

TOWN OF PALM BEACH

Office of The Town Clerk

REPORT OF THE ORDINANCES, RULES AND STANDARDS COMMITTEE MEETING HELD ON TUESDAY, JULY 27, 2010

I. CALL TO ORDER AND ROLL CALL

The Ordinances, Rules and Standards Committee meeting was called to order on Tuesday, July 27, 2010 at 11:05 a.m. in the Town Council Chambers, Palm Beach. On roll call, Chair Diamond and Committee Member Coniglio were present.

II. APPROVAL OF AGENDA

The Agenda was approved as printed.

III. PUBLIC COMMENT

There were none.

IV. REGULAR AGENDA

A. New Business

1. Chapter 114, Taxation

Article II. Local Business Tax

Chair Diamond stated there were a large number of recommended changes, not only in this chapter, but throughout the entire six chapters, dealing with fees, permits and fines. Throughout the chapters, staff recommends removing all references to dollar amounts and inserting in its place "at the discretion of the Town Council".

Committee Member Coniglio stated that she was in agreement with the recommended changes. It would allow the Town Council to change the fees without having to change the Code each time.

Town Attorney Randolph inquired if there would be amendments in a resolution regarding fees.

Deputy Town Manager Thomas Bradford said the purpose was to reiterate the existing fee in the Code of Ordinances, and not create a higher fee. There have been a few instances during this

process, where there was a fee increase, and that was reflected in a Resolution adopted by the Town Council. Committee Member Coniglio added that all fees were reviewed last year. The premise at that point was to raise the fees to cover any staff fees or time required to process applications etc.

Committee Member Coniglio expressed concern that on page 10 of the back-up, there were additional business taxes identified. She remembered that there was a 5% increase in all fees a few years ago, and it was denied by the Town Council. She asked how many fees had been reviewed, how many were applicable at the established price, and where the price came from. She asked if it was following State Statute, or are these established by the Town.

Deputy Town Manager Bradford informed the Committee that approximately ten years ago, the State passed a law, that stated business tax receipts could only be changed every two years, and not to exceed 5%. And before changing those fees, there had to be a Blue-Ribbon Panel or Commission each time to review the totality of the businesses that were being taxed, the equity of the taxes, and then recommend an increase, if any.

Town Attorney Randolph stated that if the businesses were going to re-classified, there needed to be a study commission. Planning Zoning and Building Assistant Director Veronica Close was going to review the businesses and identify if there was a need to provide a re-classification, and if a commission was needed, she was to consult with the Town Attorney to make sure she was following the provisions.

Committee Member Coniglio clarified that Assistant Director Close would review and determine whether a blue ribbon team needed to be formed. If she recommended adding a new business fee category, then a panel would be needed. Town Attorney Randolph responded that was correct but said he did not feel that there was a category not currently covered in the code.

Deputy Town Manager Bradford added that by passing a fee change by Resolution, you are not incurring advertising and codification costs, and having to have a first and second reading of an Ordinance.

John Page, Planning Zoning and Building Director, spoke and stated that his department was not suggesting a new panel be created, but staff wanted to be certain they have accounted for all types of existing businesses. He cited examples of different occupations and the varying fees.

The Committee agreed that the Town Council should approve all new fees and any increases.

Section 114-80 Exemption of Churches

Chair Diamond recommended substituting the word "Churches" to "Houses of Worship".

The Committee agreed to make the change.

2. Chapter 116, Telecommunications

Chair Diamond stated that the Town Manager's recommendations was to delete the entire section to be in compliance with F.S. 202 which altered the manner and amount of public services taxes that could be applied to telecommunications services.

Deputy Town Manager Bradford indicated that this allows the Town to be in compliance with State Law. Beginning on page 23 of the back-up, the changes were made by the Town's telecommunications attorney to comply with existing Federal and State laws. If all of the changes were adopted, the Town would be in compliance. He would continue to work with the telecommunications attorneys to ensure compliance. Both the deletions and additions were proposed by the State.

Chair Diamond suggested accepting the changes as a work in progress.

Committee Member Coniglio referred to page 26 of the back-up. She asked about a party providing services through re-sale or through use of a third party. She asked if the consumer would be protected as a result of that transfer in the same manner that they would be if they purchased the service from an original telecommunications company. She wanted to make sure there were protective measures.

Deputy Town Manager Bradford responded that the consumer would still be protected if a third party provided the service because they have the obligation to provide, regardless if they purchase it in bulk from another provider.

The Committee accepted the proposed measures and may possibly adopt future changes, as some parts were a work in progress.

Deputy Town Manager Bradford stated that the Town Council will review an Ordinance that will reflect all of the changes beginning on page 23 of the back-up, and possibly an Ordinance that addresses the first two pages of the Chapter.

Section 116-8 Construction procedures and placement of facilities; obligation to minimize interference with use of rights-of-way

Committee Member Coniglio asked about the undergrounding of utilities and if any additional construction could be required to be undergrounded. Mr. Bradford stated that they cannot force anyone to install underground utilities unless the Town was willing to bear the cost of installation. Deputy Town Manager Bradford said there was very little control over the quality of services telecommunications service providers offer, because the communications providers are now franchised by the State. He added that Comcast still has a franchise with the Town, and they have not sought to substitute it with a State franchise. Theoretically, in 2015 when the Comcast franchise contract expires, the issue could be revisited with the maintenance of services being discussed.

Deputy Town Manager Bradford cited that AT & T has a State franchise, and the level of service and quality could not be controlled by the Town.

3. Chapter 118, Traffic and Vehicles

Chair Diamond asked what the rule was regarding riding bicycles on commercial areas. Town Attorney Randolph later provided the Code where bicycles are prohibited on commercial sidewalks (Section 106-158).

Deputy Town Manager Bradford stated that in Florida, a bicycle has the right to use all roadways and streets, as if it were a vehicle. He felt that you could prohibit the use of the sidewalks for bicycles. Chair Diamond stated that during season, it is particularly dangerous to allow bicyclists on the commercial sidewalks.

Section 118-8. Nonmotorized vehicles

This section referred to the prohibition of nonmotorized vehicles of a width equal to or greater than thirty two inches. Raychel Houston, Code Enforcement Manager, clarified that the thirty two inches was the width of the vehicles being propelled. She added that you cannot have a bicycle on the sidewalk in a commercial area. There are some areas that are marked that indicate you cannot have a bicycle on the sidewalk in Town.

Captain Fred Hess, Police Department, clarified the Ordinance and said there were no signs posted on Royal Poinciana Way. Chair Diamond suggested that there be more signs posted.

Committee Member Coniglio brought up golf carts being driven on the bike trail and side streets. Captain Hess informed the committee that a municipality can allow a golf cart, but they are not permitted on the roads. Committee Member Coniglio said carts were visible in the North End and safety issues would have to be addressed at some point.

The committee decided to take no action.

Article III Parking, Stopping and Standing

Deputy Town Manager Bradford stated that the Police Department recommended most of the changes in this chapter.

Section 118-50 Parking time limit on private property

Committee Member Coniglio asked if there was any provision for Kreusler Park parking. Manager Houston said that section deals with private property and not a public parking lot. She also informed the Committee that Kruesler Park was a County Parking lot. She then asked about the Publix parking lot. Manager Houston responded that was a private parking lot. Captain Hess answered that Phipps Ocean Park has a public parking lot. Committee Member Coniglio asked if

1 a recreational vehicle (RV) could be parked there for an infinite amount of time. Captain Hess
2 indicated that they had to pay the parking kiosks just like any other vehicle would.

3
4 Deputy Town Manager Bradford said that an RV would have to not block any spaces or lanes of
5 traffic.

6
7 **Section 118-86 Regulation generally; tow-away zones**

8
9 The Committee discussed the process of how and when vehicles are ticketed and towed. The
10 Town contracts with a towing company and once they have possession of the vehicle, the Town
11 no longer has anything to do with it. Staff asked if the Town Council wished to fine the drivers
12 for illegal parking in a tow-away zone, or tow the vehicle relative to the Police Department's
13 proposal to amend Section 118-86(a).

14
15 **The Committee agreed that violators should be fined.**

16
17 Staff also recommended adding new language that would prohibit a car from just rolling forward
18 in the same parking space. This was an issue with employee parking on Worth Avenue.

19
20 **The Committee agreed to the change.**

21
22 **It was the consensus of the Committee to leave the penalty as a fine.**

23
24 Deputy Town Manager Bradford returned to Section 118-86 (a), the police department struck the
25 word "animal drawn" and asked why. Captain Hess responded that there is a prohibition in
26 Chapter 118-10.

27
28 Committee Member Coniglio asked about cars that park over the allotted time. Captain Hess
29 indicated that they are ticketed, and then re-ticketed if they still fail to remove the vehicle.

30
31 **Section 118-90 Commercial vehicles stopping on Ocean Blvd.**

32
33 Staff suggested striking "motor truck" from the language because it was too broad.

34
35 **The Committee agreed with the recommendation.**

36
37 Committee Member Coniglio asked about motor carriers. Captain Hess indicated that they are
38 permitted to park as long as they are in a legal spot.

39
40 Rob Walton, Lead Code Enforcement Officer, stated that technically, residents should get a
41 loading or unloading permit for loading and unloading the vehicles and that is not often
42 permitted. As long as it is legally parked, they are permitted to load and unload vehicles.

43
44 Staff recommended the removal of the dollar amount of fees, as previously discussed.

45
46 **The Committee agreed with the recommendation.**

Division 2. Parking Meters**Section 118-121 - Establishment of zones**

Chair Diamond felt the authority should be with the Town Council and not the Town Manager. Deputy Town Manager said the issue was always controversial, and that most likely, the Town Manager would take it to the Town Council for approval.

Committee Member Coniglio felt that any alterations to a zoning change/parking change should go to the Town Council on the consent agenda. There should be Town Council approval from the Town Manager regarding parking meter zones. The Committee added the wording "the town manager shall seek the advice and consent of the Town Council, to establish and alter....."

The Committee agreed to the change.

Chair Diamond commented that he had received numerous complaints about the kiosks on Peruvian Avenue and asked if there could be two hour parking instead. Manager Houston was asked to provide revenue statistics for Peruvian Avenue. She stated that from April until July, 2010, \$27,000 was collected in the kiosks. A fine was classified as citation revenue and that was only \$10,000 for the same time period. Committee Member Coniglio said Peruvian has had meters for thirty years. Deputy Town Manager Bradford said if parking were truly market driven meters would be installed on Worth Avenue and the cost would be higher than to park on Peruvian Avenue, but doing so would be a major hurdle.

The Committee did not make any changes.**Article IV. Abandoned Vehicles****Section 118-135 Police to take possession; notice to owner**

Deputy Town Manager Bradford suggested adding that there should be a definition of the fee. Captain Hess stated that when a car is impounded, the Town is now out of the process. The impound lot now was responsible for collecting the fee to release the vehicle to the owner.

The Committee did not make any changes to this section.**Section 118-137 Sale if unclaimed; certificate of sale**

The Committee discussed the timeframe and determined it was too short. It also was discussed whether the Town had the authority on the vehicle once a tow company has taken possession. Town Attorney Randolph will look into this further since the Committee had concerns about this topic.

1 After discussion, it was the consensus to change the time frame to thirty calendar days.
2 They also changed the word "outcry" to "auction".

3
4 The Committee agreed to the changes.
5
6

7 Manager Houston stated that once a car was towed, it then falls under State Statute. Town
8 Attorney Randolph asked to review this further and come back to the Committee after looking at
9 the Florida Statutes 713-78. The Town may not need to incur the responsibility and may
10 therefore delete related ordinances. Manager Houston added that some Towns do maintain
11 impound lots.
12
13

14 Section 118-145 Definitions

15
16 Staging Area and Valet Service – Committee Member Coniglio stated she had no issues with this
17 section. Deputy Town Manager Bradford wanted to be able to delineate the valet loading and
18 unloading zone, without the painting of the curbs, especially on the newly renovated Worth
19 Avenue.
20

21 The Committee accepted staff recommendations.
22

23 Section 118-149 Applications

24
25 There was no discussion on this item.
26

27 The Committee accepted staff recommendations.
28

29 Sect 188-159.1 Transfer permit.

30
31 Committee Member Coniglio asked if the transfer fee was in addition to the permit fee. Deputy
32 Town Manager Bradford explained that there is a transfer fee to transfer the valet permit to
33 another company. The fee is to cover the administrative costs of the research needed. Town
34 Attorney Randolph was informed by Deputy Town Manager Bradford that the Resolutions are
35 brought forth at the same time as second reading of the ordinance change.
36

37 The Committee accepted staff recommendations.
38
39

40 Article VII. Parking Zones

41 Section 118-164 Overtime in parking zones

42
43 Staff recommended that the amount of additional delinquency penalty for violation of parking
44 regulations enumerated herein shall be established by resolution of the Town Council and may
45 be amended from time to time by resolution of the Town Council.
46

The Committee accepted staff recommendations.

Section 118-123 Parking Meters

Committee Member Coniglio asked about adding language referencing the use of cell phones to pay for the parking in addition to charge cards. Sergeant Curtis Krauel clarified that the cell phone is payment from a credit card. The kiosks accept coins, but not bills.

The Committee accepted staff recommendations.

Section 118-130 Slugs or substitutes for United States coins prohibited

Staff recommended deletion of this section as F.S. 817.32 covers the violation.

The Committee agreed to the staff recommendations.

Section 118-133 Violations, penalty

Staff recommended the change to update the code to the current practice of seven days.

The Committee agreed to the staff recommendations.

Section 118-155 Penalties

Staff recommended referencing Section 1-14 to eliminate the need to make changes to a fine amount in the individual ordinance. The penalty for violations under this article is contained in the citation fine schedule of Section 2-439.

There was discussion about the penalties, the timeframes, and the collection of fines. A sample ticket was retrieved and clarified what the policy was. It was discovered that the sections of the Code did not match and more research would be needed.

Staff would come back with proposed corrections that were consistent throughout the Code.

4. Chapter 122, Utilities

Section 122-52 Applicability

Chair Diamond noted that the South Florida Water Management District (SFWMD) seems to control a lot of the authority. Committee Member Coniglio was in agreement with staff's recommendation to adopt an ordinance that states the Town will abide by any SFWMD restrictions during an emergency or drought and authorize staff enforcement of same.

Public Works Director Paul Brazil suggested that the City of West Palm Beach is the Town's water supplier, also has authority and should be referenced as well.

Town Attorney Randolph suggested providing the SFWMD and the City of West Palm Beach a copy of the proposed ordinance to make sure they are in agreement with the compliance and authorities and come back to the Committee.

Section 122-54 Violations

Committee Member Coniglio asked who enforced the violations. Deputy Town Manager Bradford said it was Code Enforcement that cites water restriction violations, but water gets shut off by the City of West Palm Beach. Public Works Director Brazil was asked to look into this further.

The Committee agreed to delete the reference to the Director of Public Works in subsection (8) since the SFWMD and the City of West Palm Beach are the underlying authorities.

Committee Member Coniglio noticed that discharges to the beach of water, wastewater, storm water into the ocean are not addressed in the code. There is nothing currently in the Code that prohibits someone from doing it. Committee Member Coniglio felt that protection of the coastline was paramount and should be protected. Illegal discharging was wrong and should be prohibited in the code and thought that it should be placed in the coastal section. Public Works Director Brazil had the same thought with the sanitary and water systems.

Section 122-80 Enforcement

The Police Department staff recommended eliminating the listing of the fine schedule and correction of officer title.

Town Attorney Randolph noted that in Chapter 162 under enforcement, should have been Article IV, Chapter 2, of the Town Code of Ordinances which is our Code Enforcement Board. Chapter 162 is the State Statute relating to Code Enforcement. He asked for the citation updated.

Committee Member Coniglio asked if the 180 days was the amount of time to comply. Manager Houston explained that it was not 180 days to comply, but rather the fining and not the compliance of it. The first offense is a warning.

The Committee accepted the recommended changes.

Article III Sewage Disposal Systems

Section 122-116 Definitions

Staff requested adding the definition of private sewer.

The Committee accepted the recommended changes.

Section 122-117 Prohibited discharges to public sewer or regional treatment plant

Public Works Director Brazil suggested referring these discharges to the ECR plant requirements and their changes. Committee Member Coniglio asked if there could be a delineation between wastewater, storm water, etc. Public Works Director Brazil said these were the industry standards definitions.

Section 122-140 Enforcement Actions

The staff recommended removing the dollar amount from the Code and correcting a scrivener's error.

The Committee accepted the staff changes.

Article IV Storm Water Control

Public Works Director Brazil said that the Town is under the NPDES permit and storm water guidelines. There are permit requirements that need to be met and would be more detailed.

Town Attorney Randolph referred back to Page 150 Section 132-142, regarding the civil and criminal remedies. He questioned the \$500 penalty. Committee Member Coniglio asked if the fine amount was established by the Town Council. It may supersede what the State law permits.

Town Attorney Randolph indicated he would have to research Section 132-142 further.

Section 122-154 Illicit Discharges

Committee Member Coniglio asked where you empty swimming pools. Public Works Director Brazil indicated that after you de-chlorinate the water, you can dump it into the storm sewer with a permit.

Public Works Director Brazil recommended changing the area code to (561) in Section 122-153 (f). The Committee accepted the recommended changes.

Committee Member Coniglio asked who the monitor and sampler was. She was concerned about inspections and monitoring, and coastal discharges. Public Works Director Brazil responded that it was a consultant and most of the time, it is a visual assessment to trace back to the violator.

Article V Utilities required to be underground

Town Attorney Randolph said these regulations had been around for a long time. Chair Diamond asked about the penalties. Public Works Director Brazil stated that the utilities will not underground utilities during maintenance, but may do it for new development. Deputy Town Manager Bradford added that the FPL Franchise Agreement is being renegotiated right now. One of the issues is undergrounding. When FPL does a major upgrade for storm hardening, they may consider a time frame of notification for possible undergrounding.

1
2
3 5. Chapter 126, Vegetation

4
5 **Section 126-31 Hazardous trees**

6 Deputy Town Manager Bradford talked about a large hedge and whether it was classified as a
7 tree or a hedge. Committee Member Coniglio stated that she receives several complaints about
8 this topic.

9 Lead Code Enforcement Officer Rob Walton stated that currently, unless there was a power line
10 between two properties affected by the hedge, there was no code enforcement. Deputy Town
11 Manager Bradford said this amendment would address utility as well as height and safety issues.

12
13 There was further discussion about the language and how it could be enforced. Committee
14 Member Coniglio wanted criteria specifying what is too tall, foreseeing lawsuits. She
15 understands power lines. Deputy Town Manager Bradford stated if someone is cited, they have
16 the right to appeal to the Code Board. The Code Board is there to determine if Code staff made a
17 good decision. Chair Diamond wanted the authority to protect properties and electrical outages
18 from branches. Town Attorney Randolph cautioned that this could be subjective. Committee
19 Member Coniglio said she was in agreement with the power line language. But there should also
20 be responsibility when hurricanes are approaching.

21
22 Code Enforcement Officer Walton suggested a maximum height, but said the way it was written
23 was subjective. Town Attorney Randolph re-read the language change in the proposed ordinance
24 to state: "It is declared that trees and hedges located within the vicinity of any building or public
25 utility facility or above ground utility line are in a condition that might render them dangerous to
26 such buildings...."

27
28 **The Committee accepted the changes.**

29
30
31 **Section 126-159 Annual inspection of historic and specimen trees.**

32
33 Committee Member Coniglio asked who pays for the annual inspection and it is the homeowner.
34 It is a nominal fee.

35
36 Town Attorney Randolph said the Town does not want a fine in this case, they want mitigation.

37
38 **Section 126-60 Natural Growth to be preserved; removal of mangroves prohibited.**

39
40 Public Works Director Brazil recommended changing the word "town forester" to public works
41 designee. Deputy Town Manager Bradford asked to clarify if there was fee or penalty referenced
42 in this section.

43
44 **The Committee accepted the changes.**

Section 126-88 General enforcement powers; obstructing enforcement

The Committee agreed with the recommended changes.

Division 3. Lethal Yellowing

Section 126-83 Inoculation required; expense

Deputy Town Manager Bradford stated that the Town used to pay for all of the inoculation of the trees in Town. In the past 2-3 years, the town Council directed the Public Works Director Brazil to contract with a landscape company for a guaranteed price for Town Property. Town Staff offers that same price to the homeowners. Former Mayor Marix's issue was that property owners were not using the service and now there is a lethal yellowing problem. She had a concern that if her neighbor was not inoculating, that could create a higher risk for her trees to contract the lethal yellowing. There was nothing in the Code to require it.

After further discussion, the Committee decided to make no changes at this time.

6. Chapter 130, Vehicles for Hire

Captain Hess stated that in the beginning of the year, there was an influx of taxis migrating into the area, especially near Club 251. He noted that as a safety issue, there was a need for taxis, but all of the permits are issued to the larger black cars and limos.

He contacted the County and was informed that there was enforcement for violations that could be used. He noted that he was not prepared to address the taxi permitting issue today, but would agree to the recommended changes thus far in the chapter.

Donna Bragel, Finance Department, commented that she did not see how it would stop taxis from coming over the bridge.

Manager Houston stated many cities have taxi permits. Anyone could come to Palm Beach and drop someone off, but if they are picking someone up, they would need a Town permit.

Staff will research other city policies and will return with a recommendation in the future.

Section 130-64- Permit fee

Committee Member Coniglio asked staff how often the permit needs to be applied for and it was annually. They are identified by a decal on the front windshield with an expiration date.

The Committee agreed to the proposed changes, and understood that the taxi permitting dilemma was a work in progress.

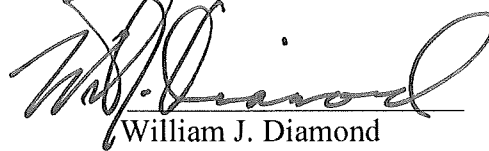
V. ANY OTHER MATTERS

There were none.

VI. ADJOURNMENT

There being no further business, the Ordinance, Rules and Standards Committee Meeting of Tuesday, July 27, 2010, was adjourned at 1:25 p.m.

APPROVED:

A handwritten signature in black ink, appearing to read 'W. J. Diamond', is written over a horizontal line.

William J. Diamond
Chairman

ORS 7-27-10 Backup