



Fort Myers Beach Town Council

**Council Chambers
2525 Estero Blvd.
Fort Myers Beach, FL 33931**

Minutes

Monday, November 14, 2022

9:00 AM

ORDER OF BUSINESS

DRAFT

I. CALL TO ORDER

Members present: Mayor Murphy, Vice Mayor Hosafros, Council Member Allers, Council Member Atterholt and Council Member Veach.

II. INVOCATION

Town Clerk Baker.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

Vice Mayor Hosafros moved to approve the final agenda; second by Council Member Allers.

Motion carried unanimously.

V. PUBLIC COMMENT

J.D. Cox, resident, spoke about losing his daughter, who attended Beach Elementary and how the community supported him and his family. He supported rebuilding the school for the children.

Jane Plummer, resident, supported rebuilding the school. As the Chair of the LPA (Local Planning Agency), she requested a joint meeting with Town Council.

Natalie Hinkley, member of the PTO for the Fort Myers Beach Elementary School, stated that someone was trying to shut down the school. She felt everyone was giving up on saving the school and described how children were suffering. She noted there was a meeting regarding the school on November 22, 2022, and encouraged the community and Town Council to attend.

Anita Cereceda, resident, hoped the beach school stayed open too. She thanked Town Council, Town Manager, Town Clerk, Town Attorney and staff for their hard work. She thanked Vice Mayor Hosafros and Mayor Murphy for their service to the community.

John Heim, resident, thanked Town Council for their service. He noted people were swimming in the water and asked that Town Council emphasize to the public to stay off the beaches.

John Kaas, resident, felt it was ridiculous that the County wanted to take the school. He noted they had to fight to save the school.

Jackie Liszak, President of the Fort Myers Beach Chamber of Commerce, thanked Council Members for their hard work. She did not attend the school but supported keeping it. She offered her help and noted the Chamber of Commerce website included resources for the community.

Vanessa (no last name provided), resident, recently moved to the beach because of the school. She noted her daughter was in kindergarten and loved the school and Bay Oaks. She stated that her five-year-old daughter was bussed off the island and dropped off at Walmart. She implored everyone to support the school.

Sanibel Mayor Holly Smith commented that they were all in it together and she supported Fort Myers Beach. She noted that they had to work together, and Sanibel was there to help. She stated they had come a long way in 47 days but had a long way to go.

Town Clerk Baker read an email from Jennifer Rusk regarding allowing self-certification instead of inspections when using FL-licensed trade contractors to reduce the workload. She requested that fence permits be waived if replaced with the same kind and quality. Town Clerk Baker read an email from Patrick Romcoe congratulating Karen Woodson and John King for being elected to Town Council, thanked those leaving and thanked those remaining on Council. He looked forward to the future.

Mayor Murphy stated that he would fight to save the beach school. He noted that keeping the school was the decision of the School Board and encouraged the community to voice their opinion.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

No items.

VII. APPROVAL OF MINUTES

- A. October 25, 2022 Town Council
Council Member Allers moved to approve the minutes; second by Vice Mayor Hosafros.
Motion carried unanimously.
- B. November 1, 2022 Town Council
Council Member Allers moved to approve the minutes; second by Vice Mayor Hosafros.
Motion carried unanimously.
- C. November 7, 2022 Town Council
Council Member Allers moved to approve the minutes; second by Vice Mayor Hosafros.
Motion carried unanimously.

VIII. CERTIFICATION OF ELECTION RESULTS

A. Resolution 22-39; Certification of Election

Resolution 22-39; Certifying the results of the Town of Fort Myers Beach General Election on November 8, 2022 for Town Council Seats One and Two.

Resolution 22-39 was continued pending certification by the Lee County Supervisor of Elections.

Mayor Murphy stated it was an honor to serve the community and thanked everyone who supported him for over 10 years. He thanked his family for their support and all the people in Town Hall, specifically the Town Manager, staff, Town Attorney, Town Clerk and fellow Council Members. He congratulated the new Council Members and wished them the best. He advised taking help when offered and thanked those who helped the town from all over the country.

Council Member Veach stated that no one was prepared for the devastation and described how Mayor Murphy and Town Manager Hernstadt had to operate right after the hurricane. He appreciated their work.

Vice Mayor Hosafros stated she was grateful for the opportunity to serve the citizens. She commented that the staff was extraordinary when dealing with COVID and the hurricane. She noted the town should be grateful to the staff because they made everything happen behind the scenes.

Council Member Atterholt thanked Vice Mayor Hosafros and Mayor Murphy for answering the public service call.

Council Member Allers thanked Vice Mayor Hosafros and Mayor Murphy for teaching him a lot. He wished them both the best in the future and thanked them for their service.

IX. INAUGURATION

A. Oath of Office

Seat #1 (King)

Seat #2 (Woodson)

Karen Woodson and John King were sworn in.

X. REORGANIZATION OF COUNCIL

A. Selection of Mayor and Vice Mayor

Selection of Mayor and Vice Mayor in accordance with the Town Charter.

Council Member Atterholt nominated Council Member Allers as Mayor. No other nominations.

Council Member Veach nominated Council Member Atterholt as Vice Mayor. No other nominations.

The nominations were approved.

Vice Mayor Atterholt recognized Representative Adam Botana and noted that

14 state legislatures had toured the island recently and met the Mayor and Fire Chief. Rep. Botana recognized other legislature members and noted they were all standing with the beach.

Mayor Allers read the title of the resolution to extend the proclamation of a state of local emergency for hurricane Ian. Motion passed unanimously.

Mayor Allers read a prepared statement and thanked Council for putting confidence in him to lead the town. He requested permission to engage with outside entities and pursue talks to identify resources to help organize future activities. He requested that Council Member King and staff work with the Audit Committee to document what the town was facing. He noted that the town needed to hire a Finance Director to coordinate monies and asked the Town Attorney to lead the oversight. He asked Council Member Woodson to coordinate with the Town Manager regarding hiring a director. He requested that she identify budget needs and provide a report at each meeting. Mayor Allers proposed that the Town Manager and staff track individual real estate transactions and develop models of those transactions. He requested that Council Member Veach provide oversight and work with the staff to create reports regarding the data. He asked Vice Mayor Atterholt to review monthly department reports and citizen communications.

Town Attorney Herin, Jr. explained that only one Council Member could be the liaison to the Audit Committee due to the Sunshine Law.

Vice Mayor Atterholt moved for approval regarding Mayor Allers's proclamation; second by Council Member King.

Council Member Veach questioned the method of assigning liaisons to advisory committees since they were typically voluntary. Town Attorney Herin, Jr. did not think the assignments directly matched up with committee liaisons. Council Member Veach did not have a problem with Mayor Allers's assignments but did not think it was typical for the Mayor to dictate duties. Mayor Allers replied that he did not mean to dictate anything but tried to be proactive.

Motion carried unanimously.

XI. ITEMS FOR DISCUSSION

A. Restoration of Fort Myers Beach

Council Member Veach commented on how Town Manager Hernstadt put the town in a good financial position. He disagreed with his resignation and felt he did a great job.

Council Member Woodson noted that people usually were mentally out the door when they submitted their resignations. She mentioned bringing in an interim manager.

Council Member King supported his resignation.

Mayor Allers stated that the Town Manager submitted his resignation yesterday, effective April 2023. He commented that the Town Manager was brought in to get the town out of financial crisis and he did a great job. He supported hiring someone to see the town through the next few years.

Council Member Veach felt the Town Manager should be able to stay until April to give the Council time to search for a new manager. He felt an interim manager would be a detriment to the community.

Vice Mayor Atterholt questioned Mayor Allers's plan for the future. Mayor Allers reiterated his position for a clear transition and accepting help from various sources. Town Attorney Herin, Jr. reviewed the terms and conditions of Town Manager Hernstadt's contract. Discussion was held regarding the details of the contract and different scenarios. Council Member King questioned which scenario would benefit the town financially.

Town Manager Hernstadt stated that it was probably cheaper for Council to accept his resignation today. Council Member Veach suggested that Mayor Allers reveal his plan before they make a decision regarding Town Manager Hernstadt. Mayor Allers replied that capable people have offered to step in. Council Member Veach questioned who those people were.

Vice Mayor Atterholt moved to accept the Town Manager's letter of resignation effective immediately; second by Council Member King.

Town Manager Hernstadt stated their option was for the town to pay him a lump sum or continue to pay him biweekly. Town Attorney Herin, Jr. suggested that a separation agreement be prepared to set forth terms and conditions as discussed.

Motion passed 4-1 with Council Member Veach dissenting.

Town Manager Hernstadt felt that his terms were clear and he was not interested in a separation agreement. Town Attorney Herin, Jr. suggested the best practice was to prepare a separation agreement with a resolution. Council Member Woodson supported creating a separation agreement put together by an employment law attorney in the state of Florida. She indicated they could accept the resignation effective today or suspension with pay pending further discussion and include the separation agreement by the next meeting.

Vice Mayor Atterholt moved to rescind his motion and proceed with the path suggested by Council Member Woodson above; second by Council Member Woodson.

Motion passed 3-2 with Council Members Veach and King dissenting.

Council Member Woodson moved to suspend the Town Manager's employment with pay pending further discussion and introduce an agreed-upon separation agreement at the next council meeting on November 21,

2022; second by Vice Mayor Atterholt.

Motion passed 3-2 with Council Members Veach and King dissenting.

Mayor Allers proposed working with the state to bring in someone immediately. Vice Mayor Atterholt noted they needed an immediate plan for an interim town manager. Town Attorney Herin, Jr. stated that without a town manager, there was no one to run the town's administration. Vice Mayor Atterholt suggested that Jim Steele be appointed as interim manager. Town Attorney Herin, Jr. stated there was a conflict of interest because Jim Steele was a relative and the vice mayor would have to sign proper paperwork and refrain from voting. Vice Mayor Atterholt indicated that he would recuse himself. Council Member Woodson supported Jim Steele.

Mr. Steele stated he would be interested on a short-term basis.

Council Member Woodson moved to bring Mr. Steele in on a short-term interim basis as Town Manager; second by Council Member King.

Mr. Steele reviewed his background.

Council Member Veach commented that the action was in haste and not transparent. He added that compensation was not discussed. He felt they should enter discussions rather than appointing Mr. Steele as interim manager. Mr. Steele stated that he would not charge the town if the position was no longer than one week.

Council Member Woodson amended her motion to bring in Mr. Steele on a short-term interim basis for town manager at no pay for one week to be reviewed again on November 21, 2022; at the same time, be looking for other opportunities and other people to fulfill that position; Council Member King amended his second.

Council Member Veach questioned when the process to find another town manager would begin. Mayor Allers replied that it would be a week or two. Council Member Veach noted there were Policies and Procedures to follow and questioned whether they were instigating the process of searching for the next permanent manager now. Mayor Allers responded that they could open the search now or next week, but they should get through this week and see what they had on Monday. Council Member Veach felt they should start the process now because it could take a while. He commented that they would hire an interim town manager for one week and then find another interim town manager until they hired a permanent town manager while they already had a competent town manager.

Motion carried 3-1 with Council Member Veach dissenting and Vice Mayor Atterholt recused.

Vice Mayor Atterholt questioned whether the Mayor could lead the search for an interim town manager over the coming week. Town Attorney Herin, Jr. replied that normally the interim town manager would be involved in the process. He added that Council could designate a liaison to work with Mr. Steele to look for a replacement in the short term.

Vice Mayor Atterholt moved to designate the mayor to work with the new interim town manager to search for a permanent, interim town manager over the coming week; second by Council Member Woodson.

Council Member Veach stated that he preferred a more open process along the lines of the Policies and Procedures, where the interim town manager solicits interested parties and Council looks at them like they were filling a job. Mayor Allers responded that all interested parties would be brought back before Council for approval. Council Member Woodson volunteered to be involved. Town Attorney Herin, Jr. cautioned Council that the process had to be done in the sunshine and only one member of the Council should be involved.

Motion carried 4-1 with Council Member Veach dissenting.

Council Member Veach recommended a budget review to look at the decisions made last year. Town Attorney Herin, Jr. stated that Interim Town Manager Steele was no longer a member of the Audit Committee. He noted that appointments had not been made for advisory committees yet, so there were no active committees. Consensus was reached to move forward with the budget review. Council Member Veach suggested that school supporters start a group to inform people when school board meetings will be held. He was concerned about water quality and suggested that Interim Town Manager Steele create warning signs at beach accesses. People were parking close to the seawall at Newton Park and questioned whether they could fortify the area, so people do not get hurt. Council Member Veach questioned why refrigerators were not being picked up. Bart Holmes, Project Manager with Crowder, stated that refrigerators were in a separate debris stream and being picked up as quickly as possible. Council Member Veach reviewed the Florida Department of Emergency Management (FDEM) analysis regarding the 50% rule. He noted the analysis did not include 20% over the structure value and that the County Property Appraiser was the appropriate government official to determine the adjustment factors and the value. Council Member Veach indicated they needed more clarification.

Mayor Allers responded that Lee County was discussing the analysis today. Council Member Woodson thanked everyone for welcoming her and Council Member King.

Council Member King moved to waive permitting fees for up to 90 days;

second by Vice Mayor Atterholt.

Council Member Veach questioned what that would cost the town and suggested a financial analysis of the impact. He commented that the funds were taxpayers' money and that moving forward without knowing the impact was reckless and financially irresponsible.

Motion carried 4-1 with Council Member Veach dissenting.

Council Member King suggested the curfew hours be modified to 6:00 a.m. to 8:00 p.m. to help local businesses. Vice Mayor Atterholt would like to hear from the sheriff's office before making changes. Town Attorney Herin, Jr. stated that they approved the resolution extending the emergency declaration, which included the curfew from 7:00 a.m. to 7:00 p.m. They would have to adopt an emergency ordinance modifying the current code provision to modify the curfew. Council Member King supported a joint meeting with the LPA and noted that Don Sudduth applied to be a member of the LPA. He would like to see Public Works staff clean the beach. He noted that the county would take clean sand piles from condos if the sand were not used by a specific date.

Mayor Allers would like a joint LPA meeting and an M&P meeting scheduled as soon as possible. Council Member Veach suggested a joint LPA M&P meeting. Town Attorney Herin, Jr. stated that meetings had to be noticed at least 48 hours in advance. Council Member Veach questioned scheduling a meeting with the LPA on Thursday. The meeting was tentatively set for Thursday, November 17, 2022, at 9:00 a.m.

Mayor Allers felt cleaning up the beach was a high priority and suggested meeting with the incident command team, fire district and sheriff to clean up the beach safely. Council Member Veach was concerned regarding the safety of working in the water. He will contact the people affiliated with Keep Lee County Beautiful.

Vice Mayor Atterholt requested that Mayor Allers be appointed as a TDC (Tourist Development Council) representative if Council approved. Council Member Veach noted that Council was already scheduled to reassign all liaisons at their next meeting.

Council Member Woodson questioned whether they were scheduling a special meeting to discuss the transition and separation agreement. Town Attorney Herin, Jr. replied that he intended to add it to the next regular meeting agenda on November 21, 2022. Council Member Veach suggested discussing the separation agreement at their next M&P. Mayor Allers agreed.

XII. FINAL PUBLIC COMMENT

Samantha Campbell, resident, questioned the process to remove the sand on their street.

Erin (no last name provided), PTO member, stated that a Facebook PTO page existed and had information regarding the school.

Neary Korn, owner of Beach Connection, discussed not being able to get electricity due to debris and accessing the pole. He noted that others refused to clean up debris and he asked the town to help him get his electricity back.

Brittany (no last name provided) attended the elementary school and stated that everyone had to show up at the meeting to save the school.

XIII. TOWN MANAGER'S ITEMS

No items.

XIV. TOWN ATTORNEY'S ITEMS

Town Attorney Herin, Jr. stated that cleaning up the beach under the state had multiple components and the FDEP (Florida Department of Environmental Protection) was tasked with cleaning the beach and canals. If staff began cleaning the beach, it might conflict with the state contract and process. He cautioned the town to move forward slowly to minimize the town's exposure and shift the financial burden away from the town to the state and FEMA. The tradeoff might be that the beach was cleaned up a little slower. He will continue to look into the issue.

XV. COUNCILMEMBERS ITEMS AND REPORTS

Council Member Veach questioned whether the emergency order signed by the FDEM was expired or extended. If it was expired, they would have to meet within the confines of the town limits. Town Attorney Herin, Jr. will check.

A. Rebuilding Beach Elementary School

Mayor Allers questioned whether there was consensus to direct staff to draft a letter to the school board from Town Council urging them to save the school. Vice Mayor Atterholt suggested sending a copy to the Supervisor. Consensus was reached.

B. Next Regularly Scheduled Town Council Meeting

Monday, November 21, 2022 at 9:00 a.m.

The next scheduled meeting was Thursday, November 17, 2022, at 9:00 a.m. as a joint meeting with the LPA.

XVI. ADJOURNMENT

Council Member King moved to adjourn; second by Council Member Woodson. Motion carried unanimously.

The meeting was adjourned at 11:50 a.m.