



# **MINUTES**

**Monday, December 2, 2013**

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

## **I. CALL TO ORDER**

Mayor Mandel called to order the December 2, 2013 Work Session of the Town Council at 2:00 p.m. Present along with Mayor Mandel were: Vice Mayor Kosinski, Council Members Andre, List, and Raymond. Also Present: Town Manager Stewart, Town Attorney Rooney, Public Works Director Lewis, Community Development Director Fluegel, and Town Clerk Mayher.

## **II. PLEDGE OF ALLEGIANCE**

## **III. DISCUSSION ON CODE ENFORCEMENT**

Council Member List reviewed the basis for her request to place the matter of Code Enforcement on the agenda; and noted it seemed there was complaint-driven code enforcement and enforcement due to inspections. She mentioned how it appeared there were some Town codes that were never enforced (i.e. unleashed dogs, etc.). She discussed her belief that increased code enforcement could improve the quality of life in the Town. She asked Council for a discussion on the idea of increasing code enforcement in the Town.

Council Member Andre concurred with Council Member List and questioned the status of the increased beach patrol (i.e. staggered hours for code enforcement staff).

Council Member Raymond appreciated the increased enforcement to 7-days per week; and discussed his views regarding code enforcement fines.

Vice Mayor Kosinski noted his belief that residents wanted someone to investigate legitimate code complaints when they called the Town.

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Mayor Mandel suggested to alert residents, approximately one month, in advance of a particular code enforcement concern [via newspaper articles], and then the next month code enforcement could target that specific code problem.

Town Manager Stewart pointed out that most of the code enforcement issues were complaint-driven; however, at times there was some proactive work done. He explained when resources were limited that it caused a more complaint-driven type of code enforcement. He addressed the beach patrol and the funding received from the TDC (i.e. picking up trash, maintenance, etc.). He noted that if increased enforcement patrol was requested, that additional staffing would be required.

Community Development Director Fluegel explained how there were currently two fulltime code officers; and he was waiting to fill the part-time administrative position.

Council Member List told of her experience with ‘community policing’ by the LCSO when she first moved to Fort Myers Beach. She suggested Council give consideration to have a conversation with the LCSO on how to better police the island, especially during season; and either increasing the sheriff’s presence in the community or increasing code enforcement staff.

Mayor Mandel outlined action items for the agenda item:

- Town Manager to meet with Captain Powell or an appropriate LCSO representative to determine what could be done by the LCSO.
- Community Development Director to come back to Council [within a short period of time] with a staffing outlook.
- Staff to determine when the additional ambassadors would be on the beach.
- Staff to establish a dedicated telephone number for code complaints.
- Consideration for highlighting a specific code enforcement issue each month.

Community Development Director Fluegel reviewed how code enforcement staff had been working recently on the matter of noise complaints and property maintenance issues.

#### **IV. ENFORCEMENT OF ORDINANCE 96-24, NOISE CONTROL**

Town Manager Stewart reviewed problems with the current noise ordinance such as but not limited to constitutional issues; and asked if Council wanted staff to retain a sound expert to assist in evaluating and determining appropriate decibel levels and possible coordination with Lee County and Bonita Springs.

Discussion ensued regarding using the services of a sound expert; and decibel levels and distance measurements (receiving land use) for decibels levels.

Council Member Raymond noted he was off topic, but wanted to suggest that properties for rent should be required to place their signage in the building window instead of a sign out in front of the building in order to help improve the image of the Town. He also suggested that when a problem occurred with

noise levels and special events that the next time the same special event was requested that it could be denied. He discussed his views on existing special exceptions and the hours of operation.

Community Development Director Fluegel reviewed the idea of progressively reducing the decibel levels over time in the Downtown district; and geographic areas and related decibel levels.

Discussion was held concerning geographic areas and related decibel levels; special exceptions and indoor and outdoor hours of operation; amplification indoors and outdoors; and ways to contain and control decibel levels through amplification.

Mayor Mandel suggested the Community Development Director come back to Council with information about the gradual reduction of decibel levels over a period of time.

Town Manager Stewart noted the issue of “how loud is the sound generated” through an amplifier.

Council Member Andre pointed out that the Town’s current noise ordinance was ‘unenforceable’ and the issue was to craft an ordinance that would be ‘enforceable’ (i.e. Naples noise ordinance).

Discussion was held regarding whether the Town should operate independently or in conjunction with Lee County and Bonita Springs to develop one uniform enforceable ordinance that the Lee County Sheriff would be familiar with and be able to enforce uniformly in all three jurisdictions.

Mayor Mandel asked if the Community Development Director could research what the other communities had, what the Town needed, and present the findings to Council.

Town Attorney Rooney pointed out there was problems with the current noise ordinance that was a decade old; and also there were some constitutional issues in the ordinance to be addressed. He explained the advantages of having the Town’s code enforcement staff handle noise issues rather than the LCSO.

Discussion was held concerning operational issues between utilizing the Town’s code enforcement staff rather than the LCSO for noise issues; and enforcement standards.

Community Development Director Fluegel reported staff would work with the Town Attorney on this matter.

Council Member Raymond suggested looking into establishments that were conducting multiple special events every month throughout the year.

Discussion ensued concerning special events and special exceptions; code compliance through cooperation; and alcohol licensing provisions.

Public Comment opened.

Attorney Robert Pritt, representing Marina Village of Snug Harbor, noted he was a proponent of code enforcement and briefly listed his experience and qualifications on the topic. He discussed the noise ordinance he wrote for the City of Naples; the plainly audible standard; the decibel meter standard; and suggested the Town consider utilizing both standards. He referred to State Statute 162.13 as it pertained to enforcing ordinances. He advised the Town to use the services of a sound expert. He stated that he supported the Town Attorney's recommendation that a new ordinance be drafted.

Public Comment closed.

## **V. FAA FLIGHT TRACKING UPDATE**

Mayor Mandel recognized Tom Babcock in the audience.

Mr. Babcock gave a presentation on the FAA's flight tracking system which became operational in March 2013; and described the background of the Part 150 Noise Study Recommendations which were approved by the Board of Port Commissioners and forwarded to the FAA for comment and approval. He noted the Part 150 Study completed ten years ago included improvements that the Town expected as improvements from the Study; however, they were never truly implemented. He indicated there were about seven improvements included in the Part 150 Study (passed in January 2013) that should have a direct impact on Fort Myers Beach. He noted the importance of the Town staying involved as it pertained to this issue. He discussed three of the seven recommendations in the Part 150 Study which portions could be implemented now and did not require approval by the FAA:

- 1) Flying at or above 3,000 feet.
- 2) Placing aircraft behind the island.
- 3) Runway 24 as the preferred runway between 10:00 p.m. and 6:00 a.m.

He utilized a PowerPoint presentation and discussed technical data collected and analyzed utilizing the flight tracking system. [He referred to certain information contained in the presentation slides that were off-camera.]

Mayor Mandel reported that the Town had requested a meeting with the airport who indicated they were working to schedule a meeting in mid-January; Council supported the Part 150 Study which was forwarded to the FAA in Atlanta who in turn reviewed the Study, made recommendations, and forwarded them to the FAA in Washington DC; currently the FAA was taking public comment and encouraged people to send comments to the FAA; and that Council supported the Part 150 Study.

Council Member List thanked the members of the aircraft noise group for their hard work on this issue.

Recessed at 3:41 p.m. – Reconvened at 3:50 p.m.

## **VI. REVIEW OF THE WATER UTILITY SERVICES**

Mayor Mandel reviewed the basis for his request to place this matter on the agenda; and requested the Finance Department explore bringing the management and operation of the Town's water utility in-house which he suspected might save the Town money.

Vice Mayor Kosinski questioned if there was sufficient space in Town Hall to bring the water utility in-house.

Town Manager Stewart pointed out that the residents view the Town as “government-light”.

Discussion ensued regarding an analysis by the Finance Director to determine whether or not outsourcing the water utility was cost effective.

Consensus approved Mayor Mandel’s request for an analysis by the Finance Director to determine whether or not outsourcing the water utility was cost effective.

Public Works Director Lewis pointed out that the water utility was an enterprise fund that operated on user fees; and standardly, at the end of each year internal carrying costs that the Town had were transferred from the water utility.

Discussion was held concerning automatic read meters.

Town Manager Stewart clarified that the Council requested a report from the Finance Director on the water utility.

## **VII. GOLF CARTS**

Town Manager Stewart outlined when Council had addressed the issue of someone [with a disabled child] wanting to utilize a golf cart on the beach in the past; and indicated there was now a similar type of request. He reviewed the recent request from Mr. and Mrs. Scolaro for a golf cart permit. He indicated Council was given information on the request in the agenda packet. He reported, based upon the attorney’s ruling and staff’s review of the LDC, that the Town could not issue such a permit.

Environmental Sciences Coordinator Laakkonen explained when the permit was denied that Mr. Scolaro requested West Coast Cabana be issued a permit so they could shuttle disabled and elderly people to the beach. He explained a permit issued to West Coast Cabana would give them a competitive edge and the issue with the LDC would remain. He noted in order to issue a permit changes to the LDC would be necessary. He reviewed LDC Section 14-7 (Restricted Beach Vehicle Permits – research or patrol vehicles, mechanical beach raking, beach furniture and equipment transport, jet ski transport and storage, and wheelchairs).

Community Development Director Fluegel gave an ‘overall policy perspective’ as it related to golf carts and wheelchairs on the beach.

Discussion ensued regarding prior requests for golf carts on the beach; and the ambiguity of “*or other conveyance*” and whether or not to remove it from the code.

Council Member List discussed her concerns with granting the golf cart permit in the past and now denying it.

Discussion ensued regarding the need for some type of transport for elderly and disabled people to the beach; the potential for a proliferation of golf carts on the beach; and possibly limiting licensing for a certain number of businesses to be able to offer transport to the beach (i.e. similar to parasail vendors).

Community Development Director Fluegel discussed his concerns regarding enforcement challenges as it pertained to permits for golf carts on the beach.

Town Manager Stewart noted that motorized wheelchairs were permissible on the beach.

Town Attorney Rooney explained that whether or not the original permit was issued in error, the fact remained that the permit had an expiration date which notified the user that the permit would terminate at some point.

Environmental Sciences Coordinator Laakkonen mentioned the environmental issues with using golf carts on the beach as it pertained to nesting birds, sea turtle nests, and critical wildlife areas.

Town Attorney Rooney pointed out that Fort Myers Beach was not unique in dealing with this issue.

Public Comment opened.

Karen Urbschat, resident, questioned if this matter was an ADA issue.

Town Manager Stewart reported that there were a number of Town beach accesses that had mobi-mats for handicap accessibility.

Public Comment closed.

Discussion continued regarding handicap accessibility to the beach.

Town Manager Stewart explained it was his understanding that Council wanted staff to continue enforcement in the same manner.

## **VIII. COUNCIL MEMBERS ITEMS**

Mayor Mandel – reported he gave information to Town Clerk Mayher regarding the Florida League of Cities and their concerns about water quality.

Vice Mayor Kosinski – requested Council’s approval to have a facilitator to contact the property owners around Seafarer’s to have a sit-down discussion and to give a more in-depth presentation to Council on the matter of a parking garage.

Council Member List suggested the presentation have a lot of visual, and not technical visual.

Vice Mayor Kosinski explained the visual would be the next step after a sit-down discussion with property owners and a study.

Council Member Raymond indicated he was not supportive of a garage.

Discussion was held concerning Vice Mayor Kosinski's request and the concept of a garage; and it was indicated that Vice Mayor Kosinski could proceed with his request.

Council Member List – no items.

Council Member Raymond – no items.

Council Member Andre – no items.

## **IX. ADJOURNMENT**

Meeting adjourned at 4:40 p.m.

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

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

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Michelle D. Mayher, Town Clerk

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