

AGENDA
CITY OF HOLMES BEACH CITY COMMISSION REGULAR MEETING
PATRICIA A GEYER COMMISSION CHAMBERS
5801 MARINA DR, HOLMES BEACH, FL 34217
JULY 12, 2016 - 7:00 P.M.

PLEDGE OF CONDUCT: We may disagree, but we will be respectful of one another. We will direct all comments to the issues. We will avoid personal attacks.

- 1. CALL TO ORDER; PLEDGE TO THE FLAG; MOMENT OF SILENCE**
- 2. ROLL CALL**
- 3. COMMISSION REPORTS AND/OR ANNOUNCEMENT OF EX-PARTE COMMUNICATIONS**
- 4. MAYOR'S REPORT**
- 5. CONSIDER APPROVAL OF THE JUNE 16, 2016 CITY COMMISSION WORK SESSION MINUTES, JUNE 28, 2016 REGULAR MEETING MINUTES, AND JUNE 28, 2016 WORK SESSION MINUTES.**
- 6. QUESTIONS AND COMMENTS FROM THE PUBLIC AND PRESS**

UNFINISHED BUSINESS

- 7. SECOND READING & PUBLIC HEARING – ORDINANCE 16-13 – ENCROACHMENTS INTO SECONDARY FRONT YARD.**
"AN ORDINANCE OF THE CITY OF HOLMES BEACH, FLORIDA CLARIFYING AND AMENDING PART III, LAND DEVELOPMENT CODE; ARTICLE VI, ZONING, DIVISION 4, SUPPLEMENTAL DEVELOPMENT STANDARDS, SECTION 6.8.Z, YARD ENCROACHMENTS BY ADDING A NEW SUBSECTION 7 TO ALLOW, WITH CONDITIONS, CERTAIN ITEMS TO ENCROACH UP TO FIVE FEET INTO THE SECONDARY FRONT YARD."
- 8. SECOND READING & PUBLIC HEARING – ORDINANCE 16-14 – NOISE CONTROL ORDINANCE**
"AN ORDINANCE OF THE CITY OF HOLMES BEACH AMENDING ARTICLE III, CHAPTER 30, CITY OF HOLMES BEACH NOISE CONTROL ORDINANCE; PROVIDING FOR FINDINGS OF FACT; PROVIDING FOR TECHNICAL AMENDMENTS TO THE MEASUREMENT OF NOISE; PROVIDING AMENDMENTS TO DEFINITIONS; PROVIDING FOR AMENDMENT TO THE NOISE ORDINANCE ENFORCEMENT CITATION PROCESS; PROVIDING FOR CITATION APPEAL HEARINGS BEFORE THE CITY'S SPECIAL MAGISTRATE; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE."

NEW BUSINESS

- 9. FIRST READING - ORDINANCE NO. 16-16 – SPECIAL MAGISTRATE/DUTIES OF BOARD OF ADJUSTMENT**
"AN ORDINANCE OF THE CITY OF HOLMES BEACH, FLORIDA, AMENDING ARTICLE II, DIVISION 2 COMMISSION AND BOARDS OF THE CITY'S LAND DEVELOPMENT CODE; AMENDING IN ITS ENTIRETY SECTION 2-12 OF THE LAND DEVELOPMENT CODE BY ESTABLISHING A DEVELOPMENT SPECIAL MAGISTRATE PROCESS TO UNDERTAKE THE CURRENT DUTIES OF THE BOARD OF ADJUSTMENT; PROVIDING FOR CONDUCT OF HEARINGS; PROVIDING FOR POWERS OF DEVELOPMENT SPECIAL MAGISTRATE; PROVIDING FOR APPEALS OF DECISIONS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE."
- 10. PUBLIC HEARING AND CONSIDERATION OF RESOLUTION NO. 16-02 – SITE PLAN APPLICATION # LD 16-000005 – 5312 HOLMES BLVD – THE DOCTOR'S OFFICE LLC.**
APPLICANTS: RICHARD & SUSAN THOMAS, PROPERTY OWNER; TENANT SEAN MURPHY; AND AGENT STEVE TITSWORTH.

11. ANNOUNCEMENTS

- WEDNESDAY – JULY 13 – 6:15 P.M. TO 7:30 P.M. – TURTLE WATCH: EDUCATING PUBLIC**
- FRIDAY – JULY 15 – 4:00 P.M. – TOWN HALL MEETING - VACATION RENTAL CERTIFICATE ORDINANCE**
- WEDNESDAY – JULY 20 – 2:00 P.M. – BIEO – BRADENTON BEACH**
- WEDNESDAY – JULY 20 – 6:15 P.M. TO 7:30 P.M. – TURTLE WATCH: EDUCATING PUBLIC**
- MONDAY – JULY 25 – 6:00 P.M. – TOWN HALL MEETING – VACATION RENTAL CERTIFICATE ORDINANCE**
- TUESDAY – JULY 26 – 7:00 P.M. – CITY COMMISSION REGULAR MEETING WITH WORK SESSION TO FOLLOW**
- WEDNESDAY – JULY 27 – 6:15 P.M. TO 7:30 P.M. – TURTLE WATCH: EDUCATING PUBLIC**
- THURSDAY – JULY 28 – 11:30 A.M. – POLICE PENSION BOARD MEETING**
- THURSDAY – JULY 28 – 6:00 P.M. – TOWN HALL MEETING – VACATION RENTAL CERTIFICATE ORDINANCE**

12. QUESTIONS AND COMMENTS FROM CITY ATTORNEY

13. QUESTIONS AND COMMENTS FROM STAFF

14. QUESTIONS AND COMMENTS FROM PUBLIC AND PRESS

ADJOURNMENT

Should any interested party seek to appeal any decision made by this City Commission with respect to any matter considered at this meeting, they will need to insure that a verbatim record of the proceedings is made which record includes the testimony and evidence upon which the appeal is to be based. In accordance with the Americans with Disabilities act and 286.26 Florida Statutes, persons with disabilities needing special accommodations to participate in this proceeding should contact the office of the City Clerk no later than 3 days prior to the meeting at telephone (941) 708-5800 for assistance; if hearing impaired, telephone (800) 955-8771 (TDD) for assistance.

#5

MINUTES
CITY OF HOLMES BEACH CITY COMMISSION WORK SESSION
PATRICIA A GEYER COMMISSION CHAMBERS
5801 MARINA DR, HOLMES BEACH, FL 34217
THURSDAY, JUNE 16, 2016 – 5:00 P.M.

PLEDGE OF CONDUCT: We may disagree, but we will be respectful of one another. We will direct all comments to the issues. We will avoid personal attacks.

1. CALL TO ORDER

Chair Titsworth called the meeting to order at 5:00 p.m.

2. ROLL CALL

Present: Commissioner Morton, Vice-Chair Peelen, Commissioner Soustek, and Chair Titsworth.

Absent/Excused: Commissioner Grossman.

Also present: Mayor Johnson, City Attorney Jim Dye, Deputy Clerk Kee, Chief Tokajer, and Building Official McGuinness.

3. QUESTIONS AND COMMENTS FROM THE PUBLIC AND PRESS

David Cheshire, 7106 Palm Drive, provided the Commission with a scenario regarding Police Officers called for a noise complaint. He commented on two areas of proposed revisions:

- Section 30-56 paragraph one - Mr. Cheshire believes the second condition needs removed and to allow the Officer, if the house is in violation of the noise Ordinance, to issue a citation with the fine to be significant.
- Sect 30-55 paragraph two - regarding decibel meter held approximately five feet above ground. Mr. Cheshire said if you have a six-foot solid fence, it is masking what the meter picks up. He would suggest holding the meter slightly above the six-foot level.

Discussion followed on the second condition in Section 30-56 referenced by Mr. Cheshire.

Mr. Cheshire referenced Sec 30-56 Enforcement and Penalties (1)(b) the premises that are the source of the violation are a frequent source of violations: and suggested the word 'complaint' may be more accurate.

NEW BUSINESS

4. DRAFT ORDINANCE 16-14 – AMENDING NOISE CONTROL - ATTORNEY JIM DYE
“AN ORDINANCE OF THE CITY OF HOLMES BEACH AMENDING ARTICLE III, CHAPTER 30, CITY OF HOLMES BEACH NOISE CONTROL ORDINANCE; PROVIDING FOR FINDINGS OF FACT; PROVIDING FOR TECHNICAL AMENDMENTS TO THE TECHNICAL MEASUREMENT OF NOISE; PROVIDING FOR AMENDMENT TO THE CITATION ENFORCEMENT PROCESS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.”

Attorney Dye reviewed his June 10, 2016 memo 'Changes to Noise Enforcement Procedures.'

Discussion followed regarding removing the mandatory warning. The Officer will have discretion to issue a ticket at the time of the violation.

Attorney Dye said anyone could receive the ticket. He added they are now eliminating the warning and relying on facts of the situation as to who will receive the ticket.

Commissioner Peelen asked if there would be circumstances when the property owner would receive a ticket.

Attorney Dye said he could not think of any, unless the property owner is the one creating the noise.

Commissioner Peelen suggested adding wording if after three or more violations, the property owner is on notice and penalized in addition to the violation.

Attorney Dye said the City has a nuisance section in the Code, which may pertain to that type of situation. He will review the nuisance Ordinance to see if it needs to be modernized.

Discussion followed on landlords/renters and notification of Rental Agents. Discussion also included Agents bringing paperwork to court cases regarding noise that had been supplied to the renter to make them aware of noise Ordinance.

Commissioner Soustek believes it is not always Rental Agents that are the problem, but rather the people visiting. She believes the fine should be significant enough to send a message.

Mayor Johnson said as the Commission proceeds, they should consider tying noise in with the Vacation Rental Certificate implementation. He believes they could also reinforce positively. When things are going well, companies can be publicly recognized and acknowledged.

Discussion followed on Police Officer discretion. However, *Attorney Dye* said someone could say unbridled discretion could be used in a discriminatory manner. Mr. Dye referenced the seven characteristics/standards in the Draft Ordinance under Section 30-55 - Prohibited acts (1)(a).

Commissioner Peelen felt the problem is there will never be first violations if it is halfway dependent upon having previous violations.

Chief Tokajer suggested changing 'violation' to 'service calls' - previous noise service calls.

Attorney Dye said he prefers the word violation because that is a defined term.

Commissioner Peelen and *Chief Tokajer* pointed out if only warnings are given, there will never be any violations issued.

Attorney Dye pointed out the Officer takes all factors of the Ordinance into account. The Officer either will have his decibel meter, or is looking at the seven characteristics (which do not require a decibel meter). The Officer weighs all the factors, says he has a violation and he writes a ticket - that is the first violation. He said that of course it could be challenged.

Discussion continued regarding number of calls versus the number of violations issued.

Attorney Dye referred to page 10, line 239, to address Commission concerns regarding warnings versus violations, stating a warning is for a violation.

Discussion continued regarding Sec. 30-56 (1) First violation (conditions).

Chair Titsworth suggested Section 30-56 - Enforcement and penalties (1)(b) be removed.

Chief Tokajer said he would agree to that. He said they discussed prior and wanted to give the Commission the option of (b).

Discussion followed with *Attorney Dye* suggesting changing 'source of violation' to 'source of noise complaints.'

Attorney Dye noted there are two ways to enforce noise - a decibel meter or the seven standards. The City is not tied to the decibel meter and the Officer can use the seven standards.

Mayor Johnson asked about the seven standards being enough to be a violation. For a violation, a ticket may be issued - or a warning notice if long term (vs. short term) or a business - anyone else receives a ticket. He said it seems awfully convoluted and inverse to get to that point.

Discussion continued as to when to issue a ticket versus a warning.

Attorney Dye said they are not talking only about rental homes; it could apply to a party on the beach. The violation does not necessarily have to apply to a piece of property.

Chair Titsworth asked about Commission concerns whereas the complainant has to sign an affidavit. She referenced line 198 - Persons Affected.

Attorney Dye pointed out the wording has always been in the Ordinance. He said it is about how to present the strongest case. The Enforcement Officer can substitute for the neighbor/complainant, but if the neighbor/complainant speaks, they are a much more persuasive witness.

Chief Tokajer said he would still like to have the complainant provide a name for a report. If it then goes before the Special Magistrate, the complainant can be contacted and asked to testify.

Discussion followed on complainant name being a Public Record.

Chief Tokajer reminded someone could also request the Police Department phone records.

Commissioner Soustek noted they are primarily trying to target short-term rentals. She believes the City can defend the cases, especially if several violations are received.

Attorney Dye pointed out there is nothing in the Ordinance requiring an affidavit to be signed.

Discussion continued regarding the internal policy on affidavits - and what the Judge said in court regarding the recent Code cases.

Chief Tokajer said that was an internal policy. It was not that they would not take action, they just could not issue a fine because the Judge has already said if a fine is issued to the wrong person and you do not have a signed affidavit you are wasting your time.

Attorney Dye said if a case goes to the Special Magistrate, an affidavit versus a live person is a lower level of evidence. If an Officer has issued a ticket, that Officer becomes the witness. The complainant can be a stronger witness - but it is not fatal if they are not present.

Chair Titsworth suggested Mr. Dye work on or possibly remove lines 244 - 245 - Sec. 30-56 - Enforcement and penalties (1)(b) in the proposed Ordinance.

Commissioner Peelen asked if the Commission should have a consensus as to what the Commission would like.

Chair Titsworth stated they agreed to change violation to noise complaints, but also discussed removing that section (due to possibly being on public land).

Commissioner Peelen recommended removing that section.

Action: Commission consensus was to remove lines 244 and 245 - Sec. 30-56 - Enforcement and penalties (1)(b).

Mayor Johnson referenced those that are here for a short period. He feels the advantage of leaving in lines 244 and 245 (or similar language) is when referencing those living here all the time - maybe they are having a wedding, etc.

Chair Titsworth suggested it read short-term rental versus only 'short term'.

Mayor Johnson pointed out 'short term' has nothing to do with a rental; it means someone that is only here for a short time.

Attorney Dye noted they are not targeting renters. It would also apply to someone having a party on the beach – short-term is short duration. He said they are trying to give the Officers in the field discretion, to help guide as to when to write a warning versus a citation.

Action: Attorney Dye will rework wording for lines 242 and 243 in addition to reviewing lines 244 and 245.

Commissioner Peelen asked about the decibel meter issue that David Cheshire had brought up. *Attorney Dye* will review and speak with Chief Tokajer.

Attorney Dye provided information on changing over to Special Magistrate and deviating from State Statute. He requested guidance on the following:

- Page 7 (4) commercial construction activities. *Attorney Dye* asked if this includes homeowner projects or just commercial construction - commercial construction only.

Mayor Johnson referenced page 4 line 96 - 'or causes or tends to cause an adverse physical or psychological effect on such reasonable.' *Attorney Dye* said it should read reasonable person.

Edits to be corrected -

- Line 101 - an edit to delete the word 'or'
- Line 100 should read 'Disturbs'
- Page 5 lines 104 and 105 - *Attorney Dye* would review wording

Attorney Dye referred to page 10 and discussion followed relating to fine amounts.

Chief Tokajer said he had recommended the first violation be \$75.00 and second violation be \$150.00. He added the fine is currently \$250 for a violation after a warning.

Attorney Dye reminded he will be looking at the City's Nuisance Ordinance - if they are having four violations in a year for the same thing they could attempt to tie together (in regards to the property owner).

Action: Commission consensus for the following -

- **First Violation - \$75.00**
- **Second Violation - \$150.00**
- **Third Violation - \$500.00**
- **Fourth Violation - \$750.00**

Chair Titsworth asked about Sec. 30-57 -Special Permits.

Action: Commission consensus to strike Sec. 30-57 - Special Permits (Temporary noise permits).

Mayor Johnson asked if allowing payment of the penalty within 30 days is too generous.

Action: Attorney Dye to change from 30 days to 15 days (but to discuss with Chief Tokajer to confirm that is what is currently being followed).

Chief Tokajer noted the proposed Ordinance changes where the payment will be paid. Violators will now pay directly to the City Clerk versus the County Clerk's Office - penalties will also be able to be paid online.

Attorney Dye will change line 310 - maximum penalty to read \$750.00 in order to match line 256. *Attorney Dye* said he could have the Ordinance ready for First Reading for June 28 Regular Meeting.

ANNOUNCEMENTS

- MONDAY – JUNE 20 NOON - THROUGH FRIDAY – JUNE 24 NOON – MAYOR AND CITY COMMISSION QUALIFYING PERIOD – HOLMES BEACH CITY CLERK**
- TUESDAY – JUNE 28 – 7:00 P.M. – CITY COMMISSION REGULAR MEETING WITH WORK SESSION TO FOLLOW**
- MONDAY – JULY 4 – OFFICE CLOSED**
- MONDAY - JULY 11 – ITPO @ HOLMES BEACH 2:00 P.M. – CANCELLED**
- TUESDAY – JULY 12 – CITY COMMISSION REGULAR MEETING WITH WORK SESSION TO FOLLOW**

5. QUESTIONS AND COMMENTS FROM MAYOR AND CITY COMMISSION

Barrier Island Elected Officials (BIEO)

Illegal Advertising of Vacation Rentals

Commissioner Soustek attended the recent BIEO meeting. She noted the City of Anna Maria recently adopted advertising restrictions and how they would be monitored. She said Longboat Key Mayor Duncan felt technology should be utilized. She feels there are IT programs that can be utilized versus manually checking vrbo.com etc. She added she likes the idea of the City of Anna Maria pushing for penalties on advertising to property owners. She would like the Commission to consider a similar Ordinance.

Commissioner Peelen said as far as she knows, the technology referenced does not currently exist. She believes Mayor Duncan has offered to have Longboat Key's IT department look into its development.

Chair Titsworth believes the Vacation Rental Certificate Ordinance does not have a penalty regarding advertising.

Commissioner Peelen said she does not think it needs to yet, but would like to have the tools/technology.

Chair Titsworth believes the Ordinance should address penalties for wrongful advertising.

Mayor Johnson noted the City has the requirement that the Vacation Rental Certificate Ordinance license number (issued number and occupancy) be displayed on the advertising.

Discussion followed on occupancy and wrongful advertising penalties.

Chair Titsworth asked *Chief Tokajer* to look at the advertising section of the Vacation Rental Certificate Ordinance regarding occupancy.

Chief Tokajer believes City Attorney Petruff had referred to new laws regarding freedom of speech and advertising, and he was led to believe the City did not want to go down that road.

Attorney Dye said anytime one is dealing with speech, advertising, etc., it triggers a First Amendment issue. However, he stated commercial speech is at a lower level of protection than political speech, religion, etc. He said it is possible to regulate advertising and referred to the Comprehensive Plan

wording. An example being - 12 people allowed, but advertising the home can sleep 20 - they are then advertising in violation of the law.

Commissioner Peelen believes the issue will disappear once the Vacation Rental Certificate Ordinance is in place.

Attorney Dye feels the City should attach a penalty to it. If not, then the issue is just a suggestion.

Discussion followed on the duration of stay for Resort Housing and bringing rental signs into compliance.

Chair Titsworth asked what the end date is for sign compliance per the Vacation Rental Certificate Ordinance.

Chief Tokajer stated in order to avoid an additional inspection, staff would like sign compliance to coincide with implementation of the Vacation Rental Certificate. This would allow Rental Agents a bit longer to come into compliance. The target date for going live is August 22 or 23, 2016.

Chair Titsworth said she thought Code Enforcement was already doing inspections.

Chief Tokajer said HR Analyst Buonagura is in the process of drafting a letter to go out to every resident and Rental Agent. The letter should be ready for review next week. He said he understands the date for the sign compliance is before implementation date, but it will be easier for enforcement purposes for the two to coincide.

Commissioner Peelen said she is not opposed to sign compliance coinciding with implementation of the Vacation Rental Certificate Ordinance.

Discussion continued on sign compliance.

Chair Titsworth felt the letter should state signs must be moved back by a certain date even if inspections are not being done yet. She pointed out there could be months of inspections.

Mayor Johnson said the target date for the mailing of the letter is within a couple of weeks. He will be reviewing it with the Commission.

Barbecuing

Commissioner Morton noted over the Memorial Day holiday people were barbecuing on public streets and having fires on the beach.

Chief Tokajer said the Police Department addresses violations using the Fire Code. He said an Ordinance would be coming before the Commission next month at a Work Session. He said he has discussed with the Mayor and Attorney Jim Dye.

Chief Tokajer asked those wanting to ride on the boat in the 4th of July Parade to let him know.

6. QUESTIONS AND COMMENTS FROM CITY ATTORNEY - None.

7. QUESTIONS AND COMMENTS FROM STAFF - None.

8. QUESTIONS AND COMMENTS FROM PUBLIC AND PRESS

David Cheshire, 7106 Palm Drive, said he appreciates the discussion and decisions made regarding the Draft Noise Ordinance. He also expressed his eager anticipation to have the Vacation Rental Certificate Ordinance up and running.

Mr. Cheshire brought a situation to the Commission's attention regarding a permitted three-bedroom duplex in which the builder then tried to add a fourth master bath, so they could use the dining room as a bedroom. He said since then the home has been furnished - the three permitted bedrooms each have king size beds and the dining room has two sets of bunk beds. Per the Land Development Code, their maximum occupancy should be six - but they have room for 10 people.

Commissioner Peelen asked if Mr. Cheshire was referring to the 306 Clark Drive house the City is currently in litigation with.

Mr. Cheshire said they began renting last Friday. He added he is looking forward to the house complying with proper occupancy of six visitors.

9. ADJOURNMENT

Chair Titsworth adjourned the meeting at 6:30 p.m.

Stacey Johnston, MMC, City Clerk

Minutes Approved: _____

NOTE: THIS IS NOT A VERBATIM RECORD; A DIGITAL RECORDING HAS BEEN MADE OF THE FOREGOING PROCEEDINGS OF WHICH THESE MINUTES ARE A PART. THIS RECORDING IS ON FILE AT THE CLERK'S OFFICE IN THE CITY OF HOLMES BEACH FOR TWO (2) YEARS.

MINUTES
CITY OF HOLMES BEACH CITY COMMISSION REGULAR MEETING
PATRICIA A GEYER COMMISSION CHAMBERS
5801 MARINA DR, HOLMES BEACH, FL 34217
JUNE 28, 2016 - 7:00 P.M.

PLEDGE OF CONDUCT: We may disagree, but we will be respectful of one another. We will direct all comments to the issues. We will avoid personal attacks.

1. CALL TO ORDER; PLEDGE TO THE FLAG; MOMENT OF SILENCE

Chair Titsworth called the meeting to order at 7:00 p.m.

2. ROLL CALL

Present: Commissioner Grossman, Commissioner Morton, Vice-Chair Peelen, Commissioner Soustek, and Chair Titsworth.

Also present: Mayor Johnson, Attorney Stephen Dye, City Clerk Johnston, Chief Tokajer, Building Official McGuinness, and City Planner Brisson.

3. COMMISSION REPORTS AND/OR ANNOUNCEMENT OF EX-PARTE COMMUNICATIONS

Commissioner Peelen's report is attached and made part of the official record.

Commissioner Morton

Commissioner Morton had a ride-along with Code Enforcement Officer Thomas, where they found violations. Commissioner Morton applauded the Code Enforcement Officers for the work they do.

Commissioner Soustek

Attended the recent BIEO meeting stating she was pleased to see the Island Mayors and Longboat Key pursuing a response from FDOT relating to traffic concerns.

Commissioner Soustek was disappointed the County did not take action in favor of the Island's request relating to the Sales Tax proposal. She was pleased they have agreed to continue discussions.

Attended the June 22 historical presentation held at the Anna Maria City Hall. Anna Maria is pursuing the process, and Commissioner Soustek felt there are areas that could be helpful for Holmes Beach to follow.

4. MAYOR'S REPORT

County 1/2-Cent Sales Tax

Mayor Johnson announced the Mayor's from the Island and Longboat Key attended the Manatee County Commission Meeting to present a solution relating to their proposed 1/2-Cent Sales Tax. As a result, the Manatee County Commission is not willing to move forward with the proposed solution at this time. However, a motion made by County Commissioner Chappie to hold a Work Session with the Mayors was approved. The Mayor's will continue to move forward.

FDOT - Island Traffic Study

The FDOT Island Traffic Study has been placed as one of the high priority projects with both the MPO and with FDOT as far as money. Mayor Johnson has an upcoming meeting with FDOT District Secretary Hattaway. He will keep the Commission informed.

July 4 Fireworks

There have been firework cancellations due to nestings on the beaches. Mayor Johnson reminded the Holmes Beach Police would be enforcing its laws over the weekend. Additional information relating to fireworks is available in the City Hall lobby.

5. CONSIDER APPROVAL OF THE JUNE 14 CITY COMMISSION REGULAR MEETING MINUTES AND WORK SESSION MINUTES.

Motion: Move that the June 14, 2016 City Commission Regular Meeting Minutes and Work Session Minutes be approved as written.

Action: Approved. Moved by Vice-Chair Peelen, Seconded by Commissioner Morton.

Vote: Motion carried by unanimous roll call vote.

6. QUESTIONS AND COMMENTS FROM THE PUBLIC AND PRESS

Exercise Facility at The Center

Jen Crady, AMI Health & Fitness, 5364 Gulf Drive, read a prepared statement asking for support relating to The (Community) Center's expansion of their fitness center. Ms. Crady's statement is attached and made part of the official record.

Nancy Deal, 203 56 Street, spoke in support of Ms. Crady as a small business owner. She utilizes the services of AMI Health & Fitness.

Ms. Deal met with The Center's Director last year to discuss how the community felt about The Center expanding their fitness/exercise area. She informed both of the fitness center owner's in Holmes Beach felt their businesses were being threatened. According to Ms. Deal, The Center's Director "looked her in the eye and stated the fitness center would not be expanded." However, less than a month later, it was expanded.

Ms. Deal felt everyone has the right to donate to a 501(c)3, but did not feel a 501(c)3 organization could be in business for themselves. She questioned with The Center now serving as a business, if it would violate their non-profit status. She questioned if something could be pursued, since they would have an unfair advantage over business owners who have to pay taxes.

Pam Leckie, 4255 Gulf Drive, also spoke in support of Ms. Crady. She noted the City Commission voted on a property tax increase last year. She did not feel the City should be donating taxpayer's dollars to a business in competition with other Holmes Beach businesses. It was her understanding The Center is requesting \$40,000 from the City of Holmes Beach. She does not feel it is right for the City to contribute the \$40,000, and does not want her taxes going to The Center, when it is in competition to where she exercises. She asked the Commission to consider her comments and not pay The Center their requested amount.

Formula Businesses – Proposed Moratorium

Todd Mathes, Benderson Development, 7978 Cooper Creek, Bradenton, referred to the proposed moratorium. He said in his opinion, it was fair to say, the moratorium is proposed in reaction to Dunkin Donuts signing their lease at Benderson Plaza. He pointed out the Ordinance's June 14, 2016 effective date is the same day they received written comments from the Building Department relating to Dunkin Donuts.

Mr. Matthews stated if the Commission wished to discuss issues such as colors, trademarks, etc., Benderson would be more than willing to hold those discussions with an open mind and good faith - resulting in a positive outcome for Holmes Beach. They feel implementing a moratorium is an attempt to block that business from coming here.

Mr. Matthews stated other communities have attempted the same prohibitions, though have found to be unsuccessful. He said only the attorneys would make a bunch of money resulting in no change to the franchisee, etc. He questioned if the Commission really wanted to go down that path.

Mr. Matthews suggested finding a clearer goal stating Benderson was never approached about the issue – the City Commission was just quick to act upon it. He hopes to work together with the City, and hopes the intent is not to attack one specific business.

Mr. Matthews informed the individual who owns Duncan Donuts is not only the franchisee, but also the business owner.

Attorney Bradley Ellis, ICard Merrill, on behalf of Benderson, informed he was at the last meeting when the moratorium issue was first discussed. In his opinion, an eight-month moratorium would be absolutely blocking businesses in the City.

Attorney Ellis questioned if the moratorium would affect the applications currently in the pipeline. He pointed out he has clients who have applied for permits, received comments, and was concerned the moratorium would block them from moving forward. He asked that issue be considered prior to adoption of a moratorium.

Attorney Ellis also did not believe the First Reading of the moratorium was properly noticed. He presented Attorney Dye with a court case, noting the moratorium public hearing must be noticed the same as for Planning meetings. He felt the public has the right to a Public Hearing prior to proceeding with the moratorium.

Exercise Facility at The Center

Mike Deal, 203 56 Street, informed he works out at AMI Health & Fitness. He provided comments from an individual who also works out at the gym, is part of the rental community on the Island, and a former board member. When Mr. Deal asked why they are still a member, he was told by the individual that The Center would do whatever they want as a Community Center, and no one can stop them.

Mr. Deal urged the Commission to pull the funding from the Community Center.

UNFINISHED BUSINESS

- 7. SECOND READING AND PUBLIC HEARING - ORDINANCE 16-12 - POLICE PENSION**
"AN ORDINANCE OF THE CITY OF HOLMES BEACH, FLORIDA, AMENDING THE CITY OF HOLMES BEACH MUNICIPAL POLICE OFFICERS' PENSION TRUST FUND RESTATED PURSUANT TO ORDINANCE 11-01; AMENDING SECTION 1. DEFINITIONS BY AMENDING THE DEFINITIONS OF "ACTUARIAL EQUIVALENT", "CREDITED SERVICE" AND SPOUSE"; AMENDING SECTION 6, BENEFIT AMOUNTS AND ELIGIBILITY; AMENDING SECTION 8, DISABILITY; AMENDING SECTION 15, MAXIMUM PENSION; AMENDING SECTION 26, PRIOR POLICE SERVICE; AMENDING SECTION 27, DEFERRED RETIREMENT OPTION PLAN; ADDING SECTION 29, SUPPLEMENTAL BENEFIT COMPONENT FOR SPECIAL BENEFITS; CHAPTER 185 SHARE ACCOUNTS; PROVIDING FOR SEVERABILITY OF PROVISIONS; PROVIDING FOR CODIFICATION; REPEALING ALL ORDINANCES IN CONFLICT HERewith AND PROVIDING AN EFFECTIVE DATE."

Chair Titsworth opened the Public Hearing.

Hearing no public comment, the Public Hearing was closed.

Motion: Move that Ordinance 16-12 be approved for Second Reading and adoption.

Action: Approved. Moved by Commissioner Morton, Seconded by Vice-Chair Peelen.

Vote: Motion carried by unanimous Roll Call Vote.

NEW BUSINESS

- 8. REVIEW OF AUDITED FINANCIAL STATEMENTS FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2015 – SUBMITTED FOR RECORD PURPOSES ONLY AND TITLED "CITY OF HOLMES BEACH, FLORIDA – FINANCIAL STATEMENTS – SEPTEMBER 30, 2015."**

Mayor Johnson announced the City received an excellent audit report. The report shows no findings and reflects excellent financial discipline.

Commissioner Peelen noted the City received the highest level of approval, and thanked the Administration for the great report.

9. FIRST READING – ORDINANCE 16-13 – ENCROACHMENTS INTO SECONDARY FRONT YARD.

"AN ORDINANCE OF THE CITY OF HOLMES BEACH, FLORIDA CLARIFYING AND AMENDING PART III, LAND DEVELOPMENT CODE; ARTICLE VI, ZONING, DIVISION 4, SUPPLEMENTAL DEVELOPMENT STANDARDS, SECTION 6.8.Z, YARD ENCROACHMENTS BY ADDING A NEW SUBSECTION 7 TO ALLOW, WITH CONDITIONS, CERTAIN ITEMS TO ENCROACH UP TO FIVE FEET INTO THE SECONDARY FRONT YARD."

Chair Titsworth read the Ordinance title.

Motion: Move that Ordinance 16-13 be approved for First Reading.

Action: Approved. Moved by Commissioner Morton, Seconded by Commissioner Grossman.

Vote: Motion carried by unanimous Roll Call Vote.

10. FIRST READING – ORDINANCE 16-14 – NOISE CONTROL ORDINANCE

"AN ORDINANCE OF THE CITY OF HOLMES BEACH AMENDING ARTICLE III, CHAPTER 30, CITY OF HOLMES BEACH NOISE CONTROL ORDINANCE; PROVIDING FOR FINDINGS OF FACT; PROVIDING FOR TECHNICAL AMENDMENTS TO THE MEASUREMENT OF NOISE; PROVIDING AMENDMENTS TO DEFINITIONS; PROVIDING FOR AMENDMENT TO THE NOISE ORDINANCE ENFORCEMENT CITATION PROCESS; PROVIDING FOR CITATION APPEAL HEARINGS BEFORE THE CITY'S SPECIAL MAGISTRATE; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Chair Titsworth read the Ordinance title.

Attorney Stephen Dye announced *Attorney Jim Dye* had no further changes to be made to the Ordinance. *Mayor Johnson* explained the Ordinance language reflects the changes discussed at the prior Work Session.

Motion: Move that Ordinance 16-14 be approved for First Reading.

Action: Moved by Commissioner Soustek, Seconded by Commissioner Grossman.

Discussion:

Commissioner Peelen asked for clarification on the language regarding ticketing on the first instance. She questioned why it states a warning notice may be issued. She did not feel that was what had been decided at the previous Work Session. She felt it should state if established as a first violation, there would be a violation issued. She noted warnings have always been given in the past - and she felt the Commission had discussed changing that with the new Ordinance.

Commission discussion followed relating to the intent of the Commission.

Chief Tokajer explained the difference between the current Ordinance and the proposed Ordinance is the current Ordinance stated a warning 'must' first be issued. The new Ordinance allows for Officer discretion. *Chief Tokajer* pointed out the Police Department has a record of all complaints to see if there are any patterns. Examples followed.

It was noted there is also language relating to short-term in the City.

Chair Titsworth stated the Ordinance allows someone to be cited from the beginning. An example would be whenever a property owner or manager may not be screening their tenants appropriately, and officers are going to the same address repeatedly.

Commissioner Grossman stated he and the Commission could relate to the residents that are subjected to the neighboring noise – and some of the agents are aware of the problem and assisting the City. He noted the noise issue is a lot of the reason many residents have moved away.

Chief Tokajer assured that the officers are well aware of the problem and want a solution. Their intent is to give a fine upon responding. If they go into a location where there has never been a problem before, there may be some discretion - and they will try to educate those at the location first.

Commissioner Soustek said she spoke to some of the Police Officers to get their input on the new Ordinance, who indicated they feel more comfortable with the new law, and believe it is more clear-cut.

Commissioner Peelen said it bothers her because the discretion sentence comes first regarding there being a warning. She would like the wording changed. She felt Attorney Dye should be asked to reword the Ordinance language in order to reemphasize that the first violation can be a \$75 fine.

Chair Titsworth pointed out the maximum civil penalty should be corrected to state \$750 versus \$500. It was further noted "if within 30 days" should be corrected to "if within 15 days".

Attorney Dye said he would have the Ordinance reworded.

Motion: Commissioner Soustek amended her motion to approve Ordinance 16-14 as amended. Commissioner Grossman seconded the amended motion.

Vote: Motion carried by unanimous Roll Call Vote.

11. FIRST READING – ORDINANCE 16-15 – MORATORIUM – FORMULA RETAIL ESTABLISHMENTS

"AN ORDINANCE OF THE CITY OF HOLMES BEACH, FLORIDA, ESTABLISHING A MORATORIUM ON ACCEPTANCE, PROCESSING AND ISSUANCE OF NEW PERMITS AND BUSINESS TAX RECEIPTS AND APPLICATIONS THAT WOULD ALLOW FOR NEW FORMULA RETAIL ESTABLISHMENTS WITHIN THE CITY LIMITS FOR A PERIOD OF EIGHT MONTHS BEGINNING JUNE 14, 2016; PROVIDING A DEFINITION OF FORMULA RETAIL ESTABLISHMENT; PROVIDING FOR FINDINGS OF FACT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE."

Chair Titsworth read the Ordinance title.

Attorney Dye noted the Ordinance uses the definition the Mayor brought to the last meeting. In addition, he will be reviewing the case presented by Attorney Ellis to determine if the Ordinance was noticed properly.

Motion: Move that Ordinance 16-15 be approved for First Reading.

Action: Moved by Commissioner Morton, Seconded by Vice-Chair Peelen.

Discussion:

Commissioner Peelen stated it was made clear at the last meeting that the Ordinance would not affect any new applications in the pipeline. She asked for clarification relating to the wording - feeling there could be some confusion.

Attorney Dye had discussed with the Mayor and decided on utilizing the word "New". The only applications affected would be those received after June 14, 2016. He pointed out some businesses may not need a Building Permit – only a Business Tax Receipt.

Commissioner Morton stated the Commission was not targeting anyone – only saving the City from the invasion of anyone coming in and destroying the mom and pops that have been in the City for ages.

Commissioner Peelen said the idea has to do with Holmes Beach, and the uniqueness of the Island. She said if the Commission does not do something now, the Island will be discovered and will have a Dunkin Donuts on every corner.

Commission discussion followed.

Vote: Motion carried by unanimous Roll Call Vote.

12. RESOLUTION 16-03 – CDBG PARTICIPATION-MANATEE COUNTY

"A RESOLUTION OF THE CITY OF HOLMES BEACH FLORIDA, AUTHORIZING THE PARTICIPATION OF THE CITY OF HOLMES BEACH, FOR THE 2017, 2018, AND 2019 COMMUNITY DEVELOPMENT BLOCK GRANT, URBAN COUNTY ENTITLEMENT FUNDING PROGRAM IN MANATEE COUNTY, FLORIDA.

Chair Titsworth read the Resolution title.

Motion: Move that Resolution 16-03 be approved for adoption.

Action: Approved. Moved by Commissioner Morton, Seconded by Commissioner Grossman.

Vote: Motion carried by unanimous Roll Call Vote.

13. CONSIDER APPROVAL OF INTERLOCAL AGREEMENT BETWEEN MANATEE COUNTY AND THE CITY OF HOLMES BEACH REGARDING THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM EFFECTIVE THROUGH 2019.

Mayor Johnson noted the agreement was a standard Interlocal Agreement between the City and Manatee County. It is similar to one in effect up to three years ago, and had no significant change.

Motion: Move that the Mayor be authorized to sign the Interlocal Agreement between Manatee County and the City of Holmes Beach regarding the Community Development Block Grant Program effective through 2019.

Action: Approved. Moved by Commissioner Grossman, Seconded by Vice-Chair Peelen.

Vote: Motion carried by unanimous Roll Call Vote.

14. ANNOUNCEMENTS

- FRIDAY – JULY 1 – 9:00 A.M. – SPECIAL MAGISTRATE HEARING – CODE ENFORCEMENT**
- MONDAY – JULY 4 – HOLIDAY – CITY OFFICES CLOSED**
- MONDAY – JULY 4 – 10:00 A.M. - PARADE**
- MONDAY – JULY 11 – ITPO - CANCELLED**
- TUESDAY – JULY 12 – 7:00 P.M. – CITY COMMISSION REGULAR MEETING WITH WORK SESSION TO FOLLOW**
- WEDNESDAY – JULY 20 – 2:00 P.M. – BIEO – BRADENTON BEACH**
- TUESDAY – JULY 26 – 7:00 P.M. – CITY COMMISSION REGULAR MEETING WITH WORK SESSION TO FOLLOW**
- THURSDAY – JULY 28 – 11:30 A.M. – POLICE PENSION BOARD MEETING**

July 4 Parade

Chief Tokajer asked the Commission to notify him if they planned on riding on the boat in the July 4 parade.

15. QUESTIONS AND COMMENTS FROM MAYOR AND CITY COMMISSIONExercise Facility at The Center

Commissioner Peelen noted there is a small division on the issue of the exercise facility at The Center that is based on age groups. A number of young families with children utilize the facilities at The Center - and love the programs they provide. What they do not have is the history the City has with The Center regarding hiding financials, telling untruths to the Commission when here last year, and stating their position.

Tourist Development Council Position

Commissioner Peelen announced she just attended her last TDC meeting, and explained her reasoning as to why she did not apply for reappointment. She said the TDC is a successful organization she had the pleasure of being a part of. However, the TDC plans in the near future to no longer advertise for the tourist season – but instead concentrate on the off-season. Commissioner Peelen said she sees no good

for the Island with that approach, and now wants to work where her heart is - to bring more residents to the Island - and grow the community.

Bike Paths

Commissioner Morton said under the direction of new Public Works Foreman Benton, this was the first time in the last 10 years he has seen the bike paths as clean as they are now.

Exercise Facility at The Center

Commissioner Soustek mentioned she knew about The Center's request for additional funding from the City, but did not understand how they can do so under the 501(c)3 status.

It was her understanding The Center is struggling financially due to some grants not coming in – and they are just trying to stay afloat as best they can. She will try to find a clear explanation as to how their fee structure is set up. Commissioner Soustek said she does not particularly like how The Center is getting too close to private enterprise.

Vacation Rental Sign Ordinance

Commissioner Soustek asked for the date the Vacation Rental signs will be changed.

Chief Tokajer announced that after discussions with Code Enforcement Officer Thomas, the rental agents have been given until July 8, 2016 to come into compliance under the new Ordinance. Enforcement will begin on July 8. All companies have been made aware of the deadline both verbally and by letter.

The Center

Mayor Johnson has a meeting scheduled with The Center in two weeks. He will keep the Commission updated.

16. QUESTIONS AND COMMENTS FROM CITY ATTORNEY – None.

17. QUESTIONS AND COMMENTS FROM STAFF – None.

18. QUESTIONS AND COMMENTS FROM PUBLIC AND PRESS – None.

ADJOURNMENT

Chair Titsworth adjourned the meeting at 8:18 p.m.

Stacey Johnston, MMC, City Clerk

Minutes approved: _____

NOTE: THIS IS NOT A VERBATIM RECORD; A MECHANICAL RECORDING HAS BEEN MADE OF THE FOREGOING PROCEEDINGS OF WHICH THESE MINUTES ARE A PART. THIS RECORDING IS ON FILE AT THE CLERK'S OFFICE IN THE CITY OF HOLMES BEACH FOR TWO (2) YEARS.

#5

MINUTES
CITY OF HOLMES BEACH CITY COMMISSION WORK SESSION
IMMEDIATELY FOLLOWING REGULAR MEETING
PATRICIA A GEYER COMMISSION CHAMBERS
5801 MARINA DR, HOLMES BEACH, FL 34217
TUESDAY, JUNE 28, 2016 – 7:00 P.M.

PLEDGE OF CONDUCT: We may disagree, but we will be respectful of one another. We will direct all comments to the issues. We will avoid personal attacks.

1. CALL TO ORDER

Chair Titsworth called the meeting to order at 8:30 p.m.

2. ROLL CALL

Present: Commissioner Grossman, Commissioner Morton, Vice-Chair Peelen, Commissioner Soustek, and Chair Titsworth.

Also present: Mayor Johnson, Attorney Stephen Dye, City Clerk Johnston, Chief Tokajer, Building Official McGuinness, and Planner Brisson.

3. QUESTIONS AND COMMENTS FROM THE PUBLIC AND PRESS - None.

NEW BUSINESS

4. DRAFT ORDINANCE – ORDINANCE NO. 16-13 – SPECIAL MAGISTRATE/DUTIES OF BOARD OF ADJUSTMENT

"AN ORDINANCE OF THE CITY OF HOLMES BEACH, FLORIDA, AMENDING ARTICLE II, DIVISION 2 COMMISSION AND BOARDS OF THE CITY'S LAND DEVELOPMENT CODE; AMENDING IN ITS ENTIRETY SECTION 2-12 OF THE LAND DEVELOPMENT CODE BY ESTABLISHING A DEVELOPMENT SPECIAL MAGISTRATE PROCESS TO UNDERTAKE THE CURRENT DUTIES OF THE BOARD OF ADJUSTMENT; PROVIDING FOR CONDUCT OF HEARINGS; PROVIDING FOR POWERS OF DEVELOPMENT SPECIAL MAGISTRATE; PROVIDING FOR APPEALS OF DECISIONS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE."

Attorney Dye pointed out it is difficult to find people to serve on City Boards. It has been recommended the Board of Adjustment be dissolved, and the City transition to a Special Magistrate in its place.

Commissioner Soustek asked if the Board of Adjustment would utilize the same Special Magistrate as the Code Enforcement Board.

City Clerk Johnston noted the City currently has a contract with Attorney Michael Connolly, with the Alternate being Attorney Kelly Fernandez.

Action: Commission consensus to move Draft Ordinance 16-13 forward to First Reading.

UNFINISHED BUSINESS

5. CONTINUED DISCUSSION RELATING TO BOATHOUSES AND BOAT CANOPIES

Chair Titsworth thanked Planner Brisson for all his research.

Planner Brisson reviewed and read commentary from his staff report. He also noted the following:

- The only areas typically found to allow boathouses and boat canopies are in the larger communities.
- The reason boathouses and boat canopies may not be allowed in the smaller communities, is they will limit the height to 5 ft. In smaller communities, the lots are small on finger canals. Therefore, visibility is limited and a neighbor loses view of the waterway and beyond.

- Most are on estates or located further north.
- Boat houses – questionable due to, but allowed in some places.

Planner Brisson feels if boathouses/canopies were allowed in Holmes Beach, they would probably tend to block views. The City currently prohibits boathouses and canopies, and prohibits if someone were to dig a channel into their lot (under the current Code). He felt it would be best to continue prohibiting boathouses and canopies in Holmes Beach, unless the Commission feels otherwise.

Chair Titsworth noted she likes the following:

- Manatee County allows the structures with maximum heights, and requires either a major permit or by implementing a special use permit.
- City of Venice requires a pitched roof on boathouses.

Chair Titsworth noted Mr. Lance Spott's (who has requested Commission consider boathouses and/or boat canopies), has nesting great blue herons in the Australian pines over his slip (inset). She said his only option is to remove the trees. She felt the City could consider allowing a special permit, or major permit, for certain instances with specific requirements. She presented the following suggestions:

- For inset slips only – only allow with a 25-ft. setback – if have a cover over the boat, the frontage must be greater than a certain number of feet.
- Maximum height established.
- Maximum coverage.
- Require pitched roofs – if a deck with a flat roof is allowed, a person could then add railings and even an upstairs.
- No enclosed walls.
- As far as outstanding waterways, it would not mean it would cause many people to add them. They would only be for special circumstances such as those having a large lot.
- No shingles allowed.

Commissioner Peelen asked what is the purpose for the boat canopy/boathouse request, and how would considering it serve the residents.

Chair Titsworth pointed out a resident has come forth who has a rookery over his boat. He is looking to have a cover over his boat. She said there was consensus to discuss at a Work Session to have the issue researched and discussed.

Commissioner Soustek stated she is considering the idea because Mr. Spott's is a lifetime resident and he does a lot for the City. She said she has owned a boat and the sun will break it down. In her opinion, a boat canopy would be an aesthetic or safety issue. She felt the permit required should meet required restrictions.

Commissioner Grossman asked if the Commissioners were also considering boathouses.

Chair Titsworth stated she likes the look of a boathouse with no walls - rather than a canvas canopy. She pointed out it is difficult to know what color canvas a homeowner may choose.

Commissioner Grossman said he is uncomfortable with boathouses.

Chair Titsworth pointed out there are boathouses just over the Cortez Bridge on the left side.

Commissioner Morton said he agrees with Commissioner Soustek.

Public Comment

Lance Spotts, 5319 Sunrise Lane, said he originally considered a boathouse. He explained how his property is situated, and noted a boathouse would not be able to be seen. Since boathouses are not

allowed by the City, he began looking for an attractive boat cover, which would not block the view. He pointed out boats are very costly and a cover would protect the boat.

Al Toland, 15040 Tamiami Trail, Punta Gorda, informed he sells covers for Waterway (Boat Lift Covers) in Charlotte County - and up to the Bradenton area. He noted all covers are custom made for the width of the lift and length of the boat. Details followed relating to the different Cities and County regulations, and where his covers are located.

Commissioner Peelen asked about the three terms in use, boat covers, boat canopies, and boathouses. She said she is not sure what the Commission is considering.

Mr. Toland explained his company manufactures boat canopies - also referred to as boatlift covers.

Discussion followed on why this issue was being discussed and the need for receiving community input. *Commissioner Peelen* felt the discussion was covering more than what was requested by one citizen, and asked why boathouses were researched.

Chair Titsworth said the discussion began based on citizen input and what is occurring in neighboring communities. She felt if the Commission wanted to consider the idea, they should review all options.

Commissioner Peelen said she wished there was community input to see if there is a desire. She stated boaters were not the entire community, therefore, felt more community input was needed.

Mr. Toland said their company receives phone calls from Holmes Beach quite often.

Building Official McGuinness pointed out the greatest objection to boathouses is neighbor's visibility. He said he does feel there is a need for boat covers, especially with the new lifts going in for the Police Department boat (and Fire Department).

Building Official McGuinness said there is a practical need for covers - as in the case of Mr. Spotts. He added he has always had boats and they are always under cover. He mentioned several ways to address the idea, including special exceptions, neighbors input with letters of no objection, etc. He said as far as boathouses, he agreed with Chair Titsworth that walls should not be allowed. In addition, all boathouses must stand up to hurricane standards.

Paula Williams, 15040 Tamiami Trail, Punta Gorda, noted the concern in the City of Cape Coral was visibility. She said many residents of Cape Coral wanted the boat canopies and the County kept denying the request. The residents sued Cape Coral and as a result, their company has been doing business in Cape Coral since 2002.

Commissioner Peelen asked about the regulations in Bradenton Beach. Discussion followed with *Mrs. Williams* of Waterway Boat Covers discussing the colors of the canopies and engineering requirements. *Planner Brisson* noted he had not researched the details involving special exceptions, until he knew if the Commission wanted further information.

Details relating to the different County and City regulations followed.

Commissioner Peelen asked Attorney Dye to research the Cape Coral case. Discussion followed on the water rule differences between the FL outstanding waterway and canals.

Action: After discussion, it was the consensus of the Commission to consider boat canopies only.

6. ANNOUNCEMENTS

- FRIDAY – JULY 1 – 9:00 A.M. – SPECIAL MAGISTRATE HEARING – CODE ENFORCEMENT**
- MONDAY – JULY 4 – HOLIDAY – CITY OFFICES CLOSED**
- MONDAY – JULY 4 – 10:00 A.M. – JULY 4 PARADE**
- MONDAY – JULY 11 – ITPO - CANCELLED**
- TUESDAY – JULY 12 – 7:00 P.M. – CITY COMMISSION REGULAR MEETING WITH WORK SESSION TO FOLLOW**
- WEDNESDAY – JULY 20 – 2:00 P.M. – BIEO – BRADENTON BEACH**
- TUESDAY – JULY 26 – 7:00 P.M. – CITY COMMISSION REGULAR MEETING WITH WORK SESSION TO FOLLOW**
- THURSDAY – JULY 28 – 11:30 A.M. – POLICE PENSION BOARD MEETING**

7. QUESTIONS AND COMMENTS FROM MAYOR AND CITY COMMISSION - None.

8. QUESTIONS AND COMMENTS FROM CITY ATTORNEY - None.

9. QUESTIONS AND COMMENTS FROM STAFF - None.

10. QUESTIONS AND COMMENTS FROM PUBLIC AND PRESS - None.

11. ADJOURNMENT

Chair Titsworth adjourned the meeting at 9:07 p.m.

Stacey Johnston, MMC, City Clerk

Minutes approved: _____

NOTE: THIS IS NOT A VERBATIM RECORD; A DIGITAL RECORDING HAS BEEN MADE OF THE FOREGOING PROCEEDINGS OF WHICH THESE MINUTES ARE A PART. THIS DIGITAL RECORDING WILL REMAIN ON FILE AT THE CLERK'S OFFICE IN THE CITY OF HOLMES BEACH FOR TWO (2) YEARS.

#7

ORDINANCE 16-13

AN ORDINANCE OF THE CITY OF HOLMES BEACH, FLORIDA CLARIFYING AND AMENDING PART III, LAND DEVELOPMENT CODE; ARTICLE VI, ZONING, DIVISION 4, SUPPLEMENTAL DEVELOPMENT STANDARDS, SECTION 6.8.Z, YARD ENCROACHMENTS BY ADDING A NEW SUBSECTION 7 TO ALLOW, WITH CONDITIONS, CERTAIN ITEMS TO ENCROACH UP TO FIVE FEET INTO THE SECONDARY FRONT YARD.

WHEREAS, the City Commission previously adopted Ordinance 16-07, which requires two front yards when a property fronts on more than one street, one of which will be the designated front yard and the other will be the secondary front yard; and

WHEREAS, Ordinance 16-07 also includes definitions for “designated front yard” and “secondary front yard”; and

WHEREAS, the definition of secondary front yard explicitly states that said yard shall be considered a front yard for setback purposes; and

WHEREAS, the Commission, after hearing testimony and evidence provided at work sessions and Commission meetings, determined that allowing limited encroachment into the secondary front yard for certain accessory items would provide flexibility for the property owner and could have a beneficial effect upon both the property owner and adjoining properties; and

WHEREAS, the Commission recognizes that certain accessory items, including but not limited to, pool heat pumps, air conditioning units and generators may emit bothersome noise levels; and

WHEREAS, the Commission also recognizes that allowing such items to encroach to a limited degree into the secondary front yard would result in less potential adverse effects upon adjacent neighbors than if these same items were placed as close as ten feet to the side or rear property lines; and

WHEREAS, the Commission recognizes that when such accessory items are allowed limited encroachment into the secondary front yard, they will not have any serious visual or other impact upon the city or the public at large; and

WHEREAS, the Commission finds that this ordinance is consistent with the City’s Comprehensive Plan; and

WHEREAS, the Commission finds that this ordinance will benefit the public health, safety or welfare of the citizens of Holmes Beach, Florida.

NOW THEREFORE, be it ordained by the City Commission of the City of Holmes Beach, the following:

Section 1. Findings of Fact. The above referenced “whereas” clauses are adopted herein as findings of fact.

Section 2. Article VI, Zoning, Division 4, Supplemental Development Standards, Section 6.8.Z, Yard encroachments by adding a new Subsection 7 to read as follows:

7. Allowable encroachments into the secondary front yard.
Restrictions set forth in the preceding Subsections (1) through (6), notwithstanding, the following items may encroach up to, but not more than, five (5) feet into a secondary front yard:
- a. air conditioning unit;
 - b. generator; and
 - c. heat pump not exceeding 48 inches in height and used to heat a swimming pool, provided the unit is screened to a height equal to or greater than the height of the heat pump by a hedge along all sides of the heat pump that do not face an exterior wall of the principal structure.

Section 3. Severability. In the event that any word(s), phrase(s), portion(s), sub-sub-section(s), sub-section(s), or section(s) of this Ordinance, or application thereof, is contrary to law, or against public policy, or shall for any reason whatsoever held to be invalid, illegal or unconstitutional, by any court of competent jurisdiction, such word(s), phrase(s), portion(s), sub-sub-section(s), sub-section(s), or section(s) of this Ordinance shall be null and void, and shall be deemed severed, and a separate, distinct, and independent provision from the remaining provisions of this ordinance, and such holding shall in no manner affect the validity of the remaining words, phrases, portions, sub-sub-sections, sub-sections, or sections of this Ordinance, which shall remain in full force and effect. This ordinance shall be construed in a manner to accomplish, to the greatest extent legally possible, the purposes of this ordinance as expressed herein.

Section 4. Effective Date. This Ordinance shall be effective upon adoption by the City Commission and approval by the Mayor in accordance with the Charter of the City of Holmes Beach.

PASSED AND ADOPTED, by the City Commission of the City of Holmes Beach, Florida, in regular session assembled, this ____ day of _____, 2016.

First Reading: _____

Publication Date _____

Second Reading and Public Hearing Date _____

Patrick Morton

Carol Soustek

Marvin Grossman

Judy Titsworth

Jean Peelen

APPROVED BY ME THIS _____ **DAY OF** _____, 2016

Bob Johnson, Mayor

ATTEST: _____
Stacey Johnston, MMC, City Clerk

#8

**NOISE CONTROL ORDINANCE
ORDINANCE 16-14**

CLEAN VERSION

1 **CITY OF HOLMES BEACH**

2 **ORDINANCE 16-14**

3 **AN ORDINANCE OF THE CITY OF HOLMES BEACH AMENDING ARTICLE III,**
4 **CHAPTER 30, CITY OF HOLMES BEACH NOISE CONTROL ORDINANCE;**
5 **PROVIDING FOR FINDINGS OF FACT; PROVIDING FOR TECHNICAL**
6 **AMENDMENTS TO THE MEASUREMENT OF NOISE; PROVIDING FOR**
7 **AMENDMENTS TO DEFINITIONS; PROVIDING FOR AMENDMENT TO THE**
8 **NOISE ORDINANCE ENFORCEMENT CITATION PROCESS; PROVIDING FOR**
9 **CITATION APPEAL HEARINGS BEFORE THE CITY'S SPECIAL MAGISTRATE;**
10 **PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE**

11 **WHEREAS,** the City of Holmes Beach is authorized by the Florida Constitutions,
12 Florida Statutes, and the City Charter to promulgate regulations for the benefit of the citizens,
13 residents, and visitors to the City; and

14 **WHEREAS,** the City is primarily a residential community consisting of numerous
15 established neighborhoods; and

16 **WHEREAS,** noise disturbances have been increasing resulting in interference with the
17 traditional peace of quiet of the City's residential areas; and

18 **WHEREAS,** the City has recognized limitations in previous enforcement actions based
19 on a policy of warning noise violators before taking enforcement action, a policy which has not
20 proven effective when the source property of the noise hosts transient residents on a recurring
21 basis; and

22 **WHEREAS,** the City recognizes that an enforcement program mandating a warning
23 prior to issuing a citation is not successful if the violator is within the jurisdiction of the City for
24 a short amount of time as the violator; and

25 **WHEREAS**, the City Commission has received advice and guidance from its
26 enforcement staff recommending changes to the City’s policy to require issuance of a warning
27 prior to taking enforcement action; and

28 **WHEREAS**, the City Commission has determined that the technical components related
29 to instrument measurements of noise disturbance should be updated; and

30 **WHEREA**, in *Verdi v. Metropolitan Dade County*, 684 So.2d 870 (Fla. 3d DCA 1996),
31 the Court confirmed that cities, including the City of Holmes Beach, have the authority to
32 determine and implement methods and procedures of code enforcement that best serves their
33 cities; and

34 **WHEREAS**, the City Commission has held workshops and public hearings where it
35 heard the testimony of its citizens and other interested persons concerning changes to its
36 enforcement policy; and

37 **WHEREAS**, the City Commission, based upon the recommendations of its professional
38 staff along with the comments received at its workshops and hearings, finds that these
39 amendments address the reoccurring enforcement issues related to noise, and are otherwise in the
40 best interests of the City, its citizens, residents, and visitors.

41 **NOW, THEREFORE, be it ORDAINED** by the City Commission of the City of
42 Holmes Beach, the following:

43 Section One. Findings of Fact. The above Whereas clauses are hereby adopted as
44 findings of Fact.

45 Section Two. Amendments to the City Noise Control Ordinance.

46 The City of Holmes Beach Code of Ordinances, Land Development Article III, Chapter
47 30, Holmes Beach Noise Control Ordinance, is hereby amended by deleting all language shown

48 as strikethrough and adding all language shown as underscored, so as to read in its entirety as
49 follow:

50 **ARTICLE III. - HOLMES BEACH NOISE CONTROL ORDINANCE**

51 • **Sec. 30-51. - Short title.**

52 This new article III of chapter 30 shall be known and may be cited as the City of Holmes
53 Beach Noise Control Ordinance.

54 • **Sec. 30-52. - Declaration of policy.**

55 It is hereby declared to be the public policy of the City of Holmes Beach to reduce the
56 ambiance noise level in the city, to preserve, protect, and promote public health, safety, and
57 welfare and the peace and quiet of the inhabitants of the city. It is the public policy of the City of
58 Holmes Beach that every person is entitled to ambient noise levels that are not detrimental to
59 life, health and enjoyment of his/her property. It is hereby declared that the making, creation or
60 maintenance of excessive or unreasonable noise within the city affects and is a detriment to
61 public health, comfort, convenience, safety, welfare on the prosperity of the people of the City of
62 Holmes Beach. Excessive and unreasonable noise can cause adverse effects on humans and
63 deprive people of the peaceable enjoyment of their private property. The provisions and
64 prohibitions hereinafter set forth support this public policy of the City of Holmes Beach.

65 • **Sec. 30-53. - Definitions.**

66 *Definitions.* All technical words and phrases used in this article and which are not
67 defined below shall be defined according to applicable publications of the American National
68 Standards Institute (ANSI) or the American Society for Testing and Materials (ASTM) or their
69 successor bodies when these bodies have promulgated such definition. When not inconsistent
70 with the context, words used in the present tense include the future tense, words in the plural
71 number include the singular number and words in the singular number include the plural number.
72 The word "shall" is always mandatory and not merely directory. Words not defined shall be
73 given their common and ordinary meaning, or for those so included, the meaning found in this
74 chapter. As used in this chapter, the following terms shall have the following meanings:

75 (1) *Ambient noise*: The surrounding or steady background noise in a particular
76 location as distinct from the specific noise being measured.

77 (2) *A-weighted noise level (dBA)*: The noise pressure level in decibels as measure
78 using A-weighting network on a noise level meter that meets the standard set for in ANSI
79 Standard S1.4-1983 (or more recent version). The level so read is designated "dBA".

80 (3) *Commercial area*: Land designated for commercial use pursuant to the Holmes
81 Beach Code of Ordinances.

82 (4) *Construction activity*: Any site preparation, assembly, erection, substantial
83 repair, alteration, or improvement of realty, whether publicly or privately owned, and whether
84 above ground or below ground.

85 (5) *Decibel (dB)*: The practical unit of measurement for sound pressure level; the
86 number of decibels of a measured sound is equal to 20 times the logarithm to the base ten of
87 the ratio of the sound pressure of the measured sound to the sound pressure of a standard
88 sound (20 micropascals); abbreviated "dB."

89 (6) *Emergency*: Any occurrence or set of circumstances involving actual or
90 imminent physical trauma to human beings or living creatures or property damage which
91 necessitates immediate action.

92 (7) *Emergency work*: Any work performed for the purpose of preventing or
93 alleviating the physical trauma or property damage threatened or caused by an emergency,
94 including work necessary to restore property to a safe condition following an emergency.

95 (8) *Multifamily dwellings*: A building designed or used exclusively for residential
96 occupancy by two or more families.

97 (9) *Noise*: Any sound which annoys or disturbs a reasonable person of ordinary
98 sensibilities or causes or tends to cause an adverse physical or psychological effect on such
99 reasonable person. "Noise" includes but is not limited to low frequency sounds that can induce
100 vibration in structures or human beings.

101 (10) *Noise disturbance*: Any noise or vibration which:

102 a. Disturbs, annoys or is harmful or injurious to the health or welfare of a
103 reasonable person of ordinary sensibilities, or

104 b. Exceeds the maximum allowable limits set forth in this article.

105 (11) *Park land*: Land that is used primarily for public recreational activities.

106 (12) *Person*: Any natural person, public or private corporation, firm, association,
107 joint venture, partnership, or any other entity whatsoever or any combination of such, jointly
108 and severally.

109 (13) *Public right-of-way*: Any street, avenue, boulevard, highway, sidewalk or alley
110 or similar place normally accessible to the public which is owned or controlled by a
111 governmental entity.

112 (14) *Public space*: Any real property or structure thereon normally accessible to the
113 public which is owned or controlled by a governmental entity.

114 (15) *Real property line*:

115 a. The imaginary line along the ground surface including its vertical extension
116 that separates one parcel of real property from another; or

117 b. The vertical and horizontal boundaries of a dwelling unit that is one unit in a
118 multi-dwelling-unit building.

119 (16) *Residential area*: Any area designated for residential use pursuant to the City
120 of Holmes Beach Land Development Code.

121 (17) *Short duration and non-repetitive*: Any sound with a duration of less than 30
122 seconds.

123 (18) *Sound*: A temporal or spatial oscillation in pressure, particle displacement,
124 particle velocity or other physical parameter, in a medium with internal forces that causes
125 compression and rarefaction of that medium. The description of sound may include any
126 characteristic of such sound, including duration, intensity and frequency.

127 (19) *Sound analyzer*: A device for measuring the octave band level of a sound as a
128 function of frequency.

129 (20) *Sound level:* The conversion of sound pressure to a logarithmic measure called
130 the decibel.

131 (21) *Sound level or noise meter:* An instrument which includes a microphone,
132 amplifier, RMS detector, integrator or time averager, output meter, and weighting networks
133 used to measure sound pressure levels. The output meter reads sound pressure level when
134 properly calibrated, and the instrument is of type 2 or better, as specified in the American
135 National Standards Institute publication S 1.4-1983 or its successor publication.

136 (22) *Vibration:* A temporal and spatial oscillation of displacement, velocity, and
137 acceleration in a solid material.

138 (23) *Violator:* Any person, natural or otherwise, in violation of those portions of the
139 Code of Ordinances of the City of Holmes Beach, or any ordinances not yet codified, which
140 are within the jurisdiction of the City of Holmes Beach. A "violator" may be the owner of the
141 property where the violation exists, the person in charge of the property where the violation
142 exists, such as a tenant or rental agent or the person causing the violation, regardless of
143 whether the person is an owner or in charge.

144 • **Sec. 30-54 – Exemptions.**

145 *Exemptions.* The following activities or sources are exempt from the requirements of this
146 chapter:

147 (1) The emission of sound for the purpose of alerting persons to the existence of
148 an emergency, in the performance of emergency work, or for public health and safety purposes
149 (e.g., mosquito fogging and street sweeping).

150 (2) Between the hours of 8:00 a.m. and 10:00 p.m., ceremonial or traditional
151 activities or events, including the sounding of ceremonial bells and the normal sounds of
152 organized sporting and cultural events.

153 (3) Operation of equipment or conduct of activities normal to residential
154 communities as set forth herein:

155

Description	Hours of Operations
(a) lawn care; soil cultivation; domestic power tools; lawn mowers; maintenance of trees, hedges and gardens; saws and tractors; tree trimming and limb chipping	8:00 a.m. to 8:00 p.m. in residential zoning districts 7:00 a.m. to 7:00 p.m. in commercial zoning districts
(b) operation of equipment for solid waste and recycling collection in or adjacent to residential uses	7:00 a.m. to 7:00 p.m.
(c) operation of equipment for solid waste and recycling collection in nonresidential locations	7:00 a.m. to 7:00 p.m.

156

157 (4) The usual sounds or noises of construction and operation of construction
 158 equipment between the hours of 7:00 a.m. to 7:00 p.m., weekdays; and 9:00 a.m. to 5:00 p.m.
 159 on Saturday. Commercial construction activities, operation of construction equipment and
 160 commercial lawn care activities are prohibited on Sunday and the following holidays: New
 161 Year's Day, Presidents' Day, Good Friday, Memorial Day, Independence Day, Labor Day,
 162 Veterans' Day, Thanksgiving Day, Thanksgiving Friday, Christmas Eve, and Christmas Day.

163 (5) The usual sounds or noises of traffic and motor vehicles on the public right-of-
 164 way.

165 (6) Operation of any air-conditioning or air handling unit; pool pump and filtration
 166 system, or other outdoor mechanical equipment such as generators, in such a manner as to not
 167 exceed any of the following noise levels:

Measurement location	Sound level (dB(A))
a. Any point on neighboring property line	60
b. Centering of nearest neighboring patio or porch	<u>50</u>
c. Outside a neighboring living area window nearest the equipment location	<u>50</u>

168

169 Said equipment must be maintained in reasonable mechanical condition and be operating
170 with the standard noise and vibration control systems provided by the manufacturer. An air
171 conditioning unit is presumed to be in reasonable mechanical condition if it meets the noise
172 specifications contained in the Air Conditioning and Refrigeration Institute's ("ARI") Applied
173 Directory of Certified Product Performance Variable Air Volume terminals. See
174 www.aridirectory.org.

175 • **Sec. 30-55 - Prohibited acts.**

176 *Prohibited acts.* The occurrence of the conditions, acts or omissions as described in
177 subsections (1) or (2) of this section shall constitute a violation of this chapter. Requirements in
178 any one of said subsections stand alone. Measurements described in subsection (2) shall
179 constitute prima facie evidence of a violation of this chapter. However, such measurements are
180 not necessary for enforcement of this chapter; i.e., neither noise measurements and maximum
181 permissible sound levels as provided in subsection (2) nor any other type of noise measurement
182 are necessary to prove a violation of subsection (1) of this section so long as evidence exists
183 sufficient to establish that the sound constitutes a noise disturbance pursuant to the applicable
184 standard of proof.

185 (1) *Noise disturbance.* Notwithstanding any other provision of this chapter, and in
186 addition thereto, it shall be unlawful for any person to make or continue, or cause or permit to
187 be made or continued, any noise disturbance.

188 a. *Standards.* The standards to be considered in determining whether a violation
189 of subsection (1) of this section exists may include but shall not be limited to the following:

- 190 1. The volume of the noise.
- 191 2. The intensity of the noise.
- 192 3. Whether the nature of the noise is usual or unusual.
- 193 4. The volume and intensity of the ambient noise, if any.
- 194 5. The proximity of the noise to residential sleeping facilities.
- 195 6. The time of the day or night the noise occurs.

196 7. The duration of the noise.

197 b. *Persons affected.* Persons affected may include residents, law enforcement or
198 code enforcement officials or others who may be reasonably disturbed by a noise disturbance
199 in the general conduct of their affairs.

200 (2) *Maximum permissible noise levels.*

201 a. *Noise.* No person shall generate or cause to be generated from any source,
202 sound, which is measured from the property line of where the sound is being generated. Such
203 sound must not exceed:

204 1. Sixty-five dBA during the hours between 7:00 a.m. and 10:00 p.m.

205 2. Fifty dBA during the hours between 10:00 p.m. and 7:00 a.m.

206 3. Outdoor mechanical equipment in residential areas is governed by section 30-
207 54(6)

208 b. *Methods of measurements.*

209 1. The measurement of sound shall be made with a decibel or a sound level meter
210 operating on the A-weighted scale of any standard design and quality meeting the standards
211 prescribed by the American National Standards Association. The instruments shall be
212 maintained in calibration and good working order. Measurements recorded shall be taken so as
213 to provide a proper representation of the sound source. The microphone used during
214 measurement shall be positioned so as to not to create any unnatural enhancement or
215 diminution of the measured sound. A wind-screen for the microphone should be used when
216 required. Traffic, aircraft, and other background ambient sounds shall not be considered in
217 taking measurements except where such ambient sound interferes with the primary noise being
218 measured.

219 2. The measurement shall be made no closer than the real property line where the
220 sound is generated and in accordance with the measurement protocols established above.

221 (3) *Internal combustion engine.* Rapid and repeated throttle advance (revving of
222 an internal combustion engine) on the public right-of-way resulting in increased sound from
223 the engine.

224 • **Sec. 30-56 - Enforcement and penalties.**

225 (a) *Criminal enforcement and penalties.* Any person or entity violating any of the
226 provisions of this article shall be prosecuted in the same manner as misdemeanors are
227 prosecuted. Such violations shall be prosecuted in the name of the State of Florida in a court
228 having jurisdiction of misdemeanors by the prosecuting attorney thereof and, upon conviction,
229 shall be punished by a fine not to exceed \$500.00, or by imprisonment in the county jail not to
230 exceed 60 days, or by both such fine and imprisonment. Each incident or separate occurrence
231 of an act that violates this article shall be deemed a separate offense.

232 (b) *Civil remedies and citations.* In addition to the criminal penalties, citations
233 enforcing this chapter may also be issued by City law enforcement and code enforcement
234 officers, when, upon personal investigation, the enforcement officers have reasonable cause to
235 believe a violation of this chapter has been committed.

236 (1) First violation: A City law enforcement or code enforcement officer may issue
237 a civil citation carrying a fine of \$75.00 for a first violation if the officer determines that the
238 violator is subject to the City's jurisdiction for less than six months. Notwithstanding the
239 foregoing, a City law enforcement or code enforcement officer may issue a warning notice for
240 a first violation of this Chapter. A warning notice does not carry a fine.

241 (2) Second violation: Within 365 days of a warning notice or a first violation
242 carrying a fine, as the case may be, a City law enforcement or code enforcement officer shall
243 issue a civil citation with a \$150.00 fine.

244 (3) Third violation: Within 365 days of the second violation, a City law
245 enforcement or code enforcement officer shall issue a civil citation with a \$500.00 fine.

246 (4) Fourth violation: Within 365 days of the second civil citation but subsequent to
247 the issuance of a citation for a third violation, a City law enforcement or code enforcement
248 officer shall issue a civil citation a fine to be determined up to \$750.00.

249 • **Sec. 30-57. - Additional remedies.**

250 *Additional remedies.* No provision of this chapter shall be construed to impair any
251 common law, or equitable or statutory cause of action, or other legal remedy of any person for
252 injury or damage arising from any violation of this chapter. As an additional remedy, the

253 operation or maintenance of any device, instrument, or machinery in violation of any provision
254 hereof which causes discomfort or annoyance, or endangers the comfort, repose, health or peace
255 of a reasonable person of normal sensibilities, may be deemed and is declared to be a public
256 nuisance and may be subject to competent jurisdiction for injunction, both temporary and
257 permanent.

258 **Sec. 30-58 – Proceedings for citations.**

259 (a) The violator shall pay the applicable civil penalty to the city clerk within 15
260 days after receipt of the citation.

261 (b) If the violator elects to contest the citation, he or she, or if a non-natural
262 violator, the violator's authorized representative, shall request a hearing
263 through the city clerk within 15 days after receipt of the citation. The clerk
264 shall schedule a hearing before the special magistrate and shall provide written
265 notice of the hearing to the violator and the officer who issued the citation. The
266 special magistrate shall conduct the hearing pursuant to Section 2-122, City of
267 Holmes Beach Code of Ordinances.

268 (c) In any contested hearing authorized pursuant to this section, a violation must be
269 proven by competent substantial evidence.

270 (d) The maximum civil penalty for any infraction is \$750.00

271 (e) If within 15 days after receipt of the citation, the violator neither pays the civil
272 penalty nor contests the citation, he/she shall be deemed to have waived his or
273 her right to contest the citation and, in such case, the violation shall be deemed
274 admitted. The city may thereafter seek an order of the special magistrate
275 imposing the fine, which may be enforced pursuant to Section 2-122, City of
276 Holmes Beach Code of Ordinances.

277 (f) All civil fines and penalties shall be deposited into the city general fund.

278 **Sec. 30-59– Refusal to sign and accept citation.** Any person who willfully refuses to
279 sign and accept a citation issued by an officer shall be guilty of a misdemeanor of the second
280 degree, pursuant to F.S. subsection 162.21(6), punished as provided in F.S. subsections
281 775.082 and 775.083.

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#8

NOISE CONTROL ORDINANCE
ORDINANCE 16-14

RED-LINED VERSION

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July 6, 2016

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CITY OF HOLMES BEACH
ORDINANCE 16-14

AN ORDINANCE OF THE CITY OF HOLMES BEACH AMENDING ARTICLE III, CHAPTER 30, CITY OF HOLMES BEACH NOISE CONTROL ORDINANCE; PROVIDING FOR FINDINGS OF FACT; PROVIDING FOR TECHNICAL AMENDMENTS TO THE MEASUREMENT OF NOISE; PROVIDING FOR AMENDMENTS TO DEFINITIONS; PROVIDING FOR AMENDMENT TO THE NOISE ORDINANCE ENFORCEMENT CITATION PROCESS; PROVIDING FOR CITATION APPEAL HEARINGS BEFORE THE CITY’S SPECIAL MAGISTRATE; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Holmes Beach is authorized by the Florida Constitutions, Florida Statutes, and the City Charter to promulgate regulations for the benefit of the citizens, residents, and visitors to the City; and

WHEREAS, the City is primarily a residential community consisting of numerous established neighborhoods; and

WHEREAS, noise disturbances have been increasing resulting in interference with the traditional peace of quiet of the City’s residential areas; and

WHEREAS, the City has recognized limitations in previous enforcement actions based on a policy of warning noise violators before taking enforcement action, a policy which has not proven effective when the source property of the noise hosts transient residents on a recurring basis; and

WHEREAS, the City recognizes that an enforcement program mandating a warning prior to issuing a citation is not successful if the violator is within the jurisdiction of the City for a short amount of time as the violator; and

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26 **WHEREAS**, the City Commission has received advice and guidance from its
27 enforcement staff recommending changes to the City’s policy to require issuance of a warning
28 prior to taking enforcement action; and

29 **WHEREAS**, the City Commission has determined that the technical components related
30 to instrument measurements of noise disturbance should be updated; and

31 **WHEREA**, in *Verdi v. Metropolitan Dade County*, 684 So.2d 870 (Fla. 3d DCA 1996),
32 the Court confirmed that cities, including the City of Holmes Beach, have the authority to
33 determine and implement methods and procedures of code enforcement that best serves their
34 cities; and

35 **WHEREAS**, the City Commission has held workshops and public hearings where it
36 heard the testimony of its citizens and other interested persons concerning changes to its
37 enforcement policy; and

38 **WHEREAS**, the City Commission, based upon the recommendations of its professional
39 staff along with the comments received at its workshops and hearings, finds that these
40 amendments address the reoccurring enforcement issues related to noise, and are otherwise in the
41 best interests of the City, its citizens, residents, and visitors.

42 **NOW, THEREFORE, be it ORDAINED** by the City Commission of the City of
43 Holmes Beach, the following:

44 Section One. Findings of Fact. The above Whereas clauses are hereby adopted as
45 findings of Fact.

46 Section Two. Amendments to the City Noise Control Ordinance.

47 The City of Holmes Beach Code of Ordinances, Land Development Article III, Chapter
48 30, Holmes Beach Noise Control Ordinance, is hereby amended by deleting all language shown

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49 as strikethrough and adding all language shown as underscored, so as to read in its entirety as
50 follow:

51 **ARTICLE III. - HOLMES BEACH NOISE CONTROL ORDINANCE**

52 • **Sec. 30-51. - Short title.**

53 This new article III of chapter 30 shall be known and may be cited as the City of Holmes
54 Beach Noise Control Ordinance.

55 • **Sec. 30-52. - Declaration of policy.**

56 It is hereby declared to be the public policy of the City of Holmes Beach to reduce the
57 ambiance noise level in the city, to preserve, protect, and promote public health, safety, and
58 welfare and the peace and quiet of the inhabitants of the city. It is the public policy of the City of
59 Holmes Beach that every person is entitled to ambient noise levels that are not detrimental to
60 life, health and enjoyment of his/her property. It is hereby declared that the making, creation or
61 maintenance of excessive or unreasonable noise within the city affects and is a detriment to
62 public health, comfort, convenience, safety, welfare on the prosperity of the people of the City of
63 Holmes Beach. Excessive and unreasonable noise can cause adverse effects on humans and
64 deprive people of the peaceable enjoyment of their private property. The provisions and
65 prohibitions hereinafter set forth support this public policy of the City of Holmes Beach.

66 • **Sec. 30-53. - Definitions.**

67 *Definitions.* All ~~terminology~~ technical words and phrases used in this article and which
68 are not defined below shall be defined according to applicable publications of the American
69 National Standards Institute (ANSI) or the American Society for Testing and Materials (ASTM)
70 or their successor bodies when these bodies have promulgated such definition. ~~A weighted noise~~
71 ~~level (dBA): The noise pressure level in decibels as measured using A-weighting network on a~~
72 ~~noise level meter that meets the standard set forth in ANSI Standard S-1.4-1983 (or more recent~~
73 ~~version). The level so read is designated "dBA."~~ When not inconsistent with the context, words
74 used in the present tense include the future tense, words in the plural number include the singular
75 number and words in the singular number include the plural number. The word "shall" is always

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76 mandatory and not merely directory. Words not defined shall be given their common and
77 ordinary meaning, or for those so included, the meaning found in this chapter. As used in this
78 chapter, the following terms shall have the following meanings:

79 (1) *Ambient noise*: The surrounding or steady background noise in a particular
80 location as distinct from the specific noise being measured.

81 ~~(2)~~ (3) *Construction activity*: Any site preparation, assembly, erection, substantial
82 repair, alteration, or improvement of realty, whether publicly or privately owned, and whether
83 above ground or below ground. *A-weighted noise level (dBA)*: The noise pressure level in
84 decibels as measure using A-weighting network on a noise level meter that meets the standard
85 set for in ANSI Standard S1.4-1983 (or more recent version). The level so read is designated
86 "dBA".

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87 ~~(2)(3)~~ (3) *Commercial area*: Land designated for commercial use pursuant to the Holmes
88 Beach Code of Ordinances.

89 ~~(4)~~ (5) *Construction activity*: Any site preparation, assembly, erection, substantial
90 repair, alteration, or improvement of realty, whether publicly or privately owned, and whether
91 above ground or below ground.

92 ~~(3)(5)~~ (5) *Decibel (dB)*: The practical unit of measurement for sound pressure level; the
93 number of decibels of a measured sound is equal to 20 times the logarithm to the base ten of
94 the ratio of the sound pressure of the measured sound to the sound pressure of a standard
95 sound (20 micropascals); abbreviated "dB."

96 ~~(4)(6)~~ (6) *Emergency*: Any occurrence or set of circumstances involving actual or
97 imminent physical trauma to human beings or living creatures or property damage which
98 necessitates immediate action.

99 ~~(5)(7)~~ (7) *Emergency work*: Any work performed for the purpose of preventing or
100 alleviating the physical trauma or property damage threatened or caused by an emergency,
101 including work necessary to restore property to a safe condition following an emergency.

102 ~~(6)(8)~~ (8) *Multifamily dwellings*: A building designed or used exclusively for residential
103 occupancy by two or more families.

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104 ~~(7)~~(9) *Noise*: Any sound which annoys or disturbs ~~humans~~ a reasonable person of
105 ordinary sensibilities or causes or tends to cause an adverse physical or psychological effect
106 on ~~humans~~ such reasonable person. "Noise" includes but is not limited to low frequency
107 ~~noises~~ sounds ~~caused by amplified bass music~~ that can induce vibration in building structures
108 or human beings.

109 ~~(8)~~(10) *Noise disturbance*: Any sound ~~noise or vibration~~ which:

110 a. ~~Is or may be~~ Disturbs, annoys or is harmful or injurious to the health or
111 welfare of a reasonable person ~~of ordinary~~ with normal sensitivities ~~sensibilities~~, or

112 b. — The presence of noise in an ~~excessive or disturbing amount or of such~~
113 ~~duration, wave frequency or intensity as to be injurious to human life or health; or~~

114 ~~e.b.~~ Which is plainly audible from a distance of 25 feet or more from a vehicle
115 ~~which is the source of the noise. Exceeds the maximum allowable limits set forth in this~~
116 article.

117 ~~(9)~~(11) *Park land*: Land that is used primarily for public recreational activities.

118 ~~(10)~~(12) *Person*: Any ~~individual~~, natural person, public or private corporation,
119 firm, association, joint venture, partnership, or any other entity whatsoever or any combination
120 of such, jointly and severally.

121 ~~(11)~~(13) *Public right-of-way*: Any street, avenue, boulevard, highway, sidewalk
122 or alley or similar place normally accessible to the public which is owned or controlled by a
123 governmental entity.

124 ~~(12)~~(14) *Public space*: Any real property or structure thereon normally
125 accessible to the public which is owned or controlled by a governmental entity.

126 ~~(13)~~(15) *Real property line*:

127 a. The imaginary line along the ground surface including its vertical extension
128 that separates one parcel of real property from another; or

129 b. The vertical and horizontal boundaries of a dwelling unit that is one unit in a
130 multi-dwelling-unit building.

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131 (16) Residential area: Any area designated for residential use pursuant to the City
132 of Holmes Beach Land Development Code.

133 ~~(14)~~(17) *Short duration and non-repetitive: Any sound with a duration of less*
134 *than 30 seconds.*

135 ~~(15)~~(18) *Sound: An temporal or spatial oscillation in pressure, particle*
136 *displacement, particle velocity or other physical parameter, in a medium with internal forces*
137 *that causes compression and rarefaction of that medium. The description of sound may include*
138 *any characteristic of such sound, including duration, intensity and frequency.*

139 ~~(16)~~(19) *Sound analyzer: A device for measuring the octave band level of a*
140 *sound as a function of frequency.*

141 ~~(17)~~(20) *Sound level: The weighted sound pressure level obtained by the use of*
142 *a metering characteristic and weighting A, B or C as specified in the American National*
143 *Standards Institute specifications for sound level meters ANSI S 1.4-1983, or in successor*
144 *publications. If the weighting employed is not indicated, the A-weighting shall apply The*
145 *conversion of sound pressure to a logarithmic measure called the decibel.*

146 (21) *Sound level or noise meter: An instrument which includes a microphone,*
147 *amplifier, RMS detector, integrator or time averager, output meter, and weighting networks*
148 *used to measure sound pressure levels. The output meter reads sound pressure level when*
149 *properly calibrated, and the instrument is of type 2 or better, as specified in the American*
150 *National Standards Institute publication S 1.4-1983 or its successor publication.*

151 ~~(18)~~(22) *Vibration: A temporal and spatial oscillation of displacement, velocity,*
152 *and acceleration in a solid material,*

153 ~~(19)~~(23) *Violator: Any person, natural or otherwise, in violation of those*
154 *portions of the Code of Ordinances of the City of Holmes Beach, or any ordinances not yet*
155 *codified, which are within the jurisdiction of the City of Holmes Beach. A "violator" may be*
156 *the owner of the property where the violation exists, the person in charge of the property*
157 *where the violation exists, such as a tenant or rental agent or the person causing the violation*
158 *on the property, regardless of whether the person is an owner or in charge.*

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• **Sec. 30-54** ~~—Exceptions~~ **Exemptions.**

~~Exceptions~~**Exemptions.** The following activities or sources are exempt from the requirements of this chapter:

(1) The emission of sound for the purpose of alerting persons to the existence of an emergency, in the performance of emergency work, or for public health and safety purposes (e.g., mosquito fogging and street sweeping).

(2) Between the hours of 8:00 a.m. and 10:00 p.m., ceremonial or traditional activities or events, including the sounding of ~~church~~**ceremonial** bells and the normal sounds of organized sporting and cultural events.

(3) Operation of equipment or conduct of activities normal to residential communities as set forth herein:

Description	Hours of Operations
(a) lawn care; soil cultivation; domestic power tools; lawn mowers; maintenance of trees, hedges and gardens; saws and tractors; tree trimming and limb chipping	8:00 a.m. to 8:00 p.m. in residential zoning districts 7:00 a.m. to 7:00 p.m. in commercial zoning districts
(b) operation of equipment for solid waste and recycling collection in or adjacent to residential uses	7:00 a.m. to 7:00 p.m.
(c) operation of equipment for solid waste and recycling collection in nonresidential locations	7:00 a.m. to 7:00 p.m.

(4) The usual ~~sounds or~~ noises of construction and operation of construction equipment between the hours of 7:00 a.m. to 7:00 p.m., weekdays; and 9:00 a.m. to 5:00 p.m. on Saturday. Commercial construction activities, operation of construction equipment and commercial lawn care activities are prohibited on Sunday and the following holidays: New

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175 Year's Day, Presidents' Day, Good Friday, Memorial Day, Independence Day, Labor Day,
176 Veterans' Day, Thanksgiving Day, Thanksgiving Friday, Christmas Eve, and Christmas Day.

177 (5) The usual ~~engine-sounds or~~ noises of traffic and motor vehicles on the public
178 right-of-way.

179 (6) Operation of any air-conditioning or air handling unit; pool pump and filtration
180 system, or other outdoor mechanical equipment such as generators, in such a manner as to not
181 exceed any of the following noise levels:

Measurement location	Sound level (dB(A))
a. Any point on neighboring property line	60
b. Centering of nearest neighboring patio or porch	<u>50</u>
c. Outside a neighboring living area window nearest the equipment location	<u>50</u>
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183 Said equipment must be maintained in reasonable mechanical condition and be operating
184 with the standard noise and vibration control systems provided by the manufacturer. An air
185 conditioning unit is presumed to be in reasonable mechanical condition if it meets the noise
186 specifications contained in the Air Conditioning and Refrigeration Institute's ("ARI") Applied
187 Directory of Certified Product Performance Variable Air Volume terminals. See
188 www.aridirectory.org.

189 • **Sec. 30-55 - Prohibited acts.**

190 *Prohibited acts.* The occurrence of the conditions, acts or omissions as described in
191 subsections (1) or (2) of this section shall constitute a violation of this chapter. Requirements in
192 any one of said subsections stand alone. Measurements described in subsection (2) shall
193 constitute prima facie evidence of a violation of this chapter. However, such measurements are
194 not necessary for enforcement of this chapter; i.e., neither noise measurements and maximum
195 permissible sound levels as provided in subsection (2) nor any other type of noise measurement

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196 are necessary to prove a violation of subsection (1) of this section so long as evidence exists
197 sufficient to establish that the sound constitutes a noise disturbance pursuant to the applicable
198 standard of proof.

199 (1) *Noise disturbance.* Notwithstanding any other provision of this chapter, and in
200 addition thereto, it shall be unlawful for any person to make or continue, or cause or permit to
201 be made or continued, any noise disturbance, ~~as defined in section 30-53.~~

202 a. *Standards.* The standards to be considered in determining whether a violation
203 of subsection (1) of this section exists may include but shall not be limited to the following:

- 204 1. The volume of the noise.
- 205 2. The intensity of the noise.
- 206 3. Whether the nature of the noise is usual or unusual.
- 207 4. The volume and intensity of the ambient noise, if any.
- 208 5. The proximity of the noise to residential sleeping facilities.
- 209 6. The time of the day or night the noise occurs.
- 210 7. The duration of the noise.

211 b. *Persons affected.* Persons affected may include residents, law enforcement or
212 code enforcement officials or others who may be ~~unreasonable~~reasonably disturbed by a noise
213 disturbance in the general conduct of their affairs.

214 (2) *Maximum permissible noise levels.*

215 a. *Noise.* No person shall generate or cause to be generated from any source,
216 sound, which is measured from the property line of where the sound is being generated. Such
217 sound must not exceed:

- 218 1. Sixty-five dBA during the hours between 7:00 a.m. and 10:00 p.m.
- 219 2. Fifty dBA during the hours between 10:00 p.m. and 7:00 a.m.
- 220 3. Outdoor mechanical equipment in residential areas is governed by section 30-
221 54(6)

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222 b. *Methods of measurements.*

223 1. The measurement of sound shall be made with a decibel or a sound level meter
224 operating on the A-weighted scale of any standard design and quality meeting the standards
225 prescribed by the American National Standards Association. The instruments shall be
226 maintained in calibration and good working order. Measurements recorded shall be taken so as
227 to provide a proper representation of the sound source. The microphone used during
228 measurement shall be positioned so as to not to create any unnatural enhancement or
229 diminution of the measured sound. A wind-screen for the microphone should be used when
230 required. Traffic, aircraft, and other background ambient sounds shall not be considered in
231 taking measurements except where such ambient sound interferes with the primary noise being
232 measured.

233 2. The measurement shall be made ~~no closer than from~~ the real property line
234 where the sound is generated and in accordance with the measurement protocols established
235 ~~above, approximately five feet above ground.~~

236 (3) *Internal combustion engine.* Rapid and repeated throttle advance (revving of
237 an internal combustion engine) on the public right-of-way resulting in increased sound from
238 the engine.

239 • **Sec. 30-56 - Enforcement and penalties.**

240 (a) ~~Criminal~~*Criminal enforcement and penalties.* Any person or entity violating
241 any of the provisions of this article shall be prosecuted in the same manner as misdemeanors
242 are prosecuted. Such violations shall be prosecuted in the name of the State of Florida in a
243 court having jurisdiction of misdemeanors by the prosecuting attorney thereof and, upon
244 conviction, shall be punished by a fine not to exceed \$500.00, or by imprisonment in the
245 county jail not to exceed 60 days, or by both such fine and imprisonment. Each incident or
246 separate occurrence of an act that violates this article shall be deemed a separate offense.

247 (b) *Civil remedies and citations.* In addition to the criminal penalties, citations
248 enforcing this chapter may also be issued by City law enforcement and code enforcement
249 officers, when, upon personal investigation, the enforcement officers have reasonable cause to
250 believe a violation of this chapter has been committed.

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251 (1) First violation: A City law enforcement or code enforcement officer may issue
252 a civil citation carrying a fine of \$75.00 for a first violation if the officer determines that the
253 violator is subject to the City's jurisdiction for less than six months. Notwithstanding the
254 foregoing, a City law enforcement or code enforcement officer may issue a ~~W~~arning notice
255 for a first violation of this Chapter. A warning notice does not carry a fine, ~~in effect for 365~~
256 days, no fine.

257 ~~(+)(2)~~ Second violation: Within 365 days of a warning notice or a first violation
258 carrying a fine, as the case may be, a City law enforcement or code enforcement officer shall
259 issue a civil citation with a ~~\$250~~150.00 fine.

260 ~~(2)(3)~~ Third violation: Within 365 days of the ~~first civil citation~~second violation, a
261 City law enforcement or code enforcement officer shall issue a civil citation with a \$500.00
262 fine.

263 ~~(3)(4)~~ Fourth violation: Within 365 days of the second civil citation but subsequent to
264 the issuance of a citation for a third violation, a City law enforcement or code enforcement
265 officer shall issue a civil citation ~~with a mandatory court appearance and~~ a fine to be
266 determined up to ~~\$50~~750.00.

267 • ~~See. 30-57. Proceedings for citations.~~

268 (a) ~~A person cited for a civil infraction may contest the citation in the county court.~~

269 (b) ~~In any contested hearing authorized pursuant to this section, a violation must be~~
270 ~~proven by competent substantial evidence.~~

271 (c) ~~The maximum civil penalty for any infraction is \$500.00.~~

272 (d) ~~The violator shall pay the applicable civil penalty to the clerk of the county court~~
273 ~~within 30 days after issuance of the citation.~~

274 (e) ~~If the violator elects to contest the citation, he/she shall request a hearing through~~
275 ~~the clerk of the county court within 30 days after issuance of the citation. The clerk shall~~
276 ~~schedule a hearing in the county court and shall provide written notice of the hearing to the~~
277 ~~violator and the officer who issued the citation.~~

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278 ~~(f) — If, within 30 days after issuance of the citation, the violator neither pays the civil~~
279 ~~penalty nor contests the citation, he/she shall be deemed to have waived his right to contest the~~
280 ~~citation and, in such case, the county court shall enter a judgment against the violator in the~~
281 ~~amount of the citation, plus court costs, recording fees, and all surcharges required by this~~
282 ~~section.~~

283 ~~(g) — All civil fines and penalties shall be deposited into the city general fund.~~

284 • — ~~Sec. 30-60. — Refusal to sign and accept citation.~~

285 ~~— Any person who willfully refuses to sign and accept a citation issued by an officer~~
286 ~~shall be guilty of a misdemeanor of the second degree, pursuant to F.S. § 162.21(6), punished as~~
287 ~~provided in F.S. §§ 775.082 and 775.083.~~

288 • — ~~Sec. 30-57. — Special permits.~~

289 ~~Temporary noise permits for prospective activities that will exceed the maximum~~
290 ~~permissible noise levels permitted by this chapter may be obtained by submitting a completed~~
291 ~~application to the mayor or his designee. Such permit shall not be unreasonably withheld so long~~
292 ~~as the prospective activity will not adversely affect the health, safety, and welfare of nearby~~
293 ~~residents. The permit application shall be reviewed in accordance with the standards of this~~
294 ~~chapter and the regulations pertaining to the temporary use permits of the City of Holmes Beach.~~

295 • ~~Sec. 30-587. - Additional remedies.~~

296 ~~Additional remedies.~~ No provision of this chapter shall be construed to impair any
297 common law, or equitable or statutory cause of action, or other legal remedy of any person for
298 injury or damage arising from any violation of this chapter. As an additional remedy, the
299 operation or maintenance of any device, instrument, or machinery in violation of any provision
300 hereof which causes discomfort or annoyance, or endangers the comfort, repose, health or peace
301 of a reasonable person of normal sensibilities, may be deemed and is declared to be a public
302 nuisance and may be subject to competent jurisdiction for injunction, both temporary and
303 permanent.

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305 Sec. 30-598 – Proceedings for citations.

- 306 (a) ~~A person cited for a civil infraction may contest the citation in the county court.~~
307 The violator shall pay the applicable civil penalty to the city clerk of the county
308 ~~court~~ within 3015 days after ~~issuance~~ receipt of the citation.
- 309 (b) If the violator elects to contest the citation, he/ or she, or if a non-natural
310 violator, the violator’s authorized representative, shall request a hearing
311 through the city clerk within 3015 days after receipt of the citation. The clerk
312 shall schedule a hearing before the special magistrate and shall provide written
313 notice of the hearing to the violator and the officer who issued the citation. The
314 special magistrate shall conduct the hearing pursuant to Section 2-122, City of
315 Holmes Beach Code of Ordinances.
- 316 (c) In any contested hearing authorized pursuant to this section, a violation must be
317 proven by competent substantial evidence.
- 318 (d) The maximum civil penalty for any infraction is ~~\$500.00~~750.00
- 319 (e) If within 3015 days after ~~issuance~~ receipt of the citation, the violator neither
320 pays the civil penalty nor contests the citation, he/she shall be deemed to have
321 waived his or her right to contest the citation and, in such case, ~~the county court~~
322 ~~shall enter a judgment against the violator in the amount of the citation, plus~~
323 ~~court costs, recording fees, and all surcharges required by this section the~~
324 violation shall be deemed admitted. The city may thereafter seek an order of the
325 special magistrate imposing the fine, which may be enforced pursuant to
326 Section 2-122, City of Holmes Beach Code of Ordinances.
- 327 (f) ~~If the violator elects to contest the citation, he/she shall require a hearing~~
328 ~~through the clerk of the court within 30 days after issuance of the citation. The~~
329 ~~clerk shall schedule a hearing in the county court and shall provide written~~
330 ~~notice of the hearing to the violator and the office who issued the citation. All~~
331 civil fines and penalties shall be deposited into the city general fund.

332 Sec. 30-60-59 – Refusal to sign and accept citation. Any person who willfully

333 refuses to sign and accept a citation issued by an officer shall be guilty of a misdemeanor of

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334 the second degree, pursuant to F.S. subsection 162.21(6), punished as provided in F.S.
335 subsections 775.082 and 775.083.

336

337 **Section 5. Severability.** In the event that any word(s), phrase(s), portion(s), sub-sub-
338 section(s), sub-section(s), or section(s) of this Ordinance, or application thereof, is contrary to
339 law, or against public policy, or shall for any reason whatsoever held to be invalid, illegal or
340 unconstitutional, by any court of competent jurisdiction, such word(s), phrase(s), portion(s), sub-
341 sub-section(s), sub-section(s), or section(s) of this Ordinance shall be null and void, and shall be
342 deemed severed, and a separate, distinct, and independent provision from the remaining
343 provisions of this ordinance, and such holding shall in no manner affect the validity of the
344 remaining words, phrases, portions, sub-sub-sections, sub-sections, or sections of this Ordinance,
345 which shall remain in full force and effect. This ordinance shall be construed in a manner to
346 accomplish, to the greatest extent legally possible, the purposes of this ordinance as expressed
347 herein.

348 **Section 6. Effective date.** This Ordinance shall be effective upon adoption by the City
349 Commission and approval by the Mayor in accordance with the Charter of the City of Holmes
350 Beach.

351

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352
353 **PASSED AND ADOPTED**, by the City Commission of the City of Holmes Beach, Florida, in
354 regular session assembled, this ____ day of _____, 2016.

355 **First Reading:** _____

356
357 **Publication Date:** _____

358
359 **Second Reading and Public Hearing Date:** _____

360
361 _____
362 Patrick Morton
363 _____
364 Carol Soustek
365 _____
366 Marvin Grossman
367 _____
368 Judy Titsworth
369 _____
370 Jean Peelen

371
372
373 APPROVED BY ME THIS ____ DAY OF _____, 2016
374
375
376
377 _____
378
379 Bob Johnson, Mayor

380
381
382
383 **ATTEST:** _____
384 Stacey Johnston, MMC, City Clerk
385

#9

Ord. No. 16-16

AN ORDINANCE OF THE CITY OF HOLMES BEACH, FLORIDA, AMENDING ARTICLE II, DIVISION 2 COMMISSION AND BOARDS OF THE CITY'S LAND DEVELOPMENT CODE; AMENDING IN ITS ENTIRETY SECTION 2-12 OF THE LAND DEVELOPMENT CODE BY ESTABLISHING A DEVELOPMENT SPECIAL MAGISTRATE PROCESS TO UNDERTAKE THE CURRENT DUTIES OF THE BOARD OF ADJUSTMENT; PROVIDING FOR CONDUCT OF HEARINGS; PROVIDING FOR POWERS OF DEVELOPMENT SPECIAL MAGISTRATE; PROVIDING FOR APPEALS OF DECISIONS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Holmes Beach, Florida is authorized by the Florida constitution, Florida statutes and the City Charter to promulgate and enforce its ordinances; and

WHEREAS, the City of Holmes Beach has a Board of Adjustment which Board reviews variances to the City's Land Development Code regulations, applications for sign variances, application for expansion of nonconforming uses, appeals pursuant to Chapter 14, Buildings and Building Regulations of the Code of Ordinances of the City of Holmes Beach and appeals pursuant to Article IX, Chapter 9 of the City's Land Development Code; and

WHEREAS, the City Commission desires to provide for the most cost effective and efficient method to handle all pending and future applications for variances, applications for sign variances, applications for expansion of nonconforming uses, appeals authorized pursuant to Chapter 14 of the Code of Ordinances, and appeals authorized pursuant to Article IX, Chapter 9 of the Land Development Code; and

WHEREAS, the City Commission desires to dissolve the Board of Adjustment and appoint an Development Special Magistrate to hear all applications, appeals and petitions presently designated in the City's codes and ordinances to be heard by the Board of Adjustment; and

WHEREAS, the City Commission finds that dissolving the Board of Adjustment and appointing a Development Special Magistrate for that purpose is in the best interest of the public, and citizens of the City of Holmes Beach.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF HOMES BEACH, FLORIDA, DULY ASSEMBLED THIS ___ DAY OF _____, 2016, THE FOLLOWING:

Section 1. Findings of Fact. The above referenced “whereas” clauses are adopted herein as findings of fact.

Section 2. Dissolution of the Board of Adjustment. Appointments to the Board of Adjustment, as made pursuant to Section 2.12 of the Land Development Code shall terminate and be null and void upon appointment of a Development Special Magistrate pursuant to Section 3 below. The additions and revisions provided in this ordinance shall not in any way impact or affect ongoing Board of Adjustment actions, except and only to the extent, that a Development Special Magistrate shall replace the Board of Adjustment and its authority related to such applications, petitions and appeals to that board.

Section 3. Substitution of Terms. All references in the City’s Code of Ordinances including the Land Development Code are hereby amended to substitute the term “Development Special Magistrate” in every place that the term, “Board of Adjustment” now appears.

Section 4. Section 2.12 of the Land Development Code is hereby amended in its entirety to read as follows:

“Section 2.12. Development Special Magistrate.

A. Development Special Magistrate appointments made by the Mayor shall be on the basis of experience or interest in city, county and local government law. A Development Special Magistrate shall mean a person who has been appointed by the Mayor with ratification by the City Commission of the City of Holmes Beach to preside over hearings related to issuance of variances, expansion of nonconforming uses and structures, sign variances, appeals provided for in Chapter 14, and appeals provided for in Article IX, Chapter 9 of the Land Development Code, and any other matters determined by the City Commission by ordinance or resolution.

1. Appointments shall be made for a term not more than one year. A Development Special Magistrate may be re-appointed at the discretion of the Mayor, subject to

ratification by the City Commission. There shall be no limit on the number of reappointments that shall be given to the Development Special Magistrate; provided, however, that a determination as to removal or reappointment must be made for each Development Special Magistrate at the end of each one-year term. The Mayor shall have the authority to remove the Development Special Magistrate with or without cause. Appointment to fill any vacancy shall be for the remainder of the unexpired term.

2. The Development Special Magistrate shall not be a city employee. The Development Special Magistrate shall be compensated at a rate to be determined by resolution or agreement.

3. The Development Special Magistrate shall have jurisdiction to hear and decide applications for variances, sign variances, applications for expansion of nonconformities, appeals pursuant to Chapter 14, Code of Ordinances and appeals pursuant to Article IX, Chapter 9 of the Land Development Code (Floodplain Management), and such other matters determined by ordinance or resolution of the City Commission.

4. No Development Special Magistrate shall communicate with any party, witness, representative of a party, or interceding person concerning any alleged violation except at the hearings provided for in this article. Failure on the part of Development Special Magistrate to comply with provisions of this subsection shall constitute grounds for removal by the Mayor.

B. Conduct of Hearing.

1. Upon the request of the staff, or at such other times as may be necessary to address administrative matters, the Development Special Magistrate may call a hearing or a meeting as circumstances dictate. Minutes shall be kept of all hearings, meetings and proceedings of the Development Special Magistrate. All hearings, meetings and proceedings of the Development Special Magistrate shall be open to the public, but under no circumstances is the public generally entitled to participate in the proceedings unless they have relevant and material evidence, testimony or matters to

submit and then only with the permission of the Development Special Magistrate. The City shall provide for such clerical and administrative personnel as may be reasonably required and necessary by the Development Special Magistrate in the proper performance of his or her duties.

2. Each case submitted to the Development Special Magistrate shall be presented on behalf of the City by either the Building Official, or his designee, as appropriate or by the City's attorney.

3. The Applicant shall have present its case first and shall have the burden to prove entitlement to the relief sought in the petition based upon substantial competent evidence.

4. The Development Special Magistrate shall proceed to hear the cases scheduled for hearing on the agenda for that day. All testimony shall be under oath and shall be recorded. Testimony shall be taken from the City staff, the Applicant and other witnesses who have relevant and material testimony or evidence to submit concerning the petition. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings. The hearing or proceedings of the Development Special Magistrate are quasi-judicial in nature and the proper decorum, conduct and respect due such proceedings shall be rendered by all persons involved.

5. The Development Special Magistrate shall render his or her initial findings and conclusions based on the evidence of record within a reasonable time frame after the hearing in a written decision containing findings of fact, conclusions of law and affording the proper relief consistent with the powers granted herein as it relates to the Applicant. The Applicant has the burden of proof and must demonstrate entitlement to the relief sought based upon substantial, competent evidence.

C. Powers of the Development Special Magistrate. The Development Special Magistrate, appointed pursuant to this article, shall have the power to:

1. Adopt rules for the conduct of the hearings;
2. Subpeona alleged violators, witnesses and evidence to the hearings and such subpoenas may be served by the police department of the City or by a process server, as may be necessary;
3. Subpeona evidence to the hearing; and
4. Take all testimony under oath.

D. Appeals.

An aggrieved party, including the City, may appeal the written decision of the Development Special Magistrate to the Circuit Court in and for Manatee County. Such an appeal shall not be a hearing de novo, but shall be limited to the appellate review of the record created before the Development Special Magistrate. An appeal shall be filed within 30 days after rendition of the decision to be appealed. Review in the Circuit Court shall be by petition for writ of certiorari which shall be governed by the Florida Appellate rules.”

Section 9. Severability. If any section, subsection, paragraph, sentence, clause, or phrase in this Ordinance is held invalid by a court of competent jurisdiction, then such invalidity shall not affect the remaining portions hereof.

Section 10. Effective Date. This ordinance shall take effect as provided by law.

Publication Date: _____

First Reading: _____

Second Reading and Public Hearing Date: _____

PASSED AND ADOPTED this _____ day of _____ 2016, by the City Commission of the City of Holmes Beach, Florida, with a quorum present and voting

Patrick Morton

Carol Soustek

Marvin Grossman

Judy Titsworth

Jean Peelen

APPROVED BY ME THIS _____ DAY OF _____, 2016

Robert Johnson, Mayor

ATTEST:

Stacey Johnston, MMC, City Clerk

#10

THE DOCTOR'S OFFICE

5312 Holmes Blvd.

SITE PLAN REVIEW

CITY STAFF REPORT

THE DOCTOR'S OFFICE: Site Plan Review

STAFF COMMENTARY for CITY COMMISSION PUBLIC HEARING, 7/12/2016

COMMERCIAL INTERIOR REMODEL: 5312 Holmes Blvd.

1. Qualification for administrative waiver:

The proposed work is a commercial interior remodel with no new structures and no change in footprint or height of the existing building. The Applicant originally thought his situation would qualify, under LDC Sec. 3.5.B, for an administrative waiver to the requirement to undergo a full site plan review. However, after examination it was determined that the proposed change of use and intensification of use resulted in an increase in the number of required parking spaces. In addition, a portion of the existing on-site parking has been rearranged. Therefore, the proposed change does not meet administrative waiver condition number two of Sec. 3.5.B, Waiver provision, which reads as follows:

“The proposed use does not have different dimensional or other requirements, including but not limited to off-street parking, than the prior use of the lot, parcel, building or structure;”

2. Qualification for administrative review:

Similarly, the change in use does not qualify for administrative review of the site plan allowed under Sec. 3.5.L because the resulting increase in required parking spaces exceeds one-third of the number of parking spaces required for the use before the change. The original parking requirement was 10 spaces [3,223 sf @ on space per 250 sf = 13]. The new configuration requires 10 spaces for the bar and 8 spaces for the Art League for a total of 18 which is an increase of 38%.

3. Off-street parking availability – total 10 spaces:

There will be a total of 10 off-street parking spaces on the property including the required designated handicap space: 6 spaces at the southeast corner of the property that back-out onto Holmes Boulevard, two of which are compact spaces in accordance with the 20 % limitation imposed under Sec. 8.19.F.5. Three new parallel spaces are located between the front of the building and Holmes Boulevard and one designated handicap space is provided on the west side of the building.

4. Hours of operation of the uses in the building:

There are three uses currently located in the building at 5312 Holmes Boulevard. They are the proposed Doctors Office Bar with 30 seats, the Art League encompassing about 1,925 square feet, and an artist 996 square foot art studio used by Mr. Thomas, the owner.

The parking requirements for each use are as follow:

It has been determined that both the artist studio and the Art League qualify under the category of "Business, professional and governmental office" for parking purposes. The parking requirement for such uses is one space per each 300 square feet of area. The combination of these two uses requires 10 off street parking spaces. The Doctors Office, with 30 seats requires 10 off-street parking spaces.

If both the Art League and Mr. Thomas agree to limit the occupancy and use of their respective units to the period between 7am and 5pm, and the Doctors Office limits its use and occupancy to the period from 5pm to midnight, the property would qualify for "Joint use of off-street parking spaces under Section 8.19.H in the LDC.

Staff Comment: However, it may be possible for the Art League to hold evening functions at the site provided it obtains a temporary use permit from the City in accordance with the provisions of Sec. 6.7.Z.

5. Standards for joint use of required off-street parking spaces (Sec. 8.19.H.1):

Under this section, the City Commission may approve the utilization of one parking area to provide the required parking spaces for more than one use, so long as the person requesting approval is able to demonstrate that the following standards are met:

- a. "Evidence of legal right: Satisfactory written evidence that the person requesting approval has the legal right to use the parking area proposed for joint use."

Staff Comment: The application includes a notarized statement signed by the owners of the property authorizing Mr. Murphy to exercise control over the parking on the property, most particularly after 5pm. In addition, the site plan approval should include stipulations that the Art League and Mr. Thomas' art studio will operate on site only from 7am to 5pm, and that the Doctors Office will operate only between the hours of 5pm and midnight.

- b. "Different period of peak use: It must be shown that the joint users, due to the nature of their respective uses will have different periods of peak use of the jointly used parking area.

Staff Comment: The above stipulations should be included in the Resolution and each of the above three entities should join in the resolution approving the joint non-concurrent use of the parking and approval of the site plan.

- c. "Impacts of joint use: The proposed joint use of the parking area shall not be detrimental to or endanger the public health, safety or general welfare or adversely impact other property, including streets and rights-of-way adjacent to the parking area and within the immediate neighborhood."

Staff Comment: So long as all tenants of the property abide by provisions of the stipulations and the seating limitations associated with the parking requirements, we would not expect any adverse impact upon the neighborhood or nearby properties.

- d. Sec. 8.19.H.1, Invalidation of an approved joint use states:

"Any change in one of the joint uses shall invalidate any prior approval granted by commission under this section."

Staff Comment: Pending approval of the City Attorney, we suggest that wording along the lines of the following be included in the site plan approval resolution:

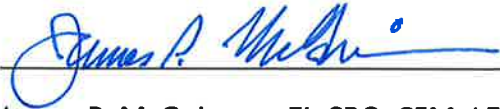
Any change in one of the joint uses shall invalidate any prior approval granted by the City Commission; and, within 30(?) days a new joint use agreement, acceptable to the City, and signed by representatives of each use on the property should be effected; or, all off-street parking for any and all uses on the property shall be provided in the manner required by strict application of the parking requirements for each use.

6. Stipulations suggested by the City Attorney in the draft Resolution prepared 6/16/2016:

In addition to the hours of operation noted previously, Ms. Petruff originally included the following stipulations with regard to the Doctors Office Bar, which have been modified slightly by Mr. Dye. These stipulations were that briefly discussed during the City Commission Work Session on June 14, 2016. These are:

- a. The hours of operation are limited to 5.p.m. to midnight.
- b. The seating within the bar is limited to thirty (30) seats.
- c. The required number of on-site parking spaces is 10 including a properly marked handicap space.
- d. Outdoor seating is prohibited.
- e. Amplified out-door music is prohibited.
- f. The Operator of the alcoholic beverage establishment will provide staff with one meal during the shift.

- g. During special events, the operator of the alcoholic beverage establishment will provide valet parking to customers.
- f. The Operator will have a vehicle available or will make appropriate arrangements to transport customers home, if deemed necessary.



James P. McGuinness EI, CBO, CFM, LEED AP
Building Official/Superintendent of Public Works
(In collaboration with: Bill Brisson AICP, Senior Planner)

#10

THE DOCTOR'S OFFICE

5312 Holmes Blvd.

SITE PLAN REVIEW

PROPOSED RESOLUTION

July 12, 2016 Regular Meeting
Agenda Item # 10
RESOLUTION NO. 16-02

STAFF REPORT

TO: Mayor and City Commission
FROM: Stacey Johnston, MMC, City Clerk
SUBJECT: Resolution No. 16-02 – Doctor's Office



Attorney Jim Dye is in the process of drafting the final Resolution. It will be forwarded to the Commission upon its completion.

#10

THE DOCTOR'S OFFICE

5312 Holmes Blvd.

SITE PLAN REVIEW

APPLICANT REPORT

**Site Plan Review Narrative
For
Interior Renovation/Change of Use
At
5312 Holmes Blvd
Holmes Beach, Fl.
6/29/16**

Existing Site:

The existing building (constructed in 1953) at 5312 Holmes Blvd. currently houses the Anna Maria Island Art League offices and studios, as well as a consignment shop and a realtor office. The parcel is 11,670 sf and is zoned C-3. The Future Land Use category is commercial. The site has 10 on site, conforming, parking spaces. The existing uses are conducted during typical daytime hours (8-5). The Owner has granted use of the existing parking after 5pm. (agreement attached)

Proposed Use:

The tenant and business owner (Sean Murphy) is a longtime resident with an extended history of community service and has two successful establishments in Holmes Beach (Beach Bistro/Eat Here). This endeavor will be a small, upscale bar in the north portion of the existing building which now houses the consignment shop and the real estate office (app. 1100 interior sf). The business will encompass 30 seats and will not open before 5pm coinciding with the closing of the Art league offices. There will be no kitchen or cooking on site.

Parking Requirements:

30 seats divided by 3 seats per space = 10 spaces

On site, conforming spaces (including handicap space/accessible isle) - 10 spaces

Project Scope of Work:

This project will consist of interior renovation of the existing space, the updating of the mechanical systems to serve the proposed use as well as construction of accessible restroom facilities and proper egress/ingress per FBC 2014. The projects meets all current LDC requirements.

Conclusion:

This project will provide an upscale bar experience for the residents and visitors of Holmes Beach administered by a well-respected and proven local proprietor.