

**1. Discussion Objective:**

**Work Session Date:**

Review and discussion of revisions to LDC Chapter 14,  
 the beach raking and wrack line policy

Monday April 15, 2013

**2. Submitter of Information:**

- Council
- Town Staff
- Town Attorney

**3. Estimated Time for this item:**

45 minutes for Beach Raking Ordinance

**5. Background:**

The Marine Resources Task Force began review of proposed changes to the beach raking and wrack line policy in March of 2009 and approved a final version to submit to LPA in Fall of 2010. The LPA conducted a public hearing in January of 2011 for the proposed changes and rejected with a vote of 6-0 and voted to send it back to Marine Resources Task Force (MRTF) for changes. MRTF reviewed the raking and wrack line policy in March and approved additional changes in April of 2011.

On November 8, 2011, the LPA voted 5-2 to recommend approval of the Beach Raking Ordinance, subject to amending the ordinance to allow holes at the wrack line to be filled with a tractor or mechanical equipment, and that the \$25.00 annual fee should not be charged to private property owners, replacing the term maintenance with the term grooming, and to require annual licensing. This draft resolution would adopt the \$25.00 annual fee, which will go into a fund for environmental education and restoration.

Attachment:

1. Proposed Beach Raking Ordinance
2. November 8, 2011 LPA Resolution
3. Staff report for Beach Raking Ordinance from November 8, 2011 LPA Meeting
4. Minutes of March 9, 2011 and April 13, 2011 MRTF meetings

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Parks & Recreation Director	Town Clerk
						

Town of Fort Myers Beach  
ORDINANCE NO. 11-

AN ORDINANCE AMENDING CHAPTER 14 IN THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE--ENVIRONMENT AND NATURAL RESOURCES; AMENDING SECTION 14-1, DEFINITIONS AND SECTION 14-6, BEACH RAKING AND WRACK LINE POLICY; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

**Section 1.** Section 14-1 of the Town of Fort Myers Beach Land Development Code is hereby amended as follows:

Sec. 14-1. Definitions.

For purposes of this article, the following terms, phrases, words, and derivations shall have the meaning given herein. When not inconsistent with the context, words used, in the present tense include the future, words in the plural number include the singular number, and the words in the singular number include the plural number. The word "shall" is always mandatory.

**Beach** means that area of sand along the gulf of Mexico that extends landward from the mean low-water line to the place where there is a marked change in material or physiographic form, or to the line of permanent vegetation, usually the effective limit of storm waves.

**Beach furniture or equipment** means any man-made apparatus or paraphernalia designed or manufactured for use or actually used on the beach or in the adjacent tidal waters. Examples include chairs, tables, cabanas, lounges, umbrellas, sailing vessels up to 16 feet in length, personal watercraft, concession storage units, canoes, kayaks, paddle vessels, sailboards, surfboards, fishing gear, sporting equipment, floatables, tents, and bicycles.

**Beach width** means the perpendicular distance measured from the edge of wet sand to the lace where there is a marked change in material or physiographic form from beach sand to dune vegetation, seawall, turf grass, etc.

**Director** means the person to whom the town manager has delegated the authority to administer this article, or that person's designee.

**Dune** means a mound, bluff, ridge, or emergent zone of loose sediment, usually sand-sized sediment, lying upland of the beach and deposited by any natural or artificial mechanism, which may be bare or covered with vegetation, and is subject to fluctuations in configuration and location (reference 161.54 F.S., 62B-33.002 F.A.C.). It encompasses those ecological zones that, when left undisturbed, will support dune vegetation. As to areas restored or renourished pursuant to a permit issued by the town or state, it encompasses the area specified in the permit as a dune or any area specified as suitable for establishment of dune vegetation.

**Dune vegetation** means pioneer species of native vegetation which, if left undisturbed by manmade forces, will begin to grow on a dune, including species such as bitter panicum, coastal panic grass, crowfoot grass, saltmeadow cordgrass, sandbur, seacoast bluestem, sea oats, seashore saltgrass, stiffleaf eustachys, beach bean, blanket flower, dune sunflower, fiddle-leaf morningglory, partridge pea, railroad vine, sea purslane, beach creeper, nicker bean, coin vine, inkberry, lantana, saw palmetto, seashore elder, baycedar, green buttonwood, cabbage palm, cocoplum, seagrape, and southern wax myrtle.

**Edge of wet sand** means the point where the visible darkening or staining of the beach sand from wave action is no longer detectable.

**Hand raking** means the use of a standard garden rake, pitchfork, potato fork, or any other handheld tool used for the purpose of removing or altering the "wrack line."

**Mechanical beach raking** means the cleaning of the sandy beach seaward of the dune and vegetation line of trash and other debris on or near the surface by use of a rake or other similar porous device which penetrates no more than 2 inches below existing ambient grade and results in no removal of in situ sand. a method of maintaining the beach by pulling a pronged rake or a piece of chain link fence that meets the requirements of the LDC Sec. 14-6 (c). The rake or chain link fence may be pulled behind a tractor, golf cart, ATV, or other vehicle, as approved by the town, that meets the maximum ground-to-tire pressure found in LDC Sec. 14-6(c).

**Seaward line of vegetation** means the location closest to the mean high water line containing, or suitable for, dune vegetation. If there is no such vegetation upon a parcel or portion of a parcel, it shall encompass a line alongshore projected from the closest areas on each side where such vegetation does exist.

**Wet sand** means the area on the beach where the sand is saturated by sea water from wave action. This area is identified by a visible darkening or staining of the beach sand from the water driven onshore by wave action.

**Wrack line** means a well defined zone of the natural organic marine material cast on the shore by the last high tide, including seaweed and other vegetative and animal debris, but excluding manmade material. Any areas of organic marine material left on the upper beach due to abnormally high spring tides, storm tides, or other extreme conditions or events, as determined by the town, are not included in the definition of "wrack line."

**Section 2.** Section 14-6 of the Town of Fort Myers Beach Land Development Code is hereby amended as follows:

**Sec. 14-6. Beach raking and wrack line policy.**

(a) The use of boxblades on the beach or dune is prohibited. In an emergency and/or storm event resulting in a build-up of sand against seawalls, the use of a boxblade may be allowed with the approval of DEP, where required, and upon filing that approval with the town manager and meeting any other requirements set by the town.

(b) Under normal circumstances, the raking of the wrack line is prohibited. No mechanical or hand raking may take place seaward of the wrack line or within ten feet (10') landward of the wrack line, provided, however that hand raking of the wrack line may be performed anytime to ameliorate hazardous conditions such as removal of sand castles or filling in of manmade holes on the beach. The town manager may approve the raking of the wrack line conditioned upon prior approval by the DEP if it is determined that excessive accumulation of 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 consistent with the authorization given by DEP. Any such raking which will result in the unreimbursed expenditure of town funds in excess of currently budgeted funds shall first be approved by the town council. If this occurs during sea turtle season (May 1 through October 31), the raking must be in compliance with the specific conditions in § 14-6(c)(4).

(c) Any mechanical beach raking other than town-initiated raking pursuant to subsection (b) above requires a permit from the town:

(1) Application for permit to mechanically rake an unvegetated portion of the beach shall be submitted to the director or their designee, in writing, on a form provided by the director. as part of this application, a site plan will be submitted depicting the property corners as represented by aerial photography available at the Lee County Property Appraiser's website (www.leepa.org), the dimensions of the area to be raked, and the location of existing vegetation and structures.

(2) The application shall be made by the owner of the business that conducts the raking, or by the property owner or authorized agent of the property owner. Any application by a raking business must attach a current copy of the Lee County business tax receipt for such business and a letter of authorization from the property owner.

(3) Any business that conducts mechanical beach raking shall be required to carry \$1,000,000 in liability insurance and name the Town of Fort Myers Beach as additionally insured. Mechanical beach raking conducted by a property owner or a condominium on their own property only is exempt fro their requirement to carry liability insurance.

(4) Any business that conducts mechanical raking shall require all operators to attend an educational and training session developed by the Town at least once every year. The education and training session shall address topics such as dune vegetation, sea turtles, and beach-nesting birds. All operators of the beach business and the business owner shall sign a form acknowledging that they understand and will abide by the Town's raking regulations.

(5) Prior to the granting or denying of the application, the director or their designee will conduct an on-site inspection to determine if the proposed raking

conforms to the requirements of this article and if any native vegetation exists to be protected.

(3) (6) Based upon the information contained in the application and the site inspection, the director shall approve or deny the application.

(7) A single permit may be issued to a business that conducts raking on multiple properties. A site permit for any newly-contracted properties must be added to the permit of any business that rakes multiple properties.

(8) A restricted beach vehicle permit will also be issued with the mechanical beach raking permit provided that the vehicle meets the maximum ground-to-tire pressure found in LDC Sec. 14-6(c).

(4) (9) The director shall attach site specific conditions to the permit relating to identifying, designating, and protecting that existing vegetation and other natural features which are not to be removed in accordance with this ordinance. These conditions are in addition to the following standard permit conditions for all mechanical beach raking permits:

a. During the sea turtle nesting season (May 1 through October 31), mechanical beach raking activities shall be confined to daylight hours and shall not begin before 9:00 A.M. or before the completion of daily monitoring for turtle nesting activity by a the Florida Fish and Wildlife Conservation Commission (FWC) authorized marine turtle permit holder, whichever occurs first (see requirements in § 14-78(b)). During the rest of the year (November 1 through April 30), mechanical beach raking may be conducted at night (sunset to sunrise) only with sufficient lighting on vehicles. The lighting levels must be approved by Town staff by an inspection of the field at night. All fixtures should be shielded to focus light only onto the direct work area. Red lights or red filters shall be used to reduce disturbance to wildlife such as shorebirds.

b. During sea turtle nesting season (May 1 through October 31), the permittee is responsible for ensuring that a daily sea turtle nest survey, protection, and monitoring program is conducted throughout the permitted beach raking area. Such surveys and associated conservation measures shall be completed after sunrise and prior to the commencement of any mechanical beach raking. the sea turtle survey, protection and monitoring program shall be conducted only by individuals possessing appropriate expertise in the protocol being followed and a valid F.A.C. rule 68-E Permit issued by the FWC. To identify those individuals available to conduct marine turtle nesting surveys within the permitted area, please contact the FWC, Bureau of Imperiled Species Management, at (850) 922-4330.

c. All turtle nests will be marked with wooden stakes, flagging tape, and an FWC sea turtle nest sign. No mechanical raking equipment is allowed inside of the staked area. All equipment operators shall be briefed on the types of marking utilized and should be able to easily contact the individual responsible for the nest survey to verify any questionable areas.

d. Mechanical beach raking equipment shall meet the following standards:

1. The vehicle and equipment cannot exceed a maximum ground-to-tire pressure of 10 PSI (pounds per square inch) using the following formula;

-a-  $PSI = \text{vehicle weight in pounds (includes person and equipment)} \div \text{the footprint in square inches}$

-b- EXAMPLE: 404 lbs. (ATV weight) + 200 (person + equipment) divided by 198 square inches (ATV with 6" x 8.25" footprint x 4 tires) = 3.1 PSI

2. Raking shall be accomplished with a pronged rake that limits penetration into the surface of the beach to a maximum of two inches. Box blades, front- or rear-mounted blades, or other sand sifting/filtering vehicles are not allowed. A piece of chain link fence or pressure treated lumber not to exceed two pieces 4" by 4" by 10' in size may be pulled behind the rake.

3. The beach raking vehicle and equipment must be removed from the beach when not in use.

4. Beach raking equipment shall be inspected periodically by the town to insure compliance with these standards.

5. Operators of mechanical beach raking equipment shall avoid all native salt-tolerant dune vegetation and staked sea turtle nests by a minimum of 10 feet.

6. Mechanical beach raking equipment must travel seaward of the mean high water line with the rake disengaged when driving on the beach from one raking area to another, and shall not disturb any dune or dune vegetation.

e. Burial or storage of any debris (biotic or abiotic) collected is prohibited seaward of any frontal dune, vegetation line, or armoring structure. Removal of all accumulated material from the beach must occur immediately after raking has been performed in an area. Prior to removing the debris and to the greatest extent possible, beach compatible sand should be separated from the debris and kept on site.

f. All permit fees collected for mechanical beach raking permits shall be used only for environmental education and restoration.

g. Any violation of the any special or standard permit conditions by a business owner, operator, or property owner shall automatically invalidate may result in revocation of the permit for a particular property and/or for the entire permitted area. Revocation of a permit shall not prevent the Town from pursuing any one or combination of the enforcement mechanisms provided in this code (for example, § 1-5, or article V of Chapter 2) for any violation of the article. Permit revocations may be appealed to the town Manager. Periodic compliance inspections will be conducted to insure compliance with the permit conditions and this ordinance.

**Section 3.** Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance, or application hereof, is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion or application shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion or application hereof.

**Section 4.** Effective Date. This Ordinance shall be effective immediately upon adoption.

The foregoing ordinance was enacted by the Town Council upon a motion by Council Member \_\_\_\_\_ and seconded by Council Member \_\_\_\_\_ and, upon being put to a vote, the result was as follows:

Larry Kiker, Mayor  
Bob Raymond, Vice Mayor  
Joe Kosinski

Alan Mandel  
Jo List

DULY PASSED AND ENACTED by the Council of the Town of Fort Myers Beach,  
Florida, this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

ATTEST:

TOWN OF FORT MYERS BEACH

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

BY: \_\_\_\_\_  
Larry Kiker, Mayor

Approved as to legal sufficiency by:

\_\_\_\_\_  
Fowler White Boggs, Town Attorney

**FORT MYERS BEACH, FLORIDA  
DEPARTMENT OF COMMUNITY DEVELOPMENT  
ORDINANCE STAFF REPORT**

**LAND DEVELOPMENT CODE SECTION:** Chapter 14 Environmental and Natural Resources, Article I- Beach and Dune Management, Section 14-6 Beach raking and wrack line policy

**LPA HEARING DATE:** October 11, 2011

**LPA HEARING TIME:** 9:00am

**I. SUMMARY:**

The proposed changes to the Beach raking and wrack line policy of the Land Development Code are to clarify definitions, permit requirements, time of day and year raking may occur, enforcement, and insurance requirements in Chapter 14 Article I.

**II. BACKGROUND AND ANALYSIS**

**History of Public Hearings:**

The Marine Resources Task Force began review of proposed changes to the beach raking and wrack line policy in March of 2009 and approved a final version to submit to LPA in fall of 2010. The LPA conducted a public hearing in January of 2011 for the proposed changes and rejected to 6-0 and voted to send it back to Marine Resources Task Force (MRTF) for changes. MRTF reviewed the raking and wrack line policy in March and approved additional changes in April of 2011.

**Background:**

The proposed changes to the beach raking are designed to better enable Town staff to issue permits for raking and to determine compliance with those permits.

In 2008, Town Environmental Sciences (ES) staff was directed by the Community Development Director to begin issuing beach raking permits in accordance with § 14-6 (c). There is little if any evidence of Town staff actually ever issuing permits for beach raking under § 14-6 (c). After reviewing § 14-6 and evaluating current business practices, ES staff and Dr. Frank Shockey determined that in order to effectively implement the permitting program the LDC should be modified for clarity. In order to

assist staff with the development of any proposed changes to Chapter 14 and to elicit input, staff brought the issue to the Marine Resources Task Force in March of 2009. After over a year of discussion, MRTF approved the proposed changes in fall of 2010. The Town Attorney has reviewed the proposed language and approved it after minor changes. The primary reasons for the modifications are:

- 1) To clarify the definition of the wrack line, hand raking, and mechanical beach raking
- 2) To prohibit raking practices which may negatively affect wrack,
- 3) to allow filling in of man-made holes in the wrack line and removal of sand castles
- 4) To clarify permit application requirements
- 5) To allow for a single mechanical back raker to work on several properties under a single permit and to define their requirements,
- 6) To require businesses that conduct mechanical beach raking to carry liability insurance and name the Town as additionally insured
- 7) Require businesses that conduct mechanical beach raking to attend educational and training sessions once per year
- 8) Define what time of day that mechanical beach rakers may operate, and allow raking at night outside of sea turtle nesting season with sufficient lighting
- 9) To clarify enforcement mechanisms.

Also proposed for LPA approval is an application to conduct mechanical beach raking. This was developed by MRTF and it addresses all the required elements of § 14-6 (c).

Finally, consideration should be given as to the permit fee. MRTF discussed this and recommended permit fee of \$25.00 per property to offset staff time for permit application, compliance inspections, and enforcement efforts.

#### Compliance with the Comprehensive Plan:

Nothing in the proposed amendment conflict with any of the polices or objectives in the Comprehensive Plan. Beach raking is mentioned specifically or by reference in several sections.

Policy 6-C-5 states: SEA TURTLES – *The town shall prepare and adopt a new sea turtle ordinance by the end of 1998 to supersede Lee County's existing Sea Turtle Protection Ordinance. The new ordinance shall provide standards for coastal uses and development and shall prohibit, during sea turtle nesting season, any point source of light or any reflective surface of a light fixture being visible from the beach; also, areas seaward of a frontal dune must not be directly,*

*indirectly, or cumulatively illuminated. Other beach activities to be regulated include:*

- i. Beach raking, scraping, and other activities that unnecessarily compact the sand and/or damage dunes or prevent the re-creation of dunes;*
- ii. Unauthorized vehicular traffic on the beach;*

Since these amendments clarify existing beach raking regulations, the proposed amendments comply with the Comprehensive Plan. However, it should be noted that there is a factual error in this language in "i". Beach raking by its nature actually does not compact sand but rather reduces compaction of the beach sand and rearranging particles and increasing pore space between them through the penetration of the tines.

Beach raking is also mentioned in the narrative section of the Conservation Element on page 6-15 with regard to an overall discussion of sea turtles.

*Despite national and international protective legislation, sea turtle populations have suffered worldwide decline, primarily as a result of human interference. Some causes include:*

- mechanical beach raking and beach driving;*

The precautions taken in Land Development Code section 14-6 (c) (4) however provide protection for sea turtles and greatly reduce the possibility for human interference since all beach rakers must coordinate their activities with the FWC authorized marine turtle permit holder (Turtle Time, Inc.) and must not rake within 10' of a marked sea turtle nest. The proposed amendments will not have any additional impact to nesting sea turtles.

#### Analysis:

The first proposed change is to Sec. 14-1 to remove include and clarify definitions. The previous definitions did not include hand raking or mechanical beach raking. These definitions are critical for full implementation of Section 14-6. Previously the only definition was of "wrack" and vague and did not account for natural events which may cast wrack further on the beach than normal. These changes will greatly clarify how other portions of Section 14-6 are implemented. The current definition of wrack was not adequate to define its character and location. The proposed changes clearly define what it is (typically a line) and its character. The proposed language also is more scientifically accurate. The current wrack line policy also did not allow trash and dangerous natural

object to be removed and did not define a distance up to which raking could occur near a wrack line.

Wrack consists of seagrass and marine algae mixed with shells, sand dollars, starfish, tiny shrimp, driftwood, sponges, coral, and other biotics that have drifted at sea before washing ashore, especially after storms. Man made materials and trash also can be mixed in with the wrack line. Wrack is also host to invertebrates such which serve as food for many creatures such as migrating shorebirds. Wrack also is critical to the health of the dunes by providing plant nutrients and stabilizing windblown sand.

*Hand raking means the use of a standard garden rake, pitchfork, potato fork, or any other handheld tool used for the purpose of removing or altering the "wrack line".*

*Mechanical beach raking means a method of maintaining the beach by pulling a pronged rake or a piece of chain link fence that meets the requirements of the LDC Sec. 14-6 (c). The rake or chain link fence may be pulled behind a tractor, golf cart, ATV, or other vehicle as approved by the town that meets the maximum ground-to-tire pressure found in LDC Sec. 14-6 (c).*

*Wrack line means a well defined zone of the natural organic marine material cast on the shore by the last high tide, including seaweed and other vegetative and animal debris, but excluding manmade material. Any areas of organic marine material left on the upper beach due to abnormally high spring tides, storm tides, or other extreme conditions or events, as determined by the Town, are not included in the definition of "wrack line."*

The second change is to provide for protection of the wrack line while allowing for other portions of the beach that fall outside of this defined zone to be raked. This change also allows filling of holes which may cause injury to beach goers.

*(b) Under normal circumstances, the raking of the wrack line is prohibited. No mechanical or hand raking may take place seaward of the wrack line or within ten feet (10') landward of the wrack line except under the following provision: hand raking of the wrack line may be performed anytime to ameliorate hazardous condition; examples of this being removal of sand castles or filling in of man-made holes on the beach.*

The next set of changes is to clarify what is necessary to apply for a beach raking permit. The Florida Department of Environmental Protection (DEP) also requires a permit to conduct beach raking. However, DEP staff

acknowledges that there are several beach raking operators and businesses working on Fort Myers Beach currently that do not have permits and DEP have not been able to either contact the operator and initiate enforcement action due to lack of staff. DEP only has one beach permitting staff person for Collier, Lee, and Charlotte counties and DEP only has one enforcement staff for the entire state. There have also been recent discussions by DEP staff that many environmental protection rules may be relaxed or eliminated including the requirement for permits for beach raking. If this were to happen and the Town has no permit requirement then the Town would not have any ability to standardize beach raking operations and thus greatly reduce our stewardship of our beaches.

This change also allows for business to conduct beach raking on multiple properties. It appears the way the original language was written it did not contemplate beach raking businesses. This change will clarify that raking may be performed by an individual property owner or a business. Currently, several operators work on multiple properties however, the current LDC is silent as to whether the permit application is made by the property owner or an operator. The current LDC language at the least would require an operator to make an application for every property that they rake or would require the property owner to make the application. The proposed language would allow an operator to make a single combined application for all properties. Modifying the LDC to allow mechanical beach rakers to work on several properties would streamline permitting and compliance by minimizing (but not capping) the total number of permit holders. It would also allow staff to work more efficiently with the industry to facilitate greater education and communication with the regulated community. Essentially, it reduces the number of points of contact between staff and rakers. The language also allows for new properties to be added onto an existing permit.

This change also requires mechanical beach raking businesses to carry liability insurance and name the Town on that policy. This is a new requirement and greatly reduces Town liability for any accidents. Subsection (4) establishes a new requirement for beach raking businesses to attend a Town held educational session that covers topics such as dune vegetation, sea turtles and beach nesting birds. A requirement for an educational session is a proactive measure to assure continued stewardship of natural resources. Subsection (8) streamlines permitting by allowing issuance of a restricted beach vehicle permit at the time that the beach raking permit is issued as long as it meets the ground pressure requirements.

(c) Any mechanical beach raking requires a permit from the town:

(1) Application for a permit to mechanically rake an unvegetated portion of the beach shall be submitted to the director, in writing, on a form provided by the director or their designee. As part of this application, a site plan will be submitted depicting the property corners as represented by aerial photography available at the Lee County Property Appraiser's website (www.leepa.org), the dimensions of the area to be raked, and the location of existing vegetation and structures.

(2) The application shall be made by the owner of the business that conducts the raking, or by the property owner or authorized agent of the property owner. Any application by a raking business must attach a current copy of the Lee County business tax receipt for such business and a letter of authorization from the property owner.

(3) Any business that conducts mechanical beach raking shall be required to carry \$1,000,000 in liability insurance and name the town of Fort Myers Beach as additionally insured. Mechanical beach raking conducted by a property owner or a condominium on their own property only is exempt from their requirement to carry liability insurance.

(4) Any business that conducts mechanical raking shall require all operators to attend an educational and training session developed by the Town at least once every year. The education and training session shall address topics such as dune vegetation, sea turtles, and beach-nesting birds. All operators of the beach business and the business owner shall sign a form acknowledging that they understand and will abide by the Town's raking regulations.

(2)(5) Prior to granting or denying the application, the director or their designee will conduct an onsite inspection to determine if the proposed raking conforms to the requirements of this article and if any native vegetation exists to be protected.

(3) (6) Based upon the information contained in the application, the site inspection, and any other facts relevant to the standards in this chapter, the director shall approve or deny the application.

(7) A single permit may be issued to a business that conducts raking on multiple properties. A site permit for any newly-contracted properties must be added to the permit of any business that rakes multiple properties.

(8) A restricted beach vehicle permit will also be issued with the mechanical beach raking permit provided that the vehicle meets the maximum ground-to-tire pressure found in LDC Sec. 14-6 (c).

The next change allows beach rakers to work at night outside of sea turtle nesting season with sufficient lighting that is of such a wavelength to reduce disturbance to wildlife such as endangered migratory shorebirds that are very common to the beach between November 1 and April 30.

*a. During the sea turtle nesting season (May 1 through October 31), mechanical beach raking activities shall be confined to daylight hours and shall not begin before 9:00 A.M. or before completion of daily monitoring for turtle nesting activity by the Florida Fish and Wildlife Conservation Commission (FWC) - authorized marine turtle permit holder, whichever occurs first (see requirements in § 14-78(b)), During the rest of the year (November 1 through April 30), mechanical beach raking may be conducted at night (sunset to sunrise) only with sufficient lighting on vehicles. The lighting levels must be approved by Town staff by an inspection in the field at night. All fixtures should be shielded to focus light only onto the direct work area. Red lights or red filters shall used to reduce disturbance to wildlife such as shorebirds.*

Finally the changes in Subsection (9) (e) requires that all permit fees are used for environmental education and restoration. Subsection (9) (f) simply clarifies enforcement which allows for the code enforcement process. This process will allow the Town to revoke a mechanical beach raking business's ability to work on one particular property after a violation but not necessarily revoke the businesses permit for all properties. The code enforcement process also allows for a public code enforcement hearing and a finding of fact that there has been a violation before a fine can be assessed.

*f. All permit fees collected for mechanical beach raking permits shall be used only for environmental education and restoration.*

*g. Any violation of the any special or standard permit conditions by a business owner, operator, or property owner shall automatically invalidate may result in revocation of the permit for a particular property and/or for the entire permitted area. Revocation of a permit shall not prevent the Town from pursuing any one or combination of the enforcement mechanisms provided in this code (for example, § 1-5, or article V of Chapter 2) for any violation of the article. Permit revocations may be appealed to the town Manager. Periodic compliance inspections will be conducted to insure compliance with the permit conditions and this ordinance.*

### **III. RECOMMENDATION**

Staff recommends **APPROVAL** of these proposed changes. These changes will existing beach regulations and implement new regulations that will offer the Town the ability to exercise greater stewardship of the Town's natural resources on our beaches.

Exhibits:

"A" - Proposed amendments to Chapter 14  
"B" - MRTF March 2011 meeting minutes

RESOLUTION OF THE LOCAL PLANNING AGENCY OF THE  
TOWN OF FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER 2011-16  
AMENDMENT TO BEACH RAKING AND WRACK LINE POLICY  
ARTICLE I OF CHAPTER 14  
TOWN LAND DEVELOPMENT CODE

WHEREAS, the existence of the Local Planning Agency (LPA) is mandated by Florida Statutes Section 163.3174; and

WHEREAS, the Local Planning Agency (LPA) is statutorily responsible under Chapter 163, Florida Statutes, and the Town of Fort Myers Land Development Code (LDC) Section 34-120 for the review of proposed land development regulations, land development codes, or amendments thereto, and for making recommendations to the Town Council with regard thereto and performing such other reviews as are requested by the Town Council; and

WHEREAS, following proper notice and as required under Florida Statute and the LDC, the LPA conducted a public hearing on November 8, 2011 to consider a proposed Town Ordinance, which is attached hereto as Exhibit A and is hereby incorporated by reference; and

WHEREAS, the aforesaid Ordinance, if passed, would amend the regulation of personal watercraft and parasailing businesses within Town municipal limits, as is more fully set forth in the draft Ordinance; and

NOW THEREFORE BE IT RESOLVED, that the LPA recommends that Town Council approve and adopt the proposed Town Ordinance to amend the Section 14-6, Beach raking and wrack line policy of, Article I Beach and Dune Management, of Chapter 14 of the Town Land Development Code and recommends the following findings of fact and conclusions with regard thereto:

**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

1. The proposed amendments are in the best interests of the health, safety and welfare of the citizens, residents, visitors, and business owners of the Town of Fort Myers Beach and the LPA hereby recommends that the Town Council adopt the proposed amendments to the Land Development Code. .

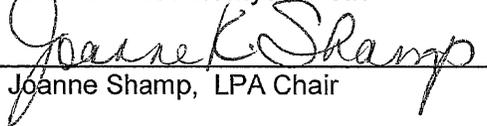
The foregoing Resolution was adopted by the LPA upon a motion by LPA Member Bill Van Duzer and seconded by LPA Member John Kakatsch and upon being put to a vote, the result was as follows:

Joanne Shamp, Chair      nay  
John Kakatsch          nay  
Bill Van Duzer          aye  
Al Durrett                aye

Hank Zuba, Vice Chair    aye  
Jane Plummer            aye  
Alan Smith                aye

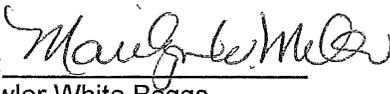
DULY PASSED AND ADOPTED THIS 8<sup>th</sup> day of November 2011.

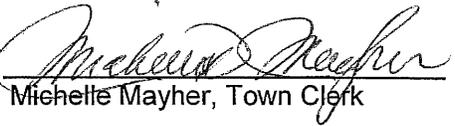
LPA of the Town of Fort Myers Beach

By:   
Joanne Shamp, LPA Chair

Approved as to legal sufficiency:

ATTEST:

By:   
Fowler White Boggs  
LPA Attorney

By:   
Michelle Mayher, Town Clerk

Town of Fort Myers Beach  
ORDINANCE NO. 11-

AN ORDINANCE AMENDING CHAPTER 14 IN THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE--ENVIRONMENT AND NATURAL RESOURCES; AMENDING SECTION 14-1, DEFINITIONS AND SECTION 14-6, BEACH RAKING AND WRACK LINE POLICY; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

**Section 1.** Section 14-1 of the Town of Fort Myers Beach Land Development Code is hereby amended as follows:

Sec. 14-1. Definitions.

For purposes of this article, the following terms, phrases, words, and derivations shall have the meaning given herein. When not inconsistent with the context, words used, in the present tense include the future, words in the plural number include the singular number, and the words in the singular number include the plural number. The word "shall" is always mandatory.

**Beach** means that area of sand along the gulf of Mexico that extends landward from the mean low-water line to the place where there is a marked change in material or physiographic form, or to the line of permanent vegetation, usually the effective limit of storm waves.

**Beach furniture or equipment** means any man-made apparatus or paraphernalia designed or manufactured for use or actually used on the beach or in the adjacent tidal waters. Examples include chairs, tables, cabanas, lounges, umbrellas, sailing vessels up to 16 feet in length, personal watercraft, concession storage units, canoes, kayaks, paddle vessels, sailboards, surfboards, fishing gear, sporting equipment, floatables, tents, and bicycles.

**Beach width** means the perpendicular distance measured from the edge of wet sand to the place where there is a marked change in material or physiographic form from beach sand to dune vegetation, seawall, turf grass, etc.

**Director** means the person to whom the town manager has delegated the authority to administer this article, or that person's designee.

**Dune** means a mound, bluff, ridge, or emergent zone of loose sediment, usually sand-sized sediment, lying upland of the beach and deposited by any natural or artificial mechanism, which may be bare or covered with vegetation, and is subject to fluctuations in configuration and location (reference 161.54 F.S., 62B-33.002 F.A.C.). It encompasses those ecological zones that, when left undisturbed, will support dune vegetation. As to areas restored or renourished pursuant to a permit issued by the town or state, it encompasses the area specified in the permit as a dune or any area specified as suitable for establishment of dune vegetation.

**Dune vegetation** means pioneer species of native vegetation which, if left undisturbed by manmade forces, will begin to grow on a dune, including species such as bitter panicum, coastal panic grass, crowfoot grass, saltmeadow cordgrass, sandbur, seacoast bluestem, sea oats, seashore saltgrass, stiffleaf eustachys, beach bean, blanket flower, dune sunflower, fiddle-leaf morningglory, partridge pea, railroad vine, sea purslane, beach creeper, nicker bean, coin vine, inkberry, lantana, saw palmetto, seashore elder, baycedar, green buttonwood, cabbage palm, cocoplum, seagrape, and southern wax myrtle.

**Edge of wet sand** means the point where the visible darkening or staining of the beach sand from wave action is no longer detectable.

**Hand raking** means the use of a standard garden rake, pitchfork, potato fork, or any other handheld tool used for the purpose of removing or altering the “wrack line.”

**Mechanical beach raking** means ~~the cleaning of the sandy beach seaward of the dune and vegetation line of trash and other debris on or near the surface by use of a rake or other similar porous device which penetrates no more than 2 inches below existing ambient grade and results in no removal of in situ sand.~~ a method of maintaining the beach by pulling a pronged rake or a piece of chain link fence that meets the requirements of the LDC Sec. 14-6 (c). The rake or chain link fence may be pulled behind a tractor, golf cart, ATV, or other vehicle, as approved by the town, that meets the maximum ground-to-tire pressure found in LDC Sec. 14-6(c).

**Seaward line of vegetation** means the location closest to the mean high water line containing, or suitable for, dune vegetation. If there is no such vegetation upon a parcel or portion of a parcel, it shall encompass a line alongshore projected from the closest areas on each side where such vegetation does exist.

**Wet sand** means the area on the beach where the sand is saturated by sea water from wave action. This area is identified by a visible darkening or staining of the beach sand from the water driven onshore by wave action.

**Wrack line** means a well defined zone of the natural organic marine material cast on the shore by the last high tide, including seaweed and other vegetative and animal debris, but excluding manmade material. Any areas of organic marine material left on the upper beach due to abnormally high spring tides, storm tides, or other extreme conditions or events, as determined by the town, are not included in the definition of “wrack line.”

**Section 2.** Section 14-6 of the Town of Fort Myers Beach Land Development Code is hereby amended as follows:

**Sec. 14-6. Beach raking and wrack line policy.**

(a) The use of boxblades on the beach or dune is prohibited. In an emergency and/or storm event resulting in a build-up of sand against seawalls, the use of a boxblade may be allowed with the approval of DEP, where required, and upon filing that approval with the town manager and meeting any other requirements set by the town.

(b) Under normal circumstances, the raking of the wrack line is prohibited. No mechanical or hand raking may take place seaward of the wrack line or within ten feet (10') landward of the wrack line, provided, however that hand raking of the wrack line may be performed anytime to ameliorate hazardous conditions such as removal of sand castles or filling in of manmade holes on the beach. The town manager may approve the raking of the wrack line conditioned upon prior approval by the DEP if it is determined that excessive accumulation of 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 consistent with the authorization given by DEP. Any such raking which will result in the unreimbursed expenditure of town funds in excess of currently budgeted funds shall first be approved by the town council. If this occurs during sea turtle season (May 1 through October 31), the raking must be in compliance with the specific conditions in § 14-6(c)(4).

(c) Any mechanical beach raking other than town-initiated raking pursuant to subsection (b) above requires a permit from the town:

(1) Application for permit to mechanically rake an unvegetated portion of the beach shall be submitted to the director or their designee, in writing, on a form provided by the director. as part of this application, a site plan will be submitted depicting the property corners as represented by aerial photography available at the Lee County Property Appraiser's website (www.leepa.org), the dimensions of the area to be raked, and the location of existing vegetation and structures.

(2) The application shall be made by the owner of the business that conducts the raking, or by the property owner or authorized agent of the property owner. Any application by a raking business must attach a current copy of the Lee County business tax receipt for such business and a letter of authorization from the property owner.

(3) Any business that conducts mechanical beach raking shall be required to carry \$1,000,000 in liability insurance and name the Town of Fort Myers Beach as additionally insured. Mechanical beach raking conducted by a property owner or a condominium on their own property only is exempt fro their requirement to carry liability insurance.

(4) Any business that conducts mechanical raking shall require all operators to attend an educational and training session developed by the Town at least once every year. The education and training session shall address topics such as dune vegetation, sea turtles, and beach-nesting birds. All operators of the beach business and the business owner shall sign a form acknowledging that they understand and will abide by the Town's raking regulations.

(5) Prior to the granting or denying of the application, the director or their designee will conduct an on-site inspection to determine if the proposed raking

conforms to the requirements of this article and if any native vegetation exists to be protected.

~~(3)~~ (6) Based upon the information contained in the application and the site inspection, the director shall approve or deny the application.

(7) A single permit may be issued to a business that conducts raking on multiple properties. A site permit for any newly-contracted properties must be added to the permit of any business that rakes multiple properties.

(8) A restricted beach vehicle permit will also be issued with the mechanical beach raking permit provided that the vehicle meets the maximum ground-to-tire pressure found in LDC Sec. 14-6(c).

~~(4)~~ (9) The director shall attach site specific conditions to the permit relating to identifying, designating, and protecting that existing vegetation and other natural features which are not to be removed in accordance with this ordinance. These conditions are in addition to the following standard permit conditions for all mechanical beach raking permits:

a. During the sea turtle nesting season (May 1 through October 31), mechanical beach raking activities shall be confined to daylight hours and shall not begin before 9:00 A.M. or before the completion of daily monitoring for turtle nesting activity by a the Florida Fish and Wildlife Conservation Commission (FWC) authorized marine turtle permit holder, whichever occurs first (see requirements in § 14-78(b)). During the rest of the year (November 1 through April 30), mechanical beach raking may be conducted at night (sunset to sunrise) only with sufficient lighting on vehicles. The lighting levels must be approved by Town staff by an inspection of the field at night. All fixtures should be shielded to focus light only onto the direct work area. Red lights or red filters shall be used to reduce disturbance to wildlife such as shorebirds.

b. During sea turtle nesting season (May 1 through October 31), the permittee is responsible for ensuring that a daily sea turtle nest survey, protection, and monitoring program is conducted throughout the permitted beach raking area. Such surveys and associated conservation measures shall be completed after sunrise and prior to the commencement of any mechanical beach raking. the sea turtle survey, protection and monitoring program shall be conducted only by individuals possessing appropriate expertise in the protocol being followed and a valid F.A.C. rule 68-E Permit issued by the FWC. To identify those individuals available to conduct marine turtle nesting surveys within the permitted area, please contact the FWC, Bureau of Imperiled Species Management, at (850) 922-4330.

c. All turtle nests will be marked with wooden stakes, flagging tape, and an FWC sea turtle nest sign. No mechanical raking equipment is allowed inside of the staked area. All equipment operators shall be briefed on the types of marking utilized and should be able to easily contact the individual responsible for the nest survey to verify any questionable areas.

d. Mechanical beach raking equipment shall meet the following standards:

1. The vehicle and equipment cannot exceed a maximum ground-to-tire pressure of 10 PSI (pounds per square inch) using the following formula;

-a-  $PSI = \frac{\text{vehicle weight in pounds (includes person and equipment)}}{\text{footprint in square inches}}$

-b- EXAMPLE: 404 lbs. (ATV weight) + 200 (person + equipment) divided by 198 square inches (ATV with 6" x 8.25" footprint x 4 tires) = 3.1 PSI

2. Raking shall be accomplished with a pronged rake that limits penetration into the surface of the beach to a maximum of two inches. Box blades, front- or rear-mounted blades, or other sand sifting/filtering vehicles are not allowed. A piece of chain link fence or pressure treated lumber not to exceed two pieces 4" by 4" by 10' in size may be pulled behind the rake.

3. The beach raking vehicle and equipment must be removed from the beach when not in use.

4. Beach raking equipment shall be inspected periodically by the town to insure compliance with these standards.

5. Operators of mechanical beach raking equipment shall avoid all native salt-tolerant dune vegetation and staked sea turtle nests by a minimum of 10 feet.

6. Mechanical beach raking equipment must travel seaward of the mean high water line with the rake disengaged when driving on the beach from one raking area to another, and shall not disturb any dune or dune vegetation.

e. Burial or storage of any debris (biotic or abiotic) collected is prohibited seaward of any frontal dune, vegetation line, or armoring structure. Removal of all accumulated material from the beach must occur immediately after raking has been performed in an area. Prior to removing the debris and to the greatest extent possible, beach compatible sand should be separated from the debris and kept on site.

f. All permit fees collected for mechanical beach raking permits shall be used only for environmental education and restoration.

g. Any violation of the any special or standard permit conditions by a business owner, operator, or property owner shall automatically invalidate may result in revocation of the permit for a particular property and/or for the entire permitted area. Revocation of a permit shall not prevent the Town from pursuing any one or combination of the enforcement mechanisms provided in this code (for example, § 1-5, or article V of Chapter 2) for any violation of the article. Permit revocations may be appealed to the town Manager. Periodic compliance inspections will be conducted to insure compliance with the permit conditions and this ordinance.

**Section 3.** Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance, or application hereof, is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion or application shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion or application hereof.

**Section 4.** Effective Date. This Ordinance shall be effective immediately upon adoption.

The foregoing ordinance was enacted by the Town Council upon a motion by Council Member \_\_\_\_\_ and seconded by Council Member \_\_\_\_\_ and, upon being put to a vote, the result was as follows:

Larry Kiker, Mayor  
Bob Raymond, Vice Mayor  
Joe Kosinski

Alan Mandel  
Jo List

DULY PASSED AND ENACTED by the Council of the Town of Fort Myers Beach,  
Florida, this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

ATTEST:

TOWN OF FORT MYERS BEACH

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

BY: \_\_\_\_\_  
Larry Kiker, Mayor

Approved as to legal sufficiency by:

\_\_\_\_\_  
Fowler White Boggs, Town Attorney

**MINUTES**  
**FORT MYERS BEACH**  
**Marine Resources Task Force**

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

**Wednesday, February 9, 2011**

**I. CALL TO ORDER**

Meeting was called to order at 10:32 AM by Chairperson Mr. Werner. Other members present:

Dan Andre  
Roger Johnson  
Al Durrett  
Julie Schwab-excused  
Dennis Kovach

Staff: Keith Laakkonen, Environmental Services Coordinator  
Leslee Chapman, Zoning Coordinator

**II. PLEDGE OF ALLEGIANCE**

After the pledge, Mr. Werner read the mission statement for the benefit of the new member and to refresh everyone's memory. Mr. Kovach introduced himself and gave a brief background of his extensive waterfront related experience.

**III. REVIEW OF MINUTES OF FEBRUARY 2011**

**Motion: Mr. Johnson moved to approve the minutes with minor edits.**

**Seconded by Mr. Andre;**

**Vote: Motion passed 5-0.**

**IV. PUBLIC COMMENT**

Mr. Bill Perry addressed the meeting and first stated that he was mistaken for not supporting the proposal that went before the LPA. He said he was upset at the MRTF workshop meeting and acted emotionally rather than think it through; this, he said was a mistake and he has since worked out some options with Mr. Laakkonen and hopes that this can clear the issue and bring about a mutually agreeable ordinance. Mr. Perry added that the topic of insurance was raised by the LPA and he feels this is a valid point.

Ms. Gabrielle Heeky? Of Gulf Coast Cabana said that the approach of this matter has been wrong from the beginning. She said that as long as there is no cap on the number of

businesses permitted to rent cabanas, she cannot support the ordinance. She added that she has a permit, insurance and abides by all the rules and feels that more regulations are unfair to the other vendors like her who are follow the law. Mr. Werner said that the reason they are even reviewing this ordinance is that the LDC, chapter 14-6 requires the Town to issue permits; in 2008, Dr. Shockey discovered that there is no process to do this so MRTF was directed to address this.

Mr. Carleton Ryffel addressed the meeting on behalf of his association (name not given) and gave a brief history as to why Dr. Shockey was working on this. He said that he objects to the Town regulations because the DEP already has regulations for beach raking and the residents feel this is "overkill." In addition, he said that he objects to the time regulations and feels that it is safer to rake at night, with lights, rather than during the day when beach-goers are there. He then passed out photos of holes in the sand (submitted for the record) on beach property and said that these are a big problem if they are not filled in, especially during the dark hours. Mr. Ryffel referred to Mr. Perry's suggestions and said he feels these are reasonable options. He added that he would not support the current proposal.

Ms. Ceil Spuhler addressed the meeting as well and said that she also feels that another permit and set of rules is more trouble than it is worth; she doesn't agree with the extra permitting.

Mr. Bud Maes? spoke as President of the Sanderack Condo complex. He also agrees that an additional regulation for this is absolutely unnecessary. He said it is an added expense for everyone and most people are satisfied with the manner in which the beaches are presently maintained. Mr. Werner commented that the cost they are proposing is \$25.00 mostly for processing and there is no requirement for aerial photos or other requirements.

Ms. Mary Ellen Branken added that she feels the same as Ms. Spuhler and agrees with those comments.

Mr. Tom Babcock addressed the meeting and for Mr. Durrett to give an explanation of the new waterfront committee that is being started. He added that the perhaps this item could go back to the LPA with their suggestions. Mr. Werner said he understood that the Council decided that MRTF review this and take their recommendation directly to Council, bypassing the LPA. Mr. Laakkonen agreed that this is what they wished.

## **V. CURRENT ITEMS**

### **A. Beach Raking Ordinance Review**

Mr. Andre said the three major issues brought up at the joint workshop were night raking, insurance and hand-raking of the wrack line so they will be discussed at this meeting so they can come up with a recommendation to send to Council.

Mr. Laakkonen said that he and Mr. Perry have discussed this and put together proposals. He said that MRTF can make a recommendation for the LPA's approval on fees and costs, which should be to offset staff time. To follow the

LDC, the Town must issue permits but the language in the code is insufficient to enable staff to issue these and/or force compliance. He pointed out that the DEP does have some regulations in place but that may change again in the near future so he feels that the Town should have its own rules to ensure keeping in charge of their own destiny and property. In addition, DEP has 1 enforcement person for thousands of area of beaches and raking is not at the top of their enforcement list.

Mr. Werner asked for discussion about night raking. Mr. Johnson said that the staff report had a recommendation regarding this and he agrees with that option which reads “currently the LDC language defines what time the mechanical beach raker may operate only during turtle season...this language closely resembles DEP standard conditions which are during turtle nesting season...” He said that the LPA could recommend allowance for beach raking at night outside of turtle nesting season with sufficient lighting, as directed.

All of the members present agreed with this option and Mr. Laakkonen will draft the wording to move it ahead.

Mr. Werner referred to Mr. Perry’s proposal regarding insurance, with a minimum of \$500,000 coverage for daylight operations only and another recommendation amount for night rakers, and asked for discussion. Mr. Werner recommended that the \$1 million dollar suggestion be required for all raking. Mr. Johnson wanted to check into the “norm” for the required insurance amounts before requiring a specific amount but agrees that there be a requirement for insurance. The board asked for input from the owner of Gulf Coast Cabanas and she advised that she has always carried \$1 million policy and feels that’s fair. Mr. Perry also commented that he carries the same amount as a matter of policy. Discussion ensued about the insurance required for any property receiving a permit for mechanical raking only. Mr. Laakkonen will add a definition of “mechanical beach raking” to clarify that this only apply to tractor driven raking and in no way hand raking.

**Motion: Mr. Johnson moved to require each applicant for beach raking to carry a \$1 Million insurance policy, listing the Town of FMB as a beneficiary, and that the Amended ordinance include a definition of mechanical raking.**

**Seconded by Mr. Andre;**

**Vote: Motion passed 5-0.**

Hand-raking of the wrack line was addressed as a separate issue and Mr. Werner read a letter submitted to the board by Terry Kane (attached), expressing his concerns about this issue as it relates to volunteer clean-up groups. Mr. Laakkonen said that the wrack line is essential to the ecosystem of the beach and that if it was deemed destructive to rake there, it would be prohibited.

Mr. Werner read the portion of the proposal that they have previously approved “components of the wrack line which may be hazardous to people or pets, such as

dead fish and sharp shells, may be removed from the wrack line with Town approval.” Mr. Andre said this is a bit ridiculous the way it is written as it directs anyone wishing to remove a broken shell, etc., needs to contact the Town for permission and he feels this part needs to be changed. Mr. Johnson noted that the biggest problem is defining “raking” and feels that removing manmade debris by hand should never be an issue; likewise, no raking of any type should be allowed at the wrack line. More discussion ensued about hand-raking of the wrack line and arguments were for and against prohibiting all raking, including private property owner hand-raking.

Mr. Durrett asked, after opinions by Mr. Werner, “why does the Town know more than the people do?” Mr. Andre said that this is going too far and including home-owners rather than just the intended rakers. Mr. Werner tended to agree to a certain extent but said not all homeowners would be responsible enough to let this go without regulation and MRTF is charged with protecting the beach. It was suggested that, under 14-6 section B the first sentence be kept, which states “no mechanical or hand-raking may take place within 10 ft. landward of the wrack line” and the rest be omitted. More discussion ensued, especially regarding education, enforcement and penalties and the point being debated the most is less restriction of the individual homeowners when they may hand remove manmade debris from the wrack line.

**Motion:** Mr. Andre moved that the sentence from 14-6B that states “components of the wrack line which may be hazardous to people or pets, such as dead fish and sharp shells, may be removed from the wrack line with Town approval.”

**Seconded by Mr. Werner;**

**Vote:** Motion passed 3-2.

**(NOTE: Mr. Werner reported this as 3-0; names of opposing not given).**

The permit fee suggested by staff is \$25.00, to cover processing by the Town. Discussion took place about the fees and the education component of the ordinance. Mr. Andre opined that the Town not charge a fee. Mr. Durrett also feels that there be no fee to the vendor or homeowners for this because they already pay for property taxes, vendor equipment, etc.; he added that a \$10.00 fee for the education classes would be fair. Mr. Johnson feels the nominal fee is reasonable and that all people who apply for permits must pay extra for them regardless of the other costs they are charged with. Arguments continued for both sides of the issue and members agreed that if the money went into an education fund about beaches, they would be in support of it.

**Motion:** Mr. Andre moved that the Town adopt a \$25.00 permit per parcel fee, with funds going into a beach-environmental education fund.

**Seconded by Mr. Durrett;**

**Vote:** Motion passed 5-0.

B. Presentation by Brad Cornell, Audubon of FL-Lee County Bird Steward Program

Mr. Cornell explained that there are 4 species of birds that nest of our beaches in the summer months and they have started a program to help protect the birds, especially now in view of the oil spill incident. His presentation included a brief education about the nesting birds and their environment, how his organization helps them and what is involved in assuring that these birds be protected, particularly in regards to beach raking and the wrack line.

C. Recycling Bins at Beach Accesses-Mr. Andre

Mr. Andre said that there is nothing to report at this time as this is the last of the 6 month test program.

D. Adopt a Beach Program-Mr. Andre

Mr. Durrett requested this be moved to the next meeting.

E. Distribution Plan for Seagrass Guide-update Mr. Durrett

Mr. Durrett said there was a meeting last night with Bonita and he doesn't have that report yet. They went out to a few area clubs and condo associations and are being well received.

F. Publicizing the Need to Dredge New and Big Carlos Passes-Mr. Durrett

Mr. Werner heard that Lee County is in the permitting process to dredge New Pass; Mr. Laakkonen will check into this.

G. Mobile Educational Outreach Displays for Special Events-Mr. Werner

Mr. Werner said Town Council offered MRTF the use of the Emergency trailer to use for educational purposes at special events and he asked for discussion as to what types of events they think it should be used at. The sand sculpting events, Shrimp Festival and any other events that require a permit were mentioned and there was discussion as to signage to use for the vehicle.

**VI. MEMBERS ITEMS AND REPORTS**

Mr. Kovach reported that the outlet from the CWA lagoon at the north end is now closed off and this is dangerous for the wildlife, but this is actually state land. He suggested adding this to the next agenda. Mr. Werner agreed.

Mr. Werner reported that a truck got stuck in the sand at the south end of the critical wildlife area but it turned out that there was nothing the DEP or anyone can do about that. Mr. Laakkonen added that he got a call from the sheriff's department that night telling him that someone pulled a truck onto the beach and couldn't get out. The sheriff's wrote the violator a citation and Laakkonen scolded him and told him what could have happened if there had been birds there. This is a difficult situation to enforce but the man had to pay about \$1000.00 to tow the truck out and later understood what he had done.

**VII. PUBLIC COMMENT**

Mr. Perry added comments about the truck on the beach and said he was thinking about putting up some chains or barriers to keep people out in that area. He also commented on

the fee for the permits and feels that if his customers knew the money went into an educational/ dune planting fund, they would be more receptive.

Ms. Gabrielle Heeky also commented about the raking issue and said there should have been more than one workshop for this subject. She said that she still cannot support this ordinance as it stands.

Ms. Mary Ellen Branken added that there should be specific themes for the educational brochures.

**VIII. AGENDA FOR THE NEXT MEETING**

Next meeting is March 9, 2011.

- Beach Raking-staff will provide LPA's input
- Sea Grass Guide Distribution
- Recycling Bins at Beach Accesses
- Adopt a Beach Program-Mr. Andre
- Apply to state for experimental project for opening the CWA channel

**IX. ADJOURNMENT**

**Motion: Mr. Andre moved to adjourn.**

**Seconded by Mr. Johnson;**

**Vote: Motion passes 5-0.**

Meeting adjourned at 1:20 PM.

**Next meeting April 13, 2011 at 10:30 AM**

Adopted \_\_\_\_\_ with/without changes. Motion by \_\_\_\_\_  
(DATE)

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

- End of document

**MINUTES**  
**FORT MYERS BEACH**  
**Marine Resources Task Force**

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

**Wednesday, April 13, 2011**

**I. CALL TO ORDER**

Meeting was called to order at 10:32 AM by Chairperson Mr. Werner. Other members present:

Dan Andre  
Roger Johnson-excused  
Al Durrett  
Julie Schwab-excused  
Dennis Kovach

Staff: Keith Laakkonen, Environmental Services Coordinator  
Leslee Chapman, Zoning Coordinator

**II. PLEDGE OF ALLEGIANCE**

After the pledge, Mr. Werner recognized and welcomed Mr. Kosinski of Council who will be the liaison to MRTF.

**III. REVIEW OF MINUTES OF MARCH 2011**

**Motion: Mr. Andre moved to approve the minutes with minor edits.**

**Seconded by Mr. Kovach;**

**Vote: Motion passed 4-0.**

**IV. PUBLIC COMMENT**

Mr. Bill Perry addressed the meeting and stated that he read the draft of the beach raking ordinance that was sent and he supports it.

Mr. Carleton Ryffel addressed the meeting next and said that these regulations are unnecessary. He also said that the wrack line is important but it is something that changes constantly and he is opposed to the general notion of this.

**V. CURRENT ITEMS**

A. Beach Raking Ordinance Review-Mr. Laakkonen

Mr. Laakkonen gave definitions and referred to the edited draft, pointing out the changes that were suggested by MRTF at the last meeting. Mr. Werner opened the

MRTF-20110413

floor for discussion.

Mr. Andre asked about a permit fee, which Mr. Laakkonen said would be determined by Council.

Mr. Kovach said he is still “deeply troubled” about Section 14-1 b from a safety standpoint of pedestrians in the wrack area. He presented photos of the holes in the sand said he wants to add a part to the draft where it talks about “no mechanical or hand raking may take place...” to read “except under the following provisions: 1: hand raking of the wrack line may be performed anytime to ameliorate hazardous conditions; examples of this being removal of sand castles or filling in of holes in the beach.” He feels this is needed for safety and does not impact the raking efforts in any way.

Mr. Laakkonen said that dealing with filling in holes is not prohibited by this or any ordinance but said there needs to be more discussion about how they want to proceed with this issue. Some members feel that this should be addressed through education rather than by ordinance. More discussion took place about this being addressed in the code. Mr. Laakkonen reported for the record that there had been a report that there was pumping of water into the Critical Wildlife area, which is a violation of the county’s “MS4,” the Army Corps of Engineers rules, and DEP rules. He said that this is because the sedimentation causes fill in a wetland area but there haven’t been any reports of health issues due to standing water on the beach. He said by the time he got to the scene of this violation, it had been abated.

Mr. Durrett agreed that specifically stating that filling in holes is permitted will make that clear to all. Mr. Laakkonen said they will need to articulate that into the draft.

**Motion: Mr. Werner asked for a motion to approve the LDC raking changes as submitted.**

**This motion failed.**

**Motion: Mr. Kovach moved to approve the LDC raking change with the following addition under Section B, “except under the following provisions: hand raking of the wrack line may be performed anytime to ameliorate hazardous conditions; examples of this being removal of sand castles or filling in of man-made holes in the beach.”**

**There was discussion about holes at the wrack line and then this motion failed for inappropriate language.**

**Motion: Mr. Andre moved to approve the changes to raking with the addition of the following sentence: the filling in of any man-made hole is permitted” to Section B.**

**Seconded by ????**

**Vote: Motion passed 3-1, with Mr. Werner opposing.**

MRTF-20110413

The permit fee suggested by staff is \$25.00, to cover processing by the Town. Discussion took place about the fees and how they apply to each parcel.

B. Recycling Bins at Beach Accesses-Mr. Andre

Mr. Andre said that there is nothing to report at this time as this is the last of the 6 month test program and there should be a record available for May. Ms. Lewis will address MRTF next month with the information.

C. Adopt a Beach Program-Mr. Andre

Mr. Andre said he has been looking at many of these programs around the country and has come up with 5 main areas that need to be considered if they want to do this. Designated areas would need to be adopted with some type of signage. Agreements and guidelines would be needed along with "Release and Hold Harmless" letters and decisions as to what would be supplied to the sponsors. This would be done mostly at the beach accesses for now.

D. Distribution Plan for Sea Grass Guide-update Mr. Durrett

Mr. Durrett said they have handed out a lot of brochures.

E. Publicizing the Need to Dredge New and Big Carlos Passes

Mr. Laakkonen had checked into this and reported that there is nothing planned for this as of yet by the county but the Town is starting to gather information for dealing with the state on this. Discussion ensued regarding funding, plans, etc.

F. Mobile Educational Outreach Displays for Special Events-Mr. Werner

Mr. Werner said that this is Julie Schwab's area and she has been excused. Mr. Durrett said there is a seafood festival at Santini Plaza coming up and it would be a perfect place for this. Mr. Andre asked if they have any banners, etc. to do this but the members agreed that there is not enough time to do this right now.

**VI. NEW ITEMS**

A. MRTF Meeting Times

Mr. Werner said that traditionally the meetings have been at 6:00 PM but last year, at member request, the times were changed to 10:30 AM to avoid the traffic but now they are going to return to the evenings, unless they vote otherwise. Members decided to go back to 6:00 PM meetings for now.

B. Experimental Project to Open the CWA Channel

Mr. Werner commented that he is opposed to anything that would alter the natural state of this area, adding that fish kills are a natural part of this.

Mr. Kovach gave a brief history of this area and said that there is no one really keeping an eye on this. The county has had a surveyor record the legal boundaries of the area but now the Town does not really take care of this area. He said that there is a building of some type there now and he feels it shouldn't be there. He said he spoke to the state and their suggestion was to come up with a proposal that includes

cleaning up any mess from fish kills, etc. and submit it to them for approval. He asked Mr. Laakkonen if the Town is contemplating vegetation mitigation at the south end of the CWA so certain birds would be encouraged to return. He replied that this is the plan and clarified that they are trying to identify a lead manager.

Mr. Laakkonen said he has been in contact with the sheriff's department about the structure on the property and they have agreed to check it. He will also contact Fish and Wildlife about it. In addition, he is working with Lee County about the Holiday Inn sign and others to stay on top of these hazardous signs.

**VII. MEMBERS ITEMS AND REPORTS**

Mr. Andre reminded Mr. Laakkonen about the proposal for the live shelling and suggested adding waterproof rack holders to the "dos and don'ts" at the beach.

Mr. Durrett reported that the DEP may be eliminated and funding extremely cut. He wonders if the Town is prepared to take over the things that would still need to be done. Mr. Laakkonen expanded on the funding cuts and said that it would be a policy discussion with Council. Mr. Durrett said that MRTF needs to be prepared and step up to take on responsibility for Estero Bay.

**VIII. PUBLIC COMMENT**

Mr. Perry talked a bit about the holes on the beach, at the wrack line, and said that he personally fills in these holes with minimal impact to the wrack line. He suggested that mechanical raking should be added to this section.

**IX. AGENDA FOR THE NEXT MEETING**

Next meeting is May 11 2011.

- Recycling Bins at Beach Accesses-presentation by Ms. Lewis
- Adopt a Beach Program-Mr. Andre
- Update on DEP status-Mr. Laakkonen
- Discuss racks for education material at beach accesses

**X. ADJOURNMENT**

Meeting adjourned at 11:53 AM.

Adopted \_\_\_\_\_ with/without changes. Motion by \_\_\_\_\_  
(DATE)

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

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