Fort Myers Beach Town Council

Town Hall Council Chambers
2731 Oak Street
Fort Myers Beach, FL 33931

Minutes **Monday, May 6, 2024** **9:00 AM**

ORDER OF BUSINESS

FINAL

I. CALL TO ORDER
Members present: Mayor Allers, Vice Mayor Atterholt, Council Member King, Council Member Safford and Council Member Woodson.

II. INVOCATION
Town Clerk Baker.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA
Council Member King moved to approve the final agenda with items C-I pulled for discussion, seconded by Council Member Safford.
The motion carried unanimously.

V. PUBLIC COMMENT
Bill Veach, resident, commented on the comprehensive plan items and recommended that they open up the uses in the CB zoning districts but make them smaller. For example, a 5,000-square-foot footprint could have a small restaurant and a small shop instead of a 5,000-square-foot restaurant to serve the community better and reduce traffic demands. He also thought it made sense to give people a floor for residential accommodation consistent with the neighborhood zoning for owner-occupied housing, workforce housing or critical services.
Howie Hoffman thanked everyone for their help with senior softball.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member King thanked ABC 7 and NBC 2 and its employees for cleaning up the beach at the end of April. He recognized the town manager for his first anniversary. He also thanked his wife for staying with him for 34 years.

Council Member Safford thanked the Chamber of Commerce and the community for their event last week.

Mayor Allers thanked the FMB Kiwanis for the picture donation.

Vice Mayor Atterholt and Council Member Woodson congratulated Council Member King on his anniversary.

VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS

A. Tidal Basin Update

Deputy Director Jeremy Speaks stated that seven projects were obligated for a total of $19.8 million. He thanked the town for their hard work and explained what obligated projects were. He noted that they also wanted to complete approximately 20 projects and $1.5 million was awarded for CB planning. Seven hazard mitigation grants were submitted and six were under review. He added that five hazard mitigation grant applications for Hurricane Nicole were being worked on.

B. Marine & Environmental Resources Task Force

Jennifer Rusk, MERTF member, displayed and reviewed the Children's Activity Book. Lee County Visitor's Bureau requested copies to distribute along with other businesses. She thanked a list of people for helping with the project and commented that 10,000 would be printed. A consensus was reached to print the book.

VIII. APPROVAL OF MINUTES

A. Town Council - April 15, 2024

Under Public Items, A. should read that Mayor Allers read the title of the resolution, not Council Member King.

Council Member King moved to approve the amended minutes, seconded by Council Member Woodson.

The motion carried unanimously.

IX. CONSENT AGENDA

Council Member Woodson moved to approve the remainder of the consent agenda, seconded by Council Member Safford.
The motion carried unanimously.

A. Resolutions 24-81 through 24-84; Extending State of Local Emergency Hurricane Ian

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND EXTENDING THE PROCLAMATION THAT A STATE OF LOCAL EMERGENCY EXISTS BECAUSE OF THE CATASTROPHIC IMPACTS CAUSED BY HURRICANE IAN; PROVIDING FOR CONFLICTS; PROVIDING FOR SCRIVENER ERRORS, PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Council Member Woodson moved to approve the resolution, seconded by Council Member Safford.
The motion carried unanimously.

B. Resolutions 24-85 through 24-88; Extending State of Local Emergency Hurricane Idalia

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO HURRICANE IDALIA; PROVIDING THE TOWN WITH POWERS, INCLUDING, BUT NOT LIMITED TO THOSE PURSUANT TO FLORIDA STATUTES, CHAPTER 252, AND TOWN CODE CHAPTER 2, ARTICLE VI; PROVIDING FOR PENALTIES FOR VIOLATIONS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND FOR AN EFFECTIVE DATE AND A TERMINATION DATE.

Council Member Woodson moved to approve the resolution, seconded by Council Member Safford.
The motion carried unanimously.

C. Resolution 24-76; CDBG-DR Applications and Grants for Public Facilities and Critical Infrastructure

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AUTHORIZING THE MAYOR OR TOWN MANAGER TO APPLY FOR AND ADMINISTER A GRANT FROM THE LEE COUNTY CDBG-DR FOR PROJECTS UNDER THE CRITICAL INFRASTRUCTURE AND PUBLIC FACILITIES PROGRAMS; AUTHORIZING THE MAYOR OR TOWN MANAGER TO EXECUTE ANY RELATED DOCUMENTS TO IMPLEMENT AND ADMINISTER THE GRANT; AND PROVIDING AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Operations & Compliance Director Frankie Kropacek reviewed the background of the request as stated on the blue sheet.

Council Member King moved to approve the resolution, seconded by Council Member Safford.
The motion carried unanimously.

D. Resolution 24-92; Disaster Recovery Services Piggyback Lee County Agreement

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN AGREEMENT FOR DISASTER RECOVERY SERVICES WITH CROWDER-GULF JOINT VENTURE, INC., BASED ON PRICING COMPETITIVELY PROCURED BY LEE COUNTY THROUGH AN AGREEMENT AND THE TWO ASSOCIATED AMENDMENTS; AUTHORIZING THE MAYOR OR TOWN MANAGER TO SIGN THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Operations & Compliance Director Frankie Kropacek reviewed the background of the request as stated on the blue sheet. He stated the Bay Oaks property would not be used for a debris pile.

Council Member King moved to approve the resolution, seconded by Council Member Safford.
The motion carried unanimously.

E. Resolution 24-93; Demolition Services (City of Fort Myers)

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN AGREEMENT FOR DEMOLITION SERVICES WITH SOUTHWEST BUILDERS INC., BASED ON PRICING COMPETITIVELY PROCURED BY THE CITY OF FORT MYERS, FLORIDA THROUGH AN AGREEMENT; AUTHORIZING THE MAYOR OR TOWN MANAGER TO SIGN THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Operations & Compliance Director Frankie Kropacek reviewed the background of the request as stated on the blue sheet.

Council Member King moved to approve the resolution, seconded by Council Member Safford.
The motion carried unanimously.

F. Resolution 24-94; Demolition Services Bonita Springs Piggyback

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN AGREEMENT FOR DEMOLITION SERVICES WITH HONC DESTRUCTION BASED ON PRICING COMPETITIVELY PROCURED BY THE CITY OF BONITA SPRINGS; AUTHORIZING THE MAYOR OR TOWN MANAGER TO SIGN THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Operations & Compliance Director Frankie Kropacek reviewed the background of the request as stated on the blue sheet.

Council Member King moved to approve the resolution, seconded by Council Member Safford.
The motion carried unanimously.

G. Resolution 24-91; ITB-23-17-PW, Change Order #1

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING CHANGE ORDER #1 OF CONTRACT ITB-23-17-PW BETWEEN THE TOWN AND AMERICAN INFRASTRUCTURE SERVICES. TO INSTALL STREET SIGNS ON ESTERO ISLAND FOR AN ADDITIONAL COST OF $11,952; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Town Manager Hyatt reviewed the background of the request as stated on the blue sheet. He stated he would follow up with the county to replace the yield signs by the bridge.

Council Member King moved to approve the resolution, seconded by Council Member Woodson.
The motion carried unanimously.

H. CDBG-DR Planning Subrecipient Agreement

Accept CDBG-DR Planning Funding award in the amount of up to $1,575,000.00

Director Kropacek explained the award as stated on the blue sheet. Council Member King moved to approve the award, seconded by Council Member Woodson.
The motion carried unanimously.

I. Amendment #1; Extension for Bandes Construction Company

AUTHORIZE THE MAYOR TO EXECUTE AN AMENDMENT TO THE PREVIOUS NON-EXCLUSIVE RIGHT OF WAY AGREEMENT WITH BANDES CONSTRUCTION COMPANY, INC. TO EXTEND THE AGREEMENT FOR TWO MONTHS LONGER UNDER THE SAME TERMS AND CONDITIONS

Council Member Safford pointed out an error and noted that it referred to a map in the packet that did not exist. Director Kropacek explained the location of the structure and stated the errors would be corrected.

Council Member King moved to authorize, seconded by Council Member Safford.
The motion carried unanimously.

X. ITEMS REMOVED FROM CONSENT AGENDA

Items C-I were removed for discussion.

XI. PUBLIC HEARINGS

Town Attorney Vose explained the quasi-judicial procedures. Town Clerk Baker confirmed that all agenda items were properly advertised and she swore in those providing testimony.

A. Resolution 24-89, VAR20240050, 590 Carlos Circle

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20240050, REQUESTING TWO VARIANCES FROM LDC TABLE 34-3 A VARIANCE OF 16-FEET FROM THE REQUIRED 25-FOOT STREET SETBACK, AND A VARIANCE OF 5-FEET FROM THE REQUIRED 20-FOOT REAR SETBACK LOCATED AT 590 CARLOS CIR; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. No ex parte communications were disclosed. The applicant confirmed receipt of the agenda items and background materials.

Community Development Senior Planner Jason Smalley reviewed the background of the request as stated in the blue sheet. The LPA (Local Planning Agency) unanimously recommended approval with an additional condition and the applicant agreed. No objections from the neighbors were received.

Fred Drovdlic from RVI Planning utilized PowerPoint for his presentation. Slides included a Location Map, Pre-Ian Property Overview, Variance Requests, Site Plan, Variance Criteria and Conclusions.

No public comment.

Council Member King moved to approve the resolution, seconded by Council Member Safford.

The motion carried unanimously by roll call vote.

B. Resolution 24-90; SEZ20240024, 6614 Estero Blvd "Island Winds Condominium"

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING / APPROVING WITH CONDITIONS / DENYING SPECIAL EXCEPTION SEZ20240024 TO ALLOW RECONSTRUCTION OF A WOODEN LANDSCAPE WALL IN THE ENVIRONMENTALLY CRITICAL (EC) ZONING DISTRICT, WITH CONDITIONS, FOR THE PROPERTY LOCATED AT 6614 ESTERO BOULEVARD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. No ex parte communications were disclosed. The applicant confirmed receipt of the agenda items and background materials.

Senior Planner Smalley reviewed the background of the request as stated on the blue sheet. Staff confirmed that this was a replacement in the existing footprint of what existed before the hurricane and the deviation from the 1978 CCCL (Coastal Construction Control Line) was minimal.

Dave Nusbaum, President of the Island Winds Condominium, stated that the landscape wall was in a common area and faced the Gulf of Mexico. The wall was 300 yards from the mean high watermark of the beach. The FDEP (Florida Department of Environmental Protection) issued a permit, and staff informed Mr. Nusbaum that they needed a special exception. He noted that the LPA recommended approval.
No public comment.

Council Member King moved to approve the resolution, seconded by Council Member Woodson.
The motion carried unanimously by roll call vote.

C. Ordinance 24-09; Moss Marina CPA20230152, 450, 445, 441 & 436 Harbor Court, 435 Bonita Street, and 438 Bonita Street

First Reading and Public Hearing on proposed ordinance 24-09 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING/ DENYING A COMPREHENSIVE PLAN FUTURE LAND USE MAP AMENDMENT FOR PROPERTIES LOCATED AT 450 HARBOR COURT, 445 HARBOR COURT, 441 HARBOR COURT, 436 HARBOR COURT, 435 BONITA STREET, AND 438 BONITA STREET FORT MYERS BEACH FROM MARINA (3.53 ACRES) AND MIXED RESIDENTIAL (1.00 ACRE) TO PEDESTRIAN COMMERCIAL; CONTAINING 4.53 ACRES GENERALLY IDENTIFIED AS STRAP NUMBERS 24-46-23-W3- 00027.0000, 24-46-23-W3-00026.0020, 24-46-23-W3-0030B.0200, 24-46-23-W3-0030B.0190, 24-46-23-W3-0030C.0060, 24-46-23-W3-0030C.0040, 24-46-23-W3-0030A.0110, PORTIONS OF HARBOR COURT AND BONITA STREET RIGHT-OF-WAY; PROVIDING FOR SCRIVENER'S ERRORS AND AN EFFECTIVE DATE. Open the public hearing and schedule for second reading and final adoption on June 3, 2024 at 9:00 AM.

Attorney Jenna Persons-Mulicka represented the applicant and requested a continuance to a date uncertain of the small-scale map amendment until the CPD (Commercial Planned Development) was ready so they could present both at the same time.

Council Member Woodson moved to approve the requested continuance to a date uncertain, seconded by Council Member Safford.
The motion carried unanimously.

D. Ordinance 24-10; Comprehensive Plan

First Reading and Public Hearing on proposed ordinance 24-10 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN IN ITS ENTIRETY, PURSUANT TO 163.3184 (3), FLORIDA STATUTES; PROVIDING FOR ADOPTION OF THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN 2040, INCLUDING AMENDMENTS TO THE FUTURE LAND USE ELEMENT AND THE FUTURE LAND USE MAP, THE COMMUNITY DESIGN ELEMENT, THE TRANSPORTATION ELEMENT, THE HOUSING ELEMENT, THE HISTORIC

PRESERVATION ELEMENT, THE UTILITIES ELEMENT, THE CONSERVATION ELEMENT, THE COASTAL MANAGEMENT ELEMENT, THE RECREATION, & OPEN SPACE ELEMENT, THE INTERGOVERNMENTAL COORDINATION ELEMENT, THE CAPITAL IMPROVEMENTS ELEMENT, AND THE PROPERTY RIGHTS ELEMENT; INCLUSIVE OF ALL ASSOCIATED TABLES, EXHIBITS AND MAPS; AUTHORIZING FINDINGS AND ADMINISTRATIVE ACTIONS; PROVIDING FOR TRANSMITTAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR SCRIVENER'S ERRORS; AND PROVIDING FOR EFFECTIVE DATE.

Open the public hearing and schedule for second reading and final adoption on June 3, 2024 at 9:00 AM.

Mayor Allers read the title of the ordinance.

Community Development Planner Sarah Propst stated that Ed Ng would present the plan. Vice Mayor Atterholt suggested that Planner Propst be involved in the presentation and she agreed. Council Member Safford requested that the Future Land Use Map be displayed on the screen during the discussion.

Mr. Ng stated that the nodes were distributed throughout the island to help alleviate traffic without intruding into neighborhoods. He indicated that the nodes would allow for different uses. Planner Propst added that the next step was to update the LDC (Land Development Code) and that zoning districts would be based on future land use districts, although existing zoning districts would still apply. She stated that once the comprehensive plan (comp plan) was adopted, she would present language for the CB (Commercial Boulevard) district that would expand some of the uses in that district. Mayor Allers clarified that the future land use amendment would not increase thresholds from what was in place today.

Planner Propst indicated that they could move forward with changes to the LDC before the comp plan was approved by the state and the CB language would come forward in June or August.

Mr. Ng noted that the wetland conservation change had to be reviewed by the state and it might be sent back.

Planner Propst described how the CB district would open up to allow most commercial uses but would be limited on square footage. She commented that they could make the medium residential language more specific to properties fronting Estero Blvd. and make it more explicit by the zoning district without encroaching in the neighborhoods.

Council Member Woodson questioned whether the marina in the Santini district was zoned pedestrian commercial. Planner Propst replied that it was an error and the intensity had to be changed to 2.5 FAR.

Changes to Times Square were designed to capture visitors and the hotel and motel rooms were based on FAR, not density. It was noted that the platted overlay language would have to be utilized. Mr. Ng reviewed the changes to the Civic Center mixed-use district and stated the density would have to be adjusted slightly with the overlay. The Center Island district was reviewed and the marina was kept as a separate use. The Arts and Theater district uses were addressed and offices would be added to retail and restaurants.

It was noted that the platted overlay would have to be used for all districts. Workforce housing was added because the state required it.

Planner Propst stated that height was corrected to three stories because the ground floor was counted. Motel densities were changed to transient densities with FAR. Mayor Allers questioned the verbiage of stories and why it mattered whether there were three stories instead of two as long as they met the 30 feet above base flood elevation requirement and all other code requirements. Planner Propst replied that the LPA did not want to remove the stories because, in the past, people were sneaking additional stories into the attic space. Town Attorney Vose noted that it would allow for more people in residential structures.

The Housing element was about maintaining existing residents to empower aging populations to remain independent in their homes. Mr. Ng indicated that an addition stating that new housing would be built to comply with the applicable Florida building code and FEMA standards was a requirement, along with other requirements from the state. He described micro-units and stated they wanted to limit those.

Most of the Coastal Management element was required and Mr. Ng reviewed the policies.

When possible, language to preserve and enhance view corridors to the beach was added to the Recreation & Open Space. Codifying pocket parks was discussed and Mr. Ng will change the language to "add, preserve and enhance view corridors." He added a monitoring objective policy to track the number of partnership agreements and to track and implement ADA (Americans with Disability Act) accessibility. The LPA recommended that the monitoring section be scaled back to open it up. The park availability LOS was changed to include transient visitors since they used the parks and amenities.

Mr. Ng listed items eliminated in the Transportation element over the years and questioned what they wanted to bring back into the discussion. Vice Mayor Atterholt suggested adding language regarding pedestrian walkovers as a public benefit for entities with property on both sides of Estero Blvd. He would like to add language about pedestrian railings on Estero Blvd. and consider it a public benefit for businesses. He requested that water taxis be added to water ferries, add language to prioritize entities that incentivize people not to rent a car from the airport and businesses that create a shuttle service the beach. Planner Propst stated that pedestrian overpasses were already in the plan and that she was concerned about the potential danger with pedestrian railings. Nr. Ng indicated that pedestrian overpasses could be expanded to include areas outside of Times Square. Vice Mayor Atterholt suggested that the town partner with water ferries to help reduce traffic congestion. Mr. Ng recommended that water transportation be used rather than ferries or taxis and provided language to include involvement by the town. He will also add language regarding incentives for people not to rent cars as a public benefit.

Planner Propst noted that the LPA deferred improvements to Estero Blvd. to the town council. Mayor Allers indicated that the town took over the landscaping responsibility on Estero Blvd. and they could install bushes to direct pedestrians. Mr. Ng indicated he would strike the first sentence in the parking section and Planner Propst provided alternate language.

Mr. Ng reviewed changes to the Historic Preservation element.

Mr. Ng stated that he normally did not include a Capital Improvements element when the town did not have an adopted CIP (Capital Improvements Program), but he thought it might be justified since the town was working on it. He made suggestions of what should be included in a CIP.

The LPA questioned whether a section of the Conservation element should be deleted and the town council agreed. Sections regarding protecting marine life and estuary habitats to protect endangered species will remain in the element. Planner Propst explained the language regarding dredging canals.

Dates in the Intergovernmental Coordination element were updated, but no changes were made.

Mr. Ng reviewed updates in the Utilities element. Vice Mayor Atterholt described a micro-grid pilot program and questioned whether a goal could be added to seek state and federal funds for the program. Mr. Ng agreed it was a worthy goal and suggested adding a new policy.

There were no changes in the Property Rights element.

The Community Design element was reviewed and Mr. Ng pointed out new policies.

Public comment:

James Ink, resident, indicated that the FAR for marinas was listed as 1.0 and should be 1.5. Concerns Mr. Ink had were already changed.

Cathy Shultz, resident, noted that the LPA unanimously recommended keeping the 1999 language as it was and rejected changes to Bowditch in the recreation and open spaces element. She stated that Lee County purchased the property to save it from commercial development and preserve its natural flavor. She described wildlife on the property and did not support changing the element. She thanked the town council for their hard work. The town council agreed to keep the 1999 language.

Public comment closed.

Mr. Ng explained that the comp plan would be transmitted to the state for their review before it came back for a second reading, which could take up to two months.

Mayor Allers moved to approve the first reading for transmittal as amended through the discussion today, seconded by Council Member Safford.

The motion carried unanimously by roll call vote.

E. Ordinance 24-08; Downtown Building Height

Second Reading and Final Public Hearing on an Ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE III., DIVISION 5, SECTIONS 34-675 BUILDING SIZE TO 1) CHANGE BUILDING HEIGHT FROM 2 STORIES TO 3 STORIES FOR PROPERTIES THAT FRONT ON TIMES SQUARE AND BAYFRONT PEDESTRIAN PLAZAS, THE NORTH SIDE OF FIRST STREET, THE SOUTH SIDE OF ESTERO BOULEVARD BETWEEN OLD SAN CARLOS BOULEVARD AND THE MAIN PEDESTRIAN CROSSING; AND 2) CHANGE BUILDING HEIGHT FROM 2 STORIES TO 3 STORIES FOR PROPERTIES THAT FRONT ON LAGOON STREET, CRESCENT STREET, FIRST, SECOND, THIRD AND FIFTH STREETS (EAST OF SKY BRIDGE ONLY); PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE.

Mayor Allers read the title of the ordinance.

Planner Propst stated the ordinance language corrected a code issue. No public comments.

Council Member King moved to approve the ordinance, seconded by Mayor Allers.

The motion carried unanimously by roll call vote.

F. Ordinance 24-06; Expedited Variance, Extension and Condition Review

Second Reading and Final Public Hearing on an Ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING SECTION 34-232 "REQUIRED HEARINGS" OF DIVISION 5 "PUBLIC HEARINGS AND REVIEW" OF ARTICLE II "ZONING PROCEDURES" OF CHAPTER 34 "ZONING DISTRICTS, DESIGN STANDARDS AND NONCONFORMITIES" TO REQUIRE ONLY ONE PUBLIC HEARING BEFORE THE LOCAL PLANNING AGENCY ("LPA") FOR VARIANCES, EXTENSIONS, AND SATISFACTION OF CONDITIONS OF PREVIOUSLY APPROVED LAND USE APPROVALS IF THE DECISION BY THE LPA IS UNANIMOUS AND THE TOWN CLERK DOES NOT RECEIVE A REQUEST FROM A MEMBER OF THE PUBLIC FOR AN ADDITIONAL HEARING BEFORE THE TOWN COUNCIL WITHIN 10 BUSINESS DAYS AFTER THE LPA DECISION; A PUBLIC HEARING BEFORE THE TOWN COUNCIL IS REQUIRED FOR VARIANCES, EXTENSIONS, OR SATISFACTION OF CONDITIONS IF THE DECISION BY THE LPA IS NOT UNANIMOUS OR IF ANYONE REQUESTS SUCH HEARING WITHIN 1O BUSINESS DAYS AFTER THE LPA DECISION; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER ERRORS, CONFLICTS OF LAW AND AN EFFECTIVE DATE.

Mayor Allers read the title of the ordinance.

Town Attorney Vose explained the title change as stated on the blue sheet. No public comment.

Vice Mayor Atterholt moved to approve the ordinance, seconded by Council Member King.

The motion carried unanimously by roll call vote.

G. Ordinance 24-04; Emergency Temporary Uses

Second Reading and Final Public Hearing of an Ordinance Entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND RESTATING ORDINANCE 23-05 TO PERMIT TEMPORARY USES IN CERTAIN ZONING DISTRICTS IN RESPONSE TO, AND AS A PART OF THE TOWN'S RECOVERY EFFORTS FOLLOWING A NATURAL DISASTER OR OTHER EMERGENCY SITUATION: 1) BY A GOVERNMENTAL ENTITY FOR THE BENEFIT OF THE PUBLIC; 2) FOR RESIDENTIAL MANUFACTURED HOMES, MOBILE HOMES, MOTOR HOMES, RECREATIONAL VEHICLES OR OTHER TEMPORARY DWELLINGS FOR RESIDENTIAL PURPOSES; AND 3) FOR MOVEABLE COMMERCIAL STRUCTURES FOR THE DELIVERY AND SALE OF GOODS AND SERVICES TO THE PUBLIC; PROVIDING FOR CONFLICT OF LAW, SCRIVENER'S ERRORS, SEVERABILITY, AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the ordinance.

Town Attorney Vose reviewed the background of the request as stated in the blue sheet. Mayor Allers pointed out an inconsistency and questioned why a sunset clause was not included. Town Attorney Vose suggested drafting a resolution for the sunset clause and referencing it in the ordinance. The town council agreed.

No public comment.

Mayor Allers moved to approve the ordinance with amendments, seconded by Council Member Woodson.

The motion carried unanimously by roll call vote.

H. Ordinance 24-13; Unsafe Structures

First Reading and Public Hearing on proposed Ordinance 24-13 entitled: ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING DIVISION 3 "UNSAFE BUILDING ABATEMENT CODE" OF ARTICLE I "PROPERTY MAINTENANCE CODES" OF CHAPTER 6 "MAINTENANCE CODES, BUILDING CODES AND COASTAL REGULATIONS" OF THE CODE OF ORDINANCES OF FORT MYERS BEACH, FLORIDA, TO CLARIFY EXISTING PROVISIONS RELATED TO NOTICE AND EXCEPTIONS; TO AUTHORIZE NOTIFICATION BY CONSTRUCTIVE SERVICE; TO INCLUDE ATTORNEY'S FEES AND COSTS AND NOTICE EXPENSES TO THE DEMOLITION LIEN AGAINST THE PROPERTY ON WHICH THE UNSAFE BUILDING WAS LOCATED, AND TO AUTHORIZE USE OF THE UNIFORM METHOD OF COLLECTION FOR COLLECTION OF LIENS; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER ERRORS, CONFLICTS OF LAW, AND AN EFFECTIVE DATE. Open the public hearing and schedule for second reading and final adoption on May 20, 2024 at 9:00 AM.

Mayor Allers read the title of the ordinance.
Town Attorney Vose reviewed the background of the request as stated in the blue sheet and described the corrections made.
No public comment.

Council Member King moved to approve the ordinance, seconded by Council Member Woodson.
The motion carried unanimously by roll call vote.

I. Ordinance 24-11, Purchasing Policy Amendments

Second Reading and Final Public Hearing of an Ordinance Entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING DIVISION 1 PURCHASING OF GOODS AND SERVICES POLICIES AND PROCEDURES OF ARTICLE V FINANCE OF THE TOWN OF FORT MYERS BEACH TO TRANSFER PURCHASING TO THE TOWN MANAGER OR DESIGNEE FROM THE FINANCE DEPARTMENT, TO INCREASE THE AUTHORITY OF THE TOWN MANAGER FOR PURCHASES OF GOODS AND SERVICES, TO CLARIFY EXISTING REGULATIONS, AND TO IMPLEMENT RECOMMENDATIONS PROVIDED TO THE TOWN BASED ON THE DISASTER READINESS ASSESSMENT AND ABATEMENT PLAN PREPARED BY THE FLORIDA DIVISION OF EMERGENCY MANAGEMENT; PROVIDING FOR CONFLICT OF LAW, SCRIVENER'S ERRORS AND SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the ordinance.
Town Manager Hyatt noted that this was to help expedite things and it lined up with FDEM (Florida Department of Emergency Management) new requirements.
No public comment.

Vice Mayor Atterholt moved to approve the ordinance, seconded by Mayor Allers.
The motion carried unanimously by roll call vote.

J. Ordinance 24-12; Elections

Second Reading and Final Public Hearing on an Ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA REAFFIRIMING ITS PRIOR AMENDMENT OF THE QUALIFYING PERIOD FOR TOWN COUNCIL CANDIDATES FOR THE NOVEMBER 2024 ELECTION TO NOON ON THE 71ST DAY (JUNE 10, 2024) TO NOON OF THE 67TH DAY (JUNE 14, 2024) PRIOR TO THE AUGUST PRIMARIES TO BE HELD ON AUGUST 20, 2024; PROVIDING FOR SCRIVENER'S ERRORS; CONFLICTS OF LAW; SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the ordinance. No public comment.
Council Member King moved to approve the ordinance, seconded by Council Member Safford.
The motion carried unanimously by roll call vote.

XII. ADMINISTRATIVE AGENDA

A. Lien Reduction request; 80 Avenue E

Review of White Sands Properties of Ft. Myers Beach, LLC's Verified Motion to Forgive or in the Alternative Mitigate Funds submitted by Steven A. Ramunni, Esq., on behalf of White Sands Properties of Ft. Myers Beach, LLC.

Council Member Safford revealed that he had to recuse himself from this item and would submit a form to the Town Clerk.

Attorney Steve Ramunni represented the applicant and reviewed previous negotiations with the town. He stated the applicant paid $50,000.00 to the town for the lien on a property. Mr. Orlandini was part of the agreement but did not fulfill his portion of $15,000.00 and White Sands requested forgiveness or payment of the $15,000.00 to settle. The cashed check was included in the document, but that was the extent of the paper trail. Attorney Ramunni stated that he had not been involved in the case until recently.

Town Attorney Vose explained the details of the case.

Jessie Schmid, owner of the property, explained the negotiations with Mr. Orlandini and the former town manager, Roger Hernstadt. Mr. Schmidt purchased many of Mr. Orlandini's encumbered properties. He described the mess with several properties and stated he could not do anything until the liens were released. He explained that the violations started because of work without a permit to replace stair treads and pavers. Mr. Schmidt bought the property and removed the stairs and pavers. He met with Mr. Hernstadt to resolve it and was told he owed $65,000.00 even though he had already paid $50,000.00. Mr. Hernstadt refused to give him a copy of the signed agreement because he said the fines were in Mr. Orlandini's name. Attorney Ramunni explained why it took so long to come before the town council. Mr. Schmidt stated he had a $1.5 million judgment filed against Mr. Orlandini and has not received a penny. He did not think he needed a permit to mitigate the violation and acknowledged he did not inform the town. Mr. Ramunni stated that Mr. Schmidt was not the violator, even though some details were missed. Mr. Schmidt commented that he purchased five properties from Mr. Orlandini, but they sat vacant because the structures were a mess.

Vice Mayor Atterholt noted that he had the same conversations with Mr. Schmidt $2^{1/2}$ years ago and Mr. Schmidt commented that he had emailed the requested timeline along with other emails.

Town Attorney Vose requested a shade meeting during the next council meeting to discuss the case. Mr. Schmidt wanted to resolve it today. Attorney Ramunni repeated the fact that Mr. Schmidt was not the violator. Discussion was held regarding the amount of the fine.

Council Member King moved to approve a settlement at $247,000.00, seconded by Council Member Woodson.

The motion carried unanimously by roll call vote, with Council Member Safford recused.

B. <u>Award ITB-24-03-EN to Ahtna Marine and Construction as the lowest responsive and responsible bidder to construct the Estero Island Beach Nourishment and Hurricane Recovery Project</u>

Award ITB-24-03-EN to Ahtna Marine and Construction, as the lowest responsive and responsible bidder, to complete the Estero Island Beach Nourishment and Hurricane Recovery Project, contingent and effective on the date the Lee County Board of County Commissioners approves the Interlocal Agreement with the Town for the "Estero Island Beach Nourishment Project," which was approved by Town Council on the 1st day of April 2024 in Resolution 24-15.

Environmental Projects Manager Chadd Chustz reviewed the project and indicated that Ahtna was the lowest responsive bidder. Town Attorney Vose stated there was a bid protest and they have not received a bond. She noted that they could legally move forward because it was necessary for the health, safety and welfare of the town due to the upcoming hurricane season.

Vice Mayor Atterholt moved to approve the award subject to approval by the county of the interlocal agreement and resolution of the bid protest, seconded by Council Member Woodson.
The motion carried unanimously by roll call vote.

C. <u>Res. 24-80, Authorizing Bridge Loan to Fund FY23 Lost Revenue</u>

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING THE TRANSFER OF $3,085,209 FROM THE BRIDGE LOAN FUND TO REPLENISH GENERAL FUND CASH THAT WAS DEPLETED AS A RESULT OF THE REVENUE LOST IN FISCAL YEAR 2023 DUE TO THE ECONOMIC IMPACT OF HURRICANE IAN, AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution.
Finance Director Joe Onzick reviewed the reason for the transfer and noted it was a retroactive accounting transaction. He revealed that the loan would be extended to ten years and there was a possibility that it would be forgiven in the future.
Council Member King moved to approve the resolution, seconded by Mayor Allers.
The motion passed unanimously by roll call vote.

D. <u>7th Amendment to ILA with Lee County for Utility Relocation Project</u>

Motion to Approve the Seventh Amendment to the Interlocal Agreement between Lee county and the Town of Fort Myers Beach for a Utility Relocation Project within the Corporate Limits of the Town of Fort Myers Beach.

Director Onzick indicated that the updated agreement would allow the town to invoice the county for their share of expenses incurred in the Tier I project, which included repair, replacement or relocation of the sewer lines.
Council Member King moved to approve, seconded by Council Member Woodson.
The motion carried unanimously by roll call vote.

XIII. FINAL PUBLIC COMMENT

Leah Greg, resident, was concerned about losing the FEMA insurance discount because a home was allowed to be built on grade before plans were submitted to the town. A stop work order was issued but later rescinded and the code enforcement officer involved was fired. She claimed documents on the town's portal appeared to be falsified and were being sent to FEMA. She stated she met with town officials months ago and shared details regarding the home. She indicated that no one from the town would communicate with her, so she presented the information publicly. She commented that the supervising contractor involved was not licensed in FL, although he represented himself as a licensed contractor.

XIV. TOWN MANAGER'S ITEMS

Town Manager Hyatt indicated that a comprehensive emergency management plan was being drafted and a drill would occur sometime in July or August. The streetlight project should start toward the end of June or first of July. Underground preparations for the conduit will be completed before each delivery. The first delivery of poles will occur on August 9, 2024, the second on September 13, 2024, and the last on October 11, 2024.

He noted that the strategic plan was being worked on, a meeting with FEMA was scheduled for tomorrow regarding the floodplain program, staffing levels were being filled and the new Harbormaster was scheduled to start next week.

XV. TOWN ATTORNEY'S ITEMS

No items.

XVI. COUNCILMEMBERS ITEMS AND REPORTS

No items.

A. Town Manager Evaluation

Yearly review of Town Manager.

Town Manager Hyatt reviewed their wins over the year and he looked forward to next year.

Council Member King thanked the town manager for where they were today.

Vice Mayor Atterholt stated the culture shift under the town manager's leadership was tremendous. The way he delegated his authority demonstrated humility and servant leadership. He encouraged the town manager to begin to more aggressively lead and make smaller decisions without worrying about the town council. He was thankful that the town manager was there and thankful for the team he established.

Council Member Woodson agreed that it was time for the town manager to take the next steps and his team was phenomenal. She felt that the whole team had a great relationship and the town manager spearheaded that. She noted that he did a great job.

Council Member Safford commented as a citizen and was impressed. He referred to the success of the Bayside Park Concert Series and stated the town wanted an engaged leader with a vision. He appreciated his attitude and felt they were headed in the right direction.

Mayor Allers felt the same as the others and shared how they were attached at the hip for the first six months. He noted the town manager picked up things quickly and was aware of the vision and where they wanted to go. He brought up his communication skills and encouraged him to pick up the ball and run, knowing that he had the town council's support. He looked forward to next year.

XVII. ADJOURNMENT

Council Member King moved to adjourn, seconded by Vice Mayor Atterholt. The motion carried unanimously.

The meeting was adjourned at 3:09 p.m.

Minutes adopted as presented, May 20, 2024. Motion by Council Member King and seconded by Council Member Safford. Passed 4-0, Woodson excused.

Amy Baker, Town Clerk

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

LAST NAME—FIRST NAME—MIDDLE NAME SAFFORD - SCOTT - M	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE TOWN COUNCIL
MAILING ADDRESS 189 Sabal Dr.	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: ☒ CITY ☐ COUNTY ☐ OTHER LOCAL AGENCY
CITY Fort Myers Beach COUNTY Lee	NAME OF POLITICAL SUBDIVISION:
DATE ON WHICH VOTE OCCURRED May 6, 2024	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, Scott M. Safford, hereby disclose that on May 6, 2024:

(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, ___;

✓ inured to the special gain or loss of White Sands, 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:

White sands was a customer of mine. I also managed one of the properties in question.

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.

5/6/24
Date Filed

Scott Safford
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.