



TOWN OF PALM BEACH

Office of The Town Clerk

REPORT OF THE ORDINANCE, RULES AND STANDARDS COMMITTEE MEETING HELD ON MONDAY, DECEMBER 7, 2009

1

I. CALL TO ORDER AND ROLL CALL

2

3 The Ordinance, Rules and Standards Committee meeting was called to order on Monday,
4 December 7, 2009 at 2:00 p.m. in the Emergency Operations Center, 355 S. County Road, Palm
5 Beach. On roll call, Chair Diamond and Committee Member Coniglio were present.

6

II. APPROVAL OF AGENDA

7

8 The Agenda was approved as presented.

9

III. PUBLIC COMMENT

10

11 Jere Zenko, 227 Tangier Ave., stated that she went out at 2 a.m. on Saturday Night to investigate
12 the state of the Town and what was happening at that hour. Ms. Zenko said she was appalled at
13 the conduct occurring in the establishments. Some parents are content knowing their children are
14 not leaving the island to party and was aware of the letters that were written to the Town. She
15 stated that there is a problem in Town and it needed to be addressed.

16

IV. GENERAL REVIEW OF TOWN CODE OF ORDINANCES.

17

18 Chairman Diamond asked Town Manager Elwell the best way to proceed. Town Manager
19 Elwell advised to go through the back-up page by page methodically and either approve or reject
20 the staff recommended changes.

21

A. CHAPTER 1-GENERAL PROVISIONS

22

23 Town Attorney Randolph indicated the terms and definitions in the General Provisions Section
24 come from the Municipal Code Corporation in regard to explaining terms and definitions. The
25 Town Council did not put this particular section together.

26

27 On Page 6 of 7 in Section 1-14 Staff recommended amending to make reference to Sec. 2-439
28 that contains the code enforcement fine schedule. In subsection (2) add "maximum as otherwise
29 established by state law" after the reference to \$500. Make a reference to the Code Enforcement
30 Board as no mention was made previously.

31

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1 Deputy Town Manager Bradford indicated that the proposed language would clear up what is
2 already in the code. Committee Member Coniglio commented on the same page regarding Sec.
3 1-15 Noncompliance and unpaid fines and asked if it should pertain to construction issues.

4
5 Deputy Town Manager Thomas Bradford responded that did not belong in this section and was
6 covered in the Town's right-of-way manual that comes up by reference in the Code as being
7 approved elsewhere. This section pertained to liens that applied to violations of the code.
8 Committee Member Coniglio further asked if it would apply to a lapse in construction time. She
9 asked about having a cross referencing.

10
11 Deputy Town Manager Bradford summarized a recent Code revision regarding the three strike
12 rule for contractors and others that violated the parking requirements associated with a
13 construction site, and there are fines that can accrue. After the third strike, that person can no
14 longer proceed with construction, and they would have to appear before the Town Council.

15
16 Town Attorney Randolph did not feel that should be placed in this section because it is a general
17 penalty provision in all municipal codes and it usually relates to provisions of state law which
18 dictate a \$500 fine or up to sixty days in jail. He then read a provision in the Code to the
19 Committee that clarified that. He was not sure that the suggested amendment was necessary.

20
21 Deputy Town Manager Bradford stated that the police department suggested this change in order
22 for their staff to be able to cross reference. Captain John Maio, Support Services, stated that the
23 reader could use this as a roadmap to direct the user to where the fines are. It would be useful to
24 the officers.

25
26 **The ORS Committee will suggest the recommended changes for Chapter 1 to the Town**
27 **Council.**

28
29
30 **B. CHAPTER 2-ADMINISTRATION**

31 Chair Diamond indicated that on Article III page 1, the Assistant Town Manager should be
32 removed out of Section 2-136 since there currently is not one. There was brief discussion as to
33 why it would be listed and if it should be. As long as the position is frozen, leaving it in the
34 chapter would allow the Town Manager flexibility if the position needs to be filled.

35
36 Committee Member Coniglio indicated that as long as the position was frozen, leaving the
37 terminology as a future possibility in the code was not a problem. She requested that the
38 language be kept in the Code.

39
40 Under Section 2-222-Town Attorney, Deputy Town Manager Bradford clarified that insurance
41 companies usually preclude the Town from appointing counsel unless the Town seeks to waive
42 the coverage. Typically, the insurance company would defend an issue but the Town Attorney
43 may have been involved and know the history of a case. There would be a differential cost for
44 the Town to have its own attorney. Town Manager Elwell indicated that there have been times

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1 when coverage has been waived. He gave a few examples from the past five or six years where
2 that has happened.

3
4 Committee Member Coniglio did not feel the change was necessary. It was a duty directive that
5 still falls under the Town Manager and Town Council.

6
7 Section 2-271: Town Engineer. Staff recommended that the Director of Public Works have
8 authority to select a Town Engineer. Deputy Town Manager Bradford stated that historically,
9 twenty five years ago, the engineer was a consultant that worked for an outside firm. Currently,
10 Jim Bowser is the Town Engineer and will be retiring in the next five years. The Town should
11 have the flexibility to decide how to most efficiently address the issue.

12
13
14 **The Committee was in agreement with the staff recommendation for this Chapter with the**
15 **exception of Section 2-222.**

16
17 Article IV. Boards and Commissions:

18
19 Section 2-326 Deputy Town Manager Bradford indicated that this recommendation came from
20 the Planning and Zoning Director in order to follow Roberts Rules of Order and to be consistent
21 with the other Boards.

22
23 Town Manager Elwell stated that some of the boards may have statutory restrictions such as the
24 Code Enforcement Board and Public Employee Relations Commission. They have different
25 terms.

26
27 Committee Member Coniglio asked if all of the Board and Commission terms were the same,
28 and if they all had alternates or not. **There was discussion and it was decided that this item**
29 **would be placed on hold, and staff would prepare a spreadsheet for the next meeting that**
30 **included all Boards and Commissions, alternates, terms, etc. for the Committee to review.**

31
32 Town Manager Elwell indicated that the intent was to have several meetings over the next
33 several months and bring one ordinance to the Town Council with all of the changes to the Code.

34
35 Chair Diamond asked about having alternates on the Shore Protection Board and asked if there
36 was a sunset provision. Town Manager Elwell said there was not and currently there are no
37 alternates on the Shore Protection Board.

38
39 Section 2-326 Committee Member Coniglio asked if the information was now accurate since
40 the Planning and Zoning Commission recently changed their meeting dates. Deputy Town
41 Manager Bradford indicated that it would not impact the Code.

42
43 Sect 2-237 Committee Member Coniglio asked about participation from alternates from making
44 motions. She asked for clarification that alternates cannot vote or make motions unless they are a
45 fill-in for an absent regular member.

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1 **Town Manager Elwell stated that they would add the language into Section 2-327**
2 **“alternate members shall not vote or make a motion on any matter unless they are sitting**
3 **to fill the position of a regular member..”**

4
5 Section 2-334 Reports – Deputy Town Manager Bradford recommended that the change be made
6 to once a year. Town Manager Elwell said that the Planning and Zoning Commission used to
7 only meet once a year and the intent was to make sure it went before the Town Council once a
8 year. The provision no longer is relevant since the Commission now meets all year round.

9
10 **The Committee decided they would wait until next month to review the Chapter again with**
11 **the Board and Commission spreadsheet.**

12
13 Article V Code Enforcement

14
15 Committee Member Coniglio asked about the language of Code Enforcement “Inspector” vs.
16 “Officer”. Captain Maio stated that the Town uses Code Enforcement Officer. There was
17 discussion between the police department staff and the Committee as to what was preferred and
18 who enforces the Code.

19
20 Town Attorney Randolph and Town Manager Elwell indicated that the Committee needed to be
21 wary of the use of the language “Code Enforcement Officer” instead of “Inspector” due to
22 definitions determined by Municipal Code. Captain Maio said that code staff and police officers
23 act as inspectors. **It was decided to leave the wording as is.**

24
25 Committee Member Coniglio asked Captain Maio if there were violations of Section 18-964:
26 Displaying house number or address. Captain Maio confirmed that there have been citations
27 issued for that particular violation.

28
29 Chair Diamond asked when reviewing the fine schedule if Level III was the highest. Town
30 Attorney Randolph advised that recently and Ordinance was passed that was a Level IV
31 violations related to unlicensed contractors with a maximum fine per State law of \$500. Since it
32 was a recently codified Ordinance, it was not reflected in the back-up. There were discussions
33 about uncorrectable violations. **Town Clerk Cunningham was asked to verify that there**
34 **would be a cross-reference in the next Code supplement.**

35
36 **Article V was approved by the Committee as recommended by staff.**

37
38 Article VI Finance

39
40 **It was recommended to staff to number the pages at the next meeting, as well as have the**
41 **Article being referred to highlighted.**

42
43 Section 2-491 Deputy Town Manager Bradford explained that this recommendation was to add
44 “or as otherwise designated by the Town Manger”. Committee Member Coniglio asked about
45 cross references and if there was a list of criteria needed to be a franchise. Deputy Town
46 Manager Bradford stated that the cross references were made by Municipal Code Corporation.

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1
2 Section 2-517 Designation of Town Depositories: **The Committee agreed that an annual**
3 **basis was acceptable and approved the staff recommendation.**

4
5 Section 2-518 (a)(5) was to add (6) debt service fund. Deputy Town Manager Bradford
6 recommended adding that section to the code and deleting the golf course fund, since it no longer
7 exists.

8
9 Committee Member Coniglio asked if this would be the locations where the erosion control
10 district funding would be, if it were created. Town Manager Elwell stated that the Erosion
11 Control District would have its own separate section.

12
13 Section 2-519 Transfer of Excess Funds

14
15 Committee Member Coniglio asked about transfer of excess funds and does it keep the integrity
16 of the fund and did it refer to appropriate reserves as well. Deputy Town Manager Bradford said
17 that only the Town Council could dip into the reserves and usually only does so with written
18 justification from staff. The Town Manager added that this particular language related to moving
19 money into the direction the opposite of the norm for the Town in the past decade. It takes it
20 from other funds of the Town and brings it into the General Fund. It states that as a matter of
21 law, the Town shall only do so when the Town Council makes a determination based on the staff
22 recommendation that it will not negatively affect the integrity of the place that the money is
23 coming from.

24
25 Section 2-541 Manager to estimate receipts and expenditures

26
27 Deputy Town Manager Bradford proposed the changes as housekeeping items. Due to
28 technology many of the procedures are obsolete. The budget is now available to everyone
29 available online, electronically etc.

30
31 Division V Contracts and Purchases – Deputy Town Manager Bradford said that at the end of the
32 chapter is the new section of the code. Florida code addresses the acquisition for materials and
33 labor of construction. Through the sealed bidding process, there can be zero profits for
34 contractors, resulting in change orders in order to make money. This process often leads to
35 conflict and litigation. The Town uses a request for qualifications. They need to give a
36 guaranteed maximum price and that is also a competitive process. Town Manager Elwell cited
37 the example of the Town Hall renovations as the first project that was done this way.

38
39 **Committee Member Coniglio stated that she was in favor of more than one way to operate.**

40
41
42 Division 6 - Investment Advisory Committee (IAC) – Deputy Town Manager Bradford stated
43 that Finance Director Jane Struder requested this item. The change would allow the IAC to
44 make recommendations to the Finance Director on the investment of the Town's surplus funds.

45
46 Committee Member Coniglio noted spelling errors in the Code.

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The Committee approved Article VI as discussed.

Article VII – Issuance of Subpoenas

After a brief discussion and a comment by Town Manager Elwell that he would not be comfortable issuing his own subpoenas, and has never done so, Section 2-568 is recommended to be deleted from the Code.

The Committee approved Article VII changes as discussed.

Article VIII -Investment Policy

This article will be proposed for amendment at the January 12, 2010 Town Council Meeting. It would bring more flexibility to the investments. Town Manager Elwell added that pension funds are addressed elsewhere in the Code.

The Committee took no action on this item since it would be discussed at the January Town Council Meeting.

Section 2-604 Standards of Care

Deputy Town Manager Bradford recommended changing Assistant Town Manager to Deputy Town Manager for signatory purposes since there currently is not an Assistant Town Manager. There was also a spelling error in line three and should be “overall” which would be corrected.

Section 2-605 Safekeeping and Custody

Committee Member Coniglio asked if there was an affidavit agreeing to comply with town's investment policy required in (a) (4). Deputy Town Manager Bradford thought there was a process and believed something did have to be signed. **Town Manager Elwell offered to have Finance Director Struder provide a proper response.**

Committee Member Coniglio asked about adding language about having an internal auditor and have criteria for that. Town Manager Elwell indicated there could be an additional section added but it is a function of operations and not a statutory requirement.

The Committee approved Article VIII changes as discussed.

Article IX - Sovereign Immunity

The Committee recommended no changes.

Article X Shore Protection Board

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Staff had no proposed changes. Chair Diamond asked about having alternates on the Shore Protection Board. Town Manager Elwell suggested deferring this item until the next meeting when they would have the spreadsheet of all of the Boards and Commissions.

The Committee deferred Article X until the next meeting.

C. CHAPTER 6-ALCOHOLIC BEVERAGES

Section 6-3 Deputy Town Manager Bradford recommended adding that a licensed engineer or registered land surveyor within Florida secured by the applicant at the applicant's expense and submitted to the zoning administrator for review instead of the Town Engineer.

Section 6-4(e) The proposed change in language requiring applications to be submitted to the planning, building and zoning director corresponds to the first change.

Section 6-8 Hours of Sale for off-premises consumption.

Chair Diamond asked for summary from Captain Maio. Captain Maio advised that the current Ordinance prohibits sales from 9p.m. – 9a.m and before 1:00 p.m. on Sundays. The Police Department recommended that it be changed to allow purchases until 10:00 p.m., and begin sales at 7:00 a.m. instead of 9:00 a.m. Capt Maio added that the County has done away with restrictions on purchasing alcohol before 1:00 p.m. on Sundays .

The Committee agreed to be congruent with the County Ordinance.

Section 6-37 Adult Entertainment Code

Deputy Town Manager Bradford pointed out a scrivener's error at Sec. 6-37(3). Committee Member Coniglio asked about distances relative to churches and schools in Section 6-34. Town Attorney Randolph stated that the Code was constructed to comply with previous case law and he recommended that it not be changed.

The Committee recommended no changes other than to correct the scrivener's error.

D. CHAPTER 10-ANIMALS

Chair Diamond indicated there was a letter from Shamin Abas requesting that the Code be modified to allow a horse parade to be permitted along Worth Avenue. The situation was discussed and the Committee was not in agreement. Chair Diamond recommended that if they are permitted, that clean-up be a condition. Town Manager Elwell also indicated that large animals are not permitted in Town currently. He added that a similar situation occurred a few months back about the keeping of pets, in particular a pig. There would need to be the granting of exceptions when the criteria is not met.

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1 Chair Diamond asked Captain Maio if the Police Department had ever considered having a
2 mounted horse unit and they have not.

3
4 **Town Manager Elwell will contact Shamin Abas and inform her that the Committee**
5 **Recommendation was to not change the Code and it will be presented to the Town Council**
6 **at a later date.**

7
8 Section 10-9 Keeping certain animals prohibited; exceptions

9
10 Town Manager Elwell indicated that the number of animals a person could keep used to be ten,
11 but as a compromise was lowered to seven a few years ago (2006). Lead Code Enforcement
12 Officer Rob Walton indicated that they do cite people occasionally.

13
14 Section 10-10 Temporary permits

15
16 Chair Diamond noted that the recommended changes were an entire re-write and asked Deputy
17 Town Manager Bradford for an explanation. Staff updated the permit fee to be more in line with
18 the other Town permits. In addition, the guidelines would follow the Fish and Wildlife
19 Commission requirements for animal handling, with a floor plan of the animals, along with
20 setback requirements.

21
22 The permits are administered by the Town Clerk's office. Town Clerk Cunningham added that
23 the Palm Beach Zoo staff had also offered recommendations and suggested requiring the State
24 Certificate that indicates the handling of animals by a licensed handler. The Zoo obtains two
25 permits each year from the Town for fundraising events.

26
27 **The Committee agreed to the recommended changes.**

28
29 Committee Member Coniglio returned to Section 10-6 Animals Creating Nuisances.

30
31 Committee Member Coniglio asked if this section was in compliance with the Palm Beach
32 County Ordinance. Captain Maio said he did not have a problem with this ordinance. Town
33 Manager Elwell stated that this section was updated two summers ago.

34
35 Section 10-41 Registration; inoculation

36
37 Staff recommended corrections to grammar and spelling with an addition of a reference to
38 Section 1-14 to eliminate the need to make changes to a fine amount in the individual ordinance.
39 The fine for this ordinance is contained in the citation fine schedule of section 2-439.

40
41 Section 10-43 Running at large prohibited

42
43 Staff recommended the removal of misdemeanor reference as a penalty/fine is listed for this
44 ordinance in the citation fine schedule contained in Section 2-439.

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1 Chair Diamond cited the Lake Trail as a dangerous place if the animals are not restrained on a
2 leash. There was discussion over the fine schedule and not having an animal on a leash is a
3 Class I violation, and not cleaning up after your pet is a Class III violation.

4
5 **Town Attorney Randolph wanted to confer with the Police Department in regard to**
6 **whether to reference Section 114 or whether to reference the code enforcement violation.**
7 **He asked for time to research that issue and report back to the Committee. The**
8 **Committee agreed.**

9
10 Section 10-4 Depositing of offal, feces or excreta; allowing or abetting prohibited; removal
11 required

12
13 The “bag on demand” requirement was too strict according to Chair Diamond as well as the
14 Class of the penalty was too high. He pointed out that not having a leash is only a Class I \$75
15 fine and not picking up after the animal is a Class III violation with a fine of \$250. Discussion
16 ensued about the history and the amount of the fine and enforceability.

17
18 Chair Diamond asked if there was much enforcement of this Ordinance. Captain Maio
19 responded that they get quite a few complaints about this, more than you would think.

20
21 Chair Diamond wanted more public input on running at large (without a leash) and what Class
22 penalty it should be. It is a much more serious issue than not cleaning up after your pet. He
23 recommended switching the penalties.

24
25 Jere Zenko, Tangier Avenue, spoke regarding the “dog poop issue”, and stated that it was almost
26 impossible to have a “device” if you have two dogs. She was informed that a bag can be a device
27 wrapped onto the leash. She thanked the Committee for the placement of bags on the corner of
28 Tangier Ave.

29
30 **The Committee will seek public comment on running at large at the next ORS meeting.**

31
32 Section 10-45 Dangerous dogs

33
34 Town Manager Elwell noted that this ordinance was updated in the summer of 2007.

35
36 E. CHAPTER 14-AVIATION

37 Town Attorney Randolph indicated that this did not pertain to aircraft from PBIA but rather low-
38 flying planes with banners, helicopters etc. Captain Maio stated that it is difficult to enforce but
39 they have issued warnings if they are able to obtain serial numbers on the plane and follow-up
40 with the owner.

41
42
43 V. ANY OTHER MATTERS

44 Bill Cooley, 8 Windsor Court, and owner of the restaurant located at 191 Bradley Place

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1 commented on the 3:00 a.m. closing of establishments. He stated that his restaurant is open until
2 1:00 a.m. Palm Beach is a residential community. Mr. Cooley informed the committee that a few
3 weeks ago he went out at 1:00 a.m. and found three restaurants open: Nick and Johnnie's, Cucina
4 and Club 251. He felt they should not be open that late. The crowds were shocking and looked
5 like South Beach. He further stated that he did a public records request and obtained ten letters
6 from the Town Manager's office that supported the keeping of the bars open until 3:00 a.m. He
7 noted that several of the letters were sent within a three-hour timeframe on the same date. He
8 stated that was most likely contrived by one of the bar owners. He wanted to see all of the police
9 reports from 1:00-3:00 a.m. from the past year. Mr. Cooley stated that selling liquor after 1:00
10 a.m. benefits nobody. The drinkers are a liability and it does not benefit tax base or residents.
11 The only people who benefit are those who bar owners. He suggested to the Committee that 1:00
12 a.m. should be the Town-wide closing time.

13
14 Town Attorney Randolph indicated that these issues are related to noise and the Town Council
15 would be discussing this as an Ordinance revision at the next Town Council Meeting.

16
17 Chair Diamond wanted the Town Council to hear this issue as it related to the 3:00 a.m. closing.
18 He suggested having a three-strikes- and-you-are-out approach if there are numerous valid noise
19 violations by businesses that currently operate until 3:00 a.m.

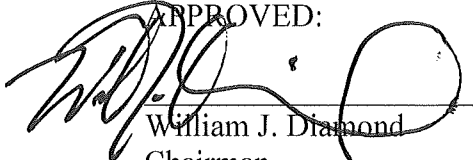
20 Chair Diamond suggested the council amend an ordinance so that, after three noise violations,
21 the offending business could no longer remain open until 3 a.m. It could be forced to close at,
22 say, 1 a.m. or midnight, he said.

23 Chair Diamond strongly recommended that we keep the three o'clock am closing hour for
24 restaurants and bars except when a particular establishment has been convicted of three noise
25 violations by the Code Enforcement Board during the course of one year. In that event the
26 offending establishment would have a one am closing time for one year from the date of the third
27 noise conviction.

28
29 Committee Member Coniglio announced that she had no comment and that she would recuse
30 herself from the vote and discussion as she has in the past.

31
32
33 VI. ADJOURNMENT

34 There being no further business, the Ordinance, Rules and Standards Committee Meeting of
35 Monday, December 7, 2009, was adjourned at 4:50 p.m.

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APPROVED:
William J. Diamond
Chairman