

**FORT MYERS BEACH
TOWN COUNCIL MEETING
AUGUST 5, 1996**
Nations Bank, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA

I CALL TO ORDER

The meeting was opened on Monday, August 5, 1996, at 6:35 P.M. by Anita T. Cereceda, Mayor. Present at the meeting were: Anita T. Cereceda, Mayor and Council Member; Ted FitzSimons, Vice Mayor and Council Member; Council Members Rusty Isler and Ray Murphy; Marsha Segal-George, Town Manager; and Attorney Richard Roosa. Excused from the meeting was Council Member Garr Reynolds.

II INVOCATION

The invocation was given by Father Thomas Goggin, pastor of Church of the Ascension Catholic Church.

III PLEDGE OF ALLEGIANCE

All assembled recited the Pledge of Allegiance to the flag.

IV PUBLIC COMMENTS AND INQUIRIES

There were no public comments.

V REVIEW OF EXPENDITURES

The Gateway item for computer tapes has not been received.

Motion: Ray Murphy moved and Rusty Isler seconded that all other items be approved. The motion passed unanimously.

VI PUBLIC HEARING ON PACKET "F"

A TOWN OF FORT MYERS BEACH TWO WHEELED MOTOR DRIVEN VEHICLE ORDINANCE

Mayor Cereceda read the titles and opened the meeting for public comment. There being no public comment, the public meeting was closed.

Motion: Mayor Cereceda moved that the ordinance be adopted. Ray Murphy seconded. There was no discussion. The motion passed unanimously.

B TOWN OF FORT MYERS BEACH PARKING VEHICLES ORDINANCE

Mayor Cereceda read the titles and opened the meeting for public comment. There being no public comment, the public meeting was closed.

Motion: Mayor Cereceda moved that the ordinance be accepted. Mr. FitzSimons seconded. There was no discussion. The motion passed unanimously.

VII FIRST READING ON PACKET "G"

A TOWN OF FORT MYERS BEACH NIGHT SLEEPING ON THE BEACH ORDINANCE

Mayor Cereceda read the titles. There was no discussion. The ordinance was set for public hearing on August 19, 1996.

B TOWN OF FORT MYERS BEACH FIREWORKS AND SPARKLERS ORDINANCE

Mayor Cereceda read the titles. There was no discussion. The ordinance was set for public hearing on August 19, 1996.

C TOWN OF FORT MYERS BEACH FINANCE ORDINANCE

Mayor Cereceda read the titles. There was no discussion. The ordinance was set for public hearing on August 19, 1996.

VIII CONTINUING DISCUSSION OF DRAFT OF NOISE ORDINANCE

A SANDI SUTER

Mrs. Suter played a recording of noise taken from the porch of her house. The noise came from The Bridge on Sunday night, but she is also getting noise from the Matanzas Inn and the cruise ships. She asked the Council to protect the residents from the noise, and to protect the Town from lowered property values. She would like the ordinance to state that no one can make noise past their property line. She feels that the ordinance that is in effect now is unenforceable. The only thing that is enforceable now is “breach of peace.”

B TRIMBLE MCCULLOUGH

Mr. McCullough has lived here four year and is a professional musician. The present noise and zoning ordinances make it impossible for him to make a living as a musician. He and the club he was playing in have been fined \$500 each because an officer was using a decibel meter. Another time he was playing from 4 to 8 PM at Marozza’s and was told if he played there again he would be fined. He asked the Council to consider the people trying to make a living on the island.

B SALLY YOUNGBLOOD

Ms. Youngblood is a musician and has been a resident for 15 years. She has been told that that her music was too loud even though she was playing an acoustic guitar and was not using a microphone.

C JOHN HATHAWAY

Mr. Hathaway is an entertainer on the Beach and has played here for seven years and is also a booking agent for other entertainers. He feels that the musicians are harrassed for trying to make a living legitimately. He feels that music makes the town a better place for tourists to come. If they can’t play at night, they will be out of business.

D FRAN MYERS

Ms. Myers stated that the present ordinance does work because she has won a court case against a noisy neighbor. She wants people to stay in business, but she feels that there can be a compromise by providing buffering from the noise. The noise problem is also from speakers from audio equipment.

E DAN PARKER

He feels that noise can be contained. There are places that have loud music, but they manage to contain the noise.

Mr. FitzSimons asked about the “real property line” which excludes intra-property lines. Mr. Roosa felt that this would not apply to a condo unit because they are in the same building. A condo owner would be protected under the multi-family provision in section 5C(1). In Section 5, Mr. FitzSimons thought the title should be changed from “receiving land use”, because in Section 5(3), it talks about the property line of the noise source. He suggested that the ordinance state that all noise be completely contained and he also wanted to use the term “plainly audible.” Mr. Roosa said that this term has already been litigated and thrown out by the court as too broad and vague. That is why he opted for the decibel rating because it was more objective. Marsha Segal-George suggested doing a search through the League of Cities, particularly

of other beach communities, to see what kind of noise ordinance is working in other communities. She said we may need to look at restricting playing time, districting music to a certain area, and containment of noise by owners of the establishments. Mr. FitzSimons felt that the noise ordinance should apply to all hours of the day, not just at night. Mr. Isler pointed out that even if the town passes a strong ordinance, it would not help the people who complain about The Bridge because it is out of our jurisdiction. The Council decided to invite the sheriff's officers who run the decibel meter to speak to the Council at a workshop at a later date.

IX CONTINUING DISCUSSION OF DRAFT OF POST-DISASTER ORDINANCE

Marsha Segal-George said that she had given the ordinance to the fire district and they did not indicate that there was any problem with it. Mr. FitzSimons suggested that on page 6, line 9, item 7 this should be changed from Kimmons to "franchisee". The ordinance is set for first reading on August 19.

X REVIEW OF AUDIT SERVICES PROPOSALS

John Gucciardo said that an ad has been run, and there were four responses. All the bids are for a lump sum and are within the budget. The audit will be for January through September 1996. Since the auditor will be auditing the work of the staff, it was decided that the staff should not choose the auditor. The Council decided that all four should be interviewed. The staff will set up the interviews during a workshop session. The proposals are available for review in Mr. Gucciardo's office.

XI DISCUSSION ON BUDGET (WITH FULL PUBLIC INPUT)

A FLIP HARBY

Mr. Harby wanted to know why the liability of the half-million dollar loan is not listed on the budget, and that the interest gained from investing that loan should be documented. He also noted that the Historical Society is scheduled for a \$30,000 loan but there is no statement about repayment of the loan.

Mr. Roosa said that the loan should only be shown as a footnote, because the budget only shows revenue and expenditures. The interest income is already documented in the budget.

The first public hearing is set for Tuesday, September 3 and the second hearing is set for Monday, September 16.

XII RESOLUTION ON ALL HAZARDS COVERAGE WITH LEE COUNTY

John Gucciardo recapped the history. In April the County talked to the Council about the coverage and at that time the Council was clear that they wanted to stay in the All Hazards, which would be the local match for any FEMA funds in case of a catastrophic event. Last Tuesday the staff found out that in order for the County to collect this tax for us, they would have had to tell the property appraisers before July 1 that the Town had elected this option, but it was not done. The County has already raised the assessment from .0533 to .1 this year in the participating areas, and there is no way to work out a payment schedule now. The All hazards MSTU will not appear on Beach taxpayers bills this year, but will reappear next year. The Town wants in it, and the County wants us in it, but it is not clear yet how it will be resolved. The latest situation seems to be that the County may allow the Town to remain in the program without requiring any funding from the Town this year. If the County says no at their next meeting on Wednesday, the Council may have to pay it out of reserves, about \$100,000. (The Council could have raised the millage to cover the difference, but it is too late now.) Mr. Isler questioned why the other cities do not participate, that perhaps the coverage is not really that good. The staff recommended that the Council sign a resolution to the County stating the town's understanding.

Bill Shenko, an attorney in the audience, suggested that since the Town's tax bills are going to be going down, perhaps the town should try to collect the money another way, rather than take it out of reserves. You can change the millage if you send out a first class letter to all the taxpayers (or registered voters) stating that you intend to raise the millage higher than has been originally set. It would be less expensive to do this mailing than to take \$100,000 out of the reserves in case the county does not vote to let us in.

Mr. Roosa felt that the Council should be represented at the Commissioner's meeting.

Motion: Ray Murphy moved and Ted FitzSimons seconded that the Council pass the resolution. The motion passed unanimously.

The Council took a break at 8:10 P.M. and reconvened at 8:21 P.M.

XIII DISCUSSION OF CLEANING SERVICES

The staff has advertised for a cleaning service, and there were two responses. One is within the budget estimate and one is slightly over. The Council directed the staff to select the best cleaning service.

XIV COUNCIL MEMBERS' ITEMS AND REPORTS

A TED FITZSIMONS

Mr. FitzSimons asked what the town was going to do about Gullwing. Marsha Segal-George answered that the owners have proceeded with construction, and therefore the permit is not going to expire.

The Mainstreet grant request contained a statement that the town would agree to fund \$30,000. He did not see anything from the Chamber stating that they would also be liable for \$30,000. Marsha Segal-George will look into getting a document from the Chamber.

He asked if there anything the Council can do to "green up" Estero Boulevard . Marsha Segal-George said that it is in the CIP but the CIP hasn't been developed yet. The town needs to also look into sidewalks, benches, shade, bicycle lanes, etc. at the same time, not just at trees. The Town will either have to work within DOT rules, or we have to take possession of the right of ways and work out our own plan. Mr. Isler asked if there wasn't a garden club that would take on the project. Perhaps a nursery would agree to a special price and the club could coordinate the plantings. If people plant the trees in their own yards, it would make the boulevard look prettier without affecting the right of way

B RAY MURPHY

Mr. Murphy is going to the Florida League of Cities meeting in Boca Raton this weekend. He asked Marsha Segal-George for the name of a contact from Delray Beach that he could talk to about their Mainstreet project. He will also ask around about the noise ordinances in other cities.

XV TOWN MANAGER'S ITEMS AND REPORTS

Marsha Segal-George reported that the meeting with the representatives of the jet ski and parasail vendors will be on August 6 at 6:30 P. M.

The Council was given a resolution that the County requires in order for the permit to be issued to install the paver blocks. The pavers on the sidewalk south of Times Square to the Lani Kai are the responsibility of the Town to maintain. Mr. FitzSimons suggested that the resolution be modified to state clearly the area that is covered in the resolution.

Motion: Mayor Cereceda moved and Ted FitzSimons seconded that the resolution be accepted with the stated change. The motion passed unanimously.

XVI TOWN ATTORNEY'S ITEMS

No items.

XVII PUBLIC COMMENTS AND INQUIRIES

A BILL WHITAKER

Mr. Whitaker is a business owner who has formerly had live entertainment on his property. He feels that the decibel reading is not an accurate number because the meter also picks up background noise of traffic, wind, people talking, and other neighboring businesses. If the Town decides to go with the decibel ordinance, he recommends that they hire and train someone to operate it . He suggests that all outdoor entertainment (including live and piped-in music) should be restricted unless the Council issues a permit for it. That would put the burden on the owners to be good neighbors.

B BILL SHENKO, JR.

There is already a state statute about breach of peace, which is a criminal violation which is difficult to prove. He does not believe there has ever been a criminal conviction based on a decibel meter reading in Florida because the judges are not convinced that the meters are valid. But a subjective criteria is also hard to prove. He thinks the ordinance needs to use the decibel reading in a civil setting of a zoning appeal board or hearing examiner. That allows the Town to retain the right to revoke permits without allowing them to put someone in jail. He suggests that the sheriff come and set up a stereo, turn it all the way to bass at 70 decibels and the Council will see that the A-weighted decibel meter (which Lee County uses) will not pick it up even though the noise will run the Council out of the room. In addition, the meters are only read every few seconds, and if the reading is taken between beats of the music, it may not pick it up. He suggested that the Council issue permits for outdoor music and that the permit would only be for one year and would be automatically renewed only if there were "x number" of verified complaints during the year.

XVIII ADJOURNMENT

The meeting was adjourned at 8:55 P. M.

Respectfully submitted,

Peggy Salfen
Recording Secretary