



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

**MINUTES**

**WORK SESSION**

**Monday, February 6, 2012**

**I. CALL TO ORDER**

Mayor Kiker called to order the February 6, 2012 Meeting of the Town Council at 2:01 p.m. Present along with Mayor Kiker: Vice Mayor Raymond, Council Members Kosinski, List, and Mandel; Also Present: Town Manager Stewart, Community Development Director Fluegel, and Town Clerk Mayher

Mayor Kiker pointed out that at the Council meeting earlier in the day it was decided to add a discussion on special events at the end of the Work Session.

**II. BORCAB ORDINANCE REVISION**

Town Manager Stewart gave a brief overview of the events which led up to the proposed amendment to the Bay Oaks Recreation Campus Advisory Board (BORCAB) Ordinance 09-06, and how the Chair of BORCAB appeared before Town Council last month to request a revision as it pertained to their quorum requirement.

Town Attorney Miller reviewed the proposed revisions for Ordinance 09-06 which was consistent with the quorum requirements of the other Town boards/committees.

Council Member List explained that this board had a different quorum requirement than other Town boards/committees because originally the board had been a County/Town entity.

Consensus approved the proposed ordinance amendment and staff would schedule it for a first reading.

**III. COP**

Mayor Kiker opened Public Comment and stated there would be a 3-minute limit imposed per speaker.

Public Comment opened.

Lu Coletta, Beach Pub, discussed items of concern which he asked Council to consider when discussing the COP:

- Biodegradable or compostable cups with the business name – he reported the price of his current cups was 4-cents per cup; biodegradable was 12-cents per cup; and compostable was 14-cents per cup and these prices did not include printing the business name.
- Printed names on the cups – discussed why he believed it would be difficult to enforce or track.
- Page 12, #5 and #6 – he believed the language to be different (i.e. special exception and hours of service)
- Service on the beach – as it pertained to hours of service inside/outside; loss of service hours for some businesses

Discussion was held regarding seating at the Beach Pub (outside only).

Lee Melsek, resident and speaking for the Board of Directors of the Civic Association, reiterated the Civic Association's opposition to the COP. He discussed the Civic Association's belief that the COP would be a huge character change to the Island; the enforcement would be a nightmare; the change would be a bad move for the Town, and he asked the Council not to support the COP changes. He noted that three former LPAs and other Mayors and Council Members had opposed COP changes.

Matt Powell, LCSO West District Captain, noted that Mr. Coletta operated his business as a "tight ship". He stated if the COP was approved, he would ask that the business areas be "roped-off" so areas would be defined and not grow. He noted he like the idea of the names on the cups to identify possible problems.

Discussion was held regarding the views and suggestions of Captain Powell on the COP from a law enforcement standpoint, as well as his experience with current establishments with COP in the EC.

Public Comment closed.

Town Manager Stewart recapped the prior events which had caused the COP to come before Council. He noted the exhaustive research staff conducted regarding "service on the sand"; and he disagreed with public comments regarding prior LPAs, Mayors, and Council Members as it pertained to COP. He explained how currently there were no rules in place for guidance for what the Town expected of a location that served or allowed patrons to consume on the sand. He clarified this matter was not about allowing people to come onto the beach and consume alcohol or serve alcohol "willy-nilly" up and down the Island. He reported the COP would state specific guidelines as to where it might happen; and if it did happen, how it would be approved; and if it were approved, what would be the rules a business would operate under.

Community Development Director Fluegel presented staff's report on *COP in EC Zoning District*. He gave an overview of the COP in EC:

- Based upon Town Council's rejection of the LPA Resolution, staff initiated an on-going dialogue with the LPA in January 2011.
- From January through May 2011 staff conducted observations of COP in EC and commenced preliminary research.
- Staff initially identified 9 establishments with COP in EC.

- In June staff embarked upon a comprehensive study of COP in EC.
- Staff presented the COP in EC Report to the LPA in October 2011.
- Staff presented a draft outline of an approach to regulating COP in EC in November 2011.
- Staff presented the ordinance to LPA in January 2012.
- The Town and County (prior to incorporation) had a history of approving COP in EC on a case-by-case basis with no regulatory framework.
- No Special Exception for COP in EC has ever been denied by prior Town Councils.
- Special Exception has been the preferred method of approval, with 7 of 12 being approved by Special Exception.
- COPs are concentrated in the Downtown District.
- Outside of Downtown District, 4 of 5 COPs are at resorts.
- 7 of 12 were approved for COP directly upon the sand beach.
- 6 have no restrictions on outdoor entertainment.
- 6 are located at resorts.

He continued his overview with an explanation of the glossary of terms listed in the PowerPoint presentation (i.e. COP – Consumption on Premises, EC – Environmentally Critical Zoning District, 1978 CCCL – 1978 Coastal Construction Control Line). He briefly noted the COP critical timelines included in his presentation. He reported how staff reviewed all available Town Council and LPA minutes from incorporation of the Town through creation of the EC Zoning District and Chapter 34 in 2003; the number of historic approvals of COP in EC by prior Town Councils suggested that COP in REC was deemed a permissible use; and how the REC Future Land Use category appeared to have been primarily intended as a means of effectively restricting densities along the beach by eliminating density seaward of the 1978 CCCL. He reviewed the difference between two maps displayed – “*COP in EC Zoning District Inventory*”. Director Fluegel discussed in detail the data entitled “COP in EC Summary” which listed the 18 establishments identified by staff with COP adjacent to EC (inventory list). He summarized the ordinance as it pertained to existing establishments and compliance, a proposed administrative process, and new establishments, and conditions of standard approval.

Discussion ensued regarding the proposed conditions of approval as it related to existing and new establishments both inside and outside the Downtown; establishments adjacent to the EC; CPD Rezoning and related costs; the administrative approval process; areas of extension of premises as indicated on the displayed map; the implications of the Erosion Control Line to expansion and beach renourishment; and how the COP attempted to create consistency.

Community Director Fluegel continued his presentation with a discussion of the “*COP in EC Ordinance Overview*” for standard conditions inside the Downtown (exhibit within the PowerPoint presentation in the agenda packet) which addressed issues such as but not limited to bio-degradable cups with names of the establishment, hours of service and consumption in EC, area of expansion in EC, and entertainment in EC.

Vice Mayor Raymond referred to the map on display in Council Chambers noting he did not support “openings to the beach” as indicated.

Town Manager Stewart discussed how additional parking was not required due to the “openings to the beach”.

Discussion ensued regarding signage, and dominion and control.

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Vice Mayor Raymond pointed out that he would like to see the use of the beach only in the Downtown, except for those establishments already utilizing the beach as of today.

Council Member List suggesting using the last two pages of staff's presentation regarding standard conditions, discuss each and reach a consensus in order to give direction to staff.

Town Manager Stewart explained that Council needed to first determine if alcohol service in the EC a permissible use.

Discussion was held regarding COP only in the Downtown; how to handle current establishments and new establishment applications in the EC and the Downtown.

Community Development Director Fluegel reviewed the second to the last page of his presentation regarding standard conditions (displayed PowerPoint slide).

Vice Mayor Raymond requested that on the chart displayed, the lower right-hand corner, under "New Establishments", Outside Downtown, to remove "~~CPD Rezoning (Resorts Only)~~" and change it to "Not Permitted".

Discussion ensued regarding whether or not alcohol service over the EC line was a permissible use.

Consensus was that alcohol service over the EC line was a permissible use; and precedents were noted.

Council Member List explained that she had requested staff to investigate COP due to the many calls she received from business owners regarding the inequities concerning COP. She noted her concern pertaining to how much the COP may cost business owners.

Community Development Director Fluegel read each procedure or condition listed on the COP in EC Standards and Procedures; Council discussed with the following results:

- Procedure:
  - Existing Establishments/Administrative Amendment for Inside Downtown – Consensus agreed.
  - Existing Establishments/Administrative Amendment for Outside Downtown – Consensus agreed.
  - Establishments currently approved for COP adjacent to EC/Administrative Approval for Inside Downtown – Consensus Agreed.
  - Establishments currently approved for COP adjacent to EC/CPD Rezoning for Resorts Only for Outside Downtown – Consensus Agreed.
  - New Establishments - Inside Downtown/Special Exception – Consensus Agreed.
  - New Establishments - Outside Downtown/CPD Rezoning for Resorts Only – 4 agreed; 1 disagreed.
- Standard Conditions:
  - Area of expansion in EC is limited to 1/3 of the distance from the EC Zoning line or rear building/deck seaward to the MWH or ECL (whichever is less) – Inside/Outside Downtown – Consensus was to keep 1/3 distance, but change to " or a maximum number of feet".

- The area of extension of premises in EC must be enclosed on three sides by rope and post extending from the rear of the building or deck to the seaward allowed distance – Inside/Outside Downtown – 3 agreed; 2 disagreed; requested staff to seek business owners’ input for alternatives.
- One 6’ wide pedestrian access opening is allowed per 100’ of rope and post along his side parallel to the waterline, etc. - Inside/Outside Downtown – Consensus agreed.
- Parking requirement for area of expansion in EC surrounded by rope and post – None/Inside/Outside Downtown – Consensus agreed.
- All beverages served within the area of extended premises in EC must be served in plastic biodegradable cups, with the establishment’s name on the cup – Inside/Outside Downtown – Consensus agreed to require names on the cup. Consensus was not to require biodegradable.
- Hours of service and consumption in EC are 1 hour after sunset – Inside/Outside Downtown – Consensus agreed; and Director Fluegel noted how they would handle existing establishments to which consensus agreed.
- Area of expansion in EC must be under same ownership as the licensed premises, etc. – Inside/Outside Downtown – Consensus agreed.
- Patrons may not bring their own alcohol into the area of expansion in EC - Inside/Outside Downtown – Consensus agreed.
- No entertainment shall be allowed in EC, except for by Special Permit, etc. - Inside/Outside Downtown – Consensus agreed. (Staff to address noise.)
- Area of expansion must be maintained free of litter and debris, etc. - Inside/Outside Downtown – Consensus agreed.

Consensus was to have the Town Manager schedule another Work Session pertaining to COP.

Town Manager Stewart requested approval to prepare the work as directed by Council, forward the information to the Council, and at a future Council Meeting inform the staff whether or not another Work Session was necessary.

Consensus agreed with the Town Manager’s request.

Town Attorney Miller recommended that the proposed ordinance be introduced and then have two public hearings after introduction.

Vice Mayor Raymond complimented Community Director Fluegel on his report and work on COP.

Mayor Kiker noted the Council had desired to discuss special event planning and the Shrimp Festival.

Council Member List acknowledged her concerns regarding 4<sup>th</sup> of July and New Year’s Eve fireworks and other events.

Town Manager Stewart pointed out that the Town recently hired a Parks and Recreation Director who had an extensive background in special events. He explained that after the Council Meeting earlier he now had it confirmed that the Semmer Family was stepping down from the fireworks display. He discussed how staff now needed to find someone in the community who wanted to volunteer to handle the fireworks, and who wanted to provide dollars.

Discussion was held concerning budgeted funds for fireworks; finding a local community group or volunteers to take over the fireworks.

Mayor Kiker recognized John Lallo in the audience.

John Lallo, Pete's Time Out, reported people were currently in the process of forming a business alliance in Times Square. He remarked that he believed the new group would help with fund raising and entertainment.

Discussion was held regarding how special events might be handled by the Town; Town Manager stated staff would put together a type of "white paper" report regarding special events to outline what staff could do.

Mayor Kiker asked the Town Manager to include updates on the special events issue in his Weekly Report.

Council Member Mandel noted that at the earlier meeting there was concern not only for the 4<sup>th</sup> of July and New Year's Eve events, but also for the other special events in the Town.

Discussion was held concerning a person or group to coordinate events.

Council Member Mandel was asked to approach CELCAB to determine if they were interested in expanding their interests into the realm of special events coordination.

Town Manager Stewart noted the Shrimp Festival banner request would be on the February 21, 2012 agenda.

Mayor Kiker suggested scheduling on a meeting the re-prioritization of Agenda Management issues.

## VII. ADJOURNMENT

Meeting adjourned at 4:25 p.m.

Adopted 3.5.12 With/Without changes. Motion by Kosinski/Luo

Vote: 5-0

  
Michelle D. Mayher, Town Clerk

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