

**FORT MYERS BEACH
TOWN COUNCIL
Town Hall – Council Chambers
2523 Estero Boulevard
Ft. Myers Beach, FL 33931
November 30, 2005**

I. CALL TO ORDER

Mayor Garr Reynolds called a Special Meeting of the Town Council to order on Wednesday, November 30, 2005 at 6:30 PM.

Members Present: Mayor Garr Reynolds, Vice Mayor Don Massucco, Councilman Dennis Boback, Councilman Charles Meador, Councilman-Elect William Shenko, Jr.

Excused Absence: None

Town Staff: Deputy Town Manager John Gucciardo

II. PLEDGE OF ALLEGIANCE

All present stood for the recitation of the Pledge of Allegiance. Mayor Reynolds gave the invocation.

III. OATH OF OFFICE: Seat 4 – Bill Shenko, Jr.

William Shenko, Jr. was administered the oath of office for Seat 4 on Town Council by Circuit Court Judge G. Keith Kerry. After several pictures were taken, Mayor Reynolds expressed his hope that the new Council could eradicate what he called the “great divide” between businesses and residents.

Town Attorney Dalton advised the public that this was a special meeting, and according to the charter, only business advertised in the published agenda for the meeting could be discussed.

Councilman Shenko thanked everyone for their support. Vice Mayor Massucco welcomed Councilman Shenko to Council, wished him well, and said he looked forward to working with him. Councilman Boback welcomed Councilman Shenko. Councilman Meador welcomed Councilman Shenko. Mayor Reynolds welcomed Councilman Shenko.

IV. PUBLIC COMMENT

Mayor Reynolds chose to forego Public Comment at this time.

V. EMPLOYEE CONDUCT AT TOWN COUNCIL MEETING ON NOVEMBER 21, 2005

Mayor Reynolds brought to the attention of the Council and audience that something “unfortunate” had occurred at the last Council meeting. He said

someone in the audience had gotten over-zealous and had yelled out a smear word at a gentleman speaking at the podium. Mayor Reynolds said if it had been said privately, it wouldn't have been a problem. He said one doesn't let one's mouth do one's thinking, especially in a Town Council meeting. Mayor Reynolds said he had been able to bring back order, but it should never have happened, and if it was going to happen, it shouldn't be done by a Town employee.

Mayor Reynolds felt it had been important enough of an issue to call the Special Meeting without consulting the other Council members. He then read something he had prepared in response to the alleged incident, which he had addressed to the Town Manager, Marsha Segal-George. In this communication to the Town Manager, Mayor Reynolds requested that immediate steps be taken to determine which Town Staff member had "hurled smear word(s)" at the meeting, and to ensure it never happened again. He had indicated in his communication to Ms. Segal-George that several people knew the individual, and that she should call Mayor Reynolds if she needed assistance. He suggested the following steps as an approach to dealing with the problem:

- 1) Give a written, signed apology by the Town employee to the gentleman. (Mayor Reynolds noted that most people knew who it was, but he wasn't going to bring any names into it).
- 2) Try to determine why the employee was so outraged as to hurl such an insult at anyone during a Town Council meeting.
- 3) Have a stern consultation with the employee and get a commitment that this will not happen again.
- 4) Write a letter detailing the incident and have it signed by the employee, a copy placed in his personnel file, and a copy to each Councilman.
- 5) Make it clear to this employee that this type of behavior will not be tolerated at Council meetings, or during any other Town work or activities in which he may be involved. The possible results of this incident could have ended in a serious confrontation where untold injuries could have occurred. Please note whether this employee was on assigned duty at the time of this incident, or only visiting.
- 6) A signed statement committing himself to a more thoughtful behavior concerning others, and the possibility of being dismissed if such behavior should ever occur again.

Mayor Reynolds requested that, due to the sensitive nature of the offense, the process begin immediately. He asked that the findings be presented to Council at this meeting.

Deputy Town Manager John Gucciardo said before any correspondence had been received from the Mayor, Town Management had handled the matter internally at a Staff meeting the next morning after the incident. He said the situation was addressed in general terms, as to what was and wasn't

appropriate behavior between Staff and any member of the public. He believed the message to the Staff was unambiguous and was understood by all. He said he was confident that the Staff members' behavior would reflect that understanding, and that the matter was considered closed.

Mayor Reynolds didn't feel the matter was closed until each of his suggestions had been answered specifically. He said he had not suggested that anyone be dismissed, but wanted the steps to be taken as he had suggested.

Mr. Gucciardo said management had taken what they deemed appropriate actions prior to having received the Mayor's correspondence. Mayor Reynolds asked if any other steps had been taken since he had sent his suggestions. Mr. Gucciardo said none had.

Vice Mayor Massucco read a memo he had sent to Council, the Town Manager and the Town Attorney. In that memo, Vice Mayor Massucco expressed his belief that a policy needed to be set with regard to materials allowed in Council chambers during meetings. He pointed out that someone in the audience at the November 21st Council meeting, during which the alleged incident had occurred, had brought a long-handled broom – indicating that the recent election of new Council members who replaced three incumbents had been a “clean sweep”; that same person had put a can of Lysol disinfectant on the speakers' podium, which Vice Mayor Massucco said was in very poor taste, and was meant only to antagonize an embarrass both Council members and certain Staff members. Vice Mayor Massucco indicated that he and at least one other Council member had known that, in the past, signs and banners of any kind had been restricted from Council chambers, and thought the broom and Lysol fell in that category. He felt it was unfortunate that no one, including himself, had asked that the offending objects be removed. Vice Mayor Massucco indicated that he wanted steps to be taken to establish policy stating in no uncertain terms that no objectionable materials would be allowed in the Council chambers during Council deliberations. He said if a motion was needed to accomplish that, he would make it. He added that if an ordinance or resolution was needed, he would direct either the Town Manager or the Town Attorney to immediately proceed in development of the document that would accomplish that. He hoped to preserve the dignity of Council chambers, and the honor of elected officials, both past and present.

Councilman Meador said his recollection of the incident was not the same as the Mayor's, in that he did not recall the individual yelling. He recalled that a comment may have been made in the back corner of the room among Town employees. He said it was loud enough for members of the public to have overheard the comment, and one member of the public had brought to the attention of the Council.

Mayor Reynolds said he stood corrected on the yelling, and said Councilman Meador was right.

Councilman Meador asked Mr. Gucciardo, when the Staff member involved in the incident had been spoken with about it, if he had been reprimanded.

Mr. Gucciardo said the management's position was that, while he believed members of the audience believed they heard or saw some action taken, from his point of view, he could not verify the incident or the individual. For that reason, he said all Staff members had been addressed regarding acceptable behavior. He said the message given to the Staff had been clear and unambiguous.

Councilman Meador pointed out to Mayor Reynolds that the Town Charter did not permit the Council to hire or fire Town employees. Mayor Reynolds acknowledged that. Councilman Meador said as long as the matter was appropriately addressed within the judgment of the Town Manager, as it appeared based on Mr. Gucciardo's report, he was happy to let the matter rest.

Councilman Boback said the items that had been brought into chambers at the November 21st meeting should have been addressed by the Town Manager at that time, if they were strictly prohibited. He said it didn't matter at that point whether those items should have been allowed or not. He said the disrespectful behavior of a Town employee who was also a supervisor was totally unacceptable to him, and should be unacceptable to the Council and residents as well. He felt it demonstrated the disrespectful atmosphere that had been fostered and deemed acceptable in Town Hall. He said that type of behavior always started at the top. He said if the incident had occurred in the private sector, the employee would have been "terminated on the spot, no questions asked". He hoped that the person at whom the comment was supposedly made had already received a written apology from the employee, or ex-employee, and from the Town Manager on behalf of the Town. He personally apologized to Mr. James for the behavior of the Town employee. He said he expected and would accept only professional behavior at all times, under all circumstances, from all Town employees. He said that type of behavior would not be tolerated from anyone at any time. He said if Council needed to set policy to address the issue, then it should do so.

Councilman Shenko said emotions were running very high in the Town. He agreed bringing items into Council chambers should be addressed, although not at this meeting. He agreed with Vice Mayor Massucco that the matter should be brought forward. Councilman Shenko said he had been initially satisfied with Mr. Gucciardo's report, but deferred to Councilman Boback's management expertise, and thought an apology would be in order from the Council and/or Town Manager, as well as from the employee if he saw fit to

do so. He felt the matter could be left at that. Councilman Shenko pointed out that there were a lot of issues ahead, and a lot of emotions were running high, and that Council should “get on with the business of governing”. He added that he saw merit in both Councilman Boback’s and Vice Mayor Massucco’s suggestions.

Mayor Reynolds thought Councilman Boback was “right on target”. He noted that in his communication to the Town Manager regarding the alleged incident, he had not requested that the employee be fired. He added that he understood it had been a man that had made the remark. He said his suggestion that the man be “sternly consulted with”. He pointed out that they were talking about adults, not young children, and that most adults, if qualified to be an employee of the Town, should have “enough other expertise or control of themselves that they wouldn’t be doing this”. He felt there needed to be a written record of the incident that would, in no way, affect the individual unless he did it again, at which point, he hoped Council would go along with the idea that the person should be fired. He stressed that he didn’t think he should be fired now, as everyone sometimes yelled a smear word at someone, although he said it would be done privately, within a small group, which he said didn’t make it right. However, he felt if one was talking one-to-one, a person might throw out a smear word after a serious conflict, but not in a community meeting. For those reasons, he asked Council to support the idea of going through the steps he had suggested, or steps they might suggest, because nothing in his suggestions would hurt the employee unless he repeated the offense. He said he was not “out to get” the individual, and said he had always been a good, decent person. He felt the point needed to be impressed upon all Town employees, and felt his suggestions was a way to accomplish that.

Town Attorney Dalton said Councilman Boback had indicated that he wanted an apology from the Council and Town Manager. Ms. Dalton believed Mayor Reynolds had requested that the six items in his e-mail memo be followed through with. In furtherance of what Councilman Meador had said, Ms. Dalton said Section 4.04 of the Town Charter stated “Neither the Council, nor any individual member of the Council, shall in any manner dictate the employment or removal of any employee...”. Ms. Dalton thought what Councilman Boback had said conformed with the Charter provision, as it was a suggested instruction to the Town Manager, who works for Council. But, Ms. Dalton said if the suggestion was to go forward with the six items as suggested by Mayor Reynolds, she was concerned that it might be construed as “dictate the employment of any employee” under the Charter.

Mayor Reynolds asked Ms. Dalton to point out any of the items he had suggested where he had stated it must be enacted. He pointed out that the items were suggestions, and had indicated as such in his memo. He said they were “pure suggestions” given to the Town Manager. Mayor Reynolds said

the suggestions were not directed to the employee, but rather to the Town Manager. He asked what Ms. Dalton found wrong with what he had said in his memo.

Attorney Dalton said she had no problem with the e-mail. She explained that by instructing or suggesting that all six items be moved forward, it went beyond the e-mail. Ms. Dalton felt the opening statement in the memo "I'm requesting you do an immediate investigation of the incident to determine the employee involved and take steps to remedy the situation" was a direction from Council to the Town Manager to follow through with the Personnel Policy and Procedures Manual, and cited Section 11 of the manual.

Councilman Meador understood Ms. Dalton's counsel to mean that a motion from Council that the Town Manager issue a written apology on behalf of her Staff to Ron James for the insulting language used by her staff toward him at the November 21st Council meeting would be acceptable. Councilman Meador went on to say that what might be looked at as micromanagement of personnel, and personnel procedures, on behalf of the Town Manager in dealings with her staff, might be considered outside the bounds of the Charter.

Attorney Dalton agreed with the possible motion suggested by Councilman Meador, and added that the micromanaging would be a policy issue. She restated her position as such: "I believe by instructing the Town Manager to implement these six items, (it) could cross the line of the Charter." She reiterated that she believed the suggested motion was within the confines of, and appropriate under, the Charter.

Councilman Meador agreed with Councilman Boback, in that attitude started at the top, which was why he had asked that the continued employment of the Town Manager be brought before Council. He said the fact that the specific employee, who had been identified by Mr. Heist, had not been specifically reprimanded, was intolerable. He said the attitude of Staff would not be changed "two or three or four tiers down the row". He believed, given who the current Town Manager was, that the best course of action would be a motion to instruct the Town Manager to issue a letter of apology to Mr. James. He felt, if the Council decided to hire a new Town Manager, they would see kind of management the Council was looking for.

Mayor Reynolds said he had made his request for Ms. Segal-George to do something on November 22nd, and that her response, in which she had said she would not be attending the Special Council meeting, had been dated November 23rd, but he had not received it until November 29th. He felt this indicated there was a breakdown "already" in simple communication on a problem he felt should have been dealt with rapidly. He felt if there was no note made of the incident, it would be as if the person had done nothing. He said the employee alleged to have made the remark in question had not

admitted to anything, nor had he given Mr. James a written apology. He felt if Ms. Segal-George sent the apology, she would be answering for her Staff, which he said was “okay”. However, Mayor Reynolds felt that when “something like this” was committed, the employee alleged to have made the remark should be expected to do something for himself, in addition to the other employees, by admitting he did something wrong. Mayor Reynolds did not believe the Charter would go against any of the suggestions he had made, as the Council was not directing anything, as they had not made a motion on anything yet. He said he had had to come up with something, and had thought his suggestions through administratively, and the suggestions he had made seemed like a legitimate way to “attack” the problem. He expressed willingness to have his suggestions modified or to have one or more of them eliminated, but felt there needed to be a written trail when there was a severe encroachment on another individual in public. He said if Council felt the same, he thought it should go that way, and if they didn’t want a written trail, “then Council rules.”

Mayor Reynolds then asked the Council if anyone had a problem with his first suggestion “Give a written, signed apology by the Town to Mr. James”. He thought they should analyze each of his suggestions one by one if they had to, because he wanted to know what was wrong with each, or make a better one. He said, once they had gone through his suggestions, if they didn’t want to do any of them, it would be okay because they were a Council, and was why they were there to make that decision.

Councilman Boback didn’t think there was anything wrong with the Mayor’s suggestions, but he believed all they could do was suggest things, and didn’t think they could instruct the Town Manager, or the Deputy Town Manager, to enforce any type of discipline on the individual employee. Mayor Reynolds interjected that he agreed. Councilman Boback said what Mayor Reynolds had written was “great” and would be a prudent way to go, but he didn’t believe Council had the authority to do it. He thought the best action of Council at this point would be to instruct the Town Manager to write an apology to Mr. James on behalf of the Town. He believed it was “the most we can get out of her”. He suggested that the Council also draw up an apology; all sign it, and send it to Mr. James, to show the Council’s support of the way the residents and the civility of the Town need to be treated in the future. He said while Council had nothing to do with what happened, they were still responsible for it. Councilman Boback said he was ready to make a motion to direct the Town Manager to write the apology, but Mayor Reynolds said he had not called for a motion as yet.

Vice Mayor Massucco said that when the employee alleged to have made the remark attended the November 21st meeting, he had not been on the clock. He asked Ms. Dalton if he could be classified as a spectator for that reason. Ms. Dalton believed he was still on duty.

Mr. Gucciardo said he was not sure, but his perception was that that was not relevant. Ms. Dalton commented that one was never off duty. Mr. Gucciardo agreed. He had no doubt that there were members of the public who believed that they had heard or seen something inappropriate, but he had no independent verification of it. He said he had been in the room, and he had not heard or seen it. He reiterated that he was not saying that it didn't happen, and understood that some people believed they had heard it or seen it, but without independent verification, rather than directing any criticism at any particular individual, he chose to address the entire Staff.

Vice Mayor Massucco asked if a Town employee left a meeting and stole a car, if the Town had to write an apology to the owner of the car. Mr. Gucciardo said he wouldn't. Vice Mayor Massucco said he was not trying to defend anyone, but wondered if the employee was off-duty if the Town could be held responsible. Ms. Dalton believed a Town employee in a Town building during Town business had the apparent appearance of being on-duty, and a certain level of conduct could be anticipated.

Mayor Reynolds said he felt more strongly about comments that had just been made. He told Mr. Gucciardo that he may not be sure, but that there had been four, five or six people around the person who were sure. He said he had been sure enough to take the time to write his suggestions. He said that, within his communication to the Town Manager, he had asked her to please note whether the employee who allegedly made the remark had been on assigned duty at the time of the alleged incident. Mayor Reynolds indicated to Mr. Gucciardo that it had been a week since his having made the request for that information, yet Mr. Gucciardo still didn't have the answer. He said he had simply asked for an investigation of the incident to see what direction the Town Manager might want to take to correct the situation so that it would not happen again. He said he had gotten no answers to his requests. He felt he was not communicating with the Council members because they seemed to be treating it very lightly, and he did not. He said he didn't want to "go after" the person and his employment, and said he had not suggested that anywhere in his memo to the Town Manager. He said "this person" needed to know that he did something wrong. He didn't think the Council should let it go by without having some investigation being done by the leader of the Island; to talk to the person and to come back to Council to let them know what was found out. He said it seemed that Mr. Gucciardo hadn't found out anything. He said he had not been given one answer to his reason for calling the Special Council meeting. He asked the Council, because he felt they didn't want to act on it, that they refer his suggestions to Mr. Gucciardo so that he could "find out some things."

Mr. Gucciardo said the actions that Town Management had taken, had been taken independently of, and before the receipt of, Mayor Reynolds' letter

because they had taken the situation very seriously. He said once the Mayor's letter had been received, Town Management had backed off on any other things. He said they considered the matter closed until the Special meeting took place. He said he didn't know what was the appropriate action, from the Council's point of view. He said because Town Management did take the matter seriously, he said he would have no problem writing a letter to Mr. James that indicated that even if there had been a perception that there had been inappropriate behavior on the part of the Staff member toward a member of the public, that the Town apologized for that. He said it was a serious matter, and something Town Management took very seriously. He said it was addressed in the policy manual, and was something they tried to reinforce. He clarified that, while he wasn't saying the incident didn't happen, the person to whom the statement had allegedly been made had been unaware of it. He felt there had been some confusion, or reasonable potential for disagreement as to what actually happened. He said he did not know for himself that it happened, but he believed that the people who reported it believe that it happened. He said for that reason, he would have no problem writing the letter to Mr. James as he had described.

Councilman Boback asked if Mr. Gucciardo had asked the employee if he had done it or not. Mr. Gucciardo said he had made a point of not doing that. He said he had made a clear, unambiguous statement to all the Staff members that if something like that happened that it was unacceptable and inappropriate. Councilman Boback said he found it difficult to believe that a thorough investigation could be done without speaking to the specific employee that was subject of the meeting.

Mr. Gucciardo guessed the difference from his perspective was that an investigation had not been done, but rather he had recapped what had allegedly occurred and what the Town Management's position was regarding that type of behavior, if it did happen.

Mayor Reynolds said there had been a lot of back-and-forth, and that Mr. Gucciardo had not answered one question that he had asked. He said Mr. Gucciardo had been repeating himself, and had expressed doubt as to whether the incident had occurred. Mayor Reynolds said there was someone present at this meeting who had heard him say it, and there were several other people who had heard it as well. Mayor Reynolds didn't think it would be acceptable to write a letter in which doubt about the incident having occurred was expressed. Mayor Reynolds said Mr. Gucciardo had not done any investigations, but that all he had to do was call some people that Mr. Gucciardo knew had heard it. Mayor Reynolds said if Council didn't want to follow his suggestions, he didn't think they could overlook the incident. He said there was no question about it having happened, unless one didn't believe any of the people who said they had heard it.

Councilman Meador said there didn't seem to be any doubt in the Town Manager's mind, as to who had said it, because she had taken the gentleman into the back room immediately after Mr. Heist had spoken. He didn't know if Mr. Heist was willing to repeat what he had seen or heard, but believed Mr. Heist could identify the employee by name. Councilman Meador felt they needed to move past "he said – she said". He believed it had been said. He said he had known Mr. Heist for "too many years", and didn't think Mr. Heist would stand up at a public meeting and accuse someone of saying something if he didn't hear it. He wondered if the Council wanted to hear from Mr. Heist.

Mayor Reynolds said they should delay that.

Councilman Meador felt if there was any doubt as to who said what, Mr. Heist had been the one who had brought it to Council's attention on November 21st, and that he wouldn't mind hearing from him about it again. He said at that point, the actions taken could be addressed specifically to the employee in question, and the issue could be brought back to the December 5th Council meeting.

Mayor Reynolds said "we obviously aren't communicating here". He said he hadn't known that the Town Manager had walked the employee in question out of the meeting and spoken with him immediately after the alleged incident. He asked Mr. Gucciardo if he had known that, and Mr. Gucciardo said he had not. He said she had spoken to more than one employee. He said the actions that had been taken at the Staff meeting the day after the incident, before receipt of the memo from the Mayor, had been deemed appropriate under the fact pattern they had had in front of them. He said he had known Harry (Heist) for a long time, and there was no doubt in his mind that Mr. Heist heard what he heard. He said he had communicated with the entire staff the next day, as he had felt it was important that the message be communicated to all of them, regardless of their involvement or non-involvement with the incident.

Councilman Meador said he was not sure the Council would be satisfied if a specific incident was not dealt with as a policy matter, and if an employee's involvement was not addressed specifically.

Councilman Shenko, noting that he had not been present at the November 21st meeting, said his view of government was that Council sets policy, and manages the Town Manager, and then the Town Manager manages the employees. He felt if Council didn't like the way the Town Manager managed the employees, the Council could do something about the Manager. He felt the Council should not direct the Town Manager to take specific action, and if the manager didn't take action that was acceptable to Council, their recourse was with the manager. He said he had spoken with Mr. Heist

about what had allegedly been said, and felt a letter of apology would be appropriate, and that the Town Manager could report to Council at their next meeting what actions, if any, had been taken, after the letter of apology had been completed. Councilman Shenko said if Council was not satisfied with that explanation, Council could take appropriate action with regard to the Town Manager.

Vice Mayor Massucco said he had been at the meeting. He remembered Mr. James having said “I will accept an apology from the Town.” Vice Mayor Massucco said that Mr. Gucciardo was willing to write the letter, and felt Council should let it be written, sent to Mr. James, and then close the issue. He said he didn’t want to see the issue at another meeting. This remark drew applause from the audience.

Councilman Boback agreed.

Mayor Reynolds said the problem with Vice Mayor Massucco’s suggestion was that Mr. James did not make the rules for Council, which was why the issue was before them. He said otherwise he could have spoken with either Ms. Segal-George or Mr. Gucciardo, and requested that a letter of apology be written on behalf of the Town. He said he hadn’t because it wasn’t Council’s call, nor had it been Mr. James call. He added that it was Council’s call, which was what he found wrong with Vice Mayor Massucco’s suggestion.

Mayor Reynolds said he liked what Councilman Shenko had said, to direct the Town Manager to take certain actions. He said those were his suggestions. He said it didn’t matter whether “they do what I said or not – these are mere suggestions”. He said nowhere in his memo had he ordered his suggestions to be done. He said his memo wasn’t worth more than the ink on the paper, and if someone wanted to make the suggestions more limited, and make a motion as such, he hoped they would consider his suggestions but it was their prerogative.

Councilman Shenko said he was ready to second Councilman Boback’s earlier motion that a letter of apology be written. He said if the Town Manager wanted to take action in addition to that, she could report that to Council. Councilman Boback said if she didn’t take additional action, Council could take action with the Manager.

MOTION: Councilman Boback made a motion to direct the Town Manager to write a letter of apology to Mr. James on behalf of the Town. Councilman Shenko seconded the motion.

Attorney Dalton said the personnel manual specifically addressed “discourtesy to person’s with whom the employee comes into contact while on the performance of duties” and assumed this was the category the Council was

considering. She said that it fell under Group I offenses, which appeared in Paragraph 11.3, subparagraph 8, sub-subparagraph 4 in the manual, in which it stated that for a first offense, a verbal or written counseling/warning would be invoked. Ms. Dalton said she pointed out this information to Council to amplify the discussion because the personnel manual did specifically address how Management should handle such issues.

Mayor Reynolds hoped that was exactly what Council was doing at that point. He asked Mr. Gucciardo to supply all Council members with a copy of the policy manual.

Mayor Reynolds called the vote, but Vice Mayor Massucco said if the issue ended with a yea vote, he would be in favor of the motion, otherwise, not. He asked that the motion be repeated.

Councilman Boback said the motion was to instruct the Town Manager to write a letter of apology to Mr. James on behalf of herself and the Town. Mayor Reynolds said that had not been the exact motion. Councilman Shenko said that it had been the motion he had seconded. He added that if the Town Manager decided to report further she could, but there was no requirement that she do so.

Mayor Reynolds reiterated his understanding of the motion, which he thought was to turn over the handling of the incident entirely to the Town Manager to do as she saw fit. Ms. Dalton didn't believe that had been the motion. Councilman Boback said the motion had been to write the letter of apology, and that the Town Manager should follow the personnel policy manual on her own. He said if she didn't, the Council would need to deal with the Town Manager on a different level. He felt the motion was such that Council could "get it over with". He said "Let's end it and require the Town Manager to write a letter of apology to Mr. James".

VOTE: The motion carried unanimously.

VI. PUBLIC COMMENT

Tom Babcock, of Williams Drive, came forward. He welcomed the new Council members, and congratulated the new Mayor and Vice Mayor. He expressed great hopes and expectations for the new Council. He read a statement to Council, in which he opined the first Council meeting had been a learning experience, and said that it had demonstrated neither civility nor respect. He believed if there had been booing during public comment, Council would have reacted to stop it. He felt allowing the audience to clap for what they agreed with, and not clap for things they disagreed with, was the same as booing. He asked the Council if that was the image they wanted for Ft. Myers Beach. He felt no booing or clapping should be allowed. He said he had heard many degrading statements aimed at previous Council members

and Town Staff during Public Comment at that meeting. He said it was okay to celebrate winning an election, but it was time for the campaign rhetoric to stop. He said that it was the Council's responsibility to stop personal attacks for everyone, and to ensure the comments made at Public Comment were focused on facts and ideas, not emotion. He said it was unacceptable for anyone to make a degrading comment. He said it was Council's job to prevent a bad situation, rather than react to it. He believed a reprimand and a private apology were appropriate for the individual involved. He said the first Council meeting was a learning experience, and that the Council members would get another chance; he hoped they would consider the same for the person who made a mistake.

Jerry Sawyer, of 111 Anchorage Street, came forward. He said over the years he had heard "a lot of bad stuff" at Council meetings, but that at this meeting, he had observed harmony, respect and reason. He said it was good to see professionals reasoning together.

Councilman Meador asked the Mayor if, during a special meeting such as this one, if Public Comment was to be directed solely toward the issue at hand. Ms. Dalton said that was correct, and that Councilman Shenko's swearing-in and the alleged incident of November 21st were the only subjects that should be addressed during Public Comment at this meeting.

Mayor Reynolds said the gentleman who had approached the podium did not get to Council meetings often, and in fact, had not seen him at one before, and insisted that he be allowed to speak, although the man had indicated that his comments were not with regard to the matters at issue.

Bill Davis, of 1154 Estero Boulevard, came forward. He asked how much the City Manager was paid. Mayor Reynolds said it was a tough question, and that Council couldn't discuss it. Mr. Davis said that was why he had said his question was not appropriate, but went on to say "I think the City Manager, no matter if it was God, is too much."

Mayor Reynolds responded to Mr. Davis' question, instructing him to call Town Hall and to speak with Mr. Gucciardo about that matter.

Harry Heist, of 155 Dundee Road, came forward. Mr. Heist congratulated Councilman Shenko for "finding his way back". He said it was fortunate the Councilman Shenko had not had to attend the first meeting. Regarding Town employee(s), Mr. Heist thought the meeting could have been shorter had the Town Manager or Assistant Town Manager done the right thing, by confronting the employee and having dealt with it appropriately. He hoped that in the future, the Town employees dealt with situations, such as what was being discussed at this meeting, in a proper fashion. Mr. Heist said he investigated the employee in question, as well as a few other Town

employees, and said he found that some of the employees had been busted for marijuana possession, for not having a driver's license, for cocaine possession. He said "these are Town employees, and he wanted Council to look into it and do something about it. He hoped this Council would be a Council of action.

Mayor Reynolds suggested that Mr. Heist bring back the information he had found at another Council meeting, when he could go through anything he needed to with it.

Pat Smith, of Fairview Boulevard, came forward. She said as a former manager herself, she found it unbelievable that one would not have discussed one-on-one with the employee who was alleged to have made the remark, and discovered what his side of the story was, and then dealt with it accordingly. She said her experience as a manager was that it was very important to document such incidents because, as the Mayor had said, that kind of offense could occur again. She said if there was no record in the employee's file, then the first offense would not exist. She felt the manager, whoever it was, should begin to deal with such situations in a professional and business-like way. She said the Council served as managers, on behalf of the taxpayers, to manage the manager who managed all the other employees. She said the particular employee, who was alleged to have made the remark, was a third-level supervisor, and said it was unacceptable that someone in that position would not have known that such behavior was completely unacceptable.

Charles Schofield, of Ibis Street, came forward. He said he had resided in the Town for six years, and he said that in the past eighteen months, he had attended 95% of the meetings. He said he had been present at the November 21st meeting, and had heard the derogatory remark. He said he had never made any Public Comment because he didn't want to be thought of as a "rebel (sic) rouser", a label he said was given to Mr. James. He said he was not surprised at the answers the Town Management gave to Council at this meeting, as he felt it was indicative of management for the last eighteen months. He hoped, with the new Council, this situation could be "conquered". He said the Council couldn't all agree all the time, but that there was one "synopsis": It was the Council's responsibility to ensure the Town Manager managed everything, which he said had not been done.

Terry Lawlor, wife of the employee who allegedly made the disparaging remark to Mr. James, came forward. Ms. Lawlor thought it was time to clarify the matter at hand. She said her husband was the employee under discussion at this meeting. She apologized for his absence, as she felt he would have been interested in all the comments made by Council. She read a statement he had prepared after he had heard about the incident. She said the first time he had heard about it was when the Ft. Myers Beach Observer had called him about it. She said at no time during his attendance of that meeting

did Mr. Heist address him in person or by name, nor did Mr. James. She said that Mayor Reynolds' memo, referred to in that day's article about the incident in the Observer, was sent to Town Hall on November 22nd. She read on from Mr. Lawlor's statement: "I reviewed the memo as did all employees, but did not see my name mentioned. At this time, I reviewed the entire recording of Monday night's meeting." Ms. Lawlor asked if the Council members had reviewed that recording. Mayor Reynolds said they had not received it yet. Ms. Lawlor read more: "Upon review of the tape, I was a little taken aback by Mr. Mayor's memo on several points. I feel that an employee "heralding smear words" at another gentleman, as stated in the memo, would certainly have been picked up on the superior audio that you run. As several sitting audience members could be heard on the audio, surely "heralding" would have been captured as well. In fact, the memo clearly refers to "yelling" of obscene words. Again, clearly "yelling" would have been caught on tape. However, during review of the tape, a derogatory term is never audible. I'd ask that you would all review the tape carefully. After Mr. Heist spoke, he clearly pointed in the direction behind him which was off camera. Several people were standing in close proximity, and sitting in close proximity, to me at the time. At that point, I did not realize I was being singled out. Directly after Mr. Heist spoke, Mr. Ron James, the supposed subject of the insult, turned around and addressed the back of the room with this comment, and I quote: "You said that about me, Pete?". I presumed Mr. James knew the person he was speaking about and was addressing with this comment. Towards the end of the meeting Mr. James spoke again. At this time, he referred to the person making the derogatory comment and, as I quote again: "A Town employee in a Town suit." As I was attending the meeting only as an employee, I was dressed in street clothes, not as an on-duty employee. At that point, however, I had already left the meeting. However, on tape, Mr. James clearly gestures again towards the back of the room, leading the viewer to believe the person he was referring to was still present. Though I was not on hand during the entire meeting, during my time attending I did not witness any uniformed Town employees in the audience, nor were any on view on camera. Unfortunately, I am unable to attend this last-minute special meeting called to discuss the incident. However, I have been involved with the Town of Ft. Myers Beach since 1997, when I won my first independent contract through the competitive bidding process. I was awarded new contracts in several subsequent years after going through the same arduous bidding process. I was hired as a staff member roughly two years ago as a maintenance supervisor. To date, my service and commitment to the Town has never been questioned. I urge all Council members to review this entire tape and my employee record carefully before discussing this in public." Ms. Lawlor said she understood that it was too late for that. She thanked the Council for their understanding. She pointed out that there had been a can of Lysol sitting on the podium at the meeting. She asked the Council to think about the derogatory term that had been used, and think about its resemblance to the word "Lysol". She asked the Council to prove their

allegations, and to review the tape of the meeting of November 21st. She said, based on the facts she had presented, it would be difficult to prove that an apology was warranted from her husband.

Mayor Reynolds asked if the woman speaking was an employee of the Town. Ms. Lawlor said she was “his wife”. She said she was there in his stead, as he could not attend.

Mayor Reynolds said he had given Ms. Lawlor 2 extra minutes to say what she had to say, and that they wanted to be fair “about this”. Regarding other criticisms, which Mayor Reynolds said he did not like to address, he asked that, if a person had comments about the Town they wanted to share, and that person wanted answers, he or she address them to Council. He qualified that statement by saying it was in reference to something another person had said, not in reference to Ms. Lawlor’s remarks. He felt the only “encroachment” at the first new Council meeting had been that there had been very enthusiastic voters there. He remarked that, had the Fire Chief attended, the room would have had to be cleared because it was over-capacity. He said “sure, they were exuberant”, and he had given them a chance to clap. But he said he didn’t expect that to happen every week, and that he had no apologies for allowing applause. He said it had been on his shoulders, and that he had made the decision to allow it. He said there had been criticisms, but “they weren’t the ones who were applauding”, so that one might have to differentiate “the ones that come forth”. He said if anyone had problems, they should write them down and send them to Council, as it was the only way those problems could be dealt with. He said innuendos would not work, and would not help Council unless people were more specific. He said he would rather have concerned issues rather than individuals, and that Council didn’t want to go in that direction.

VII. ADJOURNMENT

MOTION: Vice Mayor Massucco made a motion to adjourn, and Mayor Reynolds told him to wait “just a minute”.

Mayor Reynolds said he had added another item after Public Comments, which he had skipped. He asked each Council member if they had anything else to say. No one had anything to add, but Councilman Meador said he just wanted to second Vice Mayor Massucco’s motion.

Motion seconded by Councilman Meador. No vote was taken. Mayor Reynolds adjourned the meeting. No time was given.

Respectfully submitted,

Jo List
Transcribing Secretary