

ORDINANCE NO. 08-06

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, AMENDING ORDINANCE 01-03 REGARDING THE WATER UTILITY FRANCHISE AGREEMENT WITH THE TOWN OF FORT MYERS BEACH PUBLIC WORKS SERVICES, INC.; PROVIDING FOR MODIFICATION OF NOTICE FOR FILING PETITION FOR RATE ADJUSTMENT; PROVIDING AUTHORITY; SEVERABILITY; CONFLICTS, EFFECTIVE DATE.

WHEREAS, Article VIII, Section 2 of the Constitution of the State of Florida and Chapter 166 of the Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and exercise any power for municipal purposes except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, Town Ordinance 01-03 established the relationship between the Town and the Town of Fort Myers Beach Public Works Services, Inc. (PWSI) with regard to provision of the Town's water supply and distribution system and the provision of the Town's water utility service and further stated that the Town Council shall have the jurisdiction to review, consider and approve rates and charges with regard to the Town's water supply and distribution system; and

WHEREAS, Lee County provides potable water on a bulk water basis to the Town pursuant to an Interlocal Agreement dated August 3, 2001 and Paragraph 3.1 of such Agreement provides that Lee County will give thirty (30) days' notice of an increase in the bulk water rate to be charged to the Town; and

WHEREAS, Ordinance 01-03 provides that PWSI must file a Petition for Rate Adjustment with supporting documentation at least four (4) months' prior to the proposed effective date for the adjustment; and

WHEREAS, it is in the best interest of the Town that the time period required for PWSI's Notice of Petition for Rate Adjustment coincide as closely as possible with the time period for Lee County's notice to the Town regarding an increase in the bulk water rate; and

WHEREAS, the measures set forth in this Ordinance are necessary to provide for the protection of public health, safety, and welfare and to preserve the lives and property of the people of the Town.

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

Section 1. Incorporation of Whereas Clauses. The above "whereas" clauses are incorporated herein as though fully set forth.

Section 2 Modification of Notice Provision The provisions of Section 8(b) of Town Ordinance 2001-03 are hereby modified as follows, with additions shown in underline format and deletions shown in ~~strikethrough~~ format:

“b. Applications for all rate and charge adjustments shall be filed with the TOWN Council in the form of a “Petition for Rate Adjustment” with supporting documentation at least ~~four months~~ thirty days prior to the proposed effective date for the adjustment.”

Section 3. Conflict. Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted Ordinance or Statute, the most restrictive shall apply.

Section 4. Severability. If any one of the provisions of this ordinance should be held contrary to any express provision of law or contrary to the policy of express law, although not expressly prohibited, or against public policy, or shall for any reason whatsoever be held as invalid, then such provision shall be null and void and shall be deemed separate from the remaining provisions of this ordinance, and shall in no way affect the validity of all other provisions of this ordinance.

Section 5. Effective Date This ordinance shall take effect immediately upon adoption.

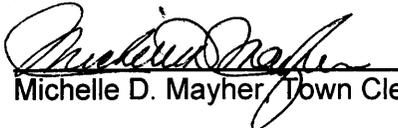
The foregoing ordinance was enacted by the Town Council upon a motion by Council Member Raymond and seconded by Babcock and, upon being put to a vote, the result was as follows:

Larry Kiker, Mayor aye
Tom Babcock aye
Bob Raymond aye.

Herb Acken, Vice Mayor nay
Jo List aye

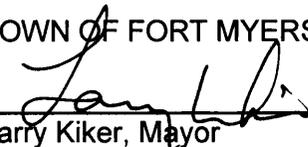
DULY PASSED AND ENACTED this 19th day of May, 2008.

ATTEST:


Michelle D. Mayher, Town Clerk

TOWN OF FORT MYERS BEACH

BY:


Larry Kiker, Mayor

Approved as to legal sufficiency by:


Anne Dalton, Esquire
Town Attorney