MINUTES

Monday, May 5, 2014

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

I. CALL TO ORDER

Mayor Cereceda called to order the May 5, 2014 Regular Meeting of the Town Council at 9:02 a.m. Present along with Mayor Cereceda: Vice Mayor Andre and Council Members Hosafros, Mandel, and Stockton (arrived at approximately 9:04 a.m.). Also Present: Town Manager Stilwell, Town Attorney Rooney, Finance Director Wicks, Public Works Director Lewis, Planning Coordinator Overmyer, Parks & Recreation Director Norton, and Town Clerk Mayher.

II. INVOCATION – Rev. Lorrie Davison

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

MOTION: Vice Mayor Andre moved to approve the Final Agenda as presented; second by Council Member Mandel.

VOTE: Motion approved; 5-0.

V. PUBLIC COMMENT

Mayor Cereceda requested Public Comment to be concerned with Agenda Items.

Public Comment opened.

No speakers.

Public Comment closed.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Vice Mayor Andre thanked Town Manager Stilwell and staff for the installation of the photographs on the front of the Town Hall windows. He reported he received a phone call from a resident regarding her positive experience with Town staff who responded to her water leak over the weekend. He extended kudos to the Chamber of Commerce for the Taste of the Beach event.

Council Member Mandel echoed Vice Mayor Andre's comments regarding the Chamber and their event. He recognized the Beach Elementary School for the Beach 500 walking event held this morning; and thanked Public Works for their expeditious issuance of a permit for the school event during turtle time.

Council Member Hosafros echoed the prior comments and thanked the Bay Oaks staff for the Volunteer Appreciation Picnic. She extended kudos to the Public Works staff who she had a "ride-along" with last week.

Council Member Stockton noted she was late due to her participation at the Beach 500 event and echoed prior comments regarding the event.

VII. ADVISORY COMMITTEES ITEMS AND REPORTS

No speakers.

VIII. PROCLAMATION

A. Public Works Week
B. Make-A-Wish Foundation

Council Member Mandel read the Town of Fort Myers Beach Proclamation for May 18-24, 2014 to be proclaimed **Public Works Week.**

Public Works Director Lewis accepted the proclamation and introduced the Public Works staff.

Council Member Hosafros read the Town of Fort Myers Beach Proclamation for May 5, 2014 to be proclaimed **Make-A-Wish Day.**

Lesley Colantonio received the proclamation on behalf of the Make-A-Wish Foundation.

IX. APPROVAL OF MINUTES

A. April 7, 2014 Regular Council Meeting Minutes

MOTION: Vice Mayor Andre moved to approve the April 7, 2014 Regular Council Meeting Minutes as presented; second by Council Member Stockton.

Council Member Hosafros requested the following change on Page 6: "Miffie Greer, Chair of CRAB, responded in the ~~negative~~ affirmative.

VOTE: Motion approved; 5-0.

X. CONSENT AGENDA

A. Wire Transfer Policy and Procedures and SunTrust Bank Schedule A Funds Transfer Agreement

A request to establish internal controls over initiating, approving, and executing wire transfers.

Town Manager Stilwell noted the agenda item came before Council with a recommendation from the Audit Committee.

Jim Rodwell, Chair of the Audit Committee, explained the wire transfer policy was part of the Town's internal controls and was required by the Investment Policy (Resolution 14-13 later in the agenda). He added the Committee originally intended the wire transfer policy strictly for investments but realized wire transfers could be made for vendors. He reviewed the proposed wire transfer policy and the wire transfer form; initiations and internal controls for the wire transfers; and pointed out that staff drafted the policy and the Committee assisted them with it. He added that as the policy was implemented there may be a need to edit the policy in the future.

Discussion was held regarding initiation of wire transfers.

MOTION: Vice Mayor Andre moved to approve the Wire Transfer Policy and Procedures and SunTrust Bank Schedule A to Funds Transfer Agreement; second by Council Member Hosafros.

VOTE: Motion approved; 5-0.

XI. PUBLIC HEARING

A. Adoption of Ordinance 14-02, Amendment to Chapter 27, PAL, PWVL

An Ordinance amending Chapter 27 of the Town of Fort Myers Beach Land Development CODE, "PERSONAL WATERCRAFT AND PARASAILING:" AMENDING SECTION 27-47, "MEANS OF ENFORCEMENT" BY ADDING DESIGNATED TOWN CODE ENFORCEMENT OFFICERS AS PERSON WHO CAN ENFORCE THE PROVISIONS OF THIS CHAPTER; AMENDING SECTION 27-49 BY ADDING PROVISIONS RELATING TO SOLICITING AND PICKING UP CUSTOMERS; AMENDING SECTION 27-50 BY ADDING PROVISION RELATING TO SOLICITATION OF CUSTOMERS; AMENDING SECTION 27-51 BY CLARIFYING HOW THE 500 FOOT SEPARATION IS

TO BE MEASURED AND BY PROVIDING THAT PWVL BUSINESSES MAY ALSO RENT PADDLEBOARDS, KAYAKS AND OTHER NON-MOTORIZED WATERCRAFT; AMENDING SECTION 27-52 BY CHANGING THE NUMBER OF PWVL LICENSES THAT CAN BE OUTSTANDING ANY POINT IN TIME FROM TEN (10) TO ELEVEN (11); AMENDING SECTION 27-55 BY PROVIDING THAT A PWVL MAY BE TRANSFERRED TO A NEW CONFORMING LOCATION WHEN THERE ARE ELEVEN (11) OR FEWER PWVL LICENSES OUTSTANDING; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

Public Comment opened.

Attorney Davies, Roetzell & Andress, stated he was representing the owner of Rebel Water Sports, Dean Kerkesner. He spoke on the issue of the cap on the number of PWVL licenses; and noted he supported the cap provision for 11 licenses. He discussed the purpose of the proposed code change which he believed was to fix an inconsistency in the language of the code. He noted there had been no opposition to the matter at the last Council meeting or at the LPA meeting. He addressed the history of the number of parasail licenses issued and the number currently stated in the code. He urged Council to approve the proposed amendment for a cap of 11 licenses and if necessary, to carve out and approve the section regarding the cap today.

Town Attorney Rooney questioned if Rebel Water Sports was moving into the business location next to the one they were currently using.

Attorney Davies responded in the affirmative.

Town Attorney Rooney explained the code, as written, would prevent a personal watercraft operator from being located within 500 feet of a parasailing vendor; therefore, he had crafted language to clarify the code [parasail vendors could not be within 500 feet of each other and personal watercraft vendors could not be within 500 feet of each other; but a parasail vendor and a personal watercraft vendor could be within 500 feet of each other or co-locate].

Attorney Davies requested that if the provisions recommended by Town Attorney Rooney did not move forward that at least the section making the PWVL cap 11 move forward today.

Town Attorney Rooney explained how Council could pull out certain sections of the proposed code change for approval.

Environmental Sciences Coordinator Laakkonen reported staff had been working with the 'industry' for several years regarding the proposed code changes. He noted how the industry was 'self-regulating'; how the proposed changes were clarifications (i.e. measuring distance between vendors); and that some language was added. He explained that raising the cap from 10 to 11 for PWVL was supported by the industry.

Council Member Hosafros questioned Attorney Davies if Council approved Ordinance 14-02, only Section 27-52(d)(1), (2), and (3), if this would solve his client's problem.

Discussion was held regarding sections of the proposed ordinance.

Attorney Davies noted that additional pertinent language regarding his client was also in Section 6 which was 27-55 (transferability of PAL and PWVL).

Discussion was held regarding current E-TrackIt information regarding vendor licenses; historical background regarding the number of PAL and PWVL licensed vendors; and potential changes to the sections of the proposed ordinance as it pertained to Rebel Water Sports, transferability of licenses, proposed code clarifications, differences or separation between PAL and PWVL vendors; and the issuance of 11 PWVL licenses by the Town since approximately 2007.

Attorney Davies requested the 'carve-out' of the proposed ordinance occur as a separate issue from the new potential location of Rebel Water Sports.

Council Member Hosafros noted her concerns regarding the proposed new language offered by the Town Attorney since she just was given the information today.

Sharon Faircloth, owner of Holiday Water Sports, noted she and her husband had been on the beach since 1991 and participated with the writing of the original ordinance. She stated she was agreeable to the section allowing Rebel Water Sports to relocate; offered some historical information related to the number of vendors over the years and how the number 10 was selected. She stated she was agreeable to changing the code to allow 11 vendors. She discussed her thoughts on the wording in the current ordinance that allowed her to offer parasailing to her customers at her Best Western location through a 'subcontract'; the concept of subcontracting as it related to PAL and PWVL; and the 7 existing parasail licenses.

Town Attorney Rooney explained his proposed language would impact Holiday Water Sports and withdrew the proposed language from the Public Hearing.

Dean Kerkesner owner of Rebel Water Sports requested Council carve out the cap from the proposed ordinance at this time. He reviewed his business locations when they were at 1010 and 1028 Estero Boulevard. He stated that the #5 license he had was for 1010 Estero Boulevard. He noted the urgency and importance of Council's approval to increase the cap to 11 licenses as it pertained to his business.

Eric O'Gilvey reported he worked in the water sports industry for approximately 15 years and explained the basis for his support of raising the cap from 10 to 11 in the proposed ordinance.

Attorney Stockman, representing Paradise Parasailing, stated there was no objection from raising the cap from 10 to 11 licenses and they would like Rebel Water Sports to stay in business and be able to transfer their license. He discussed his concerns regarding recent proposed changes about the PWVL and PAL to not be within 500 feet of each other and related safety issues.

Public Comment closed.

Mayor Cereceda questioned the ramifications if the proposed ordinance was postponed.

Town Attorney Rooney noted he had withdrawn his proposed language changes he offered today. He explained if the ordinance moved forward today with the subject section(s) carved out, then Rebel Water Sports would have the opportunity to transfer their permit to another conforming location.

Council Member Hosafros reported she had been contacted by residents who expressed concerns regarding the proposed ordinance.

Discussion ensued concerning specific sections of the proposed ordinance.

MOTION: Council Member Hosafros moved to adopt Ordinance 14-02, PAL-PWVL Ordinance Amendments **only** with Section 5, Page 7 through end of Page 9, Sections 5, 6, 7, and 8; second by Council Member Stockton.

VOTE: Motion approved; 5-0.

XII. ADMINISTRATIVE AGENDA

A. Approval of Amendment No 3 to the SEARCH Inc. Mater Contract
A request for approval of Amendment No. 3 to the Master Contract with SEARCH Inc. for Landscape Signage-Phase II, Design and landscape Signage-Phase II Fabrication and Installation.

MOTION: Vice Mayor Andre moved to approve Amendment No. 3 to the Master Contract with SEARCH Inc. for Landscape Signage-Phase II, Design and landscape Signage-Phase II Fabrication and Installation; second by Council Member Mandel.

VOTE: Motion approved; 5-0.

B. Adoption of Resolution 14-13 – Investment Policy
A request for adoption of resolution 14-13, Investment Policy, authorizing the implementation.

Mayor Cereceda pointed out that the Investment Policy was approved at the January 6, 2014 Council Meeting and that the policy was now being brought to Council for approval through a resolution.

Town Clerk Mayher read the title of Resolution 14-13
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ADOPTING THE TOWN OF FORT MYERS BEACH INVESTMENT POLICY FOR SURPLUS FUNDS; A COPY OF THE POLICY IS ATTACHED HERETO AND INCORPORATED HEREIN; PROVIDING AN EFFECTIVE DATE.

Council Member Hosafros questioned why the Florida League of Cities was not included in the Listing of Authorized Investments.

Town Attorney Rooney explained the Florida League of Cities could be included in VI (A) – *The Florida Local Government Surplus Funds Trust Fund (SBA) or any other intergovernmental pool authorized pursuant to the Florida Interlocal Cooperation Act of 1969, as provided in Section 163.01, Florida Statutes.*

Town Attorney Rooney suggesting moving the item to later in the agenda in order to obtain information regarding the question from Council Member Hosafros.

C. Introduction of Ordinance 14-03, Amending Chapter 22 of the LDC, Historic Preservation
AN ORDINANCE AMENDING CHAPTER 22 OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE, "HISTORIC PRESERVATION;" AMENDING SECTION 22-1, "PURPOSE;" AMENDING HISTORICAL SIGNIFICANCE TO INCLUDE CATEGORIES OF HISTORICAL IMPORTANCE; AMENDING SECTION 22-3 BY AMENDING THE DEFINITIONOF HISTORIC RESOURCE; AMENDING SECTION 22-74 "POWERS AND DUTIES;" AMENDING SIGNIFICANCE AND ELIGIBILITY TO EVALUATE LEVEL OF IMPORTANCE AND ELIGIBILITY; ADDING SECTION 22-75 "HISTORIC DISTRICTS;" TO ESTABLISH FOUR HISTORIC DISTRICTS WITHIN THE TOWN; ADDING SECTION 22-76 "CATEGORIES OF HISTORIC IMPORTANCE;" ESTABLISHING AND DEFINING FOUR LEVELS OF HISTORIC IMPORTANCE; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

Recessed at 10:10 a.m. – Reconvened at 10:20 a.m.

MOTION: Council Member Hosafros moved to introduce Ordinance 14-03 Historic Preservation Ordinance Amendments and set the Public Hearing date for May 19, 2014 at 6:30 p.m.; second by Council Member Stockton.

VOTE: Motion approved; 5-0.

B. Adoption of Resolution 14-13 – Investment Policy
A request for adoption of resolution 14-13, Investment Policy, authorizing the implementation.

Town Attorney Rooney stated he spoke with Finance Director Wicks who informed him that up until this year the Town had always 'piggy-backed' on the State's investment program which had the Florida League of Cities as an authorized user.

Jim Rodwell, Chair of the Audit Committee, noted the Florida Municipal Investment Trust.

Mayor Cereceda pointed out the matter was a 'policy'.

Discussion was held concerning Page 3, #10 (Authorized Investment Institutions and Dealers).

Town Attorney Rooney stated he was looking at the prospectus for Florida Municipal Investment Trust which indicated it was an intergovernmental local entity created pursuant to State law. He pointed out a

typographical error in the Resolution in the first paragraph: "WHEREAS, Florida Statutes Section ~~281.415~~ 218.415…"

MOTION: Vice Mayor Andre moved to amend Resolution 14-13 in the first paragraph: "WHEREAS, Florida Statutes Section ~~281.415~~ 218.415…"; there was no second.*

VOTE: Motion approved; 5-0.

MOTION: Vice Mayor Andre moved to adopt Resolution 14-13 adopting the Town of Fort Myers Beach Investment Policy for surplus funds; there was no second.*

VOTE: Motion approved; 5-0.

XIII. PUBLIC COMMENT

Public Comment opened.

Ceel Spuhler, resident, noted upcoming Ordinance 14-03 and discussed her thoughts on the value of the historic cottages and their historical designation. She suggested informing the residents through the newspapers about the potential historical designations for cottages.

Public Comment closed.

XIV. TOWN MANAGER'S ITEMS

A. Mound House Update

Town Manager Stilwell noted he and the Mayor would be meeting with residents concerning 216 Connecticut Street and the parking for the Mound House. He indicated the Town would be receiving applications for the Charter Review Committee until May 7th and urged Council to encourage residents to apply for the important committee.

Town Clerk Mayher reported the Committee was composed of five members; and she had received four letters and verbal interest from one person.

Discussion ensued regarding the composition of the Charter Review Committee; letters of interest received to date; the importance of the committee; and the timeline for the Charter review.

* **5. Seconding Motions**. As a general rule, with the exceptions given below, every motion should be seconded. This is to prevent time being consumed in considering a question that only one person favors, and consequently little attention is paid to it in routine motions. ***Where the chair is certain the motion meets with general favor, and yet members are slow about seconding it, he may proceed without waiting for a second.*** Yet, any one may make a point of order that the motion has not been seconded, and then the chair is obliged to proceed formally and call for a second. The better way when a motion is not at once seconded, is for the chair to ask, "Is the motion seconded?" In a very large hall the chair should repeat the motion before calling for a second in order that all may hear. After a motion has been made no other motion is in order until the chair has stated the question on this motion, or has declared, after a reasonable opportunity has been given for a second, that the motion has not been seconded, or has ruled it out of order. Except in very small assemblies the chair cannot assume that members know what the motion is and that it has not been seconded, unless he states the facts.

XV. TOWN ATTORNEY'S ITEMS

Town Attorney Rooney – noted the email he had forwarded to Council regarding the employment agreement for Town Manager Stilwell; and that he had incorporated the two changes previously discussed into the contract. He hoped the contract reflected Council's direction and indicated that if Council had not further questions or concerns regarding the contract, then there was no action required today.

Council Member Hosafros explained her intention regarding the compensation package ($7,000/insurance) for the Town Manager and requested a motion for reconsideration.

Council Member Stockton reviewed her agreement with Council Member Hosafros and her belief that the intention was to eliminate the $7,000 compensation discussed.

Council Member Mandel reviewed how the health insurance issue was handled with the former Town Manager.

Discussion ensued concerning the value of the health insurance for employees, spouses, and children; the proposed employment agreement for the Town Manager position; and prior Town Manager employment agreements relating to salary, benefits, and deferred compensation.

Finance Director Wicks reviewed the salaries of former Town Managers and pointed out the salary had stayed within the $106,000-120,000 range.

Discussion continued regarding the proposed employment agreement for the Town Manager position as it related to salary and deferred compensation.

Council Member Hosafros explained it was her prior intention to have the $7,000 related to health insurance deleted from the Town Manager employment agreement.

Discussion continued concerning the proposed employment agreement for the Town Manager position and the employment agreement for the former Town Manager.

Town Attorney Rooney stated he would process the proposed employment agreement for execution.

XVI. COUNCILMEMBER ITEMS AND REPORTS

Vice Mayor Andre – no items or reports.

Council Member Mandel – stated he would not be present at the May 19th Council Meeting. He reported he attended a meeting of the Southwest Florida Community Foundation where immediate things that could be done related to water quality issues were discussed (i.e. asking the Army Corps of Engineers, by letter, in May with a signature from every Lee County municipality, other nearby counties, and 57 environmental groups to raise the water level in Lake Okeechobee up to no more than 6 inches and to look at their risk assessment formula). He announced the subject letter was drafted last

Friday by Sanibel's environmental person; and that the letter would come to the Town for signature by May 19th.

Council Member Hosafros – reported she had been contacted by a resident who would like to see the newspaper boxes cleaned-up. She requested Council consider adding 'updating the Town's emergency plan' to a future Work Session; and questioned if the LPA would be able to review the plan before storm season started.

Mayor Cereceda noted that post-disaster/emergency management was already listed on Agenda Management.

Town Attorney Rooney explained the topic was not a committee or LPA issue; rather it was a staff issue.

Town Manager Stilwell suggested checking the County (Executive Summary) about their plan and noted he would bring that information to Council for review.

Mayor Cereceda requested the Town Clerk to place "Review of Emergency Operations Procedure" (EOP) on the next Work Session.

Town Clerk Mayher reported the following items were already scheduled for the May 19th Work Session:

- Preliminary budget discussion
- Policy decision on surveys with construction permits
- Presentation from CRW on the TrackIt system
- Presentation on the airport noise and FAA update
- Discussion on the EOP

Council Member Stockton – explained her desire to have all children 18 and under who were Bay Oaks members to get into the Town pool for free. She discussed revenue numbers she received from staff.

Town Attorney Rooney stated he would investigate if the pool fees were set by ordinance or resolution, then the item would have to go on an agenda for consideration. He added if it was a policy matter that could be handled internally, then staff would still have to come back before Council for direction.

Vice Mayor Andre supported Council Member Stockton's request.

Mayor Cereceda – noted her belief that there should be a way to consolidate each committee's efforts to publicize their projects, information, and work (town-wide) and talked about the collection of all the information compiled/created by the committees (formerly called *The Beach Access*). She indicated she intended to reach out again with another workshop to the area residents of 216 Connecticut Street. She suggested that a budget discussion go on each agenda until the budget was approved in September.

Discussion was held as to whether to place the budget discussion on each Work Session agenda or Regular Meeting agenda.

Consensus was to place the discussion of the 'preliminary or proposed budget' on each Work Session agenda.

Mayor Cereceda - questioned the status of IQM2.

Town Clerk Mayher reported staff was working on IQM2 (agenda management and minutes tracking program) which would allow the Town to go paperless for meetings, broadcast from the Town's website, Council meetings would be archived, and the site would be able to reference past meetings (written, video, and audio).

Mayor Cereceda – stated she would like to have the Council's Work Sessions televised.

Vice Mayor Andre questioned if there was sufficient air-time.

Town Clerk Mayher reported Comcast has offered the Town a channel; however, in the past the Town did not have sufficient programming so the Town actually used the City of Fort Myers (Channel 98).

XVII. AGENDA MANGEMENT

No discussion.

XVIII. RECAP OF ACTION ITEMS

No discussion.

XIX. ADJOURNMENT

Mayor Cereceda adjourned the meeting at 11:10 a.m.

Adopted 5-19-14 With/Without changes. Motion by Hosafros/Andre

Vote: 4-0 (Mandel excused)

Michelle D. Mayher

Michelle D. Mayher, Town Clerk

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