

**FORT MYERS BEACH
TOWN COUNCIL
Council Chambers – Town Hall
2523 Estero Boulevard
Ft. Myers Beach, FL 33931
September 1, 2005**

Mayor Bill Van Duzer called a special meeting of the Town Council of Ft. Myers Beach to order on Thursday, September 1, 2005.

Council Members Present: Mayor Bill Van Duzer, Vice Mayor Howard Rynearson, Councilman Don Massucco and Councilman Garr Reynolds.

Council Members Absent: Councilman Ken Katcko.

Mayor Van Duzer explained that the purpose of the meeting was to enter Council resolution 05-24 into the record, which had to do with the primary elections. When asked by Mr. Van Duzer, Town Attorney Ann Dalton explained that any comments from either the Council or the public had to be with regard to the resolution and no other issue.

At that point, Mayor Van Duzer asked if there were any people who wished to give Public Comment.

Charles Meador came forward and said that it seemed to him that the Council was attempting to amend the Town charter with a resolution, and he felt that changing an amendment in the charter required a formal charter amendment rather than a lesser form of action such as a resolution. He recognized that he was not a government law expert, and that the Council paid an attorney to advise them, but did not feel the resolution would stand up as an amendment to the charter.

Mayor Van Duzer asked the Town Attorney, Ann Dalton, to respond to Mr. Meador's remarks. Ms. Dalton, cited Ordinance 0505, passed by the Town Council on February 28, 2005, and which specifically addressed the process by which the elections would be conducted this November. Ms. Dalton then read Section 5.01 of that ordinance, which stated that the regular election for Council would be held on the second Tuesday of November 2005; a primary election would be held on a Tuesday five weeks prior to the general election. She said it also provided for the eventuality of there being more than two candidates up for any given seat. She said the ordinance had been properly enacted, and that the resolution before the Council at this meeting was being made so as to move the process forward by stating who the candidates were and officially calling for the primary to be held October 4th. She said the resolution was an implementation resolution and not an amendment to the charter.

Mayor Van Duzer said that, after having read Section 05-1 of the Town Charter, it had originally said the elections would be held in March with a primary held five weeks prior. He pointed out that had been changed to November in order to accommodate the earlier

election, but he thought the language in the ordinance was very clear about the primary election and when it should be held. He felt the Council was following the Charter Amendment as written, and asked Ms. Dalton if the purpose of the resolution was to set the exact date for the primary election. Ms. Dalton said that it had several purposes: to set the date of the primary – she said a special meeting of the Council had been necessary in order to meet the time requirements as written in the Charter with regard to announcing the exact date of the primary, and that because the Council had been on hiatus since July 2005, the special Council meeting had to be held; the resolution also indicated who the qualified candidates were who were running in the primary. Mayor Van Duzer reiterated that he had read both the Charter and the resolution and felt that the Council was following the Charter by verifying the primary date in the resolution. Ms. Dalton said he was correct.

Ms. Dalton referred to an inquiry she had received from the Town Manager, Ms. Segal-George, with regard to some confusion that existed with the Charter. In response, Ms. Dalton had outlined an historical summary of the Ordinances and Charter amendments, which she had distributed. She felt Charter Section 5-07 was what had created the confusion, because it should have been modified. She believed that due to the transition from the former Town Attorney to the current Town Attorney (Ms. Dalton herself), the modification had not been made.

Garr Reynolds felt that what the Council was doing at this meeting was attempting to correct a situation that would have not arisen had the elections been held on March 7th as he felt they should have according to Judge Corbin and the Town Charter. He said the resolution the Council had passed to move the elections to November, which Ms. Dalton pointed out was not a resolution but an ordinance, seemed not to be complete. He recalled Mr. Roosa, the former Town Attorney, had said that it was complete, but it had not been. He felt the resolution was a way of correcting or justifying that, although it was a little late. He asked Ms. Dalton if that was a fair assessment of the situation. Ms. Dalton said she had not researched what had happened during the passage of that ordinance to change the election date, because she had not been involved in it, and did not feel she could address the lawsuit or Judge Corbin's actions. What she did say was that what was being done at this meeting was in full compliance with the ordinance, as the Council was required to pass this resolution to fulfill the obligations laid out in it.

MOTION: Vice Mayor Howard Rynearson made a motion for Council to accept Resolution 05-24. Councilman Don Massucco seconded the motion.

VOTE: The motion passed unanimously.

At that point, Mayor Van Duzer adjourned the meeting at 2:09 PM.

Respectfully submitted,

Jo List
Transcribing Secretary