking can be done 5-feet above wet sand, and that you can hand rake. Mr. Hester pointed out that this only applies to the Town, and has been told that the residents can hand rake as long as it is in front of their own property.

Mayor Boback questioned why a beach vendor might need more than one vehicle to move beach furniture.

Mr. Murphy reported that a vendor may want an extra vehicle for backup; that all vehicles used on the sand need to have a permit, adding that he will further investigate issues concerning unauthorized vehicles.

Mayor Boback referred to 14-5-C which requires beach properties with more than five cabanas or beach furniture to file their hurricane action plan with the Town, asking Mr. Murphy if they had that in place.

Mr. Murphy responded that this had been conducted by another department, but that it will now become part of Community Development, and ensures Council that it will become part of the permitting.

Mayor Boback referred to 14-12-C2; the requirements of businesses to obtain a Lee County occupational license, and questioned if the Town were to issue the licensing.

Mr. Murphy reported the Town issues a use permit, which assures Lee County that all the requirements of the Town have been satisfied, and pointed out that the Tax Collector issues occupational licenses.

MOTION: Vice Mayor Massucco made a motion to move Ordinance 07-03 with changes to a second reading and final public hearing on April 2, 2007 at 6:30. Councilman Reynolds 2nd the motion.

Discussion:

Councilman Reynolds agreed that the beach furniture should be anchored as Ms. Haverfield has suggested.

Councilman Meador pointed out that they will be spending a lot of time with the proposed amendment regulating where they don't need to regulate, and over regulating adding they will be spending money that they don't need to spend. Councilman Meador proposed to authorizing the Town Manager to approve raking at the wrack line conditioned on prior approval by DEP; if it is determined that excessive accumulation or natural or other debris caused by extreme events, including but not limited to red tide, red algae bloom or storm carried debris are present. Should such excessive accumulation be determined, the Town Manager may approve raking with the authorization given by DEP. Councilman Meador pointed out that they need to set a spending limitation by the Town Manager.

Councilman Shenko agreed with Councilman Meador and pointed out that they didn't need to be in the business of licensing and regulating chairs, but do need to tell them to lock them up, and put them away. Councilman Shenko proposed that any raking that will result in the unreimbursed expenditure of Town funds in excess of current budgeted sums, be first approved by Town Council. Council then could go into a budget amendment if they desire. Councilman Shenko was in favor of and would support Councilman Meador's proposed amendment.

Vice Mayor Massucco responded that he will go along with any changes on 14-6.

Mayor Boback reiterated they have consensus on 14-6 which everyone is in favor of.

Mr. Green reported that TDC will be reimbursing the Town for their expenditure but the exact amount is not yet known.

VOTE: The motion passes 4-1; with Councilman Meador dissenting.

VI. NON-CONSENT AGENDA:

A. FEMA FIS & Firm Appeal- Update/ request for Direction

Mr. Murphy reported that FEMA has received their appeal and is under review, along with the County. Mr. Murphy asked for Council's direction whether to speak with Tomasello's office to get a ball park figure and to bring it forward to Council for authorization.

Mayor Boback opens public comment:

Approved
3-20-07

**MINUTES OF
THE LOCAL PLANNING AGENCY
OF THE
TOWN OF FORT MYERS BEACH
FEBRUARY 27, 2007**

**Local Planning Agency
2523 Estero Boulevard
Fort Myers Beach, Fl 33931
February 27, 2007**

AGENDA

12:00 Noon

I. CALL TO ORDER

Chair Babcock called to order Local Planning Agency of Ft. Myers Beach on February 27, 2007 at 12:00 noon.

Members Present: Larry Kiker, Alan Mandel, Bob Raymond, Tom Babcock, and Rochelle Kay.

Absent: Randy Brown, Robert Simon.

Town Staff Present: Community Development Director Jerry Murphy, LPA Attorney Ann Dalton, Frank Shockey, Brad Case, Colleen Young

II. PLEDGE OF ALLEGIANCE INVOCATION

All present stood for the recitation of the Pledge of Allegiance.

III. MINUTES.

- January 9, 2007 – Minutes previously approved: provided for content.

IV. PUBLIC HEARING

- **Draft Ordinance 07-03-Changes to Land Development Code Chapters 14 and 27 regarding beach raking, beach furniture and equipment, and personal watercraft.**

Ms. Dalton read Ordinance 07-03 Changes to the Land Development Code Chapters 14 and 27 regarding beach raking

Mr. Parker suggested raking in the areas that have excessive accumulation, and come back a couple of days and rake some more. This would be the

method he would be taking, and pointed out that it raises the question of wise use of funds.

Chair Babcock asked Mr. Parker whether he was asking the LPA to deal with issues in the Land Development Code as to funding as well as a policy which can establish excessive accumulation.

Mr. Parker responded that when the public dollar is being spent that it would be wise to use the LDC as a consideration in their decision making..

Mr. Raymond pointed out that by DEP issuing a permit, they must have determined a necessity.

Mr. Green responded that DEP is familiar with the situation with the beaches and the need for raking.

Mr. Raymond referred to having the people or business do the raking themselves which would save the Town some money.

Ms. Dalton explained the legislative process the LPA is up against, and that there would be some liability concerns regarding that matter which they should take into consideration.

Mr. Kiker referred to comments made by Mr. Hester regarding alternative two, and Mr. Kiker questioned whether or not the Town was looking into other alternatives to prevent the red algae from getting onto the beach.

Mr. Hester reported that it states the Town may use mechanical raking but was intended to prevent regular beach grooming.

Mr. Mandel referred to the LDC where it states mechanical beach raking other than the Town initiated raking, and questioned if that meant that someone can apply for a permit, meaning the homeowners.

Mr. Murphy referred to 14-6 where the first alternative states the Town Manager may approve raking, and that a private owner could join in and apply a DEP application and seek to do so at their expense.

Chair Babcock questioned Mr. Green if alternative one would be too restrictive the way it is written mechanically raking 5-feet from the wet sand landward.

Mr. Green responded the less is better, and added by removing the word mechanical, leaving the language raking, opens it up.

Mr. Charles Hester of MRTF expressed his concerns regarding mechanical raking stating that MRTF was trying to balance the needs of the environmentalist versus the need for speed and economy.

Chair Babcock questioned Mr. Hester regarding the language for the determination that health and safety issues have been confirmed.

Mr. Hester responded that the health and safety issued should be an issue deemed by the Lee County Department of Health, pointing out they had a red algae event.

Mr. Kiker questioned Mr. Hester whether or not he would change anything on alternative number one.

Mr. Hester responded that he would leave it as it is as defining the problem would be a difficult task, adding that this would have to be a judgment call. Mr. Hester expressed that alternative one is a step in the right direction.

Chair Babcock opens public comment:

- Bill White, General Manager of the Pink Shell Resort expressed that he was unable to get a permit to rake the beach. He added that they are more than willing to do it, but are unable due to the inability to attain a permit.

Mr. Mandel questioned if a private beach owner would be able to work under the existing beach permit for raking.

Mr. Green expressed not seeing any restrictions to employ property owners to rake under the DEP permit.

Ms. Dalton pointed out the liability related to the raking and whether or not the DEP permit by its terms can provide that other entities can have other sub permits under their permit.

- Colleen Young coordinator of Town Staff pointed out that if the Town allows private raking under their permit the Town would be liable for any violations.
- Sharon Faircloth also agreed with Colleen stated that if something was done incorrectly, the Town would get the violation.
- Dennis Kovach announced that Ms. Gabrielle Hickey has offered the use of her equipment to do some raking in compliance with the rules of the permit.

Mr. Green pointed out that any equipment used on the beach must have a license or permit in order to do any raking on the beach.

- Joanne Shamp spoke on behalf of the commercial waterfront properties referring to the red drift algae.
- Sherry Russ business owner on the beach pointed out they should start announcing the raking on the Town's website for the public.
- Mr. Yerkes spoke about the issues regarding health and safety wording and stated the reasons for removing the language.

Chair Babcock closes public comment:

Chair Babcock reports that the LPA will begin to wordsmith the language in alternative one, and discussing the specifics of putting the responsibility in the Town Manager's hands as well.

Mr. Murphy pointed out if they are approved by DEP that would be the state sanctioning what they would be doing on the state land stating that the action is consistent with the Environmental Protection. Mr. Murphy referred to Section C-4-D; which refers to the burial and storage of the debris, which is under the mechanical beach raking equipment, shall meet the following standards. Mr. Murphy noted that this is a condition which applies to the Town during Turtle Season. Mr. Murphy recommended the 6 to be dropped down and become a Sub-E; above a violation of a special or standard conditions, and change that section to Sub-F; the enforcement provision renumbering the rest.

Chair Babcock reiterated the new language for 14-6; B-6 becomes F. Chair Babcock pointed out that the language was rewritten to put the decisions on the Town Manager.

Chair Babcock asked whether Section B-6 needed to be in there, or if it will be incorporated when the Town Manager puts together an Emergency Beach Raking Plan.

Mr. Murphy referred to the provisions regarding Section 14-6-C- applied to other than Town initiated raking.

Chair Babcock pointed out that it may not be necessary to make changes to the LDC, but prefers to have some type of beach raking plan brought forth by the Town Manager since MRTF has made great efforts in bringing in experts regarding the matter and would like to have something put into a Resolution as opposed to the LDC. Chair Babcock asked Mr. Hester as to alternative three.

Mr. Hester responded that he agrees to remove the word natural debris, Mr. Hester pointed out that with the changes Mr. Murphy made it would be taking away the opportunity for a winter rake, and that there no longer be a definition on how to rake.

Joe Yerkes responded that he is in favor of removing the algae, and pointed out other municipalities have an umbrella DEP agreement to do grooming on a regular basis.

Chair Babcock reiterated the intent was not to do regular grooming and asked if they can put some type of constraints during the year to allow emergency raking.

Jack Green responded that DEP provides a permit which has a 30-day window.

Chair Babcock pointed out the need to have a policy put in place.

Mr. Green suggested introducing some language for that matter.

Chair Babcock referred to alternative three stating that it would secure the trust as to how the beach would be raked.

Chair Babcock pointed that they will need to take two alternatives and bring it forward to Town Council, and asked if alternative two can be replaced with what has been written on alternative three.

Mr. Kiker reported that they had recommendations from alternative one, which was approved unanimously by the LPA, stating that they should vote on alternative one.

Chair Babcock suggested that they can continue this hearing sending it back to hash it out. Chair Babcock suggested that submitting two alternatives it will give them an opportunity to express an opinion to Town Council for them to consider. Chair Babcock asked for the LPA members on a consensus in order to bring this forward to Town Council.

Mr. Raymond was in favor of alternative one, and was not in favor of presenting more than one for Council to consider.

Ms. Kay did not have a problem with sending two alternatives for Council's consideration.

Mr. Kiker responded that he was in favor of alternative one.

Mr. Mandel was also in favor of supporting alternative one.

Chair Babcock was in favor of passing alternative one to Town Council, but questioned if alternative two will get eliminated.

LPA members agreed in recommending one alternative to Town Council.

MOTION: To send only one alternative version to the Town Council.

VOTE: The motion passes unanimously with Mr. Simon and Mr. Brown absent.

Mr. Murphy announced that this item will be introduced at the next Town Council meeting which is March 5, at 6:30; it will appear for first reading on March 12, at 4:00, and the second reading is tentatively scheduled for April 2nd at 6:30.

Chair Babcock responded the next LPA meeting would be on March 13, 2007 and that there would be no way of approving today's minutes.

Chair Babcock closed the hearing at 3:00 PM.

V. ADMINISTRATIVE AGENDA

A. Discussion adoption of LPA Policy and Procedures Manual

Chair Babcock announced to review each section.

Mr. Kiker suggested adding another mission statement which will include a revitalization of the redevelopment of Fort Myers Beach.

Chair Babcock read the mission statement: To further the welfare of the citizens of the Town by helping to promote better, more helpful, convenient efficient, healthy safe community and a attractive environment. To ensure by strategic planning that unique and natural characteristic of the Island are preserved.

Chair Babcock reviewed the rest of the Policy and Procedures Manual with LPA members, and Ms. Dalton. LPA members had a consensus regarding the changes.

MOTION: Ms. Kay made a motion to approve the LPA Policies and Procedures Manual as written. Mr. Kiker 2nd the motion.

VOTE: The motion passes 5-0. With Mr. Simon, and Mr. Brown absent.

B. Discussion of My Safe Florida Home Program- Alan Mandel