



**TOWN OF LAUDERDALE-BY-THE-SEA
TOWN COMMISSION
MEETING MINUTES
Jarvis Hall
4505 Ocean Drive
Tuesday, January 25, 2022
6:30 PM**

1. CALL TO ORDER

Mayor Chris Vincent called the meeting to order at 6:30 p.m. Also present were Vice Mayor Alfred "Buz" Oldaker, Commissioner Edmund Malkoon, Commissioner Elliot Sokolow, Commissioner Randy Strauss, Town Manager Linda Connors, Assistant to the Town Manager Neysa Herrera, Town Attorney Susan Trevarthen, Public Works Director Ken Rubach, Director of Finance and Budget Lucila Lang, Development Services Director Jhanelle Campbell, Planner Sue Leven, Special Events and Marketing Manager Debbie Hime, Human Resources Manager Lisa Slagle, and Public Information Officer/IT Administrator Steve d'Oliveira.

2. PLEDGE OF ALLEGIANCE TO THE FLAG

3. INVOCATION

Rabbi Bentzion Singer gave the Invocation.

4. ADDITIONS, DELETIONS, DEFERRALS OF AGENDA ITEMS

Mayor Vincent requested that the first reading of Ordinance 22-01, Item 15.a, be heard immediately following Public Comment.

5. PRESENTATIONS

None.

6. PUBLIC COMMENTS

At this time Mayor Vincent opened public comment.

Michael Morelli, resident, stated his support for a proposed Resolution that would express the Town's wish to address smoking on the beach. This Resolution would

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address Senate Bill (SB) 224 and House Bill (HB) 105. He provided backup materials to the Commission, including Resolutions passed by other local municipalities.

Richard Denapoli, resident, stated that the outdoor dining options provided by Town restaurants have been a good idea during the pandemic, and spoke in favor of allowing Aruba restaurant to lease a portion of the Ocean Plaza for this purpose. He was also in favor of continuing to expand the sidewalks on Commercial Boulevard to continue outdoor dining there as well.

Mary Ellen Himes, resident, thanked the Town on behalf of the Terra Mar Island Civic Association, and recognized several members of Town Staff as well as Commissioner Malkoon for their attendance at the Association's most recent meeting.

With no other individuals wishing to speak at this time, Mayor Vincent closed public comment.

The following Items were taken out of order on the Agenda.

15. ORDINANCES 1ST READING

- a. **ORDINANCE 2022-01 – AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, AMENDING THE TOWN'S CODE OF ORDINANCES BY CREATING CHAPTER 9, "FLOOD PREVENTION AND CONTROL," ARTICLE XI, "RESILIENCY STANDARDS FOR TIDAL FLOOD PROTECTION" TO ESTABLISH TIDAL FLOOD PROTECTION AND BARRIER INFRASTRUCTURE STANDARDS THAT ACCOUNT FOR PROJECTED SEA LEVEL RISE, AND PROVIDE FOR ABATEMENT OF NUISANCE FLOODING AND REAL ESTATE SALE DISCLOSURES; PROVIDING FOR SEVERABILITY, PROVIDING FOR CONFLICTS, AND PROVIDING FOR AN EFFECTIVE DATE.**

At this time Mayor Vincent opened public comment, which he closed upon receiving no input.

Community Development Services Director Jhanelle Campbell recalled that in March 2020, Broward County adopted an Ordinance which required communities with tidally influenced waterways to adopt resiliency standards for tidal flood protection. These

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standards were adopted in January 2020 in Broward County's Land Use Plan. The proposed Ordinance meets the requirements of this policy.

Broward County Chief Resilience Officer Dr. Jennifer Jurado addressed the requirements for the adoption of Ordinance 22-01, which establishes a recommended elevation of 5 ft. North American Vertical Datum (NAVD). This elevation is intended to provide tidal flood protection for conditions modeled through 2070.

Mayor Vincent noted that the Broward County Board of County Commissioners has already adopted this set of resiliency standards for flood protection, which requires coastal municipalities such as Lauderdale-By-The-Sea with properties backing up to a waterway to adopt the same standards. A model for the proposed Ordinance was adopted into the Broward County Code of Ordinances in March 2020. Compliance with this Ordinance demonstrates compliance with the County's Land Use Plan.

Vice Mayor Oldaker asked how this Item will be handled by municipalities with regard to properties they own. Dr. Jurado cited a marina owned by the city of Hollywood as an example, recalling that this property was a source of extensive flooding in a single neighborhood. That city agreed to improve the marina using a previous NAVD standard, which has fully addressed the tidal flooding. Other examples include Fort Lauderdale's adoption of a 4.6 ft. NAVD standard for municipal investments, such as seawall improvements. Fort Lauderdale has subsequently adopted a standard of 5 ft. NAVD.

With regard to parks and other areas with natural shorelines, Dr. Jurado advised that the proposed Ordinance does not require seawalls to be the only solution, nor is this recommended. If parks are a source of extensive flooding, however, and there is no other opportunity to maintain water on-site, seawalls are an option if they do not extend beyond the boundaries of the park onto an adjacent property.

For personal properties, the Ordinance recognizes that this may be a sizable investment. There are efforts to explore funding options, such as low-interest or revolving loans, for these improvements; however, at present this remains an individual responsibility with no evident cost share or grant funding.

Commissioner Strauss made a motion, seconded by Vice Mayor Oldaker, to approve. Motion carried 5-0.

7. PUBLIC SAFETY DISCUSSION

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a. VFD December 2021 Report

Vice Mayor Oldaker made a motion, seconded by Commissioner Sokolow, to approve. Motion carried 5-0.

8. TOWN MANAGER REPORT

a. Town Manager Report for January 25, 2022

Town Manager Linda Connors advised that the city of Pompano Beach has agreed to give Lauderdale-By-The-Sea \$150,000 toward the Palm Club project. Another \$150,000 was allocated to the Town by Broward County. She recognized Assistant to the Town Manager Neysa Herrera for her work toward this funding.

Town Manager Connors continued that former Fort Lauderdale City Clerk Jeff Modarelli is working with the Town in a consulting capacity to fill the Town Clerk position. He will help to ensure all required procedures and State Statutes are followed in this search.

The March 8, 2022 Town Commission meeting will need to be canceled, as this date is also Election Day. A special meeting can be scheduled for March 22, 2022, immediately prior to the regular Commission meeting, for the verification of election results. The Commissioners agreed by consensus to bring these items back for approval on the next Consent Agenda.

United Way of Broward County will hold its annual Mayors' Gala soon. Town Manager Connors recalled that the Commission typically donates \$2000 toward this event. The Commissioners agreed by consensus to continue at this funding level.

Vice Mayor Oldaker requested an update on Codrington Drive. Public Works Director Ken Rubach reported that Staff has reached out to residents on this roadway to inform them of a meeting scheduled for March 2022, which will review what the Town hopes to achieve and alternatives toward meeting this goal. Outreach to residents on Codrington Drive is being done via email. Commissioner Strauss suggested that a physical mailer also be sent to these residents.

9. TOWN ATTORNEY REPORT

Commissioner Strauss requested an update on Senate Bill (SB) 620, which deals with business damages. Town Attorney Susan Trevarthen replied that after this bill

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encountered resistance, its sponsor invited representatives from the Florida League of Cities and Florida Association of Counties to propose an amendment. The suggested amendment is being reviewed by the sponsor, although it has not yet been made public. Many cities and counties continue to react adversely to this proposed bill.

Another pending bill, which requires an economic impact statement, has undergone significant change that prompted the League of Cities to change its recommendation to one of approval. This bill has been accelerated through the committee process and is expected to be on the floor early in the legislative session.

10. APPROVAL OF MINUTES

None.

11. CONSENT AGENDA

None.

12. OLD BUSINESS

a. Downtown Discussion

At this time Mayor Vincent opened public comment.

Barbara Cole, resident, advised that she had sent an email to the Commissioners on this topic. She stated that she has spoken with several Town residents on this issue, all of whom were supportive of continued outdoor restaurant seating in the Downtown area as an option.

Ann Marchetti, resident, stated that she spoke on behalf of a number of Downtown businesses, including Aruba Beach Café, Taco Craft, Vinnie's, Ocean 101, the Village Grill, the Pier, Even Keel, and Billy Jack's. At present, the use of public parking spaces on A1A, Commercial Boulevard, and El Mar Drive for outdoor dining has been extended through April 2022. Ms. Marchetti noted that a recent poll of 1171 tourists and residents showed that 1153 were in favor of the continued use of expanded outdoor dining. She provided the Commission with the cards used in this poll.

Bill Ciani, resident, pointed out that if a large portion of the pavilion is given to one restaurant for its use, another restaurant will also be similarly entitled. He felt this use by

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private businesses will limit use to all, and suggested that the Town consider redesigning the sidewalk on Commercial Boulevard to increase space for outdoor dining tables.

Assistant to the Town Manager Neysa Herrera read the following written comments:

- Tom Balcom, business owner, supported the continuation of regulations that allow expanded outdoor seating, which will help prevent restaurants from closing. He suggested that each restaurant ensure that their outdoor furniture is kept clean.
- Roseann Minnet, resident, also spoke in favor of eliminating Downtown parking on A1A and advised that she had no issue with using this area for expanded outdoor dining for Town restaurants. She recommended that the Town continue music and dancing events in and near the plazas.
- Stuart Dodd, resident, urged the Commission to charge restaurants the same square footage rental rate and ensure cleaning requirements, irrespective of their location. He suggested that the design consider including at least one dedicated pickup/drop-off space for ride-sharing services as a safety measure.
- Scot Sasser, resident, requested that the Commission consider extending the use of restaurant seating in the Town's plazas. He felt the restaurant uses in the plaza were helpful to visitors and residents alike, and noted that changes to the plaza did not have to be permanent.
- Diana Kugler, resident, was not in favor of retaining extended outdoor dining any longer. She recommended that backout parking spaces be removed from A1A. She concluded that curbside parking should continue on El Mar Drive and Commercial Boulevard, and that Aruba no longer use Connie Hoffmann Plaza.
- Jay Flynn, resident, advised that he opposed the continued leasing of Ocean Plaza to any business on a permanent or semi-permanent basis. He noted that there are stains on tables and pavers in the subject space, and concluded that parking spaces on Commercial Boulevard should be retained.
- Jim Rogers, resident, expressed concern with the potential use of public funds to modify outdoor dining areas, which he felt should be funded by the private businesses themselves. He also cautioned against continued use of the portal area by businesses, with the exception of permitted special events. He felt there should be more resident input, possibly including a referendum.
- Mark Silver, business owner, supported the continued use of outdoor space by Downtown restaurants and expressed concern about the continued spread of COVID-19 if only indoor seating is available. He felt this plan should be revisited after six months.

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With no other individuals wishing to speak at this time, Mayor Vincent closed public comment.

Commissioner Sokolow advised that he has discussed this issue with restaurant owners and the public, who have changed his mind from his previous opposition to continued use of outdoor space for seating. He felt indoor dining may be permanently affected by COVID-19, and that attitudes toward outdoor dining have changed as well. He recommended some caveats to this continued use, including:

- Wider pedestrian spaces on sidewalks
- Reducing the size of some outdoor dining areas
- Fair compensation to the Town for lost parking and additional dining space in the plazas
- More stringent cleaning requirements of outdoor spaces

Vice Mayor Oldaker supported Commissioner Sokolow's comments, agreeing that outdoor dining continues to be a national trend in light of COVID-19. He pointed out that the use of public space by restaurants would not be given to those businesses, but subject to a negotiated lease, with costs to be determined. He also noted that this use is limited to seated dining and does not apply to bars.

Vice Mayor Oldaker continued that while he has long been an advocate for parking, he felt the removal of parking spaces from a congested portion of Commercial Boulevard could alleviate this congestion. He explained that the elimination of these spaces would likely increase parking revenue elsewhere. He was also in favor of widening the sidewalks for better pedestrian access, although the mechanics of this change have not yet been determined.

Commissioner Malkoon pointed out that an extended sidewalk would require barriers between outdoor dining and pedestrian traffic, which would limit the number of tables available to restaurants. He felt the Downtown area was in need of change in order to remain competitive. He concluded that he was in favor of removing backout parking on A1A, primarily on the north side.

Commissioner Strauss recalled that there is significant public consensus in favor of the proposed change to the Downtown, and that there are safety issues on Commercial Boulevard that could be alleviated by the removal of spaces even if there was no need for outdoor dining. He also agreed that a drop-off/pickup area should be designated for ride-sharing services as a safety measure.

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Mayor Vincent pointed out that the last two years of the COVID-19 pandemic have allowed a trial period for additional changes, and that many of the requirements to make these changes a success are already in place. He asserted that the Town should continue to mitigate, improve, and adapt. He concluded that while there is no need to fast-track these changes, they should be prioritized. He also clarified that 12.b is limited to the Ocean Plaza.

Town Manager Connors requested direction for Staff regarding which of the following options the Commission wished to pursue:

1. Remove all Downtown parking spaces not on El Mar Drive except for Americans with Disabilities Act (ADA) -compliant spaces
2. Remove only those parking spaces on Commercial Boulevard east of A1A
3. Remove the parking spaces on Commercial Boulevard as well as the backout parking spaces on A1A north of Commercial Boulevard.

Commissioner Strauss recalled that during public comment, a concern had been raised regarding the removal of barricades to allow for backout parking, as tenants at the subject location need to use those spaces. He proposed a fourth option of removal of backout parking spaces along the north part of Commercial Boulevard, followed by some time to determine the effectiveness of this solution before later addressing the spaces on El Mar Drive. This would allow ADA-accessible spaces to remain on the El Mar Drive corridor.

Mayor Vincent noted that if the spaces on El Mar Drive are retained, this would prevent the opportunity for outdoor restaurant seating on the east side of this roadway. He was also in favor of retaining the backout parking on Commercial Boulevard, pointing out that because these spaces constitute a legal nonconforming use, they cannot be reinstated once they are removed. There could then be further discussion of spaces on A1A as well.

Vice Mayor Oldaker requested clarification of the consensus, if any, on the El Mar Drive spaces by businesses in that area. Town Manager Connors replied that Village Grille is currently not using that area, and spaces near 101 on El Mar Drive are also rarely in use. She noted that some ADA-compliant spaces would need to be relocated from Commercial Boulevard onto El Mar Drive. El Mar Drive would also be a reasonable location for a drop-off/pickup area for ride sharing services, as suggested during public comment.

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Town Manager Connors concluded that her suggestion would be to relocate the ADA-compliant spaces from Commercial Boulevard onto El Mar Drive, making no further changes to El Mar Drive until there has been time to see the effects of this change. She confirmed that FDOT requirements would not permit backout parking to be reinstated once it has been removed.

Vice Mayor Oldaker continued that there may also be spaces on Bougainvillea Drive for ride-sharing service access. Town Manager Connors recalled that the Town had tried to encourage these services to pick up customers at the south lot prior to the onset of the COVID-19 pandemic.

Mayor Vincent asked if ride-sharing services have technology to permit the designation of a single pickup/drop-off location by the Town. Town Manager Connors cautioned that while this may be an option, it would require every prospective passenger to use that location, even if it is not convenient to them.

Commissioner Malkoon stated that his preference was for Option #3, which would remove parking spaces on Commercial Boulevard as well as the backout spaces north of that roadway. Commissioner Sokolow and Mayor Vincent agreed that this was their preference as well.

Commissioner Sokolow made a motion, seconded by Vice Mayor Oldaker, to adopt Option #3, removing the parking on Commercial [Boulevard] and on the north side of Commercial on A1A. Motion carried 5-0.

b. Ocean Plaza

At this time Mayor Vincent opened public comment.

Barbara Cole, resident, emphasized the importance of the Aruba Beach Café, characterizing the business as an anchor of and asset to the Town.

Ann Marchetti, resident, requested that the Commission continue to let adjacent restaurants, including Aruba Beach Café and Anglin's Beach Café, use a portion of the Ocean Plaza for dining space for its patrons. She reiterated that when a random survey of 1171 individuals was taken on this issue, 98% of respondents were in favor of this proposal. Should the Town need space in Ocean Plaza for events, the businesses are willing to yield to those plans. Both restaurants are in favor of an annual fee for the use of this space.

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With no other individuals wishing to speak at this time, Mayor Vincent closed public comment.

Town Attorney Trevarthen reviewed the original agreement for the use of the plaza, recalling that in 2014 the Commission discussed creation of a policy that contemplated private use of this space up to four times per year for special events. The Commission will need to bring back a proposal to amend this policy to reflect its current position on this issue.

Town Attorney Trevarthen requested clarification of whether or not the Commission wished to establish annual approval of the use of the plaza, or if they preferred another type of approval.

Vice Mayor Oldaker commented that the subject businesses are not homesteaded, which means they are subject to greater tax increases on their properties.

Commissioner Sokolow observed that the proposed use of the plaza by the restaurants is preferable to other uses of this space, and provides a service to the Town. He spoke in favor of a fair set of rules to apply to the owners of businesses using the plaza.

Mayor Vincent stated that the Commission's 2014 discussion of use of the plazas was intended to be strict in the beginning and become more flexible, as needed, over time. The regulation should be based on clearly enforced rules rather than arbitrary decisions. He felt the opportunity for greater flexibility has come.

Commissioner Strauss advised that he had spoken with the Town Manager to determine how much of the plaza space is currently being used by the restaurants. He characterized this as one-third of the space being used by each business, with the final third continuing to provide beach access with a walkway. He recommended that this configuration be maintained.

With respect to an annual fee, Commissioner Strauss suggested that the Commission address the use of the plazas each year to review activity and determine if they wished to renew the fee. The amount of this fee would be decided in the future.

Vice Mayor Oldaker pointed out that he would move the fencing between restaurant spaces back so the two entrances to the plaza remain open. The design of this barrier is still open to discussion, as is the square footage allocated to each restaurant.

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Commissioner Malkoon stated that he is open to the discussion of the restaurants using this public space, but agreed with the Vice Mayor that their presence should be slightly scaled back. He asked how the serviceable area for a restaurant is determined under Town Code. Town Manager Connors replied that the standard is one seat for every 10 sq. ft. of space, and that this calculation can be reviewed within the plaza.

Mayor Vincent asked if the Town is following Florida Statutes with respect to square footage for outdoor dining, as is done with the sidewalk cafés. Town Manager Connors confirmed this, adding that Staff can bring back a Resolution addressing policy changes based on the Commissioners' input.

Commissioner Strauss made a motion, seconded by Commissioner Sokolow, to move forward with this plan. Motion carried 5-0.

The Commission took a brief recess from 8:32 p.m. until 8:53 p.m.

13. NEW BUSINESS

None.

14. COMMISSIONER COMMENTS

None.

16. ORDINANCES 2ND READING

- a. **ORDINANCE 2021-10 – AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, AMENDING CHAPTER 30, “UNIFIED LAND DEVELOPMENT REGULATIONS,” SECTION 30-11, “DEFINITIONS,” TO DEFINE TOBACCO PARAPHERNALIA STORES; AMENDING SUBDIVISIONS L AND M, B-1-A AND B-1 DISTRICT REGULATIONS, TO CHANGE THE LISTS OF PERMITTED AND CONDITIONAL USES AND CREATE SUPPLEMENTAL REGULATIONS; CREATING SECTION 30-281 TO PROVIDE FOR AMORTIZATION OF EXISTING TOBACCO PARAPHERNALIA STORES IN THE B-1 ZONING DISTRICTS; PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS, AND FOR AN EFFECTIVE DATE. Or AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY-THE-SEA,**

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FLORIDA, AMENDING CHAPTER 30, "UNIFIED LAND DEVELOPMENT REGULATIONS," SECTION 30-11, "DEFINITIONS" TO DEFINE "TOBACCO PARAPHERNALIA STORES;" AMENDING SUBDIVISIONS L AND M, B-1-A AND B-1 DISTRICT REGULATIONS, TO CHANGE THE LISTS OF PERMITTED AND CONDITIONAL USES AND CREATE SUPPLEMENTAL REGULATIONS; CREATING SECTION 30-281 TO PROVIDE FOR AMORTIZATION OF EXISTING TOBACCO PARAPHERNALIA STORES IN THE B-1 ZONING DISTRICTS; PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS, AND FOR AN EFFECTIVE DATE.

Town Attorney Trevarthen pointed out that there are two different versions of Ordinance 2021-10, as the Commission had requested a change to the Ordinance after first reading. Exhibit 1 includes the Ordinance as presented upon first reading, which included a mention of amortization of tobacco paraphernalia stores at either one year or another time that could be substantiated with records of their investment. After first reading, however, the Commission directed Staff to prepare a different version of the Ordinance, removing the mention of amortization and instead considering a standard for the display of tobacco paraphernalia.

The Ordinance excluding the reference to amortization is Exhibit 2, which addresses the need for tobacco paraphernalia stores to conceal their inventory from outside the businesses.

At this time Mayor Vincent opened public comment.

Barbara Cole, resident, stated that she would like the amortization option to remain in the proposed Ordinance. She also requested clarification of the Town Manager's role in Ordinance 2021-10, asking if the Town Manager would be required to bring forth information on any similar businesses seeking to open in Lauderdale-By-The-Sea.

Adam Steinberg, representing Grateful J's, explained that this business had applied to move into Lauderdale-By-The-Sea without any issues. He pointed out that there is a collateral effect to amortization, which includes harming the property owner/landlord as well as potentially harming the Town. He concluded that the business has cooperated with the Town regarding the display of inventory, and hopes to be a valuable member of the community.

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Vice Mayor Oldaker requested clarification of whether or not amortization could remain in the Ordinance as a potential future option. Town Attorney Trevarthen replied that the Ordinance calls for amortization to happen, rather than providing it as an option. The inclusion of amortization in the Ordinance means it will be applied to the appropriate businesses.

Town Attorney Trevarthen continued that Ordinances may be subject to different state statutory standards after July 1, 2022. She emphasized that amortization is included in the Ordinance as a tool the Commission may use.

Vice Mayor Oldaker asked, if triggered, the amortization process would affect both the Town's tobacco paraphernalia stores. Town Attorney Trevarthen confirmed this, noting that both stores meet the Ordinance's definition of tobacco paraphernalia stores, as more than 5% of their inventory is paraphernalia.

Vice Mayor Oldaker observed that if amortization is included in the Ordinance, this would mean the Town is potentially taking steps to shut down two businesses and place a burden on two landlords. He pointed out that the two businesses have not experienced any incidents to date, and that Grateful J's has cooperated with the Town's policies by modifying its signage and lighting. Town Attorney Trevarthen confirmed that the businesses would eventually be required to close, depending upon the time frame and their documentation. Vice Mayor Oldaker stated that he did not wish to close businesses because he was not in favor of them.

Commissioner Sokolow agreed with the Vice Mayor, stating that he did not feel it would be fair to close a business because the Town may have made a mistake in approving them. He was not in favor of amortization as long as the businesses continue to act as good citizens.

Commissioner Strauss advised that Ordinances 2021-10 and 2021-15 were brought back for second reading together, as they address issues that go hand-in-hand. He noted that while one of the subject stores has removed its paraphernalia from its front windows, it is still clearly visible through those windows from where it is displayed on the back wall. He recommended retaining the reference to amortization in Ordinance 2021-10.

Commissioner Malkoon commented that he did not believe a mistake was made in allowing the second tobacco paraphernalia store to come into the Town. He added that he was also in favor of retaining the amortization portion of the Ordinance, and noted

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that he has seen an improvement in the newer store through its compliance with signage requirements as well as in moving products out of the window.

Mayor Vincent recalled that he had strongly opposed either store's location in the Town, as he had not expected two such stores to come into Lauderdale-By-The-Sea as permitted uses. He felt allowing the second business should have been brought forward for Commission discussion; however, he also did not wish to punish a business for opening legally.

Mayor Vincent continued that if the Ordinance is adopted including the amortization mechanism, that mechanism would be triggered one year from now, with the option of granting an extension to the businesses based on documentation. Alternatively, Town Code can be changed by the Commission at any time.

Commissioner Sokolow made a motion, seconded by Vice Mayor Oldaker, to approve the Ordinance without the amortization (Exhibit 2). Motion carried 3-2.

b. ORDINANCE 2021-15 – AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, AMENDING CHAPTER 14 “OFFENSES,” ARTICLE I “IN GENERAL,” SECTION 14-33 “SALE OF NICOTINE VAPORIZERS OR LIQUID NICOTINE” TO CONFORM TO CHANGES IN STATE LAW, AND REQUIRING BUSINESSES SELLING TOBACCO PARAPHERNALIA TO CONCEAL THEIR INVENTORY FROM OUTSIDE OF THEIR PREMISES; AND PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS, AND FOR AN EFFECTIVE DATE.

At this time Mayor Vincent opened public comment.

Barbara Cole, resident, stated that she shared Commissioner Strauss' concern that tobacco paraphernalia was still clearly visible inside at least one of the subject stores, despite its removal from the window. She strongly recommended enforcement of the proposed Ordinance.

Adam Steinberg, representing Grateful J's, addressed concealment of the store's products, pointing out that the store is legally open for business and is cooperating with the Town's requirements. He felt further concealment would diminish his client's ability to operate his business, and requested that the Commission consider options other than Ordinance 2021-15 as it is currently written.

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Town Attorney Trevarthen explained that Ordinance 2021-15 is consistent with recent state law, which is preemptive. The major area of discretion in this Ordinance states that any business selling tobacco paraphernalia, not only tobacco paraphernalia stores, shall conceal its inventory of this paraphernalia from the view of the public from outside its premises. This may differ from store to store, depending upon its configuration and amount of glass area.

Another area of discretion lies with the designation of Town Code Officers as "nicotine product enforcement officers." While it was previously stated that Town Code Officers could be used to enforce regulations with respect to tobacco, the new state law would mean that nicotine product enforcement officers have jurisdiction over individuals under the age of 21 who are violating the Ordinance. Enforcement against the seller of these products is covered by Chapter 569 and would be either the Broward Sheriff's Office (BSO) or the Department of Business and Professional Regulation.

Vice Mayor Oldaker addressed the visibility of paraphernalia within stores, recalling that during previous phases of the COVID-19 pandemic, enforcement was done less strictly in order to support Town businesses. He felt Ordinance 2021-15 would address any remaining issues without resorting to amortization.

Commissioner Strauss commented that whether or not some of the subject paraphernalia may have artistic value, it should still be concealed from a front window. He also felt it was disingenuous to suggest that a store's survival might be affected by the concealment of its products, and that lighting merchandise on a back wall does not conceal those items. He concluded that the proposed Ordinance is entirely reasonable.

Commissioner Malkoon agreed with Commissioner Strauss that concealment of merchandise will not cost a store any business, as all shopping is done indoors.

Mayor Vincent concurred with Commissioners Malkoon and Strauss, stating that the purpose of Ordinance 2021-15 is to serve as a check on businesses that may not be cooperating with Town requirements.

Vice Mayor Oldaker made a motion, seconded by Commissioner Strauss, to approve Ordinance 2021-15. Motion carried 5-0.

17. RESOLUTIONS – PUBLIC COMMENTS

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None.

18. QUASI JUDICIAL PUBLIC HEARINGS

None.

19. ADJOURNMENT

With no other business to come before the Commission at this time, the meeting was adjourned at 9:31 p.m.

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Mayor Chris Vincent

ATTEST:

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Town Clerk

3/25/2022

Date