



## **MINUTES**

**Monday, January 6, 2014**

**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 January 6, 2014 Work Session of the Town Council at 3:00 p.m. Present along with Mayor Mandel were: Vice Mayor Kosinski, Council Members Andre, List (arrived at approximately 3:45 p.m.), and Raymond. Also Present: Town Manager Stewart, Town Attorney Miller, Community Development Director Fluegel, Planning Coordinator Overmyer, and Town Clerk Mayher.

### **II. PLEDGE OF ALLEGIANCE**

Town Manager Stewart noted that the Town's potable water project was progressing.

### **III. NOISE ORDINANCE**

Town Attorney Miller pointed out that a few meetings ago she mentioned she had been contacted by the State Attorney's Office about a case which involved the Town's noise ordinance that was taken to court where the judge questioned the ordinance in light of a recent Florida Supreme Court decision [State v. Catalano]. She explained there were portions of the Town's existing noise ordinance that were subject to challenge; and in light of what happened the LCSO was not going to enforce the Town's existing noise ordinance. She stated she provided samples documents from other jurisdictions that have modified their ordinances since the Catalano decision. She noted that correspondence from the LCSO addressed how the existing ordinance was not 'content-neutral' since it did not apply equally to music, political speech, and advertising. She discussed portions of the existing noise ordinance that dealt with the types of noise and decibel levels; and suggested the Council could eliminate the portion(s) dealing with types of noise and go with 'straight decibel levels'. She also pointed out internal inconsistencies in the existing noise ordinance (i.e. measuring decibel level from the property line of the receiving land use

and in another section measuring the noise from the property generating the noise). She informed Council that the existing ordinance needed to be changed.

Discussion ensued regarding using one of the sample ordinances included in the Agenda packet; whether to coordinate efforts with Lee County and Bonita Springs; which sample ordinance would the LCSO enforce; to seek input from LCSO on what they would enforce; hours of operation for businesses as it related to noise (i.e. indoor/outdoor noise, hours of operation granted in a special exception, noise from bands practicing/sound checks in the morning, etc.); and whether decibel levels should differ from district to district or residential/non-residential.

Town Manager Stewart requested direction as to whether Council wanted a comprehensive ordinance that dealt with an entertainment district or to recognize *“that you might have a slightly different decibel level in a downtown district or some place of that nature”*.

Discussion was held concerning the downtown district and adjacent residential; potential for enforceability problems with determining noise levels on the edge of a district; utilization of Code Enforcement for the noise ordinance; and obtaining a determination from LCSO on which sample ordinance they would enforce.

Town Manager Stewart questioned Council’s preference as to the number of workshops to be held on the topic.

Discussion was held concerning the number of workshops and the input to obtain on the matter (i.e. decibel levels, staff input, etc.).

Mayor Mandel recapped that first the sample ordinance (Naples) would be forwarded to the LCSO for determination of enforceability; and then schedule a workshop to include having sound equipment to demonstrate decibel levels.

Town Manager Stewart suggested that staff give Council the Naples ordinance and a document prepared by staff indicating the differences between the two, if any, based upon the input already received from the public.

Mayor Mandel expressed agreement and noted then that document would be given to the LCSO to determine enforceability, and then hold a workshop which would include a demonstration of decibel levels.

#### **IV. CODE ENFORCEMENT**

Town Manager Stewart reported the discussion topic was requested by Council Member List.

Council Member List explained she was seeking enforcement of codes other than building codes (i.e. live shelling, dog owners not picking up after their dog, noise and other disturbances, etc.). She noted her concerns for the Town to have ‘more presence’ and enforceability for code violations such as but not limited to noise, littering, and live shelling.

Discussion ensued regarding an additional presence on the beach (i.e. ambassadors paid through TDC); the beach patrol; increasing code enforcement and education about the Town's laws; and advantages and effectiveness of having some type of person to enforce Town codes who actually walked the streets/area.

Town Manager Stewart explained the LCSO provided the Town with a core level of service that would be provided to any place throughout the County; and the two additional services the Town paid the LCSO for were additional marine patrol and traffic control.

Discussion was held concerning the LCSO 'core level of service' (i.e. road patrol, general investigations, etc.).

Town Manager Stewart noted that many years ago the Town had community officers (neighborhood resource officers) and there was a small sub-station in Lynn Hall Park; however, the sub-station building deteriorated and was never replaced, and when the economic downturn hit the services were eliminated.

Mayor Mandel requested the Town Manager to approach the LCSO to determine whether they could go back to that type of service for the Town and the potential cost.

Town Attorney Miller pointed out that the way the current litter ordinance was written would prohibit a Code Enforcement Officer from citing a violator. She suggested that Council may want to consider modifying the litter ordinance. She stated she would look at the other sections of the Code to determine if a Code Enforcement Officer could write a citation (i.e. live shelling, dog owners required to clean up after their dog, etc.).

Mayor Mandel recapped the discussion item:

- Town Attorney would look at the Town's codes to determine which were enforceable by a Code Enforcement Officer and/or a Lee County Sheriff.
- Town Manager and staff to determine the actual number of current Code Enforcement staff working outside (2); how many ambassadors; and question LCSO as to what it would take to have the their level of service as 'Pre-Hurricane Charley'.

Town Manager Stewart noted that the Town's Environmental Sciences Coordinator had code enforcement capabilities as it related to issues dealing with the environment and the beaches.

Mayor Mandel continued to recap the discussion item:

- Staff to determine capabilities of Beach Patrol (i.e. enforcement, etc.).

Council Member Andre noted the new educational brochure completed by MRTF for distribution by Beach Patrol and the ambassadors. He reported MRTF was working on an Adopt-a-Beach Program.

Town Manager Stewart clarified that the Town Attorney would look at the codes for any possible adjustments as it pertained to code enforcement efforts; he would check with the LCSO concerning bring back the neighborhood resource officers and the cost, if any; and verify the number of Beach Patrol officers.

Council Member Raymond suggested that the new educational brochure by MRTF be given to rental agencies to include in their check-in packages.

Council Member Andre questioned the number of new educational brochure printed.

Keri Weeg, Vice Chair of MRTF, responded she was uncertain; and explained the Committee's intention was to distribute the brochure to as many places as possible.

Discussion was held concerning potential locations to give the new educational brochure.

Town Manager Stewart stated staff would make an estimate of the usage of the brochure, and then he would make a recommendation as to the printing cost.

## **V. COUNCIL MEMBERS ITEMS**

Council Member Andre – questioned the status of Center Street.

Mayor Mandel reported he participated in a meeting at which Ms. Monroy was present where the last segment of Fort Myers Beach was being looked at as to what was happening on San Carlos. He added that he received two drawings which would be disseminated to Council; and then the Town would have to decide what they would want to do with the Seafarer's property/area. He indicated he contacted someone who was interested in developing the Seafarer's property and the owner of Helmrick Plaza about the matter. He added that at the meeting Center Street, Vice Mayor Kosinski's idea of parking, and San Carlos all came up for discussion.

Town Manager Stewart explained that FDOT did not want to make a separate decision on Center Street at this time.

Council Member Andre – questioned if the Town had any issues arise or complaints received regarding the signs on the street for a new restaurant called Dos Churros.

Community Development Director Fluegel was unaware if the Town had received any complaints.

Council Member Andre suggested a new business be given 30-days allowing them to have an A-shaped sign noting "*We are now open*".

Town Attorney Miller noted that ability for a new business was currently within the Town codes.

Discussion was held concerning a 'grace period' for a grand opening for a new business.

Council Member List – no items.

Vice Mayor Kosinski – no items.

Council Member Raymond – commented on other people knowing about Seafarer’s before Council.

Discussion was held.

Mayor Mandel – no items.

**VI. ADJOURNMENT**

Meeting adjourned at 4:22 p.m.

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

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

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Michelle D. Mayher, Town Clerk

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