



Fort Myers Beach Town Council

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

Minutes**Monday, June 6, 2022****9:00 AM**

ORDER OF BUSINESS

FINAL

I. CALL TO ORDER

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

II. INVOCATION

Town Clerk Baker.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

Council Member Veach moved to approve the final agenda; second by Council Member Allers.

Motion carried unanimously.

V. PUBLIC COMMENT

Bob Burandt, resident, discussed the sea turtle ordinance regarding obstructions on the beach and read Florida Fish & Wildlife instructions. He requested that Town Council reconsider the ordinance and stop issuing citations until the ordinance was researched.

Jim Steele, resident and Chair of the Audit Committee, reported that the Audit Committee unanimously approved the audit and thanked Town Council for appointing new members. He personally suggested that the town consider setting a maximum fund balance for assigned and unassigned fund balances.

Dave Viecei, resident, requested that Town Council remove property owners living between the Outrigger and the Wyndham Resort from the beach renourishment project. He asked that the town direct the FDEP (Florida Department of Environmental Protection) and its permitting agencies to remove

the request to have the area beach designated as critically eroding and that it be shown on the project's portal. On behalf of the property owners, he requested that the town help them secure a permit to utilize a box blade to shape the beach. Tim Malbon of Best Western Beach Resort suggested that the dune line would block views and further erode the beach.

Jason Tobias of Lucas Lagoons Construction commented on primary and accessory setbacks regarding a pool he was trying to build. He requested that they be able to go to the edge of the house with the pool cage like the rest of the neighborhood. He stated that he had been talking to the building department for a year and the department denied a variance request. Mayor Murphy suggested that Mr. Tobias submit information to the Town Manager.

Sharon Faircloth, owner of Holiday Water Sports, supported Diamond Head Beach Resort's request for a dune on their beach. She requested that Town Council review the language in section 32-113 of the sea turtle ordinance. She felt the change in language was an extreme change and questioned how it was passed without any public comment. She stated that the FWC (Fish & Wildlife Conservation) allowed provisions for storage on the beach. She commented that she worked closely with Turtle Time to protect the turtles and minimize any impacts.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member Veach commented that the design of Estero Blvd. handled the recent rainfall event well.

No items from other members.

A. 2022 Citizen of Distinction

Naming Patrick (Pat) McKeown as the 2022 Fort Myers Beach Citizen of Distinction in the area of Arts and Culture for his authoring of the history of the Mound House book "*Crown Jewel of Fort Myers Beach The Mound House*".

Mayor Murphy reviewed Mr. McKeown's experience and described the book. He presented the Citizen of Distinction award to Mr. McKeown. Town Clerk Baker added that Mr. McKeown would be the Grand Marshall in this year's Fourth of July parade also.

VII. ADVISORY COMMITTEES ITEMS AND REPORTS

Bay Oaks Recreational Campus Advisory Board (BORCAB)

Chair Betty Simpson commented that the BORCAB, CELCAB and CRAB merge was discussed at the May 3rd BORCAB meeting. A consensus was reached to merge the advisory committees. She reported on other topics discussed at their meeting.

CELCAB Member Ellen Vaughan reported that they met on May 26 and were joined by BORCAB to discuss the merger. CELCAB requested that the merger be tabled until June of 2023 to allow progress on the Bay Oaks project. She noted that both committees recommended holding a charrette to discuss details.

VIII. APPROVAL OF MINUTES

- A. May 16, 2022 Town Council
Council Member Veach moved to approve the minutes; second by Council Member Allers.
Motion carried unanimously.

IX. CONSENT AGENDA

Vice Mayor Hosafros moved to approve the consent agenda; second by Council Member Veach.

Motion carried unanimously.

- A. 290 Carolina Avenue - Utility Easement Agreement

Authorize the Town Manager to execute a Utility Easement agreement between Steven Proctor, who resides at 290 Carolina Avenue, and the Town of Fort Myers Beach.

Vice Mayor Hosafros moved to authorize the Town Manager; second by Council Member Veach.

Motion carried unanimously.

- B. Surplus Items

Declare listed items as surplus and authorize staff to dispose of these items utilizing a municipal government auction service.

Vice Mayor Hosafros moved to approve; second by Council Member Veach.

Motion carried unanimously.

- C. Emergency POD Locations

Authorize the Town Manager to negotiate and execute Memorandums of Understanding (MOU) for emergency response Point-of-Distribution (POD) locations at Santini Plaza and the adjacent Fire Department property (2545 Estero Boulevard) for the 2022 hurricane season.

Vice Mayor Hosafros moved to authorize the Town Manager; second by Council Member Veach.

Motion carried unanimously.

X. PUBLIC HEARINGS

- A. Ordinance 22-10: Advisory Committees

2nd Reading and Public Hearing on proposed Ordinance 22-10 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING SECTION 2-94 "QUALIFICATIONS AND APPOINTMENTS OF MEMBERS" OF ARTICLE IV "BOARDS, COMMISSIONS, COMMITTEES AND OTHER AGENCIES", CHAPTER 2 OF THE CODE OF ORDINANCES, TOWN OF FORT MYERS BEACH, FLORIDA, DISSOLVING THE BAY OAKS RECREATIONAL CAMPUS ADVISORY BOARD ("BORCAB"), COMMUNITY RESOURCE ADVISORY BOARD ("CRAB"), AND CULTURAL AND ENVIRONMENTAL LEARNING CENTER ADVISORY BOARD ("CELCAB"); ESTABLISHING A NEW ADVISORY BOARD TO TAKE OVER THE FUNCTIONS OF BORCAB, CRAB, AND

CELCAB; RENAMING THE MARINE RESOURCE TASK FORCE (“MRTF”); AND PROVIDING FOR CODIFICATION; CONFLICTS; SCRIVENER’S ERRORS; SEVERABILITY AND AN EFFECTIVE DATE.

Mayor Murphy read the title of the ordinance.

Council Member Veach recommended that they remove dissolving the committees but keep the renaming of MRTF. Vice Mayor Hosafros revealed that a member of one of the committees involved with the merger contacted her and the member was not sure it was appropriate to wait for a year. Vice Mayor Hosafros suggested looking at the issue in six months. She reassured committee members that Town Council did not intend to prevent anyone from serving by merging the committees. Council Member Allers agreed and stated the intent was to streamline activities between committees. He indicated that committee members wanted time to get caught up and work out details. He supported waiting a year.

Council Member Atterholt commented that he was comfortable with waiting a year and respecting committee members' concerns.

Council Member Veach agreed with creating a timeline for charrettes and meetings rather than revisiting the topic next year. He stated that he did not want to wait a year to rename MRTF.

Council Member Allers moved to table Ordinance 22-10 in regard to combining the three committees and approving the MRTF renaming; second by Council Member Atterholt.

Public comment:

Ellen Vaughan felt it was reasonable to have activities during the year and act on the merger in June of 2023.

Public comment closed.

Council Member Allers amended his motion to table Ordinance 22-10 until June of 2023 to combine the three committees with a motion to approve the renaming of MRTF today; second as amended by Council Member Atterholt. Council Member Veach explained why MRTF wanted to change its name. Vice Mayor Hosafros suggested amending the motion to table the ordinance for a year or less.

Council Member Allers amended his motion to table Ordinance 22-10 for a year or less if the committees agreed to bring it back earlier with a motion to approve the renaming of MRTF today; second as amended by Council Member Atterholt.

Motion carried unanimously by roll call vote.

B. Ordinance 22-11; Sea Turtle Conservation

Second reading and public hearing on proposed Ordinance 22-11 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING ARTICLE V OF CHAPTER 32 OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH ENTITLED “SEA TURTLE CONSERVATION” TO SPECIFY A FIFTEEN-PERCENT (15%)

OPACITY OF TINTED GLASS FOR ALL NEW CONSTRUCTION TO REDUCE THE INSIDE TO OUTSIDE LIGHT TRANSMITTANCE VALUE, TO SPECIFY A FORTY-FIVE PERCENT (45%) OPACITY OF TINTED GLASS FOR ANY RENOVATIONS, RETROFITTING, OR WINDOW REPLACEMENTS TO EXISTING BUILDINGS TO REDUCE THE INSIDE TO OUTSIDE LIGHT TRANSMITTANCE VALUE, PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE.

Mayor Murphy read the title of the ordinance.

Council Member Allers suggested language be added to clarify section 32-105 regarding improvements to existing structures. Attorney Sanabria replied that language could be added to specify existing windows.

Council Member Atterholt confirmed compromises made throughout discussions. Town Manager Hernstadt described increased enforcement and the challenges surrounding rental properties. Council Member Atterholt supported the ordinance.

Council Member Allers questioned the definition of railings. Town Manager Hernstadt responded that it would be clarified. He confirmed that stickers had to be left on windows until the town inspected them.

Council Member Veach discussed creating decades of adversarial relationships between the condo owners, condo renters and the town by allowing 45% windows to be put in condos that were currently receiving violations.

Vice Mayor Hosafros agreed with Council Member Veach and indicated that she regularly saw multiple violations in multiple buildings.

Public comment:

William Althoff represented Shamron Condos and encouraged the Council to adopt the 45% tint. He stated there was no concrete evidence that the 15% glass was superior at preventing disorientations. He described the high price and limited availability of the 15% glass. He encouraged the adoption of the state guidelines of 45% tint.

Adrienne Trimarche, regional director for VRI Americas, a management company. She represented the homeowners association and the board of directors at Mariner's Boathouse and Beach Resort. She stated that the sliding doors had not been replaced in 38 years and they were finally able to proceed. She asked that the town follow the state code of 45% tint for windows. She reviewed statements made by window manufacturers at the last public hearing. She suggested that Council consider that every building is unique.

Carolyn Cane from Woodland Custom Homes stated that the 15% windows were more expensive than regular windows and are not widely available today. She indicated the windows were very dark in the home her company built on the gulf. She questioned whether there was scientific data to back up the 15% tint. She agreed with enforcement and stated that her renters were required to pay for any violations.

John R. King from Islands End repeated statements made by PGT representatives at the first hearing. He described various manufacturers' warranties and urged passage of the ordinance.

Jennifer Brown, General Manager of Mariner's Boathouse, stated they spent thousands to become turtle compliant and described measures taken to remain turtle-friendly. She supported the ordinance.

Neil Hopgood, General Manager of Diamond Head Resort, requested an extension regarding turtle lighting, window tinting and creating a dune to store furniture behind. He stated they had a plan to create a dune and replace glass sliders with a 15% tint. He noted the 15% glass would cost \$2 million while the 45% would cost \$1.5 million. Pool lights would be changed to be turtle-friendly. He indicated that the sliders would not be available until June of 2023. He requested that another task force be created with beach business owners, turtle conservancy groups and town staff to write new language. He also requested that the town be lenient with code violations in the meantime.

Daniel Burger, with Shoreline 3M Window Film, noted he carried different types of films to protect sea turtles. He described covered warranties.

Jason Newton, owner of Adventure Water Sports, stated that he had never had a citation in 23 years. He described receiving an exception in the past, but he was recently issued a warning. He requested guidance from Town Council.

Jim Ryder of Jeld-Wen Windows and Doors was concerned with the 15% windows due to a lack of data and science. He noted that the FWC reached out to an automotive window tinting company regarding 15% tinting rather than the fenestration industry. He discussed the lack of testing and encouraged Town Council to get the data first.

Lynn Miller, Code Compliance Manager of PGT Innovations and a member of the Fenestration and Glazing Industry Alliance (FGIA), stated his company did have discussions with the FWC to make sure they understood the differences between automotive glass and glass in a building. He described current testing and research on hatchlings with different tints on the east coast. He indicated that most window manufacturers would void warranties if tints were added to the windows.

Jeff Wright of the Henderson Franklin law firm represented Sharon and Kevin Faircloth regarding beach furniture and obstructions. He discussed substantive changes in 32-113 made between the first and second hearing. He suggested that the town meet with business owners to draft new language and adopt the ordinance properly.

Mr. Johnson from Potter Homes stated the ordinance affected all his clients and created a hardship with the 15% glass requirement. He felt it was unfair for new construction to be held to a different standard than the rest of the beach. He discussed the downfalls of the 15% window tint and asked that the turtle ordinance be kept at 45% tint for new development.

Eric O'Gilvie, representing water sports operators on Avenue C questioned the fines and the difficulty of moving all the equipment off the beach. He asked that staff provide an extension for companies to comply.

Public comment closed.

Council Member Veach stated that requiring 15% glass was an improvement to prevent fewer turtle disorientations. He noted there was existing science regarding the wavelength that attracted turtles. He reiterated that the 45% tint would create adversity and numerous disorientations.

Council Member Allers mentioned communications with Jennifer Hatfield with FGIA regarding the lack of data to warrant a 15% glass. He supported keeping 45% for new construction until the science changed. He indicated that the FWC did not encourage localities to adopt the 15% over the 45% until more information was known.

Mayor Murphy questioned whether the beach furniture ordinance was done correctly. Attorney Sanabria was not familiar with noticing issues and stated that any changes would have to be done with an ordinance. Town Manager Hernstadt suggested that the matter be reviewed with Town Attorney Herin, Jr.

Council Member Veach stated that property owners could apply for a variance concerning the window tint.

Mayor Murphy pointed out that because testing was ongoing, he believed that the builders would be put at a disadvantage by requiring 15% windows on new construction. He did not know whether he could support requiring 15% for all windows.

Council Member Allers moved to approve Ordinance 22-10 with the removal of the requirement for new construction to have the 15% glass; second by Council Member Atterholt.

Council Member Atterholt stated that the 15% glass was difficult to see through and the solution was to close blinds and shades. He explained why he seconded the motion at the first hearing to require new construction to install 15% glass.

Council Member Allers discussed continuing education and enforcement efforts and noted the town would not be able to catch every violator. Council Member Veach questioned whether everyone was okay with allowing 10% of the hatchlings of an endangered species to perish in their jurisdiction.

Mayor Murphy noted that people might comply after they have to start paying fines over and over again. He questioned penalizing new construction when the professionals were still studying the issue.

Attorney Sanabria stated that since the 15% requirement was in the title of the ordinance, he would like to discuss the issue with Town Attorney Herin, Jr.

Vice Mayor Hosafros moved to recess; second by Mayor Murphy.
Motion carried unanimously.

(Reconvened at 11:21 a.m.)

Attorney Sanabria recommended that Town Council move to table the amendment, direct staff to change the title and set the hearing for the next Council meeting if they wanted to remove the 15% requirement for new construction.

Council Member Allers withdrew his previous motion.

Council Member Allers moved to table Ordinance 22-11 and direct staff to bring back at the next available council meeting a draft that removes the 15% distinction and keeps it at 45% across the board; second by Council Member Atterholt.

Motion carried 3-2 by roll call vote with Vice Mayor Hosafros and Council Member Veach dissenting.

XI. ADMINISTRATIVE AGENDA

A. FY2021 Audit

Accept FY2021 Audit Report prepared by Mauldin & Jenkins

Mayor Murphy moved to accept the FY2021 Audit Report; second by Council Member Veach.

Council Member Allers questioned why system issues and turnover in the accounting department kept appearing in the report. Mayor Murphy replied that the department was a mess two years ago, but the current group was more than capable of moving forward. Town Manager Hernstadt agreed and added that 100% of the staff turned over, but the turnover did not affect the town's financial situation. He felt that the current team was stabilized and indicated that the town eventually needed to purchase new software.

Motion carried unanimously.

B. Resolution 22-24; Tentative FY 2022-2023 Millage Rate

Approve Resolution 22-24 establishing the Town's Tentative Millage rate for Fiscal Year 2022-2023

Vice Mayor Hosafros discussed setting the tentative millage rate at .99 due to potential projects.

Council Member Allers stated that Lee County's estimated cost for lighting 5.7 miles of Estero Blvd. with 400 poles using the same light fixtures on Old San Carlos Blvd. would be approximately \$6 million. He indicated the town would have to enter into an interlocal agreement with Lee County to reimburse them for the town's portion of the project. He estimated that the yearly cost to the town would be approximately \$700,000.00 using the non-approved fixture. If FPL (Florida Power & Light) approves the bulb currently in testing, Lee County would manage and design the project and the cost to the town would be lower. Town Manager Hernstadt estimated the town's cost would be \$500,000.00 per year if the bulb is approved.

Vice Mayor Hosafros moved to modify the resolution to include a .99 millage rate rather than the .95 millage rate; second by Mayor Murphy.

Cheri Russ from the Finance Department stated that a .99 millage rate would result in an additional \$660,000.00 for the year.

Council Member Atterholt questioned whether the town's surpluses warranted increasing the millage rate. Town Manager Hernstadt explained that the town's \$2 million cash on hand was not the answer to the list of initiatives.

Council Member Atterholt and Council Member Allers continued to discuss the lighting project. Mayor Murphy noted they were there to approve the tentative millage rate and there would be plenty of time to further explore issues.

Town Manager Hernstadt listed costs for upcoming projects and noted the projects would exceed \$2 million. He explained the budget process as set forth by the state.

Motion carried unanimously.

C. Playground Installation Agreement

Waive the Town's purchasing policies and procedures for an emergency purchase at the request of the Lee County School District and approve an Agreement with Conidar Builders to serve as the project manager/general contractor to obtain all required permits for the installation of playground equipment and accessory items at Fort Myers Beach Elementary in an amount not to exceed \$117,992.00 (existing piggyback agreement will be amended and lowered \$68,000).

Public Works Director Jason Freeman explained the accounting.

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

Motion carried unanimously.

D. Mooring Field Expansion Construction Agreement

Awarding the mooring field expansion bid to Dock Marine Construction Corporation, as the low, responsive and responsible bidder, in response to ITB-22-11-PW Matanzas Pass Mooring Field Expansion Construction in the amount not to exceed \$269,454.00 (Town's share is up to \$138,939 which includes a \$67,430 grant match) for up to ten double anchor mooring systems and nine single anchor mooring systems and authorize the Town Manager to negotiate the number and size of systems to be installed, negotiate a final and best offer, and execute a construction agreement with Dock Marine Construction Corporation.

Council Member Veach moved to award the bid to Dock Marine Construction; second by Vice Mayor Hosafros.

Motion carried unanimously.

E. Parking Sensors and App

Authorize the Town Manager to waive the Town's procurement policies and procedures and to negotiate a best and final offer and execute a sole source agreement with Civic Smart in the amount of \$119,688.00 (with a recurring monthly fee of \$1320.00), for a parking app and installation of individual parking space sensors.

Council Member Veach moved to authorize; second by Mayor Murphy.

Council Member Allers questioned whether people would download the app and he questioned spending the money when there were other more important items. Vice Mayor Hosafros commented that they told people they were going to do this to help with traffic. Council Member Allers did not think it was the right time to spend the money.

Motion carried 4-1 with Council Member Allers dissenting.

F. EV Charging Stations

Approve Resolution No. 22-26, authorizing the Town Manager to enter into a piggyback contract with Charge Point, Inc. to install Level 3 dual EV charging stations at Times Square-Center St., and Level 2 Dual EV charging stations at Newton Park and Town Hall in an amount not to exceed \$122,139.75

Mayor Murphy read the title of the resolution. (Recess from 12:27 p.m. to 12:40 p.m.)

Vice Mayor Hosafros questioned adding chargers to the Mound House and Town Manager Hernstadt noted it was an error to include the Mound House.

Vice Mayor Hosafros moved to approve resolution No 22-26; second by Council Member Atterholt.

Motion carried 4-1 with Council Member Allers dissenting.

G. ITB-22-14-UT Bid Rejection

Authorize the Town Manager to reject bids and solicit new bids for ITB-22-14-UT; Tier 1 Water and Stormwater Improvements pursuant to Section 2-480(a)(11) of the Town Code, which states: "An invitation for Bid may be cancelled, or any or all bids or proposals may be rejected in whole or in part, with or without cause".

Vice Mayor Hosafros moved to authorize; second by Council Member Allers. Motion carried unanimously.

XII. FINAL PUBLIC COMMENT

No public comment.

XIII. TOWN MANAGER'S ITEMS

Town Manager Hernstadt stated that the Audit Committee would review proposal packages for a new auditor and forward recommendations to Town Council. FDOT (Florida Department of Transportation) submitted two fence designs to be installed around the LeeTran storage area for approval. Town Council approved the picket style design.

A. Bayside Park**Notice of Improvement to properties in the vicinity of Bayside Park**

Town Manager Hernstadt indicated that a property owner reached an agreement with the town to provide a walkway.

B. FYs 2023-2025 CDBG program**Letters of intent to rejoin the Urban County Cooperation agreement, to collaborate with Lee County to potentially receive HUD funding.**

Town Manager Hernstadt explained the reasons for rejoining the program and why the town had previously opted out.

Vice Mayor Hosafros moved to authorize the Town Manager to rejoin; second by Council Member Veach.
Motion carried unanimously.

C. Supplemental FY2023 Budget Information

Town Manager Hernstadt provided calculations regarding how \$2.1 million in initiatives were reached. He explained the deductions for the costs for inflation.

Council Member Veach commented that revenue from increasing short rental fees and parking fees would apply to workforce housing and the parking app. Vice Mayor Hosafros stated that she did not advocate using the building she mentioned during a previous workforce housing discussion and there were other possibilities for future projects.

XIV. TOWN ATTORNEY'S ITEMS

Attorney Sanabria stated lawsuits for liens would be filed during the week.

XV. COUNCILMEMBERS ITEMS AND REPORTS

Council Member Veach reported on the Resiliency Cooperative meeting and vulnerability assessments. Town Manager Hernstadt explained how a resiliency study consultant would guide the town through the process. He indicated he would contact Sanibel to determine whether they wanted to collaborate with the town.

Vice Mayor Hosafros suggested discussing a grace period of enforcement for vendors on the beach while the language in the ordinance was being discussed. She received consensus Vice Mayor Hosafros did not agree with allowing a box blade on the beach because ~~Sandpiper Village raked over other people's property. the adjacent condos were raking over the Sandpiper Village beach access~~ as amended at August 1, 2022 Town Council meeting. Environmental Project Manager Chadd Chustz stated that box blades were only allowed on the beach with an FDEP permit and the consent of the Town Manager. Vice Mayor Hosafros reminded Town Council that they were not supposed to respond to public comment issues.

Council Member Allers questioned whether he had a consensus to continue talks with Lee County regarding lighting. Vice Mayor Hosafros agreed with continuing discussions and suggested adding the topic to a future M&P agenda. Town Manager Hernstadt indicated that Lee County issues were on the agenda for the next M&P.

No items from other members.

XVI. ADJOURNMENT

Council Member Veatch moved to adjourn the meeting; second by Council Member Atterholt. Motion carried unanimously.

The meeting was adjourned at 1:31 p.m.

Minutes adopted as amended, August 1, 2022; Motion by Council Member Atterholt, seconded by Vice Mayor Hosafros. Adopted 5-0.



Amy Baker, Town Clerk