Fort Myers Beach Town Council

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

Minutes | **Monday, April 7, 2025** | **9:00 AM**

ORDER OF BUSINESS

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

Town Attorney Nancy Stuparich explained that C. under Public Hearings had to be continued to June 7, 2025, to allow staff more time to work with the county.

Council Member King moved to approve the amended final agenda, seconded by Council Member Safford.

The motion continued unanimously.

V. PUBLIC COMMENT

Tom Brady, resident and President of Protect FMB, opposed the Seagate development agreement. He clarified that those who opposed the project were not a small group and were not anti-development. He requested that the public be involved like they were promised. He asked why they allowed testimony from non-residents about density at Red Coconut when residents refuted their comments. Fran Myers was quoted as telling residents they would not see giant towers.

Ed Rood, resident, stated that Anita Cereceda, Chair of the Local Planning Agency, donated funds to Protect FMB and thought it was unethical. He asked that Ms. Cereceda be temporarily relieved of her position while the council considered the legal ramifications. He continued to voice his opinion.

Philip Miglioratti, resident, appreciated Operations & Compliance Director Frankie Kropacek and others for working with him over the weekend regarding the demolition on 8211 Estero.

Paula Kiker, resident, agreed with Mr. Rood. She stated that Ms. Cereceda was also lobbying others to donate to Protect FMB. She felt it was unethical and elected officials should be held to a higher standard. She referred to an email she sent to all council members. She said her actions would cause conflict on the island. She continued to express her opinion.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Operations & Compliance Manager Thomas Yozzo recognized Rangers and Code Officers for assisting with a medical emergency on the beach. The victim survived and was recovering in the hospital. Roxanne Tucci could not make the meeting, but the following were recognized: Bob Monahan, Tim Hoffman and Mike Mayhan.

VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS

No items.

VIII. APPROVAL OF MINUTES

A. Management & Planning Session - March 13, 2025

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

B. Town Council - March 17, 2025

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

IX. CONSENT AGENDA

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

A. <u>Resolutions 25-96 through 25-100; Extension of Local Emergency - Hurricane Ian</u>

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 King.
The motion carried unanimously.

B. <u>Resolutions 25-101 through 25-105; Extension of Local Emergency - Hurricane Idalia</u>

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 King.
The motion carried unanimously.

C. Resolutions 25-106 through 25-110; Extension of Local Emergency - Tropical Storm Debby

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO TROPICAL STORM DEBBY 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 King.
The motion carried unanimously.

D. Resolutions 25-111 through 25-115; Extension of Local Emergency - Hurricane Helene

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 HELENE (FORMERLY KNOWN AS POTENTIAL TROPICAL CYCLONE NINE) 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 King.
The motion carried unanimously.

E. Resolutions 25-116 through 25-120: Extending Local State of Emergency, Hurricane Milton

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 MILTON, 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 King.

The motion carried unanimously.

X. ITEMS REMOVED FROM CONSENT AGENDA

XI. PUBLIC HEARINGS

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

A. Ordinance 25-02; 2500 Estero CPD Boundary Expansion

Second reading and public hearing of and ordinance entitled: AN ORDINANCE OF THE TOWN COUNCIL OF FORT MYERS BEACH, FLORIDA APPROVING/APPROVING WITH CONDITIONS/ DENYING AN AMENDMENT TO THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING, PREVIOUSLY APPROVED BY RESOLUTION 07-28 FOR PARCELS LOCATED AT 2500 AND 2510 ESTERO BLVD., GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W3-0120A.0100; 19-46-24-W3-01302.0000, TO ADD PARCELS 2518 ESTERO BLVD. AND 2543 COTTAGE AVENUE, GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W3-01301.0000; 19-46-24-W3-0120A.013A IN FORT MYERS BEACH; PROVIDING FOR OTHER 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 ordinance. Ex parte communications: Council Member King received emails and a phone call from Mr. Gallander at the Neighborhood Company, Vice Mayor Atterholt received emails and had conversations with the applicant and those against the project, Mayor Allers received emails, Council Member Woodson received emails and had conversations with the applicant and Council Member Safford received emails and a phone call from Mr. Gallander. The property owner confirmed receipt of the agenda and background materials.

Principal Planner Judith Frankel reviewed the background of the request as stated on the blue sheet. The LPA voted unanimously to recommend approval.

Attorney Katie Berkey from Becker & Poliakoff represented the intervenors and requested Intervenor Status for both items.

Mayor Allers moved to grant Attorney Berkey Intervenor Status for both hearings, seconded by Council Member Woodson.

The motion carried unanimously.

Mayor Allers stated that intervenors were allowed five minutes per person. Attorney Berkey requested 20 minutes collectively for this hearing and 35 for the next hearing. All council members agreed.

Attorney Noel Davies asked that the record from the first reading be incorporated into this second reading. He did not have anything else to add.

Attorney Berkey represented Pelican Watch, Tom and Deb Danford and Ed French. The intrusion of the expanded commercial use was problematic and would impact the neighborhood. She requested that they deny expansion or

pause this item until comments are heard at the second hearing.
Ed French was not interested in seeing more commercial in his neighborhood because it would cause traffic and other problems.
Randy Briesath, HOA President of Pelican Watch, thanked everyone for letting him participate remotely. This project squeezed two other properties and would probably lower their property values, making them more likely to sell and amenable for future purchase by the applicant.
Attorney Berkey submitted her resume, a supplemental letter from Matt Simmons and a supplemental letter from Mohsen Salehi into the record. David Tezak, resident, requested intervenor status.
Mayor Allers moved to grant Mr. Tezak five minutes as an intervenor, seconded by Council Member King.
The motion carried unanimously.
All council members received Mr. Tezak's email. Mr. Tezak referred to his email and explained that FL case law did not support spot zoning. He stated that the most extreme use was next to the residential neighborhood and would depreciate the value of properties. He discussed the increase in pedestrian and vehicular traffic and calls he made to the Sheriff's Department. He has called beach patrol almost daily due to illegal parking on his driveway. He felt they needed to consider the residents and asked that they not approve the project.
Attorney Davies noted testimony from the first hearing addressed Mr. Tezak's concerns.
Town Attorney Stuparich did not think this was spot zoning in her opinion.
Public comment:
Susan Bonfigli, resident, explained why she thought it was spot zoning and expanding commercial entities into her neighborhood did not soothe her.
Sandy Spitzer, resident, described how a food truck park ten feet from her property would not allow her to relax.
David Tezak commented on spot zoning in Jacksonville Beach. He stated that the town did not even have an ordinance for food trucks.
Sally Goldberg, resident, commented that the commercial use would be ten feet from her property.
Public comment closed.
Attorney Davies noted that the request was consistent with the comprehensive plan.
Principal Planner Frankel read the findings and conclusions. Staff found that the CPD (Commercial Planned Development) amendment met the criteria and recommended approval. She noted that the LPA unanimously recommended approval.
Attorney Davies indicated his clients did not care whether the rezoning vote was before or after the vote to expand the uses.

Mayor Allers moved to approve the ordinance, seconded by Council Member Safford.
The motion carried unanimously by roll call vote.

B. Ordinance 25-01; DCI20240137.2, Mobile Vending/Food Truck Park CPD Amendment

1. Second reading and public hearing of and ordinance entitled: AN ORDINANCE OF THE TOWN COUNCIL OF FORT MYERS BEACH, FLORIDA APPROVING WITH CONDITIONS THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING FOR THE PROPERTY LOCATED AT 2500, 2510 AND 2518 ESTERO BLVD. AND 2543 COTTAGE AVENUE, GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W3-0120A.0100; 19-46-24-W3-01302.0000; 19-46-24-W3-01301.0000; 19-46-24-W3-0120A.013A IN FORT MYERS BEACH, TO ALLOW A MOBILE VENDOR/FOOD TRUCK PARK WITH SHARED PARKING; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

2. Request from Pelican Watch Condominium Association, Thomas F. and Debra Danford as managers and members of Coastal Cottages LLC, and Edwin T. French III, to have Intervenor Status.

Mayor Allers read the title of the ordinance. Ex parte communications: All council members disclosed the same communications as in the previous item. The applicant confirmed receipt of the agenda and background materials.

Principal Planner Frankel reviewed the background of the request as stated on the blue sheet. Changes made included a larger support structure to enclose the live music area and another deviation to increase the buffer on Pelican Watch. She described changes in the order of the conditions to make them more cohesive. She requested that they use the second version if the project is approved. She also included the exhibit provided by the applicant. The applicant requested the hours of operation to be 7:00 a.m. to 10:00 p.m. and the staff suggested an end time of 9:00 p.m. Principal Planner Frankel asked whether the town council wanted to limit the number of special event permits to specific days like holidays. She noted there was another discussion regarding limiting the maximum number of hours for music after the first hearing. Although it was discussed extensively, the council did not vote on limiting music to three hours for two days of the week.

Attorney Davies noted changes would be discussed; however, they could not satisfy every request, especially the hours of the music.

Ken Gallander with the Neighborhood Company represented the applicant and reviewed the request. Slides included Request, Town Council Directives, 4/7/25 Master Concept Plan, Master Concept Plan w/Green Space/Buffers & Aerial Overlay, Concept View: Overall Site, South/Southwest, Corner of Estero & Chapel, Chapel St., North/Northeast along Cottage Ave., Corner of Chapel & Cottage, Southwest from Estero, Estero Blvd. Pathway, Southeast from Parking Area, West from Parking Area, Southeast from Estero Pathway, Southwest from Estero Pathway, Parking - Revised, Proposed Conditions/Commitments and Findings &

Conclusions. An additional 500 square feet of the building will be added to the second story. A security gate for Pelican Watch will not be considered. They acknowledged that people and vehicles could drive through their parking lots, but they would not provide security.

The recording skipped to Vice Mayor Atterholt mentioning a position based on negotiations with the opposition. Mr. Gallander replied that they respected their position that music was not critical, but it was an element many other businesses relied on. He thought they provided a significant compromise.

Council Member King clarified that six special events would be held per year. The public restrooms were outside to be closer to the beach, but facilities would be inside the building for employees. Mr. Gallander said they would consider installing a digital sign to indicate whether parking was available.

Attorney Berkey stated that the evidence presented by experts supported the denial of the application because it was incompatible with the surrounding residential neighborhood. According to expert Matt Simmons, the underlying proposed use was an open-air food truck park with live music close to existing residential uses, likely impacting property values. The intervenors requested that the proposed conditions on page 581 be incorporated. Other concerns were related to noise, hours of operation, aesthetics and security. She summarized comments on the applicant's revised proposed conditions on page 185. Attorney Berkey will clarify whether the request for live and ambient music will be limited to three days per week, no more than six hours per day, between 12 and 8 p.m. Her clients requested a maximum of four special event permits for one day per event. She asked for clarification regarding a right exit-only on Chapel St. and a right exit-only sign in addition to the pork chop design. She referred to page 591 concerning a security gate at Pelican Watch, a dead-end sign, a no-trespassing sign and holding $7,500.00 in escrow. She continued to review the conditions. Town Clerk Baker will print the applicants' and Ms. Berkey's proposals for conditions so council members can compare them.

Ed French appreciated all efforts to compromise. He asked how deliveries would get up and down their narrow street and to make sure that the development stays with the current owner.

Deb Danford stated that the Neighborhood Group has not contacted the neighbors. She was not opposed to commercial development, but not when it intruded into residential neighborhoods. She discussed the threat to her home after investing hundreds of thousands of dollars to protect their property.

Randy Briesath, HOA President of Pelican Watch, noted they have never been against development on the site, but they wanted an enclosed structure with specific use parking. They opposed the proposed development because it intruded on their neighborhood and negatively affected the property value of their building. He thought it was important that Mr. Simmons could not find one food truck park adjacent to residential properties in the country. He indicated that Lee County guidelines mentioned a 50-foot buffer off residential areas and local food truck parks provided at least an 80-foot buffer; most were greater than a 100-foot buffer. Mr. Briesath asked them to consider that Fort Myers Beach would be the only one in the U.S. with immediate adjacency to a food truck court with live amplified music. If they were still compelled to vote yes, the conditions were essential to mitigate the residents' issues. He appreciated the constructive discussions but noted that the applicants had not asked how they could make the intervenors drop their opposition. He indicated there were enforcement problems on the beach and described the illegal parking situation at Mom's food truck on the weekends. Mr. Briesath said nothing had been done and that it would get worse. He asked what the town would do about the illegal parking and the noise. He reviewed some of the conditions that Ms. Berkey discussed earlier. He concluded by asking the town council to vote no. However, if they voted yes, they should fully consider the requested conditions because they did not unduly burden the applicant and did not affect their commercial viability.

David Tezak revealed there was a food truck park close to a residential area in Oregon, but it ended up being detrimental to the area. He did not want the project unless they closed the access to his house. He noted that a pedestrian study had never been done and asked whether the town council wanted a food truck park next to their house. He discussed how the proposed rezoning violated the town charter, Florida Statutes and potential legal consequences and liabilities. He said they were trying to put a square peg in a round hole. Mr. Tezak indicated that he filed a Freedom of Information request and has never received the information.

Principal Planner Frankel explained that the town clerk printed out three working versions of conditions. The staff reordering versions were on page 174, the applicants' version starts on page 185 and the intervenors' version began on page 592.

Attorney Davies suggested they hear staff and public comments and then take a break to meet and clarify issues before reporting back.

Principal Planner Frankel reviewed the seven deviations starting on page 193. Deviation seven was discussed. Principal Planner Frankel continued by reading the findings and conclusions.

Public comment:

Susan Bonfigli, resident, noted that she emailed town council members and reviewed her concerns. She stated that vehicles would be on the residential streets and people blocked her driveway access because they did not use the Mango parking lot. She described the narrow road and felt it would be a significant congestion point. She asked the town council to consider restricting the parking lot to sunrise and sunset like the Mango lot.

Sandy Spitzer, resident, noted that the idea that they had to create so many conditions proved that it was an intrusion on the neighborhood.

Monica Tezak, resident, reiterated that the applicants never contacted them. She discussed her concerns with parking on Chapel St. and stated she called the town every day because she could not get out of the road because people were parking on both sides. Beach patrol did not address the current situation and it was going to get worse. She asked why they would even consider putting the project in a residential neighborhood. She concluded that it was shameful that they did not care about the residents.

David Tezak, resident, stated they were bending over backward for the developer, who reached a $750,000.00 legal settlement with the Fair Housing Center of Central Indiana in March 2023. They were accused of running a predatory rent-to-own housing scheme. He stated that Bay Oaks or Times Square would be a better spot for the food truck park.

Carolyn McKeown, resident, commented that the request for the security gate at Pelican Watch was because of the volume of traffic coming into their area.

Public comment closed.

The hearing was recessed until 1:30 p.m.

Parick Vanasse with the Neighborhood Group stated that there were food truck parks locally next to residential neighborhoods. He noted that Pelican Watch had traffic issues well before Ian and felt it set a dangerous precedent to expect the applicants to rectify it. He added that uses go with the land, not the owners.

Mr. Gallander reviewed their handout with the star of revised conditions. The music will be four days per week, four hours per day between noon and eight. They want the hours of operation to end at 10:00 p.m. Instead of setting a specific number of events per year, every special event permit request would go before the town council.

Principal Planner Frankel reviewed the same handout and clarified that amplified live music would be restricted to four days a week for four hours per day. She noted that ambient music could be played for the remainder of the time unless they chose to restrict it. The decibel level of ambient music was less than required by code. The staff had the close time at 9:00 p.m. The parking operation plan and sunshade sails were not included in the latest Master Concept Plan.

Attorney Berkey utilized the same handout for her discussion. She stated that it was agreed that a wall or fence would be installed on the east boundary next to Pelican Watch. Mr. Gallander forgot to add that item and noted it would be a four-foot decorative fence. Attorney Berkey felt that the hours of operation should be 9:00 p.m. but would compromise to 10:00 p.m. in the summer (daylight savings time). The applicant agreed with the compromise. The intervenors were open to ambient music seven days a week from noon to 8:00 p.m. and live amplified music three days per week, six hours maximum from noon to 8:00 p.m. No music was allowed outside of noon to 8:00 p.m. The noise ordinance would govern the live music and the ambient music would be limited to 60 decibels. They asked for four individual special events permits on single days, with an opportunity for the council to approve them with public input instead of a blank check. They requested a traffic impact statement (TIS) and asked that the TIS account for the 2008 error.

A discussion was held regarding where the dead-end and no thru traffic signs should be installed. Attorney Berkey requested that the signs that were there before Ian be replaced.

Attorney Davies thought the town council had the final language and asked for approval. Mr. Gallander said they would do a traffic impact study if the trip generation study showed an impact. Principal Planner Frankel questioned the reason for a traffic impact study since it would not impact the design or development of the site. Mr. Vanasse explained the 2008 study and agreed they would do another one if there was an impact.

Attorney Berkey explained the error in the 2008 TIS.

Council Member Safford thought the compromise on the hours was good; he was glad the short-term parking was addressed, questioned the hours of the music and agreed the music should not start earlier than noon. He agreed with the traffic study and did not think the applicant should be responsible for the security gate.

Council Member Woodson appreciated the adjustment of buffers and agreed the music had to be settled. She suggested allowing music on Thursday, Friday, Saturday and Sunday, with the hours to be determined. She supported replacing the signs that were there pre-Ian.

Vice Mayor Atterholt noted that initially, the intervenors asked for two days, three hours per day for the amplified music. The applicants countered with four days per week, six hours per day. Splitting the difference would be three days with four and a half hours per day. The intervenors came back with three days, six hours per day between noon and 8:00 p.m., which seemed like a good compromise.

Council Member King agreed with members Safford and Woodson and noted there was currently a lack of traffic enforcement on Cottage and Chapel. He thought a sunshade sail should also be installed above the parking area.

Mayor Allers did not think the applicant should install a security gate at Pelican Watch. He was fine with not setting a specific number of special events permits. He agreed with the ambient music hours and preferred four days and four hours for amplified music.

Council Member King agreed that the applicants should not be responsible for the security gate. He wondered whether the town could help alert people that they could not turn around in that area by possibly installing speed bumps. Mayor Allers agreed that the town needed to step up enforcement and suggested involving the fire department regarding right-of-way issues and parking. Vice Mayor Atterholt was concerned with live music for four days and four hours and felt three days was a reasonable compromise.

Council Member Woodson stated that only duos with no percussion would perform and the music faced away from residents. She supported Thursday through Sunday in season. Dan Myers described holding entertainment events without music and wanted the fourth day for bingo or another event. He clarified that amplified sound did not necessarily mean live music. He agreed with amending the language.

After a short recess, four days a week, four hours per day for live entertainment for three days was agreed upon. The fourth day would be amplification for activities without music. They disagreed on regulating ambient music. The other outstanding issue was the threat of litigation if the

project was approved.
Attorney Berkey requested that the ambient music be seven days a week from noon to eight.

Mayor Allers moved to approve the ordinance with the conditions agreed upon by both sides through discussions today. The music will be allowed four days a week, four hours a day, with one day being no music performances. There will be no conditions on the hours of operation for ambient music, but it will not exceed 60 decibels. The special events permit language will change from temporary use and will state that a special event permit must be obtained when additional vendors of any type or an increase in visitor numbers occurs. The pork chop and right turn only on Chapel will be included along with the parking operation plan. The trip generation will be done first. All sound generated will be in compliance except where noted, seconded by Council Member King.
The motion carried unanimously by roll call vote.

C. Ordinance 25-03; Bicycle Safety

Second reading and adoption public hearing of an ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING ARTICLE III "BEACH BICYCLE AND VEHICLE SAFETY" OF CHAPTER 28 "TRAFFIC AND VEHICLES" OF THE CODE OF ORDINANCES OF FORT MYERS BEACH, FLORIDA, TO ALLOW THE OPERATION OF ELECTRIC BICYCLES ON SIDEWALKS; ESTABLISHING SAFETY REGULATIONS; ESTABLISHING A MAXIMUM SPEED AND PASSING PROCEDURES; REQUIRING OPERATION WITH THE FLOW OF TRAFFIC; ESTABLISHING RESPONSIBLE PARTIES AND PENALTIES; ESTABLISHING ADDITIONAL REGULATIONS FOR THE SAFE OPERATION OF BICYCLES ON SIDEWALKS; PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS OF LAW, AND AN EFFECTIVE DATE.

Mayor Allers read the title of the ordinance.
Public comment:
Debbie DePauw asked whether markings on the sidewalk would be allowed. Town Attorney Stuparich replied that they had to talk to the county. Debbie DePauw asked whether e-bikes would be allowed on the beach and Mayor Allers responded that the ordinance only addressed sidewalks.
Debbie DePauw asked what helper motors meant. Town Attorney Stuparich thought the language was outdated and would review it.
Debbie DePauw asked whether segways were allowed. Town Attorney Stuparich will look at the language.
Public comment closed.

Mayor Allers moved to continue on June 2, 2025, seconded by Council Member King.
The motion carried unanimously by roll call vote.

XII. ADMINISTRATIVE AGENDA

A. Town Manager Selection Process

Town Council to Select Top 5 Town Manager Candidates for Interviews on April 18, 2025

Human Resources Director Talissa Oliveira noted the town received 66 applications. The council will vote on which ones they want to interview on April 18, 2025. Council members previously received all candidates' resumes and seventeen were identified as meeting the qualifications. Five candidates and two alternates were selected from the pool as potential fits for the role. The five candidates and two alternates are Michael Brillhart, William Lawrence, William McKannay, Scott Moye and Jeremy Shaffer, with Patrick Jordan and John Trew as alternates.

Mayor Allers, Vice Mayor Atterholt and Council Member King voted for the top five and the two alternates listed.

Council Member Safford voted for Michael Brillhart, William McKannay, Scott Moye and Jeremy Shaffer with no alternates.

Council Member Woodson voted for William McKannay and Jeremy Shaffer, with Patrick Jordan and John Trew as alternates.

Michael Brillhart, William Lawrence, William McKannay, Scott Moye and Jeremy Shaffer will be invited for interviews.

Patrick Jordan and John Trew are the alternates.

Vice Mayor Atterholt moved to interview the candidates selected above on April 18, 2025, at 9:30 a.m. and 1:00 p.m., seconded by Mayor Allers.

The motion carried unanimously.

B. Resolution 25-95, Authorizing Adoption of Policies Required by HUD for CDBG-DR

Adopt CDBG-DR Policies

Finance Director Joe Onzick noted the policies were provided by HUD (Department of Housing and Urban Development) and had to be completed to receive the CDBG-DR grant. Dr. Tracy Kohler was designated as the Accessibility Coordinator and the Fair Housing Coordinator.

A citizen complaint policy, financial management policies and a fair housing compliant policy had to be adopted overall.

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

The motion carried unanimously by roll call vote.

C. Resolution 25-94, Authorize Interfund Loan to Cover FEMA/FDEM Receivables

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA, APPROVING INTERFUND LOAN TO COVER OUTSTANDING FEMA AND FDEM RECEIVABLES; PROVIDING FOR EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Director Onzick explained that they had cash set aside, but those funds were earmarked to be spent. The town has $10.3 million of expenditures incurred that FEMA will reimburse (Federal Emergency Management Agency). The emergency fund has $4.1 million in unallocated cash and the insurance proceeds were already allocated. He proposed an $8 million loan from the bridge loan fund to the emergency fund, with $4 million transferred now. As much as another $4 million would be transferred into the bridge loan fund after they receive the revenue replacement loan.

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

D. <u>Resolution 25-90, Sole Source Contract with Metro Forecasting Models, LLC</u>
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING THE SCOPE OF SERVICES FROM METRO FORECASTING MODELS, LLC AS A SOLE SOURCE PROVIDER AND AUTHORIZING THE TOWN MANAGER TO EXECUTE A PROFESSIONAL SERVICES CONTRACT IN THE AMOUNT NOT TO EXCEED $150,000.00; AND PROVIDING FOR AN EFFECTIVE DATE.
Mayor Allers read the title of the resolution. Principal Planner Frankel noted that Dave Farmer made a presentation a couple of months ago. She felt he would provide them with more information to make better decisions regarding the comprehensive plan and the LDC (Land Development Code), along with future development proposals. She felt it was a very valuable resource.
Director Onzick stated that funds were in the budget to cover the cost. Director Kropacek expanded on the reasons the metrics would be invaluable to staff.

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

E. <u>Resolution 25-93; Piggyback of Demolition Services with Honc Destruction</u>
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. Deputy Clerk Jason Freeman explained the previous piggyback contract and stated the Honc contract had expired. The City of Bonita Springs rebid it out and this was an opportunity to piggyback on the contract again.

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

Member Safford.
The motion carried unanimously by roll call vote.

F. Resolution 25-122; Amendment to FDEP Agreement 23LE1A1

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, APPROVING AMENDMENT NO. 1 TO AGREEMENT 23LE1 BETWEEN THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION AND TOWN OF FORT MYERS BEACH FOR DESIGN, PERMITTING, CONSTRUCTION AND MONITORING OF THE ESTERO ISLAND SHORE PROTECTION PROJECT; AND AUTHORIZES THE TOWN MANAGER TO EXECUTE THE AGREEMENT AND RELATED DOCUMENTS AND TO EXPEND BUDGETED LOCAL MATCHING FUNDS TO MATCH FUNDING RECEIVED FROM THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Environmental Projects Manager Chadd Chustz explained how the agreement expanded the area to the entire project area, so the permitting and design costs are eligible for reimbursement from FDEP (Florida Department of Environmental Protection). The contract was still valid and if the beach was obliterated this year, they would still have the funding available to the town. A separate funding request was made for Helene and Milton impacts, which will hopefully be picked up by the legislature to appropriate funds for local governments.

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

XIII. FINAL PUBLIC COMMENT

No public comment.

XIV. TOWN MANAGER'S ITEMS

Town Manager Hyatt has another in-person meeting this week with FEMA about the National Flood Insurance Program regarding the town's status to get off probation next year.

Community Services Director Jeff Hauge commented that the Easter egg hunt will be at Bay Oaks on Saturday, April 12, 2025, from 9:00 a.m. to 11:00 a.m. The Bay Oaks pickle ball, basketball and tennis area will be closed tomorrow and Wednesday to install the air handling units on risers. Details were posted on the Facebook page and the town's website. Today, they started the prep work to apply the epoxy, which should be poured in three to four weeks. Bay Oaks should be ready to open shortly after that.

Approximately 80 properties were identified as needing attention and listed on a handout. Assistant to the Town Manager, Traci Kohler, noted code cases were created on 20% of the properties. Every property on the list has had action taken and they will keep monitoring the list for progress. Operations & Compliance Manager Thomas Yozzo explained that individual properties can be tracked on the town's website through iWork. He said people should call the town about rats so

they can start a case and the Health Department would come out and write citations.
Assistant Kohler clarified that the other 80% of properties already had cases with the building official or code enforcement. Town Manager Hyatt noted that a big part of the problem was that the realtors were not telling their clients to clean up their property.
Director Kropacek explained the details surrounding the property on 8211 Estero Blvd. The deadline to apply for the demolition permit was today and if that did not happen, the town would demolish the structure in 15 days.
Legislative Liaison Freeman will submit an appropriation request for stormwater, utility improvements, equipment and infrastructure repair. A letter of community support was required for those requests in case the funding does not come through from last year's request. A similar letter with new dates was drafted and he requested that the mayor sign it. Mayor Allers added that the request had to be resubmitted because the new administration had eliminated all the requests from last year.

Council Member King moved to authorize Mayor Allers to sign the community support letter to Congressman Donalds for the fiscal year 26 appropriations, seconded by Vice Mayor Atterholt.
The motion carried unanimously.

Town Manager Hyatt stated that he would work with the town attorney to extend his employment for 30 days.

XV. TOWN ATTORNEY'S ITEMS

Town Attorney Stuparich reviewed the DOAH (Division of Administrative Hearings) cases last week regarding the property on 131/133 Estero Blvd. A demolition permit was applied for and will be issued after payment. She was informed today that the Special Magistrate ordered them to come into compliance by May 9, 2025. The town will monitor the case and if they do not comply, a fine of $250.00 will accrue daily and the town has the authority to demolish it themselves.

A. Settlement Agreement

Approval of DiBiasi Settlement Agreement to conclude litigation concerning the Town's placement of stormwater infrastructure on DiBiasi property without an easement as previously directed by the Town Council.

Town Attorney Stuparich noted the settlement agreement was negotiated in December and they finally had a signed copy. She reviewed the history of the case. The town will pay him $85,000.00 for an easement to keep the infrastructure in place.

Mayor Allers moved to approve the settlement agreement, seconded by Council Member Safford.
The motion carried unanimously.

XVI. COUNCILMEMBERS ITEMS AND REPORTS

Council Member Safford asked Town Attorney Stuparich for her feedback regarding the donation by the LPA Chair to Protect FMB. Town Attorney Stuparich replied that she had a constitutional right to her views on policies and to associate with whomever she wanted. She read and discussed the first part of 2-96 from the code of ordinances. She did not know that there was a conflict of interest under Chapter 112 and she cautioned them to rely on the code, which may be unenforceable for reasons under the constitution. When her term comes up, they would have to decide if they want her to continue participating in the LPA. She reminded them that she asked members if they could be impartial in the matters under ex parte disclosures and that the applicant had an opportunity to question them regarding bias. She did not think there was a risk.

Council Member Woodson thought donating money if one was appointed was a conflict of interest.

Vice Mayor Atterholt felt the accused should be able to defend herself in an open conversation.

Council Member King thought the optics did not look good. He agreed they needed to hear from her.

Mayor Allers agreed with the optics, but it was up to her to decide whether she could be impartial. Town Attorney Stuparich noted they could ask her if she wanted to resign, but they could not force her out.

Council Member Woodson did not think the Arches project would get a fair shake tomorrow. Town Attorney Stuparich repeated that the applicant could probe whether anyone was biased.

Vice Mayor Atterholt stated that the residents on St. Peters Dr. would like to turn over the jurisdiction of their street to the town. Town Attorney Stuparich asked the purpose of turning over the road and what kind of condition it was in. It could be deeded to the town at a public hearing and added to the list of roads the town owned. Vice Mayor Atterholt will invite Mr. Boan to a meeting to explain why they want to give it to the town. After replacing all the fire hydrants, people who live at Waterside want to transfer operational and maintenance control of their private road to the town. Director Hauge will talk to Mark about adding the hydrants to the town's inspection list. Vice Mayor Atterholt indicated that the school district assessed the beach school and provided five options to bring to the school board. All options would take between 7 and 18 months. He asked whether they could use the existing trailers at the existing location for the beach school pupils for six to eight months. Director Hauge replied that he could ask for an extension, but an answer would probably take several months.

Council Member King noted that a fire department official responsible for permitting took time off and asked whether that affected permits. Town Manager Hyatt had not heard anything but would follow up.

Council Member Safford said the Community Foundation had about 20 tickets left for their Vegas night event at 6:30 p.m. at Diamondhead on Saturday.

Mayor Allers noted that a risk management professional had offered to do a free risk management assessment of the island. Town Attorney Stuparich commented that once they knew of a known hazard, they had to correct it. She added that they could target specific areas to focus on.

Mayor Allers will let the person know they should contact the town.

XVII. ADJOURNMENT

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

The meeting was adjourned at 5:04 PM

Minutes adopted as presented, April 21, 2025. Motion by Council Member King and seconded by Council Member Safford. Passed 5-0.

Amy Baker

Amy Baker (May 1, 2025 15:32 EDT)

Amy Baker, Town Clerk