

**FORT MYERS BEACH
TOWN COUNCIL MEETING
OCTOBER 7, 1996**
Nations Bank, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA

I CALL TO ORDER

The meeting was opened on Monday, October 7, 1996, at 6:37 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, Ray Murphy, and Garr Reynolds; Marsha Segal-George, Town Manager; and Attorney Richard Roosa.

II PLEDGE OF ALLEGIANCE

All assembled recited the Pledge of Allegiance to the flag.

III INVOCATION

Mr. FitzSimons gave the invocation.

IV PUBLIC COMMENTS AND INQUIRIES

A J. D. WILLIAMS

Mr. Williams stated that he has owned a company, Sundance Water Sports, for 6 years. This company sells parasail and waverunner rides, even though he does not operate the rides himself. He is a mobile operator and mentioned a letter from the county that states that he has the right to do business as a water taxi service which transfers people to licensed PWVL operators. He is not sure if he would be considered a "floating vendor" but if he is, it sounds like this ordinance is trying to get rid of them.

B PATRICK RANALLI

Mr. Ranalli stated that he is president of Ranalli Parasail Inc. He is concerned about the windspeed in Section 16(d). Small craft advisory (20-23 knots) is unpredictable because sometimes they give a small craft caution and the wind doesn't blow. Even a knot is not well defined. The Coast Guard only takes wind speed three times per day. He thinks the ordinance should state a wind speed rather than a small craft advisory.

C SHARON FAIRCLOTH

Ms. Faircloth owns two watercraft business on the beach. She has worked with Marsha Segal-George on this draft and she thinks it is a good ordinance and encouraged the Council to pass it.

D LONNIE CLARK

Mr. Clark is a business owner, native South Floridian, and a captain. A few years ago, he and his partner Linda Kane asked the county to put in regulations for parasailing. As a captain, he has had no accidents with swimmers or other vessels. He has rescued boats, pelicans, and ultralights, so he feels that he has been an asset to the beach, not a hindrance. There are only 5 parasail boats and they are licensed separately, require a separate zoning, require CPR, and captain's licenses. He does not object to working with jet ski operators, but he feels they should be treated separately.

E WILLIAM PERRY

Mr. Perry of Aqua Sports, thanked Marsha Segal-George for helping put this draft together. He feels like it shows a fairly good consensus of the operators. He thinks the problem area is in allowing parasail operators to go wherever they like because they are showing up anywhere without any permission. He thinks that limiting the number of skis at any location is good because of congestion. But he also thinks it is a good idea to allow the operators to take people away from the congested areas on a tour as long as there is one operator per five skis.

F JIM FIGUERADO

Mr. Figuerado, owner of Mid Island Marina, stated that he has a problem with section 22-26 which requires proof of completion of an 8-hour boating safety course. He does not think the Town needs to regulate everything. The State has just passed a law to license ages 16 up to 21 and eventually everyone will be licensed. 99% of his rentals are grandparents. This section will hurt families who want to come and enjoy the water

but can't afford a boat or don't want to bring their boats from home. It would mean that you are telling visitors that we can enjoy the beauty of the area, but they can't. That will hurt our reputation.

G JOHANNA CAMPBELL

Ms. Campbell wanted to speak for the residents, not the industry. She wants to give safety to residents and tourists alike. She also wanted to know what the Council is going to do about jet skis in the back bay, because a lot of damage can be done in that sensitive area.

V APPROVAL OF MINUTES

Motion: Mr. Murphy moved and Mr. Reynolds seconded that the minutes be approved as submitted. The motion passed unanimously.

VI REVIEW OF EXPENDITURES

Motion: Mr. Murphy moved and Mr. FitzSimons seconded that the report of expenditures be approved. The motion passed unanimously.

VII COUNCIL MEMBERS' ITEMS AND REPORTS

A RUSTY ISLER

No items.

B TED FITZSIMONS

Mr. FitzSimons questioned the maintenance of Times Square. Some of the paver blocks are already showing signs of wear from vehicular traffic. He felt that the Council needs to start now to work on a plan before project is completed. The area will need tree inoculation, watering trees, and maintenance of the paver blocks. The Council also needs to decide whether to make a pedestrian mall or a partial mall. Mr. Isler said it would be good to make a schedule and plan for the rest of the streets on the island too. Mr. Reynolds thought that this shouldn't be a total taxpayer expense, since it benefits the merchants so they should have to assist. It is estimated to cost \$32,000 per year to maintain. Mr. Isler said perhaps the merchants will help with labor in front of their businesses, rather than giving money. It was decided to have a workshop as quickly as possible with Times Square merchants, and then with all owners in the overlay district

The Council took a recess at 7:05 due to a power failure and reconvened at 7:13 PM.

C GARR REYNOLDS

Mr. Reynolds reported on the recent traffic committee. San Carlos Boulevard is complete and will be returned to 45 mph soon. LeeTran said we will have one trolley until Dec 15 when they will put on a second one, although he has asked the County if we could get more. The committee also discussed privatizing the trolleys.

D RAY MURPHY

Mr. Murphy said that many people are excited about the Times Square overlay and improving their property and are inquiring about financing. While it is not the place of the Town to arrange financing, he feels it would be good for the Town to help them if possible. He made a few calls, and Downtown Redevelopment of Fort Myers will send some information. He wants to put the word out to the local financial institutions for help. He offered to be available to meet with the lenders and come up with ideas on getting something started.

E ANITA CERECEDA

No items.

VIII INFORMATIONAL UPDATE ON THE LPA

John Mulholland, Chairperson, reported on their activities for the last month. They have discussed height signs, commercial zoning and parking. They put an ad in the paper to get volunteers to help with an inventory of building heights on the island. They are planning to have design workshops with the public. At their last meeting Scott Whipple gave them an overview of the overlay. Rob Fowler and Jim Elliot also talked to the LPA from a builder's perspective. Because of hearings, it is slowing down their effort to do the comp plan, so they may not make their 18 month objective.

IX APPROVAL OF CONTRACT WITH HUMANE SOCIETY FOR ANIMAL CONTROL

This was pulled from the agenda since the contract has still not been received from the society.

X DRAFT DISCUSSION OF PROPOSED BOATING ORDINANCE

On page 1, Mr. Isler suggested changing the title to Personal Watercraft ordinance, even though it covers parasails. He thinks jet skis and parasails should not be in the same ordinance. One is small equipment which is rented out to inexperienced drivers, but parasailing involves a licensed captain on a more expensive boat.

It was clarified that the PWVL license belongs to the operator, not the landowner. However, if the operator does not have a land based site, they will lose their license in 30 days unless they transfer to another location. If the landowner is a non conforming use, and an operator leaves, the landowner has to get another operator in 30 days or they lose their non conforming use. But in this draft, there is a suggested cap on the number of licenses allowed and if there are no more licenses available, the non conforming landowner cannot get one.

On page 5, Section 9(1), there was a question of whether the 500 foot slow speed zone includes the pier. Mayor Cereceda expressed a concern that that would hamper the operations of the jet ski operator who is about 150 feet of the pier.

Motion: Mr. FitzSimons moved and Mr. Isler seconded that there be a 500 foot slow speed zone on all sides of the pier. Mr. FitzSimons, Mr. Isler and Mr. Murphy voted for the motion. Mayor Cereceda and Mr. Reynolds voted against the motion. The motion passed.

On page 6, it was decided to remove Section 10 altogether.

Motion: Mr. Isler moved and Mayor Cereceda seconded that on page 7, Section 11(3) the Town conform with the existing state law regarding the minimum age for renters and owners. Mayor Cereceda, Mr. Isler, Mr. Murphy and Mr. Reynolds voted for the motion. Mr. FitzSimons was opposed. The motion passed. Mr. Roosa suggested eliminating that paragraph since it now follows the state law.

On page 8, Section 12A, Marsha Segal-George pointed out that operators will only need a county occupational license.

On page 11, Section 15(5), the rule requiring a fire safety inspection is new and was suggested by the fire marshal.

Also on page 11, Section 15(6), the CPR requirement is new and the draft only requires it for the license holder, not everyone working for them.

Motion: Mr. Isler moved that the requirement for CPR be eliminated. There was no second. The motion failed.

Motion: Mr. FitzSimons moved and Mr. Reynolds seconded that the CPR certificate be required of the license holder and also that a CPR-qualified person be on duty at all times. Mr. FitzSimons, Mr. Reynolds, and Mayor Cereceda voted for the motion. Mr. Isler and Mr. Murphy were opposed. The motion passed.

Also on page 11, Section 15(8), it is suggested that there be a cap on the number of licenses allowed. There are about 23 jet ski licenses now and 6 parasail licenses.

Motion: Mr. Murphy moved and Mr. FitzSimons seconded that the cap be set at 15 jet ski licenses and 6 parasail licenses. The motion passed unanimously.

On page 11, Section 16(a), the Council had no problem with adding this paragraph.

On 16(b), Mr. FitzSimons suggested adding the words "or pier" on end.

On 16(c) the draft suggested that parasail flights must end ½ hour before sunset, but one operator has sunset flights and wants the wording to say "dusk" instead. Since the word dusk is not clearly definable, the Council wished to use the word "sunset" because it is very specific.

Motion: Mr. FitzSimons moved and Mayor Cereceda seconded that parasail operations must cease ½ hour before sunset. Mr. FitzSimons voted for the motion. Mr. Isler, Mr. Murphy, Mr. Reynolds and Mayor Cereceda were opposed. The motion failed.

Motion: Mr. FitzSimons moved and Mr. Reynolds seconded that operations must cease "at sunset". Mr. FitzSimons, Mr. Reynolds, Mr. Murphy and Mayor Cereceda voted for the motion. Mr. Isler was opposed. The motion passed.

On page 12, Section 16(d) suggests that parasail operators may not fly when there is a small craft warning. Mr. FitzSimons thinks that since these are licensed captains who are familiar with wind conditions in the area they are operating, the ordinance should set a specified wind velocity. Mr. Ranalli recommended 30 mph (25 knots).

Motion: Mr. Reynolds moved that Section 16(d) remain as written using “small craft warning” as the standard. There was no second. The motion failed.

Motion: Mr. Isler moved and Mr. Murphy seconded that Section 16(d) be dropped from the ordinance, making it be the captain’s decision when it is too windy to fly. Mr. Isler, Mr. Murphy, Mr. FitzSimons, and Mayor Cereceda voted for the motion. Mr. Reynolds was opposed. The motion passed.

On page 12, Section 16(e), the draft suggests that parasail operators must pass through buoys unless the lanes are too congested, in which case they may pass just to the left or right of the buoys.

Motion: Mr. FitzSimons moved and Mr. Reynolds seconded that the section stay as written. Mayor Cereceda, Mr. FitzSimons, Mr. Reynolds and Mr. Murphy voted for the motion. Mr. Isler was opposed. The motion passed.

Motion: Mr. Isler moved and Mr. FitzSimons seconded to separate the parasail ordinance and license from the jet ski ordinance and license. The motion passed unanimously.

The Council took a break at 9:20 PM and reconvened at 9:30 PM.

On page 12, Section 16(g), Mr. Roosa said there could be a problem by mentioning the grandfathered parasail license holder by name in the ordinance, making him a franchise. He suggested changing the section to read “any grandfathered...”

The Council agreed that there should be one license for one parasail boat.

On page 13, Section 19(2), it was agreed to change the second half of the description to “east of Big Carlos Pass bridge.”

Motion: Mr. FitzSimons moved that on page 13, Section 19C, the vendor’s telephone number be printed on the side of the vessel in 3” letters. There was no second. The motion failed.

Motion: Mr. FitzSimons moved and Mr. Reynolds seconded that on page 14, Section 19H the words “or within 20 feet of the water’s edge” be added to the end of the sentence. Mr. FitzSimons and Mr. Reynolds voted for the motion. Mayor Cereceda, Mr. Murphy and Mr. Isler were opposed. The motion failed.

On page 15, Section 19M(4), Mr. FitzSimons said that he does not want jet ski eco-tours in the back bay because he thinks that you can’t lead a tour when people are on separate vessels, that the area is too sensitive, and that it is too dangerous.

Motion: Mr. FitzSimons moved and Mr. Reynolds seconded that a period be put after the words “Estero Bay” and the rest of the sentence be eliminated. Mr. FitzSimons, Mr. Reynolds voted for the motion. Mr. Murphy, Mr. Isler and Mayor Cereceda were opposed. The motion failed.

On page 15, Section 19N addresses designated areas for pickup. Under the Lee County ordinance parasail boats can’t pick up from beach accesses or private homes. They can pick up from their primary location or at another licensed jet ski location if they have written permission from the landowner. Mr. FitzSimons feels that people don’t want parasails going in anywhere on the beach. They would rather have them use the jet ski lanes which will be clearly marked. Mr. Isler thinks the parasails should be away from the jet skis rather than in the same area because of safety and congestion. According to the proposed draft, parasail captains would have the option of going to the left or right of the chute if it is congested.

Motion: Mr. FitzSimons moved and Mayor Cereceda seconded that on page 15, Section 19N be accepted as written, making parasail operators pick up and return customers at their primary location or at another PWVL

location only. Mr. FitzSimons, Mayor Cereceda, Mr. Murphy, and Mr. Reynolds voted for the motion. Mr. Isler was opposed. The motion passed.

Motion: Mr. FitzSimons moved and Mr. Murphy seconded that on page 15, Section 19”O” be accepted as written, requiring parasail operators to use buoy lanes unless it is too congested. The motion passed unanimously.

Motion: Mr. Reynolds moved and Mr. FitzSimons seconded that page 15, Section 19P be accepted as written, limiting each PWVL operator to eight rentals. Mr. Reynolds, Mr. FitzSimons, and Mr. Isler voted for the motion. Mr. Murphy and Mayor Cereceda were opposed. The motion carried.

Motion: Mr. FitzSimons moved and Mr. Murphy seconded that page 15, Section 19Q be accepted as written, requiring standardized rules. The motion passed unanimously.

Motion: Mr. FitzSimons moved that in Section 21the insurance requirement be set at one million per occurrence and one million aggregate. There was no second. The motion failed.

Discussion: The Council clarified that it would like to keep the new paragraph requiring that the declaration page be on file at the Town however.

Mr. Murphy, and Mr. Reynolds voted for the motion. Mr. Isler was opposed. The motion passed.

Motion: Mr. FitzSimons moved and Mr. Murphy seconded that on page 15, Section 19”O” be accepted as written, requiring parasail operators to use buoy lanes unless it is too congested. The motion passed unanimously.

Motion: Mr. Reynolds moved and Mr. FitzSimons seconded that page 15, Section 19P be accepted as written, limiting each PWVL operator to eight rentals. Mr. Reynolds, Mr. FitzSimons, and Mr. Isler voted for the motion. Mr. Murphy and Mayor Cereceda were opposed. The motion carried.

Motion: Mr. FitzSimons moved and Mr. Murphy seconded that page 15, Section 19Q be accepted as written, requiring standardized rules. The motion passed unanimously.

Motion: Mr. FitzSimons moved that in Section 21the insurance requirement be set at one million per occurrence and one million aggregate. There was no second. The motion failed.

Discussion: The Council clarified that it would like to keep the new paragraph requiring that the declaration page be on file at the Town however.

Motion: Mr. FitzSimons moved and Mr. Reynolds seconded that on page 17, Section 22-26 remain in the ordinance at least until the public hearings.

Discussion: Marsha Segal-George suggested splitting these sections out into a separate ordinance.

Amended Motion: Mr. FitzSimons amended the motion and Mr. Reynolds agreed to the amendment that these sections be separated from the rest of the ordinance for separate review by the Council. Mr. FitzSimons and Mr. Reynolds voted for the amended motion. Mr. Isler, Mr. Murphy, and Mayor Cereceda were opposed. The motion failed.

Motion: Mr. Isler moved and Mr. Murphy seconded that Sections 22-26 be deleted. Mr. Isler, Mr. Murphy, and Mayor Cereceda voted for the motion. Mr. FitzSimons and Mr. Reynolds were opposed. The motion carried.

Motion: Mr. Reynolds moved and Mr. Isler seconded that on page 19, Section 28 the penalty for violation of the ordinance be civil rather than criminal. The motion passed unanimously. The Council agreed that the fine should be \$100.

XI TOWN MANAGER’S ITEMS AND REPORT

Marsha Segal-George passed out a request that had just been received from the County that afternoon asking the Council to amend Resolution 96-23 concerning maintenance of Estero Boulevard. Mr. Roosa has looked

at the request and is bothered that nobody knows what some of the listed items mean. Mr. Reynolds said his objection is that the County has been requiring a lot of maintenance and he thinks the merchants should have to help. Mr. Isler said that if they don't pass it, it will just hold up the job.

Motion: Mr. Isler moved and Mr. FitzSimons seconded that the resolution be amended as requested by the County. Mr. Isler, Mr. FitzSimons, Mr. Murphy and Mayor Cereceda voted for the motion. Mr. Reynolds was opposed. The motion passed.

Marsha Segal-George also mentioned that in their meeting today, the BOCC raised the issue of whether to go ahead with the Town pool. She talked with Ray Judah and he thinks the commissioners want an interlocal committing the Town to maintenance of the pool prior to the County committing to spend any money on the project, even though the Council has already passed a resolution to that effect.

Motion: Mr. Isler moved and Mayor Cereceda seconded that Mr. Roosa be instructed to draft an interlocal. Mr. Isler, Mayor Cereceda, Mr. Murphy and Mr. FitzSimons voted for the motion. Mr. Reynolds was opposed. The motion passed.

Discussion: Mayor Cereceda suggested sending a strong letter saying that the Town already gave them the resolution they asked for, and how can we do an interlocal for something that doesn't exist. Marsha Segal-George said that apparently they think the resolution is not as binding as an interlocal and Mr. Roosa confirmed that is true. She pointed out that if we don't do what they ask, they won't allocate the money and they'll give it to someone else. The interlocal would say that the County will build and the Town will operate and maintain it. Mr. Roosa said that he would want parameters of the swimming pool included in the interlocal, but Mr. Isler said that any pool agreed upon with the County, we will maintain. Mr. FitzSimons said he heard that they think the area needs an olympic pool but not on the beach and they want to use the money for that instead. It was also mentioned at the meeting that Parks and Rec said they intend to close Bay Oaks or turn it over to the Town some time this year. They are concerned that if the Town has to take over operation of Bay Oaks at \$300,000, we won't be able to afford the maintenance of the pool.

XII TOWN ATTORNEY'S ITEMS

Mr. Roosa passed out a status report of the cases he is working on for the Town.

XIII PUBLIC COMMENT AND INQUIRY

A RON JOHNSON

Mr. Johnson said he has been in the parasail business for 15 years and his safety record is impeccable. Depending on wind direction, his tow vessel would have to be 1/2 mile off shore before he can operate if the parasail must be 500 feet away from the pier. He does not fly over the pier or land because it is not safe. He also thinks he should be allowed to have more than one vessel per license. He needs four vessels to survive. Since the business is so seasonal, he needs to make money when he can.

B KATHLEEN FISHER

Ms. Fisher stated that she does not have a problem with only running 8 skis from any location. But she also works with retirement villages and schools to lead eco-tours of the back bay. If she can only have 8 skis, she can only take 16 children on an eco-tour which is only half a classroom. They are asking for 18 skis, so that on tours outside gulf waters, they could rent 15 plus 3 tour guides. She invited each council member to come take a tour to see what they do and spend a day with them before they make these laws. When they go in the back bay, they stay in the channels and observe no wake zones. She also mentioned that if the Town is going to require a 500 foot slow speed zone around the pier, they need to put out buoys because other boats and jet skis won't know about it, only rentals.

C JIM FIGUERADO

Mr. Figuerado wished to thank Mr. Isler, Mayor Cereceda, and Ray Murphy for making the decision to cut Section 22-26.

D CHRIS SCHAAB

Mr. Schaab runs CRS Beach Service with Ms. Fisher. His income will be cut in half and he will have a hard time making a living on this beach without the income from the eco-tours. In addition, it will disappoint the

retirements homes and school children. He thanked the Council for taking out section 22-26. People want to see the birds and dolphins and it is not fair that only people who live on the back bay can see them.

E WILLIAM PERRY

Mr. Perry said that he agreed with most of what the Council approved tonight except regarding allowing extra vessels for taking guided tours. In the congested areas, eight is enough, but they should be able to also take tour groups. Perhaps the tours could go to other areas besides the back bay (perhaps Sanibel).

XIV ADJOURNMENT

The meeting adjourned at 11:00 PM.

Respectfully submitted,

Peggy Salfen
Recording Secretary