



Fort Myers Beach Town Council

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

Minutes

Monday, November 21, 2022

9:00 AM

ORDER OF BUSINESS

FINAL

I. CALL TO ORDER

Members present: Mayor Allers, Vice Mayor Atterholt, Council Member King, Council Member Veatch and Council Member Woodson.

II. INVOCATION

Clerk Baker.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

Vice Mayor Atterholt moved to approve the final agenda; second by Council Member Veatch.

Motion carried unanimously.

V. PUBLIC COMMENT

Tauheedah Mateen from the Small Business Administration (SBA) provided an update. She noted that businesses registered with FEMA (Federal Emergency Management Agency) would be sent to the SBA (Small Business Administration). If the SBA could not help, the business owner would be automatically referred back to FEMA for additional grant consideration. She urged people to submit applications and not to throw out letters of denial from either agency because instructions on submitting an appeal were contained in the letters. She stated that any SBA applicant could speak to a representative at a standalone business center.

Aria Cox from Fort Myers Beach Elementary questioned whether the school would be rebuilt. Mayor Allers replied that the town did not have the ability to make that decision, but the Council would be at the school board meeting on November 22, 2022.

Captain Melody King, resident, introduced herself and described her business experience. She stated that she helped with the storm recovery is

involved with fundraising for the community.

Jesse Field, resident, explained why his family moved to the beach and discussed saving the elementary school. He noted that he had also submitted his resume for the LPA. John Koss, resident, indicated that many community members would be attending the school board meeting. He noted there was no communication between the school board and parents and asked whether the Town Council could be involved with communication issues.

Cliff Gallagher felt that one of the reasons former Mayor Murphy did not win the election was because property owners were not allowed back on the island immediately after Ian. He hoped that the policy would change before the next hurricane. He disagreed with the policy that every property had to obtain a structural engineer report and wanted a refund. He disagreed with the requirement that trailers and motor homes had to be registered with the town.

Jenny Paradiso, resident, described the damage inside the beach school.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member Veach recognized the Kiwanis for hosting the Thanksgiving event. Council Member Woodson described the Mayhem at the Man Caves and noted it was a great event.

Council Member King recognized Kim and Ed Ryan at Beach Talk Radio. He noted they raised over \$320,000.00 for beach employees and residents. He suggested that they receive a day of honor.

Mayor Allers thanked members of the Jacksonville management team for their hard work.

No items from other members.

VII. CONSENT AGENDA

Council Member Atterholt moved to approve; second by Council Member Woodson.

Motion carried unanimously.

A. Resolution 22-39; Certification of 2022 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.

Council Member Atterholt moved to approve; second by Council Member Woodson.

Motion carried unanimously.

VIII. ADMINISTRATIVE AGENDA**A. Town Manager****Roger Hernstadt****H2 Solutions, LLC**

Town Attorney Herin, Jr. described the terms of the agreement proposed by H2 Solutions. They would be available for up to six months and the contract could be terminated with 15 days' notice without cause. They would provide all interim town manager services and all administrative actions per the town charter, the town code and state law. H2 Solutions requested \$20,000.00 per month with travel and housing provided per the policies and procedures. He stated that he was reviewing and adding to a draft contract provided by H2 Solutions. H2 Solutions requested that the start date be November 1, 2022. The Town Attorney confirmed that H2 Solutions could work without a signed contract.

Council Member King moved to approve the contract with H2 Solutions, LLC as described; second by Council Member Woodson.

Motion carried unanimously.

Town Attorney Herin, Jr. stated that the Council had the authority to accelerate the termination date of Mr. Hernstadt's resignation. Mr. Hernstadt had the option to request payment of compensation through April 20, 2023, or up to 20 weeks or the maximum allowed under Florida law. Mr. Hernstadt requested that if Council decided on an accelerated resignation date, it would be through December 31, 2022, to maintain his health benefits and provide access to Mr. Holley regarding the transition. Mr. Holley indicated that he wanted to follow up with Mr. Hernstadt but did not know if keeping him on for another month was necessary.

Town Attorney Herin, Jr. informed Council that if they accelerated his resignation, they would still have to pay Mr. Hernstadt through April 20, 2023, but he would not be eligible for benefits beyond the date of early acceleration. He explained the difference between severance pay and compensation. Council Member Veach supported keeping Mr. Hernstadt until December 31, 2022, to help with the transition. Mayor Allers was confident in the abilities of the new interim town manager and staff and supported them moving forward. Council Member King moved to accept Mr. Hernstadt's resignation and accelerate his resignation to be effective November 21, 2022; second by Council Member Woodson.

Motion carried 4-1, with Council Member Veach dissenting.

B. 2023 Meeting Schedule**Approve the monthly schedule for Town Council meetings for calendar year 2023**

Town Clerk Baker read the schedule for meetings which was located on the town's website.

Vice Mayor Atterholt moved to approve the 2023 meeting schedule; second by Council Member King.

Council Member Veach noted he would not be available on November 28, 2022.

Motion carried unanimously.

C. Local Planning Agency appointment

Appointment to the Local Planning Agency (LPA)

Town Clerk Baker noted that Patrick Romcoe and James Baon submitted their applications for the LPA before the cutoff date. Jesse Field submitted his application after the cutoff date.

James Baon was appointed to the LPA.

D. RFP-23-01-AD: Disaster Recovery Consultant Services

Approve the Selection Advisory Committee's recommendation in response to RFP-23-01-AD, Disaster Recovery Consultant Services, and authorize the Town Manager to negotiate and execute an agreement with Hagerty Consulting, Inc.

Mayor Allers requested that the item be tabled until November 28, 2022, for discussion.

Vice Mayor Atterholt moved to table until the next formal meeting on December 5, 2022, at 9:00 a.m.; second by Council Member Woodson. Motion carried unanimously.

E. Permitting Fees

A discussion regarding the waiving of permit fees

Vice Mayor Atterholt indicated the goal of waiving permit fees was intended to be in concert with the fire district. Mayor Allers noted that Chief Martin clarified that approved or accepted permit fees were waived for 90 days.

Council Member Veach questioned which permit fees were waived. Mayor Allers replied that an issued permit qualified for the waiver. Council Member Woodson preferred that fees be waived only for permits related to clean-up and rebuilding. Council Member Veach suggested that property owners not submit variance applications if they are not needed to streamline the process. He thought that a cap should be put in place. Mayor Allers felt it was important to waive permit fees for people ready to start rebuilding. He clarified that permits submitted post-September 28 and issued before the 90-day cutoff would qualify for the fee waiver. Council Member Woodson questioned whether additional staff would have to be hired to process permits that were ready to go. Interim Town Manager Holley suggested that applications submitted before the 90-day cutoff receive the waiver.

Mayor Allers moved that straight permit applications for damage related to hurricane Ian received after September 28, 2022, qualified for the 90-day fee waiver period; second by Vice Mayor Atterholt.

Motion carried 4-1, with Council Member Veach dissenting.

IX. FINAL PUBLIC COMMENT

Kara Stewart stated that there was a provision under a statute that private provider services could be hired to provide plan review and permitting inspection services as an individual. The town would be obliged to adjust its fee schedule to compensate for services it would not provide. She indicated that the fee schedule combined a building permit fee with additional services. She noted that the public could hire a private provider to take the burden off the town.

Joe Orlandini, resident, appreciated the relief of permit fees, but he opted to pay his fees. He noted that after searching for several days, the clock was not found. He and one of his investors offered to pay for a new clock.

Dave Fuchelli, resident, supported Vice Mayor Atterholt's theory that the town would be functional in one year. He stressed that the beaches had to be cleaned immediately. He referred to the 90-day permit fee waiver and noted that he lived in a condo and was still waiting for FEMA engineers to assess the property. After the assessment, he had to hire an engineer and design firm before submitting a proper permit. He stated that he appreciated any help the Council could offer.

George Gilbert, Town Square magician, thanked Council for their service. He thanked Chris Primo for letting him and others use his space this weekend from 4:00 p.m. to 7:00 p.m. to provide family entertainment.

Chris Primo, resident, stated that three of his restaurants were trying to get back online. Food trucks were concerned regarding the policy that they had to provide restrooms for many people. He offered Norm's beach parking lot to beach cleanup groups and another lot in Times Square was available if needed.

Neary C. thanked the Council for helping clean his area. He suggested a meeting with Times Square vendors to help continue cleaning the debris. He described areas that he believed were still dangerous to the public.

James Cox, resident, suggested that the map concerning the 50% rule be used to identify properties that were heavily damaged and allow those owners to rebuild at no cost.

X. TOWN MANAGER'S ITEMS

Interim Town Manager Steele noted that the former Town Manager instituted a salary increase effective October 13, 2022. All employees who worked 40 hours received time and a half pay and hours exceeding 40 were paid double time. The impact of the first pay period on October 27, 2022, was an additional \$167,529.00, for November 9, 2022, an additional \$155,168.00 and the pay period ending November 23, 2022, was estimated at \$126,000.00. Approximately \$450,000.00 in additional pay was made. He met with town staff on Friday and indicated the town was going back to the regular pay schedule. Council Member Veach questioned whether any of the payments were reimbursable by FEMA. Mayor Allers replied that he spoke to FEMA and since the policy was not in effect before Ian, the money would probably not be reimbursed. He thanked Mayor Allers for being so focused.

A. Year End Financial Report

Interim Town Manager Holley suggested the topic be revisited when Council had an opportunity to review the report. Mayor Allers agreed. Interim Town Manager Holley noted that the town was in good shape. Council Member Veach questioned what the insurance payment of \$3 million was for. Interim Town Manager Steele replied that about \$800,000.00 was for the water department and about \$1.9 million was for the stormwater department.

Interim Town Manager Holley indicated that he hoped to meet with insurance representatives at the League of Cities conference next week and recommended that the town not settle claims anytime soon. He noted that the company representing the town had a section on insurance adjustment and services. He added that the town might have to hire an independent adjuster.

XI. TOWN ATTORNEY'S ITEMS

Town Attorney Herin, Jr. reported that Donald Crapo submitted a personal injury claim on behalf of his wife who was injured in an accident allegedly on a town sidewalk. He stated a mediation was scheduled for tomorrow and anticipated that the matter would be settled during the mediation. He offered to attend the meeting and report back to Council. Town Attorney Herin, Jr. informed Council that the claim started years ago when Estero Blvd. was widened.

XII. COUNCILMEMBERS ITEMS AND REPORTS

Vice Mayor Atterholt requested that the Interim Town Manager contact representatives from the internet providers for an update. He suggested that the internet provider representatives be invited to attend an M&P meeting. He questioned scheduling a meeting with employers, the Chamber of Commerce and other entities to discuss a program to allow employees to enroll their children at the Beach Elementary school. He received support to add both items to an M&P. He noted the Key Questions for Key Staffers information was on the website. He thanked Beach Talk Radio for advertising the meeting.

Council Member Veach wondered whether Council could facilitate a meeting with beachfront property owners, businesses, and town staff to move forward with the future of the town square. He questioned when the debris at Bay Oaks would be removed. Mayor Allers did not hear anything about closing the site, but they were hauling at night to reduce the pile. He indicated that debris was being removed from what appeared to be state land on the beach. Keep Lee Beautiful was working towards a beach cleanup and a parking site was located on the north end. He commented that he was in conversations with condo associations on the south end to find out whether they would allow volunteers to park in their lots. Mayor Allers reiterated that beachfront owners go to landebriscleanup.com and fill out the right of entry form. He indicated that a significant cleanup effort with Tuna Skin was expected sometime in December. He recommended that coordination efforts be scheduled with Tuna Skin. Council Member Veach suggested that participants who planned to attend the School Board meeting ask how the community could help save the elementary school.

He thought Council should continue to examine how they could help accelerate the

permitting process. He suggested bringing in consultants or additional staff to help. He noted the gym at Bay Oaks appeared to be in good condition and felt it could be remodeled in less than 90 days. Mayor Allers stated that discussions were being held concerning creating a temporary working space for Town Hall staff. The fire department and two medical clinics would be on the same site.

Council Member Woodson questioned whether they should add public restrooms and sanitary stations to permits for food trucks. Vice Mayor Atterholt agreed and noted one of the food truck vendors indicated the current setup was working fine and they were hopeful the existing facilities would remain. Mayor Allers questioned contacting the Web EOC for portable facilities at Times Square. Council Member Veach noted the TDC (Tourist Development Council) might have funds to provide a restroom trailer. Council Member Woodson questioned approving containers for liquor consumption at food trucks affiliated with restaurants with liquor licenses. Council Members agreed as long as the restaurants followed state guidelines. The topic was added to an M&P. Council Member Woodson questioned clearing Bayside Park to allow community events. Mayor Allers replied that cleanup was in the works. Council Member Woodson brought up creating a search committee to hire a permanent Town Manager and fill the vacant Finance Director position. Interim Town Manager Steele agreed that the position needed to be filled. Council Member Woodson suggested looking at the organizational design of the permitting process and hiring a local attorney.

Mayor Allers responded that they should wait until Interim Town Manager Holley meets with staff and he felt the first step should be to hire a permanent Town Manager. Council Member Woodson questioned what the previous Town Manager did regarding salaries was something they should look into. Mayor Allers disagreed and thought they should move forward. Interim Town Manager Steele stated that staff were on their normal pay scale now.

Council Member King questioned whether a letter from Council was sent to the school board. Council Member King questioned whether the town could do anything regarding the scheduled release from Lake Okeechobee. Manager Chustz responded that the Council could address the U.S. Army Corps of Engineers. He offered to send examples of letters.

Mayor Allers stated that the curfew in Bonita Springs was 7:00 a.m. to 7:00 p.m. and contractors could not get on the island at the south end until 7:00 a.m., but residents were allowed on at 6:00 a.m. The information will be included on the website.

Town Attorney Herin, Jr. noted the declaration of emergency had to be extended. Vice Mayor Atterholt moved to extend the declaration of emergency; second by Council Member Veach.

Motion carried unanimously.

A. Outside Committee Designations

Designation of a Council representative and alternate to the seven

outside committees on which Council members have previously served. Coastal and Heartland National Estuary Partnership - Council Member Veach.

Coastal Advisory Committee - Environmental Projects Manager Chadd Chustz.

Fort Myers Beach Elementary School Youth Council - Mayor Allers. Horizon Council - Council Member Woodson.

Metropolitan Planning Organization - Council Member King with Vice Mayor Atterholt as the alternate.

Southwest Florida Regional Planning Council - staff. Tourist Development Council - Mayor Allers.

Southwest Florida Resiliency Coalition - Council Member Veach. Estero Committee for Bay Management - Council Member Veach.

B. Council Representation to Town Advisory Committees

Designation of a Council representative to the six Town advisory boards/committees.

Anchorage Advisory Committee - Vice Mayor Atterholt.

Audit Committee - Council Member King.

Bay Oaks Recreational Campus Advisory Board - Council Member Woodson.

Cultural and Environmental Learning Center Advisory Board - Vice Mayor Atterholt.

Marine and Environmental Resources Task Force - Council Member Veach.

Public Safety Committee - Mayor Allers.

XIII. ADJOURNMENT

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

The meeting was adjourned at 11:58 a.m.

Minutes adopted, January 9, 2023; Motion by Council Member King and seconded by Council Member Veach. Passed 5-0.



Amy Baker, Town Clerk

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME Atterholt James Douglas		NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE Fort Myers Beach Council	
MAILING ADDRESS 7390 Estevo Blvd. Unit 902		THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF:	
CITY Fort Myers Beach	COUNTY Lee	☒ CITY ☐ COUNTY ☐ OTHER LOCAL AGENCY	
DATE ON WHICH VOTE OCCURRED 11/14/2022		NAME OF POLITICAL SUBDIVISION: Fort Myers Beach	
		MY POSITION IS: ☒ ELECTIVE ☐ APPOINTIVE	

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which would inure to his or her special private gain or loss. Each elected or appointed local officer also **MUST ABSTAIN** from knowingly voting on a measure which would inure to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent, subsidiary, or sibling organization of a principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies (CRAs) under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you are not prohibited by Section 112.3143 from otherwise participating in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on page 2)

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, James Atterholt, hereby disclose that on 11/14/2022, 20__ :

(a) A measure came or will come before my agency which (check one or more)

- ☐ inured to my special private gain or loss;
- ☐ inured to the special gain or loss of my business associate, _____ ;
- ☒ inured to the special gain or loss of my relative, James Steele (uncle) ;
- ☐ inured to the special gain or loss of _____, by whom I am retained; or
- ☐ inured to the special gain or loss of _____, which is the parent subsidiary, or sibling organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

James Steele, my uncle, was appointed as the temporary Town Manager for the Town of Fort Myers Beach. I recused myself from the vote.

If disclosure of specific information would violate confidentiality or privilege pursuant to law or rules governing attorneys, a public officer, who is also an attorney, may comply with the disclosure requirements of this section by disclosing the nature of the interest in such a way as to provide the public with notice of the conflict.

11/17/2022
Date Filed

James Atterholt
Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.