

TOWN COUNCIL AGENDA REGULAR MEETING

THURSDAY NOVEMBER 21, 2024 – 2:00 P.M. TOWN COUNCIL CHAMBERS 4300 S. ATLANTIC AVENUE, PONCE INLET, FL

SUNSHINE LAW NOTICE FOR BOARD MEMBERS – Notice is hereby provided that one or more members of the Town's various boards may attend and speak at this meeting.

A complete copy of the materials for this agenda is available at Town Hall.

- 1. CALL TO ORDER.
- 2. PLEDGE OF ALLEGIANCE.
- 3. ROLL CALL.

NOTE: Citizens who wish to speak during Public Participation about any subject that is not on the meeting agenda should fill out the Citizen Participation Request form and submit it to the Town Clerk prior to the start of the meeting.

- 4. INAUGURATION:
 - A. Administer Oath of Office to Council Members Elect.

~~~ Break for Refreshments ~~~

- B. Reconvene Council meeting.
- C. Appointment of Vice-Mayor.
- D. Appointment of Council representatives for interlocal organizations:
  - 1. Primary and Alternate representatives to the Volusia County Elected Officials Roundtable.
  - 2. Primary and Alternate representatives to the Volusia-Flagler Transportation Planning Organization.
  - 3. Representative to the First Step Shelter, Inc. Board of Directors *any change requires confirmation by the City of Daytona Beach Commission*.
- 5. ADDITIONS, CORRECTIONS OR DELETIONS TO THE AGENDA.
- 6. CITIZENS' PARTICIPATION The Town of Ponce Inlet encourages engagement by citizens via a variety of means. This is an opportunity for our citizens to talk to us collectively on any subject that is not identified on the meeting agenda. The Town's Rules for Conducting Town Council meetings are set forth in Resolution 2024-09 and include the following guidelines:

- Citizens are provided with 5 minutes at each meeting to speak on one or more issues that are not otherwise placed on the meeting agenda.
- Please introduce yourself with your name and address clearly for the record.
- Share with us your thoughts, ideas, and opinions; we want to hear them.
- Under our rules, all questions and comments are directed to the Mayor.

While some questions may be able to be addressed at this meeting, others may require research or more information than we have readily available from our staff, so we may have to defer the response to you until we have that information. Also, depending on the type of issue, we may place the matter on a properly noticed subsequent meeting agenda. As a Council, we welcome the opportunity to hear from you and hope you will speak with us not only during Citizen Participation but outside of these meetings. We understand the formal nature of this meeting, but rest assured, we want to hear from you, we want to address your concerns, and we are appreciative of your involvement.

#### 7. PROCLAMATIONS, PRESENTATIONS, AND AWARDS:

- A. Small Business Administration disaster loan program *Yolanda Dillard*.
- B. Veterans Memorial expansion plans Mark Oebbecke with June and Marty Foreman
- C. Native landscaping restoration at Town Hall *Barbara Davis*.
- 8. CONSENT AGENDA Items on the consent agenda are defined as routine in nature that do not warrant detailed discussion or individual action by the Council; therefore, all items remaining on the consent agenda shall be approved and adopted by a single motion, second and vote by the Town Council. Items on the consent agenda are not subject to discussion. Any member of the Town Council may remove any item from the consent agenda simply by verbal request at the Town Council meeting. Removing an item from the consent agenda does not require a motion, second or a vote; it would simply be a unilateral request of an individual Council member and this item would then be added as the last item under New Business. As with all agenda items, the public will have the opportunity to comment prior to a motion being placed on the floor and their comment(s) may persuade the Council to remove the item from the Consent Agenda and place under New Business for discussion.
  - A. Annual Financial Statements from Citizens For Ponce Inlet (C4PI).
  - B. Request for the use of Town property for the Operation Changing Lives 5K
  - C. Approval of the Town Council Regular meeting minutes. October 17, 2024.
- 9. OLD/NEW BUSINESS ITEMS PREFERRED AT THE BEGINNING OF THE MEETING:
  - A. Approval of one-year agreement with Halifax Humane Society, Inc. for animal shelter services.
  - B. Request for co-sponsorship of the 14<sup>th</sup> annual Ponce Inlet Christmas Parade with proposed changes to staging and increased cost to the Town.
- 10. PUBLIC HEARINGS / QUASI-JUDICIAL MATTERS: None.

#### 11. PUBLIC HEARINGS / NON-QUASI-JUDICIAL MATTERS:

- A. Ordinance 2024-06 2<sup>nd</sup> reading Amending Section 2.40 Table of Permitted Uses in the Land Use and Development Code to include farmers markets as a major special exception use in the P-I (Public-Institutional) zoning district. **TO BE HEARD AFTER 5:00 PM per F.S. 166.041(3).**
- B. Ordinance 2024-07 2<sup>nd</sup> reading Amending Chapters 1, 2, 6, 10, 18, 34, 42, 46, 51, 62, 66, 70, 74, 78 and 82 of the Code of Ordinances to substitute references of the Code Enforcement Board with Special Magistrate.
- C. Ordinance 2024-08 2<sup>nd</sup> reading Amending Articles 3, 8, and 9 of the Land Use and Development Code to substitute references of the Code Enforcement Board with Special Magistrate.

#### 12. ORDINANCES (FIRST READING) AND RESOLUTIONS:

- A. Ordinance 2024-09 1<sup>st</sup> reading Prohibiting the non-medical, personal use of marijuana on public property within the Town of Ponce Inlet.
- 13. OLD BUSINESS: *None*.

#### 14. NEW BUSINESS:

- A. Discussion Amending the Land Acquisition Fund to allow vehicle and equipment purchases.
- B. Discussion of proposed county-wide moratorium for new residential development from the November 19, 2024 County Council agenda. requested by Councilmember White

#### 15. FROM THE TOWN COUNCIL:

- A. Vice-Mayor Smith, Seat #5
- B. Councilmember Villanella, Seat #4
- C. Councilmember White, Seat #3
- D. Councilmember Milano, Seat #2
- E. Mayor Paritsky, Seat #1
- 16. FROM THE TOWN MANAGER.
- 17. FROM THE TOWN ATTORNEY.

18. CITIZENS' PARTICIPATION - The Town of Ponce Inlet encourages engagement by citizens via a variety of means. This is another opportunity for our citizens to talk to us collectively for 2 minutes before closure of this meeting regarding reports provided by the Town Council, Town Manager, or Town Attorney in items 14-16 (only) of the meeting agenda.

#### 19. ADJOURNMENT.

#### Upcoming Town Council meeting(s) and Important date(s):

• Thursday, December 19, 2024, 2:00 PM – Regular Town Council Meeting.

If a person decides to appeal any decision made by the Town Council with respect to any matter considered at a meeting or hearing, he/she will need a record of the proceedings and that for such purpose, he/she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. Persons who require accommodation to attend this meeting should contact the Ponce Inlet Town Hall at 236-2150 at least 48 hours prior to the meeting to request such assistance.



**Meeting Date:** 11/21/2024

Agenda Item: 4

#### **Report to Town Council**

**Topic:** Inauguration

#### **Summary:**

A. Administer the Oath of Office to Council Members – Elect.

~~~Break for Refreshments~~~

- B. Reconvene and Roll-Call of New Council
- C. Appointment of Vice-Mayor
- D. Appointment of Council representatives for interlocal organizations:
 - 1. Primary and Alternate representatives to the Volusia County Elected Officials Roundtable.
 - 2. Primary and Alternate representatives to the Volusia-Flagler Transportation Planning Organization.
 - 3. Representative to the First Step Shelter, Inc. Board of Directors any change requires confirmation by the City of Daytona Beach Commission.

Requested by: Ms. Cherbano, Town Clerk

Approved by: Mr. Disher, Town Manager



Meeting Date: 11/21/2024

Agenda Item: 7

Report to Town Council

Topic: Proclamations, Presentations, and Awards.

Summary:

A. Small Business Administration disaster loan program.

B. Veterans Memorial expansion plans.

C. Native landscaping restoration at Town Hall.

Suggested motion: None required.

Requested by: Mr. Disher, Town Manager

Approved by: Mr. Disher, Town Manager

Date: 10/11/2024

Item 7-A



U.S. SMALL BUSINESS ADMINISTRATION FACT SHEET - DISASTER LOANS

FLORIDA Declaration 20759 & 20760
(Disaster: FL-20015)
Incident: HURRICANE MILTON

occurring: October 5, 2024 & continuing

in the <u>Florida</u> counties of: Brevard, Charlotte, Citrus, Clay, Collier, DeSoto, Duval, Flagler, Glades, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Lake, Lee, Manatee, Marion, Martin, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, Sarasota, Seminole, St. Johns, St. Lucie, Sumter, Volusia and the Miccosukee Tribe of Indians of Florida; and for economic injury only in the contiguous <u>Florida</u> counties of:

Alachua, Baker, Bradford, Broward, Levy, Miami-Dade, Monroe and Nassau

Application Filing Deadlines:

Physical Damage: December 10, 2024 Economic Injury: July 11, 2025

If you are located in a declared disaster area, you may be eligible for financial assistance from the U. S. Small Business Administration (SBA).

What Types of Disaster Loans are Available?

- <u>Business Physical Disaster Loans</u> Loans to businesses to repair or replace disaster-damaged property owned by the business, including real estate, inventories, supplies, machinery and equipment. Businesses of any size are eligible. Private, non-profit organizations such as charities, churches, private universities, etc., are also eligible.
- Economic Injury Disaster Loans (EIDL) Working capital loans to help small businesses, small agricultural cooperatives, small businesses engaged in aquaculture, and most private, non-profit organizations of all sizes meet their ordinary and necessary financial obligations that cannot be met as a direct result of the disaster. These loans are intended to assist through the disaster recovery period.
- <u>Home Disaster Loans</u> Loans to homeowners or renters to repair or replace disaster-damaged real estate and personal property, including automobiles.

What are the Credit Requirements?

- <u>Credit History</u> Applicants must have a credit history acceptable to SBA.
- Repayment Applicants must show the ability to repay all loans.

What are the Interest Rates?

By law, the interest rates depend on whether each applicant has Credit Available Elsewhere. An applicant does not have Credit Available Elsewhere when SBA determines the applicant does not have sufficient funds or other resources, or the ability to borrow from non-government sources, to provide for its own disaster recovery. An applicant, which SBA determines to have the ability to provide for his or her own recovery is deemed to have Credit Available Elsewhere. Interest rates are fixed for the term of the loan. The interest rates applicable for this disaster are:

| Physical Damage Loan Types | No Credit Available
Elsewhere | Credit Available
Elsewhere |
|----------------------------|----------------------------------|-------------------------------|
| Home Loans | 2.813% | 5.625% |
| Business Loans | 4.000% | 8.000% |
| Non-Profit Organizations | 3.250% | 3.250% |

| Economic Injury Loan Types | No Credit Available
Elsewhere | Credit Available
Elsewhere | |
|--|----------------------------------|-------------------------------|--|
| Businesses & Small Agricultural Cooperatives | 4.000% | N/A | |
| Non-Profit Organizations | 3.250% | N/A | |

What are Loan Terms?

The law authorizes loan terms up to a maximum of 30 years. However, the law restricts businesses with credit available elsewhere to a maximum 7-year term. SBA sets the installment payment amount and corresponding maturity based upon each borrower's ability to repay. Borrowers may be required to provide collateral.

Date: 10/11/2024

What are the Loan Amount Limits?

- <u>Business Loans</u> The law limits business loans to \$2,000,000 for the repair or replacement of real estate, inventories, machinery, equipment and all other physical losses. Subject to this maximum, loan amounts cannot exceed the verified uninsured disaster loss.
- Economic Injury Disaster Loans (EIDL) The law limits EIDLs to \$2,000,000 for alleviating economic injury caused by the disaster. The actual amount of each loan is limited to the economic injury determined by SBA, less business interruption insurance and other recoveries up to the administrative lending limit. EIDL assistance is available only to entities and their owners who cannot provide for their own recovery from non-government sources, as determined by the U.S. Small Business Administration.
- <u>Business Loan Ceiling</u> The \$2,000,000 statutory limit for business loans applies to the combination of physical, economic injury, mitigation and refinancing, and applies to all disaster loans to a business and its affiliates for each disaster. If a business is a major source of employment, SBA has the authority to waive the \$2,000,000 statutory limit.
- Home Loans SBA regulations limit home loans to \$500,000 for the repair or replacement of real estate and \$100,000 to repair
 or replace personal property. Subject to these maximums, loan amounts cannot exceed the verified uninsured disaster loss.

What Restrictions are there on Loan Eligibility?

- <u>Uninsured Losses</u> Only uninsured or otherwise uncompensated disaster losses are eligible. Any insurance proceeds which are required to be applied against outstanding mortgages are not available to fund disaster repairs and do not reduce loan eligibility. However, any insurance proceeds voluntarily applied to any outstanding mortgages do reduce loan eligibility.
- <u>Ineligible Property</u> Secondary homes, personal pleasure boats, airplanes, recreational vehicles and similar property are not eligible, unless used for business purposes. Property such as antiques and collections are eligible only to the extent of their functional value. Amounts for landscaping, swimming pools, etc., are limited.
- <u>Noncompliance</u> Applicants who have not complied with the terms of previous SBA loans may not be eligible. This includes borrowers who did not maintain flood and/or hazard insurance on previous SBA loans.

Note: Loan applicants should check with agencies / organizations administering any grant or other assistance program under this declaration to determine how an approval of SBA disaster loan might affect their eligibility.

Is There Help with Funding Mitigation Improvements?

If your loan application is approved, you may be eligible for additional funds to cover the cost of improvements that will protect your property against future damage. Examples of improvements include retaining walls, seawalls, sump pumps, etc. Mitigation loan money would be in addition to the amount of the approved loan but may not exceed 20 percent of total amount of physical damage to real property, including leasehold improvements, and personal property as verified by SBA to a maximum of \$500,000 for home loans. It is not necessary for the description of improvements and cost estimates to be submitted with the application. SBA approval of the mitigating measures will be required before any loan increase.

Is There Help Available for Refinancing?

- SBA can refinance all or part of prior mortgages that are evidenced by a recorded lien, when the applicant (1) does not have credit available elsewhere, (2) has suffered substantial uncompensated disaster damage (40 percent or more of the value of the property or 50% or more of the value of the structure), and (3) intends to repair the damage.
- Businesses Business owners may be eligible for the refinancing of existing mortgages or liens on real estate, machinery and equipment, up to the amount of the loan for the repair or replacement of real estate, machinery, and equipment.
- Homes Homeowners may be eligible for the refinancing of existing liens or mortgages on homes, up to the amount of the loan for real estate repair or replacement.

What if I Decide to Relocate?

You may use your SBA disaster loan to relocate. The amount of the relocation loan depends on whether you relocate voluntarily or involuntarily. If you are interested in relocation, an SBA representative can provide you with more details on your specific situation.

Are There Insurance Requirements for Loans?

To protect each borrower and the Agency, SBA may require you to obtain and maintain appropriate insurance. By law, borrowers whose damaged or collateral property is located in a special flood hazard area must purchase and maintain flood insurance. SBA requires that flood insurance coverage be the lesser of 1) the total of the disaster loan, 2) the insurable value of the property, or 3) the maximum insurance available.

Applications for disaster loans may be submitted online using the MySBA Loan Portal at https://lending.sba.gov or other locally announced locations. Please contact the SBA's Customer Service Center by email at disastercustomerservice@sba.gov or by phone at 1-800-659-2955 for further assistance. For people who are deaf, hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services.



Disaster Loans

for Homeowners and Renters



Benefits of a disaster loan for homeowners and renters

- ☐ Low-interest, fixed rate with terms up to 30 years
- ☐ No payment and no interest for 12 months
- ☐ Up to \$500,000 to cover damage to primary residences
- ☐ Up to \$100,000 to replace personal property, including vehicles
- ☐ Funds available to build back better and protect against future disasters (Mitigation)
- ☐ No need to wait for insurance to settle before applying

What you need to apply for a disaster loan

- ☐ Email addresses and contact information for all applicants
- ☐ Social Security numbers for all applicants/owners
- ☐ Financial information, e.g. income and monthly expenses
- ☐ A complete copy of the most recent Federal income tax return (this can be provided later)
- ☐ Insurance information, if available

Ways to apply

- ☐ Scan the QR Code
- ☐ Visit sba.gov/disaster



For Additional Information

- ☐ Call (800) 659-2955 (dial 7-1-1 to access telecommunications relay services)
 - O To locate a Recovery Center for assistance with your loan application
 - O To check the status of your loan application



Préstamos por desastre

para propietarios de hogares e inquilinos



Beneficios de un préstamo por desastre para propietarios de hogares e inquilinos

- ☐ Baja tasa de interés fija con plazos de hasta 30 años
- ☐ No se requiere pago ni se generan intereses durante los primeros 12 meses
- ☐ Préstamo máximo de hasta 500,000 dólares para cubrir daños en la residencia principal
- ☐ Préstamo máximo de 100,000 dólares para bienes y propiedad personal e incluye vehículos
- ☐ Fondos disponibles para reconstruir con mayor resiliencia y seguridad (mitigación)
- No es necesario esperar a que se concluya el proceso del seguro antes de realizar la solicitud

Qué necesitan para solicitar un préstamo por desastre

- ☐ Correo electrónico e información de contacto de todos los solicitantes
- ☐ Número de seguro social de todos los solicitantes/propietarios
- ☐ Información financiera como ingresos y gastos mensuales
- ☐ Copia completa de la última declaración de impuestos federales presentada (puede entregrarse después)
- ☐ Información del seguro, en caso de contar con ella

Formas de solicitar

- ☐ Escanee el código QR
- ☐ Visite sba.gov/desastre



¿Preguntas?

- ☐ Llame al (800) 659-2955 (marque 7-1-1 para acceder a los servicios de retransmisión de telecomunicaciones)
 - O Para localizar un Centro de Recuperación
 - O Para información sobre el estatus de su solicitud



Disaster Loans for Businesses and Non-Profits



Benefits of a disaster loan

- ☐ Up to \$2 million to cover physical damage and financial losses
- ☐ Low fixed rate interest with terms up to 30 years
- ☐ No payment and no interest for 12 months
- ☐ No need to wait for insurance to settle before applying
- ☐ Funds available to build back better and protect against future disasters (Mitigation)

What you need to apply for a disaster loan

- ☐ Email addresses and contact information for all applicants
- ☐ Social Security numbers for all applicants/owners, and Employer Identification Numbers (EIN)
- ☐ Financial information, e.g. income and monthly expenses
- ☐ A complete copy of the most recent Federal income tax return (this can be provided later)
- ☐ Insurance information, if available

Ways to apply

- ☐ Scan the QR Code
- ☐ Visit sba.gov/disaster



For Additional Information

- ☐ Call (800) 659-2955 (dial 7-1-1 to access telecommunications relay services)
 - O To locate a Recovery Center for assistance with your loan application
 - O To check the status of your loan application



Préstamos por desastre

para empresas y organizaciones sin fines de lucro



Beneficios de un préstamo por desastre para empresas y organizaciones sin fines de lucro

- ☐ Hasta 2 millones de dólares para cubrir daños materiales y pérdidas económicas
- ☐ Baja tasa de interés fija con plazos de hasta 30 años
- ☐ No se requiere pago ni se generan intereses durante los primeros 12 meses
- ☐ No es necesario esperar a que se concluya el proceso del seguro antes de realizar la solicitud
- ☐ Fondos disponibles para reconstruir con mayor resiliencia y seguridad (mitigación)

Qué necesitan para solicitar un préstamo por desastre

- ☐ Correo electrónico e información de contacto de todos los solicitantes
- ☐ Número de seguro social y números de identificación fiscal (EIN) de todos los solicitantes/propietarios
- ☐ Información financiera como ingresos y gastos mensuales
- ☐ Copia completa de la última declaración de impuestos federales presentada (puede entregrarse después)
- ☐ Información del seguro, en caso de contar con ella

Formas de solicitar

- ☐ Escanee el código QR
- ☐ Visite sba.gov/desastre



¿Preguntas?

- ☐ Llame al (800) 659-2955 (marque 7-1-1 para acceder a los servicios de retransmisión de telecomunicaciones)
 - O Para localizar un Centro de Recuperación
 - O Para información sobre el estatus de su solicitud



Economic Injury Disaster Loans



Benefits of an SBA Working Capital Loan for Small Businesses and Non-Profits

- ☐ Up to \$2 million to meet ordinary and necessary financial obligations
- ☐ Low fixed interest rate with terms up to 30 years
- ☐ No payment and no interest for 12 months
- ☐ No need to wait for insurance to settle before applying

What you need to apply for a disaster loan

- ☐ Email addresses and contact information for all applicants
- ☐ Social Security numbers for all applicants/owners, and Employer Identification Numbers (EIN)
- ☐ Financial information, e.g. income and monthly expenses
- ☐ A complete copy of the most recent Federal income tax return (this can be provided later)
- ☐ Insurance information, if available

Ways to apply

- ☐ Scan the QR Code
- ☐ Visit sba.gov/disaster



For Additional Information

- ☐ Call (800) 659-2955 (dial 7-1-1 to access telecommunications relay services)
 - O To locate a Recovery Center for assistance with your loan application
 - O To check the status of your loan application



Préstamos por desastre tras daños económicos



Beneficios de un préstamo por desastre dirigidos a empresas y organizaciones sin fines de lucro

- ☐ Hasta 2 millones de dólares para cubrir daños materiales y pérdidas económicas
- ☐ Baja tasa de interés fija con plazos de hasta 30 años
- ☐ No se requiere pago ni se generan intereses durante los primeros 12 meses
- ☐ No es necesario esperar a que se concluya el proceso del seguro antes de realizar la solicitud

Qué necesitan para solicitar un préstamo por desastre

- ☐ Correo electrónico e información de contacto de todos los solicitantes
- ☐ Número de seguro social y números de identificación fiscal (EIN) de todos los solicitantes/propietarios
- ☐ Información financiera como ingresos y gastos mensuales
- ☐ Copia completa de la última declaración de impuestos federales presentada (puede entregrarse después)
- ☐ Información del seguro, en caso de contar con ella

Formas de solicitar

- ☐ Escanee el código QR
- ☐ Visite sba.gov/desastre



¿Preguntas?

- ☐ Llame al (800) 659-2955 (marque 7-1-1 para acceder a los servicios de retransmisión de telecomunicaciones)
 - O Para localizar un Centro de Recuperación
 - O Para información sobre el estatus de su solicitud

SBA Disaster Loan approvals are on hold, but you can still apply

The U.S. Small Business Administration has temporarily paused funding for its disaster loan program. However, the SBA is still accepting applications for low-interest, long-term disaster loans to assist homeowners, renters, businesses, and nonprofits affected by disasters, including Hurricanes Helene and Milton.

Once additional funding is secured from Congress, disaster loan applications will be processed promptly.

The SBA remains fully operational in impacted areas and is committed to supporting residents and businesses with their disaster loan applications as we await Congress's approval of the necessary funding.

For more information, visit www.sba.gov/disaster.



U.S. Small Business Administration Businesses Homeowners
Renters Nonprofits



Meeting Date: 11/21/2024

Agenda Item: 8

Report to Town Council

Topic: Consent Agenda

A. Annual Financial Statements from Citizens For Ponce Inlet (C4PI).

B. Request for the use of Town property for the Operation Changing Lives 5K.

C. Approval of the Town Council Regular meeting minutes. – October 17, 2024.

Summary: See attached staff reports.

Suggested motion: To approve the Consent agenda as presented.

Requested by: Mr. Disher, Town Manager

Ms. Alex, Cultural Services Manager

Ms. Cherbano, Town Clerk

Approved by: Mr. Disher, Town Manager



MEMORANDUM OFFICE OF THE TOWN MANAGER

The Town of Ponce Inlet staff shall be professional, caring and fair in delivering community excellence while ensuring Ponce Inlet citizens obtain the greatest value for their tax dollar.

To: Town Council

From: Michael E. Disher, AICP, Town Manager

Date: November 14, 2024

Subject: Citizens for Ponce Inlet (C4PI) – Annual Accounting Report

MEETING DATE: November 21, 2024

Pursuant to Resolution 2020-16, C4PI has provided the attached information regarding how the annual \$4,000 contribution from the Town was spent.

The Town has provided newsletter articles for three editions of the C4PI newsletter this year, including the State of the Town address, hurricane preparation and recovery efforts, project updates, the annual budget process, and many others.

C4PI records and posts Town Council meetings on its website, providing a service to the public not currently offered by the Town. The Town also provides C4PI with copies of public records upon request, which C4PI makes available to its members at no charge, pursuant to its agreement with the Town. In the past, C4PI has also conducted surveys for the Town, such as obtaining feedback to improvements to the dog park.

In accordance with Resolution 2020-16, \$4,000 has been provided in the Town's approved budget for C4PI in the current fiscal year to ensure that the newsletter remains available online at no charge to all Town residents and property owners.

Attachment

C4PI 2024 Annual Accounting Report

November 8, 2024

Mr. Mike Disher, Town Manager Town of Ponce Inlet 4300 S. Atlantic Avenue Ponce Inlet, Florida 32127

Citizens for Ponce Inlet Newsletter Agreement

Dear Mr. Disher,

As the Citizens for Ponce Inlet, Inc. enters our second year of nonprofit 501(c)(3) status we want to reassure the community that both our Board and Advisory Board members, all of whom serve as volunteers, remain fully dedicated to enhancing the quality of life in Ponce Inlet by providing vital services and support.

Our commitment to the community spans a variety of initiatives, including the delivery of important local information through our newsletters, organizing community engagement opportunities, advocating for residents' needs, and fostering connections among residents, local businesses, and town officials. These efforts, along with our ongoing projects and programs, are designed to ensure that Ponce Inlet remains a vibrant, informed, and well-supported community for all who live here.

For over 40 years, C4Pi has distributed newsletters to Ponce Inlet residents, offering them timely updates and valuable insights into town affairs, local history, and community events. All newsletters are archived on our website - www.C4Pi.org - providing free and easy access to decades' worth of intriguing and informative content. Additionally, our quarterly newsletters and the annual Election Edition are sent directly to our members' inboxes to keep them engaged and informed.

In line with the Citizens for Ponce Inlet (C4Pi) Newsletter Agreement with the Town, and as part of the Town's \$4,000 contribution for the C4Pi/Town Digital Newsletter during the fiscal year 2023-2024, I am providing the following financial breakdown:

C4Pi Expenses from October 1, 2023 to September 30, 2024.

- Website hosting and cloud storage, e-mail subscription services, per diem tech support, and NSB payments: \$1,650.50
- Expense for Citizens of the Year and Lifetime Achievement Awards dinner: \$1,912.25
- Newsletter design and creation, Vimeo and video dropbox storage of town meetings, and miscellaneous accounting for state and federal services for 501(c)(3) services: \$2,966.25

Total Annual Expense: \$6,529.00

We are truly grateful for the Town's support and the opportunity to include Town-related information in our newsletter. We trust that the services we provide continue to meet your expectations, and we look forward to further collaboration in the future. Your ongoing support is sincerely appreciated.

Warm regards,

Lynn Albinson, President Citizens for Ponce Inlet, Inc.

Lynn Albinson



MEMORANDUM

TOWN OF PONCE INLET, CULTURAL SERVICES DEPARTMENT

The Town of Ponce Inlet staff shall be professional, caring and fair in delivering community excellence while ensuring Ponce Inlet citizens obtain the greatest value for their tax dollar

To: Michael E. Disher, AICP, Town Manager

From: Jackie Alex, Cultural Services Manager

Date: November 14, 2024

Subject: Request for Use of Town Property: 2025 Operation Changing Lives 5K

MEETING DATE: November 21, 2024

Ms. Cherise Wintz has submitted her special event permit application through the Cultural Services Department for the *Operation Changing Lives 5K*. This event was previously held in Ponce Inlet from 2010-2019, and then in 2024; it is scheduled once again for Saturday, January 4, 2025.

Organizers expect approximately 200 runners this year. Proceeds from this event are used to fund worldwide reconstructive surgeries for children and adults with facial deformities. In addition, this event provides funding and gifts for Christmas parties held at various elementary schools in Volusia and Flagler Counties.

This event does not meet the Town's Special Event criteria for co-sponsorship. For this event, staff must refer to Sec. 51-8(d) below,

(d) For events that do not meet the definition of *Town-sponsored event* under Sec. 51-2 described above, a written request shall be delivered to the town's cultural services department at least 60 days prior to the event by an applicant if use of town facilities, parking on town property, and/or street closures are found to be required for the event based on the findings of the town's special event review committee. Town staff may provide a report and recommendation to the town council for review.

The applicant has submitted her request for the use of Town property during the event along with the special event permit application packet (Attachment 1).

This is the second year with a request for the use of town property for this event. This year's request again includes the closure of both the boat ramp and boat ramp trailer parking lot. Street closures will occur along the race route with both Police and volunteers at intersections. No complaints or negative feedback were received from residents or noted during staff's after-action discussion from last year's event.

The applicant is responsible for all special event application fees, the pavilion rental fee, all staff personnel fees, and providing proof of insurance.

SUMMARY:

Request is for use of town property for the *Operation Changing Lives 5K* scheduled for January 4, 2025; the request is for closure of the boat ramp and boat ramp trailer parking lot, and street closures along the race route, with the event organizers providing volunteers at street intersections.

Staff recommends approval of the request for use of town property, as the criteria have been met.

| Jackel Alex | November 14, 2024 |
|---------------------------------------|-------------------|
| ackle Alex, Cultural Services Manager | Date |

Attachments:

1. Application Packet 2025 Operation Changing Lives 5K

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Town of Ponce Inlet Cultural Services Department

Request Form: Event Use of Town Property

Pursuant to Chapter 51 of the Code of Ordinances

This co-sponsorship request form must be filled out accurately and completely and submitted along with a special event permit application. Incomplete forms cannot be reviewed.

This form and all supporting documents may be submitted up to 365 days in advance of the event, but no less than 60 days prior to the event date. If the applicant desires their co-sponsorship request to be heard at a specific Town Council meeting, these documents must be submitted no less than 20 days prior to the desired Council meeting date.

Request forms for event use of Town property will be presented to Council for review for events not eligible for co-sponsorship. Regardless of whether the event qualifies as a special event, or is eligible for co-sponsorship, an applicant's co-sponsorship request shall comply with the content requirements below.

For event applicants requesting us of town's means of advertising, email jfrench@ponce-inlet.org

| Event Name: OPERATION CHANGING LIVES 5K/WALK/A |
|---|
| Event Date(s): Jan 4th 2025 Event Location: 49 Athouse. Ry |
| Business/Organization Hosting Event: ORERATION CHANGING LIVES |
| Event Applicant/ Contact: Chenest Wintz |
| |
| Please provide a brief description of the event and any important details: |
| Please select and state your event needs that require permission from the Town: |
| Town permission required: |
| Closure of boat ramp |
| Closure of boat ramp trailer parking lot |
| Placement of temporary signs on Town property |
| Street closures |
| Use of Town facilities |
| Parking on Town property |

Other:

| 1. | Estimated number of event participants: | | | |
|----|---|--|--|--|
| | 200 | | | |
| 2. | Estimated number of any animals by type: | | | |
| | | | | |
| 3. | Purpose of the event: | | | |
| | CHARITY FUNRAISEI FOR OCL | | | |
| 4. | Nature and the types of activities that will occur. | | | |
| | RUN/WAIK | | | |
| 5. | Provide a copy of indemnification in favor of the Town and included as part of the application, which shall be executed by an authorized representative of the applicant. The organization will not be required to indemnify the Town for the negligent acts of the Town's employees or agents. Attached | | | |
| 6. | Describe any public right of way, property, buildings, facilities, or equipment utilized: | | | |
| | RUNNING ON STREET | | | |
| 7. | 2 | | | |
| | Yes- County right-of-way use permit is attached No | | | |
| 8. | The event serves a valid public purpose benefiting the town and/ or its residents and the community by either- | | | |
| | Providing a local commemoration of a national holiday; or
Providing historical, educational, cultural enrichment and/or recreational experiences to Ponce
Inlet residents and the public. | | | |
| | Describe how: | | | |
| | Recheational Expenience- Buce Inlet | | | |
| | Lesidents will be able to participate | | | |
| | In a wonderful cause that support | | | |
| | Recreational Expenience-Rouce Inlet
Lesi Dents Will be able to participate
In a wonderful cause that support
many childred & families in our
community | | | |
| | co man un 174 | | | |

Placement of temporary signs on Town property

Closure of boat ramp

Closure of boat ramp trailer parking

Placement of temporary signs on Town property

Use of Town facilities

Parking on Town property

Other:

As the applicant, I certify that upon request, I will provide event space or facilities to established Ponce Inlet



Town of Ponce Inlet Cultural Services Department 4300 S. Atlantic Avenue Ponce Inlet, FL 32127 386-322-6703

SPECIAL EVENT PERMIT APPLICATION

Pursuant to Chapter 51 of the Code of Ordinances

| Permit #: \009 - 2024 | |
|----------------------------|--|
| Submittal Date: 09/11/2019 | |
| FEE PAID: | |

APPLICATIONS MAY BE SUBMITTED UP TO 365 DAYS IN ADVANCE OF THE EVENT, BUT NO LESS THAN 28 DAYS PRIOR TO EVENT DATE, OR 60 DAYS PRIOR IF REQUESTING TOWN CO-SPONSORSHIP.

Please submit the following information with your application:

- A site plan of the event area(s) with all applicable information requested below.
- If the event is on town property, a certificate of insurance showing the town as additional insured in the amount of \$1,000,000 is required.

| Ψ1,000,000 is required. | | | | |
|--|---|--|--|--|
| SECTION 1: EV | VENT INFORMATION | | | |
| | FING LIVES 3K | | | |
| Event Location: Lighthouse | THE BITTER | | | |
| Date(s) of Event: | Event Hours: | | | |
| 1-4-2025 | 6AM- 9:30 | | | |
| Brief Event Description: | | | | |
| 5K WALK RUN | | | | |
| Estimated Attendance: 200 | Repeat Event: Yes No | | | |
| SECTION 2: APPI | ICANT INFORMATION | | | |
| Business/ Organization Hosting Event: | | | | |
| Authorized Head of Business/ Organization: | 2182 1212 | | | |
| Phone Number: 3 av 2 (2) | Email Address | | | |
| Authorized Head of Business/Organization: Cherise WINTZ Phone Number: 386.383-2686 Email Address: Cherises 392yohoo. Com Event Applicant/ Contact: | | | | |
| Event Applicant/ Contact: | | | | |
| Day-of Phone Number: Same | Email Address: | | | |
| Mailing Address: | | | | |
| SECTION 3: ADI | DITIONAL INFORMATION | | | |
| Please answer the questions below. If answering | "Yes," indicate the location(s) on your site plan, providing any s on a separate sheet if needed. | | | |
| Traffic Control Required? Yes No | Parade? Yes *Provide a map and streets to be closed* | | | |
| Portable Restrooms? | Private Security Firm? OYes ONo | | | |
| | Name of Security Firm | | | |
| Off-Site Parking Required? | England Lighthouse & On Hentled | | | |
| *Provide written agreement with property owner(s) and number of | spaces needed* | | | |
| Provide a site-plan showing the means of all vehicular (inclu | ading shuttle) and pedestrian ingress & egress to and from the event. | | | |

| | ETODE A | | | | | | |
|---|--|--|--|---|--|--|--|
| Please answer the questions | TION 4:
below. If | answering "Yes,"
details on a | ' indi | USE - Addition cate the location(sate sheet if needed | s) on your site p | y be require e
lan, providin | d.
g any additional |
| Barricades Required? | OYes | O No | | Traffic Cones I | Required? | | ONo |
| Amplified Sound? 1 | @Yes | O _{No} | | High-Intensity *Provide specificat | | O Yes | ⊘ No |
| # of Tents (over 10'x10')? | 0 | # Stages/ Struc | tures | ?3 | # of Signs/ B | Banners? 4 | 0 |
| Tent Size ³ (if over 10'x10 ⁵) | | Stage Dimension | | | Sign permit
Building Div
If yes, permi | vision? | submitted to Yes N/A |
| How do you plan to collect a Voluntee Food Prepared On-Site? 5 | 25 | ve trash and litter | r duri | ng and after the | event? | | |
| | | | // TD | 1: 6 5 | . 10 200 | | |
| # of Mobile Food Vendors (| MFV)?* | No | | rking Spaces Re
ude on your site pla | | 'Vs? NC |) |
| DBPR Food Service License *Attach copy of License | | NO | DBI | PR Alcoholic Beach copy of License | everage Licens | se # 7 N L |) |
| | Supple | mentary Reg | ulati | ions for Speci | ial Events: | | |
| 1- See Code of Ordinances Sec. 34-
allowable noise level limits and re | 93 for sour
estricted ho | nd limitations and \mathbf{C}_0 | ode of | Ordinances Sec. 3 | 34-94 for permit r | equirements to | exceed maximum |
| 2- See <u>Code of Ordinances Sec. 34-</u>
does not prohibit the temporary ex | terior light | ing used for civic ce | lebrat | ion and promotion a | associated with a | permitted spec | are. This section ial event. |
| 3- Tents larger than 10'x10' and stag | | | | | | | |
| 4- See <u>LUDC Sec. 3.30.6</u> and Reso
Sunshine State One Call at 1-800 | lution 201 1
- 561-6720 | 1-03 for temporary si
prior to digging for | ign reg
sign i | gulations. To prever nstallation. | nt signs from inte | rfering with p | ıblic utilities, contact |
| 5- Code of Ordinances Sec. 46-3.a. Davies Lighthouse Park. Within d | esignated a | reas, only propane a | nd ele | ectric portable equip | ment is permitted | - no charcoal | |
| 6- LUDC Sec. 3.34: Mobile Food ve
Mobile food vendors shall comply
Fire Prevention Code. | ending is the with regul | e sale of food, either
lations from this sect | prepa | ared on location or p
ad shall be subject to | ore-packaged, from | n a mobile foo
rsuant to the N | d vending vehicle.
IFPA and Florida |
| 7- Code of Ordinances Sec. 6-7.a: within the town, or on any town p | It is unlawf
roperty or p | ul for any person to oublic park located in | consui | me or possess any a
own except as provi | lcoholic beverage
ided in the Code o | s on public stroor as approved | eets, sidewalks
by Town Council. |
| I hereby state that the above info
and all conditions and costs of
event. I hereby agree to defend
claims, suits, actions and legal
otherwise, to the full extent as pe
and shall remain in full force at
administrative action against the | the requirely hold had proceeding the mitted by and effect to Town und | ed permits. I und maless, and indem gs brought agains the law of the Statuntil the expiration der either federal l | erstandify the the of I of | nd that the Town the Town, at the Town in connect Florida. This proves the time for the i | of Ponce Inlet
Town's option
tion with this e
ision shall survi
nstitution of an | assumes no
, from any an
event, whether
ive the term of
any action at 1s | liability for this nd all demands, er threatened or f this agreement aw or equity or |
| Cherine l | Um | to | | | | 11-20 | 25 |
| Signature of Applicant STATE OF FLORIDA COUNTY OF VOLUSIA | \ | | | | Date Sig | ned | |
| This document was sworn to (or affirmed) and subscribed before me by me of physical presence or online notarization, this day of, 20, he/she is personally known to me or has presented as identification. | | | | | | | |
| Notary Public, State of Florida | | Nota | ıry sta | mp/ seal: | Notary Public - | HUGLER
State of Florida
HH 056738
res Oct 25, 2024
onal Notary Assn. | |

STANDARD CONDITIONS FOR SPECIAL EVENT PERMITS

Per Code of Ordinances Sec. 51-9.

Standards and conditions for issuance of permit. The special event review committee will review the special event permit application based upon the following standards and conditions:

- (a) The conduct of the event will not substantially interrupt the safe and orderly movement of other pedestrian or vehicular traffic in the vicinity of the event.
- (b) The conduct of the event will not require the diversion of so great a number of public safety personnel or equipment of the town to properly secure the event area and the areas contiguous thereto, as to prevent current level of public safety services from being furnished to other parts of the town.
- (c) The event shall not take place until inspections of the special event site have been conducted by the appropriate departments to determine whether this ordinance and any conditions of the special event permit have been met or satisfied.
- (d) The concentration of persons, animals and/or vehicles at the event will not unduly interfere with proper fire and/or police protection of, or ambulance service to, areas contiguous to the event area or other areas of the town.
- (e) The conduct of the special event is not reasonably likely to cause injury or intended to cause injury to persons or property, create an environment not compatible with a residential neighborhood if within or abutting a residential neighborhood, or to result in disorderly conduct as defined by town ordinance or state statutes, provided that the town may not deny a permit solely on the basis of the proposed content of speech or ideas of the group involved.
- (f) The conduct of the event shall not introduce extraordinary hazards to fire protection and/or life safety in the immediate or adjacent areas.
- (g) Adequate sanitation and other required health facilities are, or will be, made available in or adjacent to the event area. These include restrooms, trash receptacles, or anything normally required by the health department.
- (h) The conduct of the special event must be in accordance with the town's noise ordinance.
- (i) There are sufficient parking places on site and/or written approvals from off-site property owners where off-site parking is to occur, to accommodate the approximate number of automobiles expected to be driven to the special event.
- (j) Precautions will be taken to ensure protection of landscaping and irrigation systems.
- (k) The applicant has secured security personnel or police, fire/emergency medical services protection and public works services, if any, are required under this procedure. If applicant has secured police, fire/emergency medical services, or public works services from the town, (s)he must prepay the expenses thereof.
- (l) The applicant shall obtain public liability and property damage insurance, with the town named as an additionally insured party for any special event that is held on town property or that utilizes town facilities, in an amount approved by the town, as recommended by the town's insurance carrier. The applicant shall place on file with the town a certified insurance policy issued by a company authorized to do business in the state.
- (m) Application for a special event permit shall constitute an agreement by the applicant to pay for town personnel expenses and extraordinary services provided by the town, including any repairs, renovations and/or landscaping and turf restorations or replacement of town property which is necessitated by virtue of the special event.
- (n) Any temporary lighting will not adversely affect adjacent properties.
- (o) No applicant shall be granted a permit for an event that is to occur over a period longer than seven consecutive days.
- (p) No applicant shall be granted more than twelve special events permits in a single calendar year.

NOTE: The town may deny or revoke a permit for failure of the applicant to satisfy the applicable standards set forth in this chapter and the requirements of the permit, pursuant to <u>Code of Ordinances Sec. 51-10(b)</u>.



Town of Ponce Inlet Cultural Services Department

Special Amplified Sound Permit Application

Pursuant to Section 34-94 of the Code of Ordinances

Please Note: The application must be filled out accurately and completely. Incomplete applications cannot be processed.

CERTIFICATION STATEMENT (Ashequired by Chapter of Ponce Inlet Council Or Barance Permits may be granted by the Town Manager for the purpose of entertainment or nonentertainment under the following conditions (see Sec. 34-94 for full list of conditions):

- The special permit may be issued only for four hours
- Between 9:00 a.m. and 10:00 p.m. in one calendar day.

| Name of Event ON CHANGING LIVES 5K WAT |
|---|
| Date of Event L-AM-9-30AM Time 3.5 Hours of Amplified Sound |
| Name of applicant: Cherysc WINTZ Phone: 386-383-2686 |
| Applicant's street address: 92 JANA DRIVE |
| Description of equipment to be used (ie. stereo, band, etc. Bull horns are not permitted) |
| Description of how the sound will be minimized (mufflers, screens or other sound-attenuating devices) ATIWAL AHEM - AWAND5 |
| |
| |

The issuance of a Special Amplified Sound Permit grants permission to the applicant(s) for the location and type of sound, as per section 34-94 of the Town of Ponce Inlet Ordinances. The Amplified Sound Permit may be revoked by an agent of the Town of Ponce Inlet at any time. The Special Amplified Sound Permit does not waive applicant's responsibility to ensure compliance with all applicable requirements. Applicant(s) agrees to hold the Town of Ponce Inlet, its agents and employees, harmless for any damages that may incur from failure to meet all Town codes. **CERTIFICATION STATEMENT (As required by Chapter 34, Ponce Inlet Code of Ordinances)** reministration in the property of As applicant, I understand that I shall monitor the use and operation of all amplified sound equipment to ensure that it is operated within the decibel levels permitted by Chapter 34, §34-93, Ponce Inlet Code of Ordinances. Applicant's Printed Name: CHENISE WINTZ

Applicant's Signature: Dinta FOR OFFICE USE ONLY: Fees (License Fee) = \$50.00 Amount Paid: Application received by: ______ Date: ____ Approved Police Dpt: L Denied Previous violations of sound ordinance? Yes Conditions: _____

Date:

Racingle North Turn Daggett Island S PENINSULA DA Winterhaven Park SATIANTICALE North Jetty, Ponce Inlet CINDY LN ANERGLEN BUND Off The Hook at InlettHarbor Jerry's iddler sland Beach Street Access Point RAINS CT 3Cot spat useum Down the Hatc Q Lighthou Point Pa



Town of Ponce Inlet

Town Council Regular Meeting Minutes October 17, 2024

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1. CALL TO ORDER: Pursuant to proper notice, Mayor Paritsky called the meeting to order at 2:00 p.m. in the Council Chambers at 4300 South Atlantic Avenue, Ponce Inlet, Florida.

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2. PLEDGE OF ALLEGIANCE: Mayor Paritsky led the Pledge of Allegiance.

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3. ROLL CALL:

12 **Town Council:**

- 13 Mayor Paritsky, Seat #1
- 14 Councilmember Milano, Seat #2
- 15 Councilmember White, Seat #3
- 16 Councilmember Villanella, Seat #4
- 17 Vice-Mayor Smith, Seat #5

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Staff Members Present:

- 20 Ms. Alex, Cultural Services Manager
- 21 Mr. Baker, Chief Building Official
- 22 Mr. Blackburn, Building Inspector
- 23 Ms. Cherbano, Town Clerk
- 24 Mr. Disher, Town Manager
- 25 Ms. Dowling, HR Coordinator
- 26 Ms. Fisher, Senior Planner
- 27 Ms. Gjessing, Assistant Deputy Clerk
- 28 Chief Glazier, Police Chief
- 29 Ms. Hall, Assistant Finance Director
- 30 Mr. Hooker, Code Compliance Manager
- 31 Ms. Hugler, Fire Department Office Manager/PIO
- 32 Deputy Chief Landreville, Deputy Fire Chief
- 33 Mr. Lear, Planning & Development Director
- 34 Ms. McColl, Finance Director
- 35 Mr. Okum, IT Director
- 36 Chief Scales, Public Safety Director
- 37 Mr. Wargo, Public Works Director
- 38 Attorney Shepard, Town Attorney

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Other representatives present:

Council Member Reinhart, Volusia County District 2 Representative

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4. ADDITIONS, CORRECTIONS, OR DELETIONS TO THE AGENDA: Item 6-B was added, moving the original Item 6-B to 6-C; Item 6-D was added to the agenda.

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5. CITIZENS PARTICIPATION: Mayor Paritsky opened citizens participation – Mr. Steve Field, 6 Mar Azul, requested the discussion to amend the Land Acquisition Fund be placed on the next regularly scheduled Town Council agenda and provided comments on the benefit of burying utility lines in the future. Ms. Lynn Albinson, 58 Calumet Drive, thanked the Council and staff for their response to Hurricane Milton. Mayor Paritsky closed citizens participation.

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6. PROCLAMATIONS, PRESENTATIONS, AND AWARDS:

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A. Certificate of Recognition to Braeden Kopec for his national surfing championship. – *this item was postponed for presentation later in the meeting*

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Hurricane Milton update. – Chief Scales provided a presentation on the events of Hurricane Milton. He described the preparation, impact, and post-storm activities. Chief Scales noted the maximum wind gust recorded was 99 mph and nearly 11 inches of rain fell over a 24hour period. He then described the functions and roles of each department during the storm's events. The ongoing pond pumping from Public Works helped mitigate water levels around the town, and the pumps each ran for 96 hours from October 7 through October 9, 2024. He stated that staff will be holding an after-action meeting to discuss what went well and what could be improved with future hurricanes; input is always welcome from the Council and residents. He discussed the Florida Power & Light (FPL) response to Ponce Inlet and encouraged anyone with medical urgencies to register on FPL's priority list before a hurricane by calling 386-252-1541. He also emphasized that those who have medical concerns who could be affected by the loss of power should evacuate in the future, as expectations cannot always be met on when power may return post-event. Mr. Disher compared the statistics between the impacts of Hurricanes Ian and Nicole to Hurricane Milton. Volusia County Council Member Matt Reinhart provided more information on evacuation orders, laws related to post-storm transportation limitations, and an update on the County's vote to repeal certain regulations sand placement and coastal construction. The Councilmembers provided comments on previous storms and thanked staff for their hard work.

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Mayor Paritsky opened public participation – Ms. Jair Kessler, 81 Buschman Drive, asked how people should preserve their sandbags to use them again in another event. Council Member Reinhart recommended emptying the sand and storing the bags for the next storm. Mayor Paritsky closed public participation.

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C. Mayor's Proclamation Report. – Mayor Paritsky presented a proclamation declaring the month of October 2024 as *National Breast Cancer Awareness Month*.

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D. Veterans Memorial proclamation. – Retired Lieutenant Colonel Bill Wester, the first Vice President of the Ponce Inlet Veteran's Association, provided a brief presentation on the history of the Veterans Memorial. He explained that after much hard work and dedication, the Ponce Inlet Veterans Memorial was dedicated at Davies Lighthouse Park on November 11, 2011. Mayor Paritsky presented a proclamation honoring the nine founding members of the Ponce Inlet Veterans Memorial Association.

7. CONSENT AGENDA: Mayor Paritsky asked if there was any item Council would like to remove from the consent agenda; there were no requests. Mayor Paritsky asked if there were any requests from the public – there were none.

A. Approval of the Town Council Regular meeting minutes – September 19, 2024.

B. Approval of the Town Council Special meeting minutes – September 26, 2024.

C. Request to approve piggyback contracts through the City of Edgewater for emergency debris monitoring services.

Mayor Paritsky moved to approve the Consent Agenda as presented; seconded by Councilmember White; The motion PASSED 5-0, consensus.

8. OLD/NEW BUSINESS ITEMS PREFERRED AT THE BEGINNING OF THE MEETING:

A. Financing for the 75' Quint Fire Apparatus. —Attorney Shepard read Resolution 2024-20 by title only. A RESOLUTION OF TOWN OF PONCE INLET, VOLUSIA COUNTY FLORIDA, AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE-PURCHASE AGREEMENT WITH COGENT LEASING AND FINANCING, INC., WITH RESPECT TO THE ACQUISITION, FINANCING, LEASING, AND PURCHASE OF A 75' QUINT FIRE APPARATUS; AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS REQUIRED IN CONNECTION THEREWITH; AUTHORIZING ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

i. Acceptance of Capital Finance Bid Proposal from Cogent Leasing and Financing, Inc. for the 75' Quint Fire Apparatus. – Chief Scales introduced this item and explained the history of the request. He stated this item was discussed originally at the Town Council meeting on September 19, 2024, at which Council directed staff to re-bid the capital financing proposal following the recent reduction in federal interest rates. He explained how staff evaluated the submittals received according to the terms of the RFP. Councilmember White questioned what the anticipated insurance cost will be; a brief discussion ensued regarding insurance and how the rate is calculated. Mr. Disher addressed Councilmember Milano's inquiry about allocated funds for the financing and explained how a change to the Land Acquisition Fund ordinance would allow those funds to be used for this purchase.

Mayor Paritsky opened public participation – Mr. Steve Field, 6 Mar Azul, asked about the annual and total payment figures from the 7-year and 10-year terms and stated he was in favor of the 7-year term. Mayor Paritsky closed public participation.

A discussion ensued regarding the difference between 7-year and 10-year terms. Mayor Paritsky opened public participation – Ms. Barbara Davis, 4871 Sailfish Drive, asked whether there are

Town Council Regular Meeting Minutes prepayment penalties and suggested the Town double up on amounts regardless of the 7- or 10year term. Mayor Paritsky closed public participation.

Councilmember Milano made a motion to approve the acceptance of the capital finance bid proposal from Cogent Leasing and Financing, Inc. for the 75' Quint Fire Apparatus with a 7-year term; seconded by Councilmember Villanella. The motion PASSED, 5-0 with the following vote:

Councilmember Milano – yes; Councilmember Villanella – yes; Mayor Paritsky – yes; Councilmember White – yes; Vice-Mayor Smith – yes.

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ii. Approval of Resolution 2024-20 Authorizing the Town Manager to Proceed with Entering into a Lease-Purchase Finance Agreement.

Councilmember Villanella made a motion to approve resolution 2024-20, authorizing the Town Manager to proceed with entering into a lease-purchase finance agreement; seconded by Councilmember Milano. The motion PASSED, 5-0 with the following vote: Councilmember Villanella – yes; Councilmember Milano – yes; Mayor Paritsky – yes; Councilmember White – yes; Vice-Mayor Smith – yes.

B. Request to Dispose of Fixed Capital Asset – Fire Department Pierce Mini-Pumper. Chief Scales described the purpose of the mini-pumper, how it was originally acquired, and its functions. He said the fire department has utilized it well, but the cost to repair and maintain exceeds its value. With the acquisition of the 75' Quint fire apparatus, the mini-pumper is no longer needed and it is now appropriate to sell it. Councilmember White asked how Harbour Village condominiums are protected in the event of an emergency and Chief Scales explained the functions of their built-in sprinkler systems.

Councilmember Villanella made a motion to approve the disposal of fixed capital asset, 2002 Pierce Mini-Pumper, and authorize its removal from the fleet; seconded by Councilmember White. The motion PASSED, 5-0 consensus.

C. Request to Retain the Current Fire Engine as a Reserve Apparatus. Chief Scales provided a brief history of the discussion to retain the current fire engine. At the Essential Services Advisory Board (ESAB) meeting on October 3, 2024, the Board recommended the Town Council approve retaining the current fire engine as a reserve apparatus. The engine will be stored in Ponce Inlet and the costs to maintain it will be minimal. Councilmember White expressed his appreciation for the work that went into guaranteeing the engine could be stored within town limits. He also commented on the importance of having a memorandum of understanding in the case the fire apparatus is loaned to another municipality. Mayor Paritsky opened public participation – hearing none, public participation was closed.

Councilmember White made a motion to retain the current fire engine as a reserve apparatus, contingent on it being stored within Ponce Inlet, and bringing a memorandum of understanding for loaning the apparatus to another fire department to the Town Council for approval; seconded by Councilmember Villanella. The motion PASSED, 5-0 consensus.

9. PUBLIC HEARINGS / QUASI-JUDICIAL MATTERS: None.

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10. PUBLIC HEARINGS / NON-QUASI-JUDICIAL MATTERS: None.

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11. ORDINANCES (FIRST READING) AND RESOLUTIONS:

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Ordinance 2024-06. Attorney Shepard read Ordinance 2024-06 by title only. AN ORDINANCE OF THE TOWN OF PONCE INLET, FLORIDA, AMENDING THE LAND USE AND DEVELOPMENT CODE, ARTICLE 2 "ZONING DISTRICTS", SECTION 2.40.1 "INTERPRETATION OF USES AND STRUCTURES PERMITTED", TABLE 2-5 "TABLE OF PERMITTED USES"; ADDING FARMERS MARKETS AS A MAJOR SPECIAL EXCEPTION USE TO THE PUBLIC-INSTITUTIONAL ZONING DISTRICT; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE. - Mr. Lear explained that this item is being presented at Council's direction to amend the Land Use and Development Code (LUDC) to add farmers markets as a major special exception use to the public-institutional zoning district. He further explained the history of this topic and the different ways LUDC amendments can be proposed. He described the different locations where the Public-Institutional (PI) zoning district applies and explained that only three of the 17 P-I zoned properties would be considered in this amendment. The three locations include the Ponce Inlet Community Center, Ponce Inlet Fire Rescue station, and Timothy Pollard Memorial Park. The other P-I zoned properties are excluded from the proposed amendment. Mr. Lear noted the adoption of this change does not guarantee farmers markets at the community center; this would merely allow the Community Center Board to apply for a special exception, for which all criteria would have to be met for approval. He also explained what the special exception use application entails. Mayor Paritsky stated the Council will only be determining whether the matter being presented is consistent with the comprehensive plan and the Town's visioning statement. She detailed the difference between a special exception use and a variance. The Councilmembers briefly expressed their opinions on whether this subject is consistent with the comprehensive plan and visioning statement; there was a consensus that it is.

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Mayor Paritsky opened public participation – Mr. John Carney, 86 Rains Court, Vice-Chair of the Planning Board, voiced his concerns with information brought to the Board when it reviewed this amendment, along with parking regulations as they relate to the special exception uses, and conflicts of interest regarding a Community Center Board member advocating on behalf of an organization. Attorney Shepard clarified that a board member with a conflict is still able to discuss the matter; however, they must recuse themselves from the vote. Ms. Jair Kessler, 81 Buschman Drive, expressed her concern with two farmers markets being held within the town, and provided a presentation on the history with this case. Ms. Delphine Pinet, 4 Beacon Court, appealed to the Council as a vendor of the existing market and stated the lack of consistency of time and location is significantly impacting the vendors. Ms. Nicole Carr, 41 Jana Drive, explained her involvement with the farmers market, the planning that goes into hosting it, and the history with relocation. Mr. Mike Kaszuba, 4590 South Atlantic Avenue, Chair of the Planning Board, provided comments on procedural matters for future Planning Board meetings. Ms. Barbara Davis, 4871 Sailfish Drive, provided comments related to when food trucks were considered for re-zoning, and voiced her support for the farmers market to be held at the Community Center. Mr. Peter Finch, 106 Rains Drive, explained the Ponce Inlet Community Center's intention to have the opportunity to apply

for a special exception; he clarified they are not currently discussing hosting a farmers' market.

Mayor Paritsky closed public participation.

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Councilmember Milano clarified the only thing being addressed now is an amendment to the code which would allow a future farmers market to apply for a special exception use. They would still be required to go through the procedure of applying for and meeting the criteria of a special exception use permit. Vice-Mayor Smith commented on the intent behind the code amendment and expressed his confusion with the discussion of multiple farmers markets being started.

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Mayor Paritsky opened public participation – Ms. Nicole Carr, 41 Jana Drive, provided clarification on the history of the existing farmers market finding a new location to host the market and the discussions with the community center. Ms. Jair Kessler, 81 Buschman Drive, described the community involvement in the market. Ms. Cathy Harvey, 41 Loggerhead Drive, commented on the procedure of citizen's participation. Mayor Paritsky closed public participation.

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Mr. Disher addressed comments that were made regarding discussions between himself and Mr. Oebbecke. He stated they only discussed the process of requesting a code amendment. He also clarified the difference between the current request for a code amendment versus what else will be needed for a special exception application to allow a farmers market on this specific property. Mr. Disher then provided information on the difference between a special exception and a special event permit.

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Councilmember Villanella moved to approve proposed Ordinance 2024-06, amending section 2.40, table of permitted uses to include farmers markets as a major special exception use in the P-I zoning district excluding 14 of the 17 P-I zoned properties, upon first reading; seconded by Councilmember Milano. The motion PASSED, 5-0 with the following vote: Councilmember Villanella – yes; Councilmember Milano – yes; Mayor Paritsky – yes; Councilmember White – yes; Vice-Mayor Smith – yes.

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Ordinance 2024-07. Attorney Shepard read Ordinance 2024-07 by title only. AN ORDINANCE OF THE TOWN OF PONCE INLET, FLORIDA, AMENDING THE CODE OF ORDINANCES, CHAPTER 1 "GENERAL PROVISIONS", CHAPTER 2 "ADMINISTRATION", CHAPTER 6 "ALCOHOLIC BEVERAGES", CHAPTER 10 "ANIMALS", CHAPTER 18 "BUILDINGS AND BUILDING REGULATIONS", CHAPTER 34 "ENVIRONMENT", CHAPTER 42, "OFFENSES AND MISCELLANEOUS PROVISIONS", CHAPTER 46 "PARKS AND RECREATION", "SPECIAL EVENTS", CHAPTER 62 "SOLID WASTE", CHAPTER 66 "STORMWATER AND CONSERVATION", CHAPTER 70 "STREETS, SIDEWALKS AND OTHER PUBLIC PLACES", CHAPTER 74 "TRAFFIC AND VEHICLES", CHAPTER "UTILITIES", AND CHAPTER 82 "VEGETATION" TO REPLACE REFERENCES TO THE "CODE ENFORCEMENT BOARD" WITH "SPECIAL MAGISTRATE" AND TO UPDATE RELATED DEFINITIONS AND PROCEDURES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE. – Mr. Lear provided the history of the Council's direction to move the Town's Code Enforcement system from a volunteer Board to a Special Magistrate and described the duties of the Special Magistrate. He stated this proposed ordinance is amending the Code of

Town Council Regular Meeting Minutes Ordinances to replace all references to the Code Enforcement Board with a Special Magistrate.

Mayor Paritsky opened public participation – hearing none, Mayor Paritsky closed public participation.

Councilmember Villanella moved to approve proposed Ordinance 2024-07, amending Chapter 1, 2, 6, 10, 18, 34, 42, 46, 51, 62, 66, 70, 74, 78, and 82 of the Code of Ordinances to substitute references of the Code Enforcement Board with Special Magistrate, upon first reading; seconded by Councilmember Milano. The motion PASSED, 5-0 with the following vote: Councilmember Villanella – yes; Councilmember Milano – yes; Mayor Paritsky – yes; Councilmember White – yes; Vice-Mayor Smith – yes.

C. Ordinance 2024-08. Attorney Shepard read Ordinance 2024-08 by title only. AN ORDINANCE OF THE TOWN OF PONCE INLET, FLORIDA, AMENDING THE LAND USE AND DEVELOPMENT CODE, ARTICLE 3 "USE REGULATIONS", ARTICLE 8 "ENFORCEMENT", AND ARTICLE 9 "DEFINTIONS AND RULES OF INTERPRETATION" TO REPLACE REFERENCES TO THE "CODE ENFORCEMENT BOARD" WITH "SPECIAL MAGISTRATE"; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE. – Mr. Lear explained this proposed ordinance is amending the Land Use and Development Code to replace references to the Code Enforcement Board with Special Magistrate. Mayor Paritsky opened public participation – hearing none, Mayor Paritsky closed public participation.

Councilmember Milano moved to approve proposed Ordinance 2024-08, amending Articles 3, 8, and 9 of the Land Use and Development Code to substitute references of the Code Enforcement Board with Special Magistrate, upon first reading; seconded by Councilmember White. The motion PASSED, 5-0 with the following vote: Councilmember Milano – yes; Councilmember White – yes; Mayor Paritsky – yes; Councilmember Villanella – yes; Vice-Mayor Smith – yes

12. OLD BUSINESS: None.

NEW BUSINESS:

13.

404. – Mr. Hooker stated the Josephs are formally requesting a lien abatement totaling \$48,000. He provided the case history, stating this case began in June 2021 when staff noticed construction occurring without a permit. The property finally came into compliance on June 21, 2024. Mayor Paritsky clarified dates and times of the case. Councilmember Milano had questions on the frequency of communication with the applicant. Ms. Guada Joseph, 4745 South Atlantic Avenue, Unit 404, explained they were unaware that a permit was needed when they first began renovations on the home. The condominium association had provided them with permission, which they believed was sufficient. She reviewed a timeline of receiving notices from the Town and what was happening at the time. She further stated that while there was not always an electronic record of communication, she and her husband met with staff on multiple occasions. Mayor Paritsky

Lien abatement request for Guada Joseph – 4745 South Atlantic Avenue, Unit

questioned if there was documentation related to the financial or medical hardship that is being claimed. Councilmember White asked questions related to the permit received from the condo

association and the timeline of the construction. Councilmember Milano and Vice-Mayor Smith

also provided comments on the length of time between receiving notification from the Town and addressing the case. Mayor Paritsky opened public participation – hearing none, Mayor Paritsky closed public participation.

Councilmember White moved to impose the original lien amount of \$48,000, with payment due within 30-days; seconded by Councilmember Milano. The motion PASSED, 5-0 with the following vote: Councilmember White – yes; Councilmember Milano – yes; Mayor Paritsky – yes; Councilmember Villanella – yes; Vice-Mayor Smith – yes

6. PROCLAMATIONS, PRESENTATIONS, AND AWARDS: (postponed from earlier)

A. Certificate of Recognition to Braeden Kopec for his national surfing championship. – Mayor Paritsky presented Mr. Kopec with a certificate of recognition for his recent achievements at the National Scholastic Surfing Association's National Surfing Championships, where he earned two national titles in the Explorer Juniors' and Explorer Men's divisions. Ms. Kopec, Braeden's mother, commended her son on his accomplishments and provided some history about his surfing career. Mr. Braeden Kopec expressed his appreciation for Ponce Inlet and thanked the Council for this recognition.

13. **NEW BUSINESS:** (Continued)

B. Discussion – Recommendation to abolish restrictions on panhandling and aggressive solicitation following ruling by the U.S. District Court of the Middle District of Florida. – Attorney Shepard explained a case from the Middle District of Florida where they ruled the panhandling ordinance from Daytona Beach was unconstitutional and deemed the city liable for monetary damages. Attorney Shepard recommends abolishing the existing restrictions on panhandling and aggressive solicitation to prevent a similar case in Ponce Inlet. Chief Glazier provided examples of ways that panhandling and solicitation can be mitigated. Mayor Paritsky opened public comment – hearing none, Mayor Paritsky closed public participation.

Council consensus to direct the Town Attorney to begin the process to repeal Ponce Inlet's panhandling and aggressive solicitation ordinance.

14. FROM THE TOWN COUNCIL:

A. Vice-Mayor Smith, Seat #5 — Vice-Mayor Smith commented on previous discussions surrounding installing utility lines underground. He explained that Florida Power & Light (FPL) has previously stated they are not opposed to burying power lines if the ground is dry. The outages above ground are easier to find and resolve, but the ones underground take much longer.

B. Councilmember Villanella, Seat #4 – Councilmember Villanella stated it was a great meeting and wished everyone a nice month.

C. Councilmember White, Seat #3 – Councilmember White provided information from Jessica Fentress on the sand replenishment program. According to Ms. Fentress, the Army

Town Council October 17, 2024
Regular Meeting Minutes Page 8 of 9

Corps of Engineers will be in Ponce Inlet to review the sand placement project on November 4. He then reflected on his past year serving on the Town Council.

D. Councilmember Milano, Seat #2 – Councilmember Milano thanked the staff for their efforts during Hurricane Milton. He announced an upcoming wine tasting function which will be held at the Ponce Inlet Community Center. He provided an update to the First Step Shelter and stated that during the hurricane, 26 additional individuals were brought in. He also announced that Bank of America awarded the First Step Shelter the "Neighborhood Champion" award, which provides a \$50,000 grant.

E. Mayor Paritsky, Seat #1 – Mayor Paritsky provided information on the preparation for the upcoming legislative session. She mentioned that she will have the opportunity to present the new appropriation requests to the Volusia Delegation of State Elected Officials. She informed everyone that the American Flood Coalition met earlier in the week to discuss current federal legislation to provide money to the State and local governments, along with streamlining efforts with FEMA. Next, she discussed the recent Florida League of Mayors conference she attended and shared that US Senator Rick Scott, Representative Chase Tramont, and Volusia County Council Member Matt Reinhart all reached out after the storm to offer their assistance. Mayor Paritsky informed everyone she was recently appointed to the Florida League of Cities' Advocacy Committee, and she also announced the Port Orange Chamber of Commerce is holding an event on October 22, 2024, where local businesses can speak with staff members from US Senator Rick Scott's office.

15. FROM THE TOWN MANAGER – Mr. Disher gave an update on Hurricane Milton efforts including the Finance Department's application to FEMA for public assistance, debris hauling, trash pickup, and landfill hours and procedures. He stated the Police Department will be holding a women's self-defense course soon and he thanked Barabara Davis and her native plant crew for their efforts in planting native vegetation around the Town. Chief Scales provided a brief update on the cell tower and pickleball fence which received damage from the storm.

16. FROM THE TOWN ATTORNEY – Attorney Shepard had nothing further to report.

17. PUBLIC PARTICIPATION (on items 14 – 16 only) – Mayor Paritsky opened public participation – hearing none, Mayor Paritsky closed public participation.

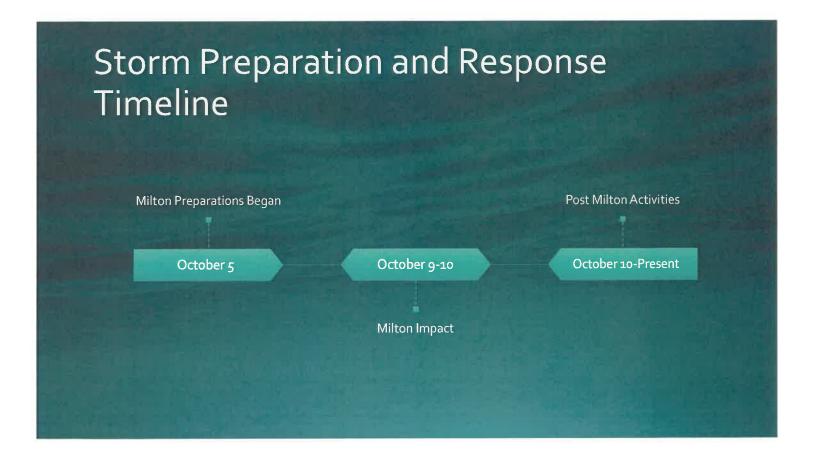
18. ADJOURNMENT – Mayor Paritsky adjourned the meeting at 5:19 P.M.

Respectfully submitted by:

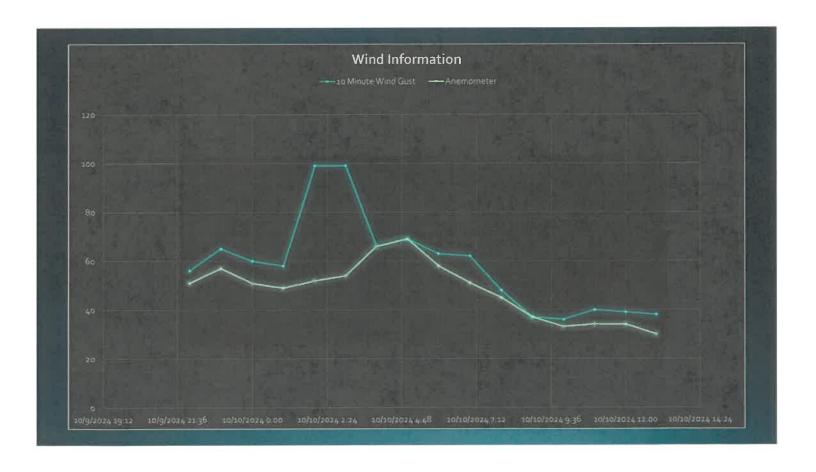
- 407 <u>*Draft*</u>
- 408 Kim Cherbano, CMC, Town Clerk
- 409 Prepared by: Stephanie Gjessing, Assistant Deputy Clerk

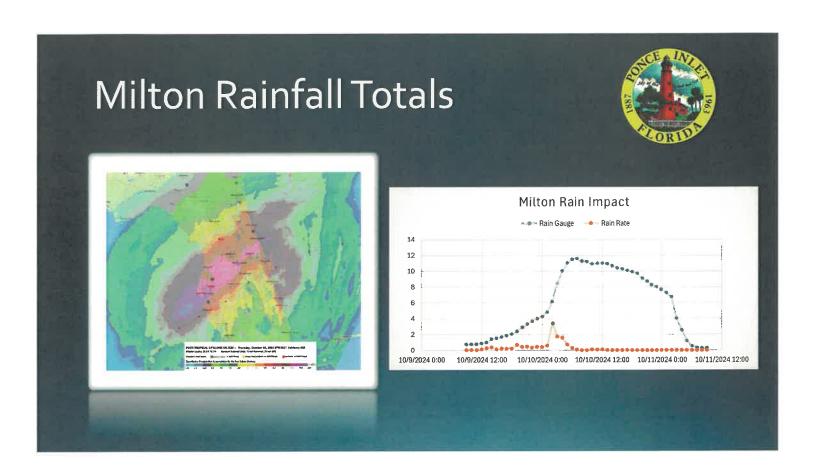
- 411 Attachment(s): Hurricane Milton Presentation by Chief Scales
- J. Kessler's Farmers Market Presentation

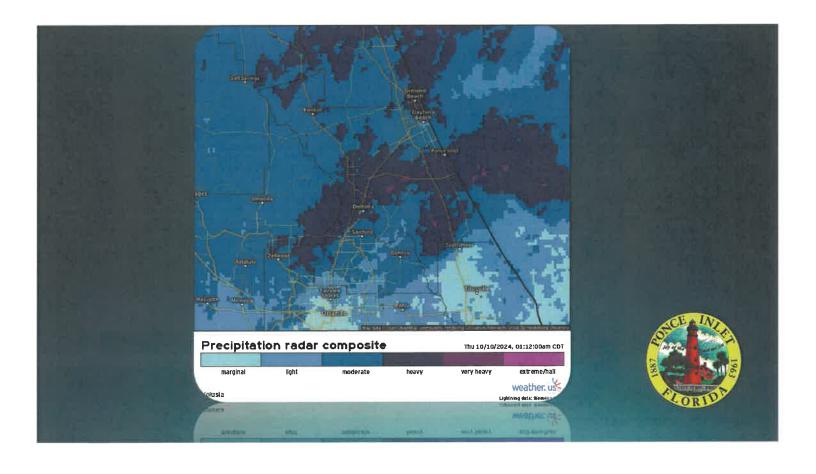












Public Information-Outreach







- Posted 44 Facebook Posts
- Posted 44 Next-door Posts
- Sent 17 Town Subscriber Emails
- Announced sandbag availability at the Public Works Facility (Sunday) and Community Center (Monday).
- Posted about the Emergency Management team's active monitoring of Hurricane Milton and shared sandbag information.
- Encouraged residents to sign up for Town emails and Code Red alerts.
- Provided guidelines on proper sandbag placement to help protect property.
- > Shared the latest forecast and town preparations.
- > Town Staff Update for Residents:
 - Published an FAQ & Resources document.
 - Opened the Citizens' Hotline for storm-related inquiries.
 - Provided sandbag collection information.
 - Informed residents about potential bridge closures and pond monitoring by Public Works.
 - Urged residents to avoid placing debris outside before the storm.
- Posted about fire risks related to lithium-ion batteries.

Public Works



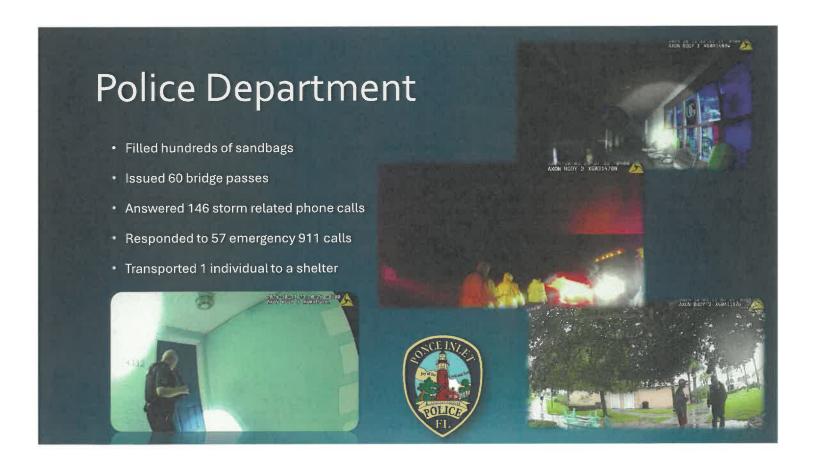
➤ Sandbag Operations

- Initially available at Public Works Sunday October 6
- Site moved to Community Center Monday October 7
- · Approximately 60 cubic yards of sand distributed
- · Sand Available until the Evening of October 9

>Pumps placed at Beach Street and Inlet point

- Ponds pumped during the day from October 7 until October 9 3 pumps ran for 96 hours each
- ▶ 166 staff hours worked October 6-8
- Secured Town Buildings (board-up)
- > After Storm Activities
 - Assisted with Damage Assessment
 - Provided Road Access
 - Replaced and reinstalled road signage 25 so far
 - Working non-stop getting Town facilities back in shape
- >334 staff hours worked to October 14 (includes weekends and extended days)





Fire Department

- Incident Action Plan (IAP) created and distributed to personnel outlining actions to be taken during and after the storm event.
- · Equipment and PPE assessed and made ready.
- Ride out crews for the storm were selected and informed they would be reporting to duty at 4pm on the night of the storm.
- · Meeting conducted with town department teams to plan for hurricane response and recovery.
- Meeting conducted with the Volusia County Fire Chiefs to plan for response.
- Vehicles topped off with fuel.
- Station area policed to make certain loose items were properly stored.
- Crews assisted with sandbag station for residents.
- Second engine outfitted with ALS and BLS medical gear.
- Surface water rescue gear placed on second engine.
- Crews responded to structure fire.
- Responded to three fire alarm incidents
- Damage assessments performed town wide.
- Equipment and personnel assignments returned to pre-storm status.

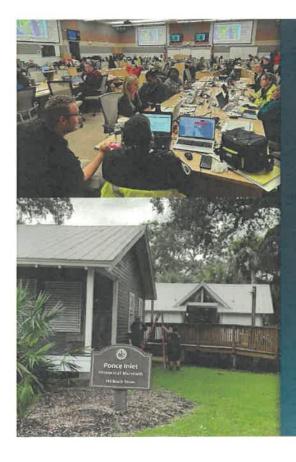




Planning and Zoning

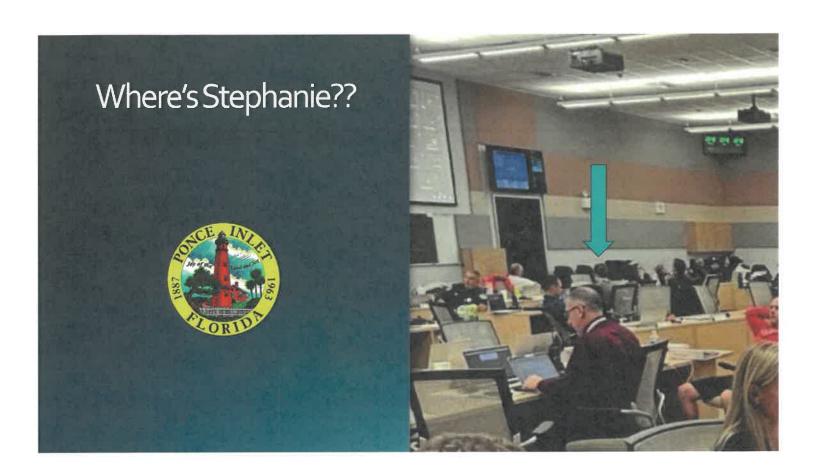
- Affected (properties sustained either roof shingles missing, missing siding, chimney, or porch damage, fencing or flood water less than 3 inches)
- 137 single family residential units
- 300 multi-family/condominiums
- 6 commercial
- 1 research/professional office (Battelle property)
- 1 Town owned (community center)
- Total = 445 unit
- Minor (properties encompass a wide range of damage that does not affect the structural integrity of the residence. Structure is habitable, with minor repairs)
- 2 single family residential units
- 1 commercial
- Total = 3 units

No properties classified as Major or Destroyed. 70% f all residential property experienced some storm-related damage.



Cultural Services/Clerks Office

- ▶ Prepared museum for storm impacts
- Prepared Clerk's Office for potential impacts
- Staffed EOC position Wednesday, 10/8 as municipal liaison
 - Jackie Alex worked two 12-hour day shifts
 - Stephanie Gjessing (Clerk's Office) worked 12hour night shift (after working a full day in the office)
- ➤ Cultural Services Coordinator (Julie) Helped with sandbag distribution



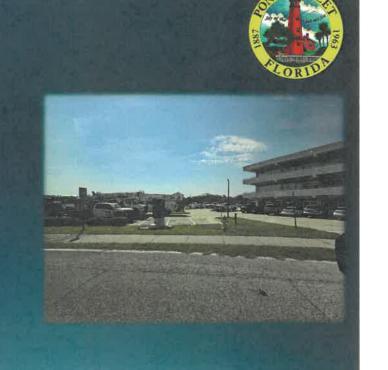




Ongoing Items

- Debris management
- Continuing cleanup of town-owned properties
- Compiling all storm related documentation
- After-Action discussion
 - What worked well
 - · What could work better next time
 - Any improvements Drone use
- FPL Response to Ponce Inlet

 - Managing Future ExpectationsPrepare adequately if you have a special need
 - Registry number 386-252-1541
- Possible expanded use of Community Center
 - Resident respite location
 - Utility staging area (FPL)
- Special Thank You to Las Olas
 - Allowed pumping from Bay Harbor retention area into Inlet Harbor retention pond





From: Jair Kessler Jair.Kessler@ens.fr & Subject: Fwd: Letter to Planning and Zoning

Date: March 2, 2024 at 09:54
To: Nic nic2bfit@yahoo.com



Begin forwarded message:

From: Kimberly Canny < kimberly canny@yahoo.com>

Subject: RE: Letter to Planning and Zoning

Date: March 1, 2024 at 10:05:35 EST

To: jair.kessler@nyu.edu

Good morning, it was nice to meet you after the Townhall meeting last night. Here is a copy of the letter that was sent to Mr. Lair in the planning and zoning office.

Regards, Kim Canny

Mr. Darren Lear,

Recently our Board of Trustees were unanimous in support of allowing the local Farmers Market to operate at the North end of the parking area at the Community Center. We feel that this location provides the safety and convenience that would add significant value to the vendors and those enjoying the market. In looking at our ability to have the market on the property we found that, per the current zoning, we are classified a PUBLIC/INSTITUTIONAL property. Based-on Table 2-5, TABLE OF PERMITTED USES we are precluded from having a Farmers Market on the property, as listed under the COMMUNITY FACILITIES AND PUBLIC ASSEMBLY section - even as a minor or major special exception. Given the importance to the residents of Ponce Inlet of continuing to have a Farmers Market here in the Town and the unique location we provide, we are requesting that the COMMUNITY AND PUBLIC ASSEMBLY section be changed to - under the 'P/I' column - to either: P, S, or S,. This will allow the Community Center to move forward with soliciting the Town to be a permanent 'home' for the Farmers Market at the Community Center - the center of community activities. As the Farmers Market has lost their ability to operate at their current location, we ask that this reclassification of the abilities of a PUBLIC/INSTITUTIONAL entity is expedited.

Respectfully submitted,

Kim Canny President, Ponce Inlet Community Center. Mr. Darren Lear Town Manager, Ponce Inlet Florida

March 10, 2024

Mr. Lear,

After extensive discussions between members of our Board of Trustees and a formal vote, we have decided that we are not in a position to host the farmers market. Although we believe it is a good activity for the Town, there were too many conflicts which proved unsurmountable for us to host the activity.

Respectfully,

Kim Canny

President, Ponce Inlet Community Center

From: Kimberly Canny kimberlycanny@yahoo.com &

Subject: RE: Farmers Market
Date: March 11, 2024 at 12:37

To: Jair Kessler jair.kessler@nyu.edu, Nicole Peterson Carr nic2bfit@yahoo.com

Cc: Mark Oebbecke piccrentals@yahoo.com

Dear Jair & Nicole,

All of your communications to myself, and Mark Oebbecke have included Mr. Lear, so I notified everyone, including Mike Disher at the same time, of the Boards decision.

The discussion that was held regarding the idea of the PICCI hosting the farmers market was between Mark and myself. We liked the idea, but had to bring it to the Board for a vote, which was concluded by email on Friday.

Ultimately, Board members, who may I remind you are volunteers, would have to sign up to be on the premises during Farmer market event dates. Several of our Board members voiced having other standing commitments on Sunday mornings and could not commit to that day. As I mentioned, we put it to a vote, and it was ultimately not passed. This is not to say that in the future, the community center wouldn't be open to hosting such events, but at this time it is just not possible. At this time that will conclude our communications.

Regards, Kim Canny

Sent from my iPhone

On Mar 11, 2024, at 10:45AM, Jair Kessler <jair.kessler@nyu.edu> wrote:

Dear Kim and Mark,

We received the copy of the letter you sent to Darren. I was absolutely flabbergasted to read that your board voted to rescind hosting the Farmer's Market, due to 'many conflicts which proved insurmountable...." Considering that your board never had one formal meeting with us, despite our many requests for one, it is truly impossible to imagine what conflicts exist when we never sat down to discuss the market with you.

Mark announced at the town hall meeting that PICC had voted unanimously to host the market and had submitted a special events application to do so. Despite the fact that we weren't informed of this beforehand, we were still pleased at the idea. Therefore, after a formal town hall announcement, it is particularly hard to understand how suddenly it is a no go when you haven't even explored the options with Nicole and I who manage the market.

I am very disappointed in the lack of 'community' from your Community Center. Your unilateral decisions were made without any discussion with all the parties concerned. And may I add that it is extremely unprofessional to inform us of your decision by copy of a letter to Darren. Not only was a meeting with us out

of the question, but you couldn't even bring yourself to inform us directly of the decision!

Seeing how your clique works, I am sure that we are much better off not doing anything with PICC.

Jair

On Mar 10, 2024, at 19:32, Kimberly Canny kimberlycanny@yahoo.com wrote:

Mr. Darren Lear Town Manager, Ponce Inlet Florida

March 10, 2024

Mr. Lear,

After extensive discussions between members of our Board of Trustees and a formal vote, we have decided that we are not in a position to host the farmers market. Although we believe it is a good activity for the Town, there were too many conflicts which proved unsurmountable for us to host the activity.

Respectfully,

Kim Canny

President, Ponce Inlet Community Center

From: Jair Kessler jair.kessler@nyu.edu

Subject: Please forward to Planning Board in advance of meeting on September 24

Date: September 22, 2024 at 22:03

To: Debbie Stewart dstewart@ponce-inlet.org

Cc: Mike Disher mdisher@ponce-inlet.org, Lois Paritsky lparitsky@ponce-inlet.org, Patty Rippey prippey@ponce-inlet.org,

Darren Lear dlear@ponce-inlet.org, Nicole Peterson Carr nic2bfit@yahoo.com



I have seen that on your agenda for the meeting on September 24th is: (under Business Item A) Ordinance 2024-##, Amending the LUDC, Article 2 "Zoning Districts", Section 2.40.1 "Interpretation of Uses and Structures Permitted, Table 2-5, "Table of Permitted Uses", adding farmers markets as a major special exception to the public-institutional zoning district".

Since we came before your committee for approval back in June 2022, I'm sure you are aware that we already have a Farmers Market on Sunday mornings once or twice a month at Racings North Turn, which is why such a request without our involvement feels like a personal attack.

For the brief back story to this issue:

At the February 2024 Town Council Meeting, Mark Oebbecke spoke in front of the Town Council and Ponce Inlet residents on behalf of the PICC to state that his Board of Directors had voted to submit a request for a permit to host the Farmers Market at the PICC. This was the first that Nicole Peterson Carr and I had heard of this request.

We talked that evening to both Mark Oebbecke and Kim Canny to say that we thought it was a great idea for our community. I then requested several times to meet with PICC to go over the logistics of the market. PICC never responded to this request, so a meeting never took place. Then on March 10th, 2024, Darren Lear forwarded us a copy of a letter sent to him by PICC saying that they were no longer in a position to host the market as there were too many conflicts. (All correspondence between PICC and us were copied to Mike Disher, Mayor Paritsky and Darren Lear.)

Considering that we never met with them, we understood that the conflict was due to personal issues a few PICC Board members had with my partner Nicole Carr. She was formerly on their board, until she resigned after her mother's death. This did not explain, however, why PICC would not meet with me.

I know that PICC has already contacted many of our vendors regarding their proposed PICC market, and I am taken back that they have gone behind my back to do so. It would have been so easy for us to work together, instead of this useless division of our community.

May I also add as a point of information, that we have learned from experience that a weekly Farmers market is not in the best interest of Ponce, as there are simply not enough residents taking advantage of this resource. However, a biweekly market does seem to be the best for our vendors and our community.



This town is too small to have 2 Farmers Markets on the same day. If this ordinance is being studied because the desire is to have an evening market, that could be a possibility. However, if this is a request to compete with our market, I must strongly object and ask the Planning Board to refuse to amend the ordinance. I also believe that Mark Oebbecke should recuse himself from the discussion and vote, as there is a conflict of interest between his role as Vice President of the PICC Board and Member of the Planning Board.

I would have liked to attend your meeting to speak in person, but have a previous engagement which could not be rescheduled.

Thank you for your consideration.

Jair Kessler



Town of Ponce Inlet

Planning Board Regular Meeting Minutes September 24, 2024

CALL TO ORDER AND PLEDGE OF ALLEGIANCE: Pursuant to proper notice,
 Chair Kaszuba called the meeting to order at 2:00 p.m. in the Council Chambers, 4300 S. Atlantic
 Avenue, Ponce Inlet, FL, and led attendees in the Pledge of Allegiance.

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2. ROLL CALL AND DETERMINATION OF QUORUM:

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Board members present:

Mr. Oebbecke, Seat #1

Mr. Kaszuba, Seat #2; Chair

Mr. Burge, Seat #3

Mr. Cannon, Seat #4

Mr. Carney, Seat #5; Vice Chair

Mr. Revak, Alternate #1 - Absent

Mr. Young, Alternate #2 - Absent

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Staff present:

Ms. Dowling, HR Coordinator

Ms. Fisher, Senior Planner

Ms. Gjessing, Assistant Deputy Clerk

Mr. Hooker, Code Compliance Manager

Ms. Hugler, Fire Department Office Manager

Attorney Knight, Town Attorney

Mr. Lear, Planning & Development Director

Ms. Rippey, Principal Planner

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Other officials present:

Mayor Paritsky

Councilmember Villanella

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3. ADOPTION OF AGENDA: - <u>Mr. Cannon moved to adopt the agenda as presented;</u> seconded by Vice-Chair Carney. The motion PASSED by consensus, 5-0.

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4. APPROVAL OF MINUTES:

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A. July 23, 2024 - Mr. Cannon moved to approve the July 23, 2024, meeting minutes as presented; seconded by Vice-Chair Carney. The motion PASSED by consensus, 5-0

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5. REPORT OF STAFF:

A. Planning Division Reports – Mr. Lear announced there are three new employees in the Planning and Development Department: Bernadette Fisher, Senior Planner; Bailey Hornbuckle, Code Enforcement Administrative Assistant; and Heather Ricci, Permit Technician.

He announced a Town Hall landscaping project to replant the areas previously cleared by Public Works of the muscadine grape vines; planting is scheduled to begin in October. They will be installing 272 native plants varieties; once established, these plants will help reduce soil erosion, conserve water and water run-off, lower maintenance needs, and enhance wildlife habitat. Regarding the S. Peninsula Drive sidewalk, contractors were hired last month by Volusia County to conduct survey work from the northern town limits to Lighthouse Drive; the survey is expected to take approximately five months after which the county will engage an engineer for the design work. Chair Kaszuba asked if there is a completion date for the sidewalk project. Mr. Lear explained that will be finalized during the design phase; public meetings must still take place.

B. Other Updates and/or Reports - There were no other updates.

6. CORRESPONDENCE/DISCLOSURE OF EX-PARTE COMMUNICATION: Mr. Oebbecke stated he identified communications between Mr. Revak and himself that was forwarded to staff for the record regarding the ordinance change to the LUDC. Mr. Revak texted Mr. Oebbecke on September 23, 2024 at 5:28 PM indicating he had reviewed what was being presented and the only question he had was "with modification zoning district permitting uses with major special exceptions designation what are the next steps required to get the event approved?". Mr. Oebbecke replied he received the message; Mr. Revak responded that he should probably bring up his thoughts and potentially identify an issue with Sunshine requirements. Vice-Chair Carney commented he went to the farmers market on Sunday and spoke with the ladies that run it who discussed their concerns with him; he requested they send their concerns to Ms. Rippey which they have done.

7. **HEARING OF CASES:** None.

BUSINESS ITEMS/PUBLIC HEARINGS:

8.

Ordinance 2024-XX (proposed), Amending the LUDC, Article 2 "Zoning Districts", Section 2.40.1 "Interpretation of Uses and Structures Permitted, Table 2-5, "Table of Permitted Uses"; adding farmers markets as a major special exception to the **public-institutional district.** – Ms. Rippey explained this proposed ordinance has been drafted in response to the Town Council's directive at the June 4, 2024 special meeting with the Planning Board and Town Council to amend the Land Use and Development Code (LUDC) to allow farmers markets as a special exception use in the Public Institutional (P-I) zoning district. She explained how amendments are adopted and reviewed the background of this proposed amendment to the LUDC. Currently, farmers markets are only permitted in the planned waterfront development (PWD) zoning district and allowed as a minor special exception use in the B-1, B-2, and PUD zoning districts. In the P-I zoning classification, farmers markets are not a permitted or special exception use, although they may be allowed through a special event permit, limited to 12 times per calendar year. According to LUDC Section 6.6.3, a special exception is a use that would not be appropriate without restriction, but which, if controlled as to number, area, location or relation to the surrounding area, would promote the public health, safety and general welfare. These uses require more comprehensive review, and by their nature may necessitate specific conditions to mitigate any potential adverse impacts. The Planning Board serves as the decision-making authority for minor special exceptions while major special exceptions require a recommendation from the Planning Board and approval by the Town Council. The request to add farmers markets as a special exception use to the P-I zoning district would provide additional locations for farmers

markets to serve the local population; 16 properties within the town limits are zoned Public-Institutional. Those properties include town-owned facilities and parks, county-owned facilities and parks, and private scientific facilities. The Ponce Inlet Community Center Board of Trustees is in support of allowing a farmer's market to operate at the Community Center. Based on the safety, convenience and unique location, the Board has requested that farmers markets be added as a special exception use. The proposed amendment will add a major special exception notation in the P-I zoning column in Section 2.40 of Table 2-5 (Table of Permitted Uses) under the section of the table in the LUDC titled "Community Facilities and Public Assembly"; footnote 10 is included in the notation and is located on the last row of Table 2-5 to identify P-I zoned properties excluded from the major special exception. The three P-I zoned properties proposed to be included as a major special exception are: Ponce Inlet Community Center, Ponce Inlet Fire Rescue, and Timothy Pollard Memorial Park which are located adjacent to each other on S. Peninsula Drive. The P-I zoned properties excluded from the special exception are Ponce Preserve, Timucuan Oaks Garden, Winter Haven Park, Public Works facility, Ponce Inlet Historic Museum, the two Batelle Institute properties, Jesse Linzy Boat Ramp, Marine Science Center, and Lighthouse Point Park. Originally, the Pacetti Hotel Museum, Ponce de Leon Lighthouse and Museum, Kay and Ayres Davies Lighthouse Park were included; however, after a discussion with Ed Gunn, Director of the Historic Lighthouse Preservation Association, they did not want that to occur on those properties and upon further review, there are some restrictions on those properties that are included in the 10acre location. As reviewed regarding the comprehensive plan, the ordinance will maintain consistency with the Town's desired vision and direction. The Future Land Use Element of the comprehensive plan classifies the P-I land use category as land used for quasi-public and private activities or facilities which will serve the public interest in an educational, recreational, or scientific context. Staff recommends Ordinance 2024-##, amending Section 2.40 Table of Permitted Uses to include farmers markets as a major special exception use in the P-I zoning district excluding 13 of the 16 P-I zoned properties.

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Vice-Chair Carney referred to the email provided by Jair Kessler regarding this issue and her concern that Mr. Oebbecke has a conflict of interest as he is a Board Member of the Ponce Inlet Community Center. Attorney Knight explained Mr. Oebbecke will be recusing himself from the vote on this issue. Mr. Lear clarified that Ms. Kessler's email was forwarded to the Planning Board members. Members discussed the proposed amendment, the use of the Fire Department and Timothy Pollard Park properties, other uses than farmers markets, and potential parking issues. They discussed it being a major versus minor exception; they discussed the properties that are excluded and why. Board members discussed communication submitted from the Ponce Inlet Community Center Board of Directors and their decision to allow farmers markets. Mr. Oebbecke explained on behalf of the PICCI Board of Directors why a weekly farmers market will be a benefit to the community and their reasons for supporting this amendment. Discussion continued. Chair Kaszuba opened public comment; seeing none, he closed public comment. Chair Kaszuba opened the floor for more Board discussion or a motion. Mr. Cannon asked for clarification of the nature of a farmer's market; that it is an aggregation of vendors that are not beholden to anyone. There is no contractual agreement; it is only an assembly point. Mr. Oebbecke explained that is correct; there is no agreement, no contract is signed, and no fee is charged to the vendors; it is a place for them to congregate and sell their wares on a weekly basis. Mr. Lear clarified that the current farmers market operating at the North Turn Restaurant is under a special event permit that is allowable only 12 times per year. Mr. Cannon asked if this is approved, if there is anything that prohibited one market operating at will and another that is limited to 12 times per year. Vice-Chair Carney commented that the Board members recently received training, and he would like guidance on what the threshold should be for an exception like this or what they should be looking for to make this decision. Attorney Knight explained there is no set criteria, and this is not a quasi-judicial proceeding. Discussion continued; Attorney Knight explained the difference between a variance and a special exception.

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Mr. Cannon moved Ordinance 2024-XX, amending the LUDC, Article 2 "Zoning Districts", Section 2.40.1 "Interpretation of Uses and Structures Permitted, Table 2-5, "Table of Permitted Uses" to include farmers markets as a major special exception to the public-institutional district excluding 13 of the 16 P-I zoned properties be forwarded to the Town Council with a recommendation of APPROVAL; seconded by Chair Kaszuba. The motion FAILED 2-2, with the following vote: Mr. Cannon – yes; Chair Kaszuba – yes; Mr. Burge – no; Vice-Chair Carney – no.

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Mr. Oebbecke abstained, and his filed Form 8-B is attached as part of the record.

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В. Ordinance 2024-XX (proposed), Amending Articles 3, 8, and 9 of the LUDC to substitute references of Code Enforcement Board with Special Magistrate - Mr. Lear explained that this ordinance has been developed to implement the Town Council's directive to shift from a Code Enforcement Board process to a Special Magistrate process. The amendment changes references found throughout the LUDC pertaining to enforcement of land development regulations, Chapter 162, Florida Statutes, authorizes the use of a Special Magistrate to enforce the city's codes and ordinances. A Special Magistrate is an attorney and a member of the Florida bar who is appointed by the Town Council; he explained the duties of a Special Magistrate in relation to code enforcement. He noted that the Town of Ponce Inlet is the only municipality in Volusia County that exclusively uses a Code Enforcement Board rather than a Special Magistrate or a combination of both. At the July 18, 2024 Town Council meeting, Council directed staff to proceed with transitioning from a Code Enforcement Board to a Special Magistrate. Staff recommends approval for this item. Vice-Chair Carney commented he has heard that Ponce Inlet code, as it refers to housing and short-term leasing, is grandfathered and could not be changed; he wants to ensure that when we update this, we do not lose the grandfather status. Mr. Lear explained that would not affect this. Attorney Knight explained it is not a substantive change where we would lose the grandfathering status. Chair Kaszuba asked how long the Town has had a Code Enforcement Board. Mr. Hooker explained the first Code Enforcement Board meeting was in the 1980's. The Town has had the same attorney since that time, Mr. Charles Cino, who has indicated he will likely retire within the next year. The Special Magistrate would start in January; Mr. Hooker explained the process and noted that the Special Magistrate would only serve the Town of Ponce Inlet. He explained that the Special Magistrate will be chosen through an RFP process. He explained the appeal process and why the Town is transitioning to a Special Magistrate. Chair Kaszuba opened public comment; seeing none, he closed public comment.

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Mr. Cannon moved that Ordinance 2024-XX amending Articles 3, 8, and 9 of the Land Use Development Code to substitute references of the Code Enforcement Board with Special Magistrate be forwarded to the Town Council with a recommendation of APPROVAL; seconded by Vice-Chair Carney. The motion PASSED 5-0, with the following vote: Mr. Cannon – yes; Vice-Chair Carney – yes; Mr. Oebbecke – yes; Chair Kaszuba – yes; Mr. Burge – yes.

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9. **PUBLIC PARTICIPATION:** Chair Kaszuba opened public participation – hearing none, he closed public participation.

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10. BOARD DISCUSSION: None.

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11. ADJOURNMENT: The meeting was adjourned at 3:07 p.m.

189 Prepared and submitted by,

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191 <u>Draft</u>

192 Debbie Stewart

193 Assistant Deputy Clerk

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Stephanie Gjessing

From: Debbie Stewart

Sent: Wednesday, October 16, 2024 12:28 PM

To: Stephanie Gjessing

Subject: FW: Town Hall October 17 Agenda Item 11 A

Attachments: 01_0301_CANNY.pdf; 02_0310_Canny.pdf; 03_0311_Canny_email.pdf; Kessler Planning

Board email.pdf

Follow Up Flag: Follow up

Due By: Wednesday, October 16, 2024 2:30 PM

Flag Status: Completed

From: Jair Kessler < jair.kessler@nyu.edu>
Sent: Wednesday, October 16, 2024 9:49 AM
To: Debbie Stewart < dstewart@ponce-inlet.org>

Cc: Darren Lear <dlear@ponce-inlet.org>; Kim Cherbano <kcherbano@ponce-inlet.org>; Mike Disher <mdisher@ponce-

inlet.org>; Nicole Peterson Carr <nic2bfit@yahoo.com>; Patty Rippey <prippey@ponce-inlet.org>

Subject: Town Hall October 17 Agenda Item 11 A

[EXTERNAL: This email was sent from outside of ponce-inlet.org, confirm this is a trusted sender before opening any links or attachments]

Madame Mayor and Town Council Members,

I am writing you regarding Business item 11 A (1st reading amending section 20): Farmers Markets Permitting Uses. Many pertinent facts and details regarding this issue have been left out along with correct dates. We request these items be added to the agenda and on public record.

I realize that this is only a 1st reading by the Town Council, but I am here to express once again my concern that this town is too small to host two Farmers Markets on the same day (Sunday). This would only be confusing and divisive for residents and vendors, and would not count as good business competition.

My partner and I have never had an objection to hosting a Farmers Market at the PICC (although much detail would have to be worked out regarding parking availability for the church goers, residents and vendors - not to mention managing the vendors). As you all know, we were never given the chance to meet with PICC to see how we could work this out together.

Please look at the following selected documents in chronological order which I also request to be posted on the screen during Citizens' Participation on this item:

1) Kim Canny letter submitted in February before the Town Hall Meeting on February 29th. Note that the letter in your packet is **neither dated nor stamped**. The email from Kim Canny to myself was sent on March 1st.

- 2) Kim Canny letter dated March 10 to Darren Lear saying that PICC is not in a position to host the Farmers Market.
- 3) Correspondence on March 11 between myself and Kim Canny.
- 4) My email to the Planning Board dated September 22.
- 5) *Planning Board Minutes showing item failed on 9/24 2-2 vote (already in council agenda packet) so not printed out.
- 6) This summarizing email.

We do not understand why the Farmers Market is even an issue for this town, given that it has been operating smoothly for 2 years now. Therefore, we do not wish to see the Town Council amend the permitting for PICC, and hope that you will put an end to this matter which, because of the way it has been handled, is conflictual for our community. It is time to put the town first over individual agendas.

Thank you in advance for your attention.

Jair Kessler 81 Buschman Drive 917.539.8706



Meeting Date: 11/21/2024

Agenda Item: 9-A

Report to Town Council

Topic: Approval of one-year agreement with Halifax Humane

Society, Inc. for animal shelter services.

Summary: The Ponce Inlet Police Department wishes to extend the

current contract with the Halifax Humane Society (HHS) through September 30, 2025 for humane care, sheltering,

and disposition of animals delivered to them.

Suggested motion: Staff recommends approval of the service

agreement with Halifax Humane Society.

Requested by: Chief Glazier, Police Chief

Approved by: Mr. Disher, Town Manager



MEMORANDUM

PONCE INLET POLICE DEPARTMENT - OFFICE OF THE POLICE CHIEF

THE TOWN OF PONCE INLET STAFF SHALL BE PROFESSIONAL, CARING, AND FAIR IN DELIVERING COMMUNITY EXCELLENCE WHILE ENSURING PONCE INLET CITIZENS OBTAIN THE GREATEST VALUE FOR THEIR TAX DOLLAR.

TO: Michael E. Disher, AICP / Town Manager

FROM: Jeff Glazier / Police Chief

DATE: October 28, 2024

SUBJECT: Staff Report / Extension of Halifax Humane Society Contract

Meeting Date: November 21, 2024

The Ponce Inlet Police Department wishes to extend the current contract with the Halifax Humane Society (HHS) through September 30, 2025. Upon written agreement of the parties, this contract may be renewed for up to three 12-month periods, with a 10% increase of fees per renewal.

There are several fee increases found on pages 5-6 being proposed by the Halifax Humane Society. These increases are the same for all cities.

| Service | Current Fee | Proposed Fee |
|--------------------------------|------------------------|---------------------------|
| Stray Sheltering | \$120 | \$156 |
| Other Domesticated Animal | \$100 | \$130 |
| Livestock Animal | \$150 | \$195 |
| Wild Animal (Euthanasia) | \$55 | \$71.50 |
| Deceased on Arrival (Disposal) | \$25 | \$32.50 |
| Quarantined Animal | \$100+ \$30/day | \$390 + \$39/day |
| Confiscated Animal | \$120+\$20/day | \$130 + \$45.50/day |
| Fees for RTF/TNR cats | | |
| Sterilization Surgery | \$45 | \$58.50 |
| Complimentary ear tipping, | | |
| FVRCP, Rabies Vaccines | | |
| Anesthesia Fee | \$45 | \$58.50 |
| Euthanasia | \$45 | \$58.50 |
| | Staff Support \$25/hr. | Staff Support \$32.50/hr. |
| Staff Assistance | Vet Support \$125/hr. | Vet Support \$162.50/hr. |

In 2024, the total cost of HHS services for the Town was \$1,255. A majority of the cost (\$810) was spent on the Return To Field (RTF) Program for feral cats. This included spaying or neutering, vaccinations for rabies and distemper, and ear tipping of 18 feral cats. Note that this number is unusually high. The average number for the last 2 preceding years is 10.

The Ponce Inlet Police Department budgeted \$1,000 for FY 2024-2025 animal control services. We believe this amount will be sufficient to cover all services needed given the abnormally high number of feral cats serviced in 2024.

The proposed agreement has been reviewed by the Town Attorney for legal form and content. The Ponce Inlet Police Department recommends the approval of the attached service agreement with Halifax Humane Society for humane care, sheltering, and disposition of animals delivered to them.

AGREEMENT FOR SERVICES BETWEEN Halifax Humane Society, Inc. AND The Town of Ponce Inlet

This Services Agreement ("Agreement") is hereby entered into by and between the Halifax Humane Society, Inc., a Florida non-profit corporation, with its principal address at 2364 West LPGA Boulevard, Daytona Beach, Florida 32124 ("Humane Society"), and the Town of Ponce Inlet ("Impounding Agency"), a political subdivision of the State of Florida, with its primary address at 4300 S. Atlantic Avenue, Ponce Inlet, FL, 32127.

WHEREAS, to enforce the ordinances of the Impounding Agency and the laws of the State of Florida with respect to stray animals, the Impounding Agency desires to deliver stray animals to the Humane Society for the humane impoundment and humane disposition of said animals; and

WHEREAS, the Humane Society is organized for the purpose, among others, of preventing cruelty to animals and is interested in assuring that impounded animals are sheltered in a humane manner and those which must be destroyed, be so destroyed humanely.

NOW, THEREFORE, for and in consideration of the mutual covenants, conditions and provisions herein contained, it is expressly agreed and understood as follows:

1. **TERM**: This Agreement will take effect on the 1st day of October 2024 and will remain in full force and effect for an initial twelve (12) month period ending on midnight between September 30, 2025 and October 1, 2025. Prior to the end of the initial twelve (12) month period, the parties shall have the option to extend the contract or enter contract negotiations if they desire. Upon written agreement of the parties, this contract may be renewed for up to three (3) twelve (12) month periods, with a 10% increase of fees per renewal.

2. ANIMAL SHELTER, RETURN TO FIELD, AND TRAP, NEUTER, AND RETURN:

- (a) The Humane Society will maintain and operate an animal shelter ("Shelter") in a manner adequate for the confinement, remedial treatment, and, if necessary, disposal of stray dogs, cats, or other animals, which may be delivered to the Humane Society from all areas within the jurisdictional limits of the Impounding Agency, and the Humane Society will furnish, at its sole expense, all supervision, labor, animal food, tools, supplies and other things necessary for the satisfactory performance of the services herein agreed to be provided. Remedial care will be provided for injured animals during operating hours when there is a staff veterinarian available, at the Humane Society's sole expense. The Shelter will be operated at 2364 West LPGA Blvd., Daytona Beach, Florida.
- (b) The Humane Society will provide means to accept all stray dogs and other stray or seized domesticated animals delivered to the Shelter by the Impounding Agency's law enforcement personnel, Animal Control Officers, or other designated officers

appointed by the Impounding Agency for this purpose. The Humane Society will provide Return to Field (RTF) service for unsterilized cats following national animal welfare organization recommendations for the most humane practices with addressing cat overpopulation. The Humane Society will accept wild animals and livestock only if it has the ability and facilities to impound and control these animals, and the decision to accept or reject such animals will be solely within the discretion of the Humane Society. The Humane Society will require all persons who drop off or report injured or stray animals to the Shelter during the Shelter's normal operating hours to give their names and current home and post office addresses and identify the place where the animals involved were located or picked up.

- (c) When the Impounding Agency delivers an animal to the Shelter for impoundment and such animal bears information indicating ownership of the animal, the Impounding Agency's representative shall attempt to return the animal to its rightful owner, only when safe for the animal to do so. The Impounding Agency's representative shall also provide all contact information gathered and their documented attempts of contact of the animal's owner/guardian to Halifax. An administrative fee of \$45 will be assessed for every animal found to have identification by means of a collar with information, tag or microchip and an attempted contact of the owner/guardian of the animal has not been made and the owner/guardian provides documentation of such. Regardless of the foregoing, any animal suspected of being infected with rabies or which has bitten or otherwise exposed any person to rabies, shall not be released to its owner/guardian until after such animal has been impounded for a period of ten (10) days and the Volusia County Health Department, through its authorized representatives, has expressly approved, in writing, any such release. When a stray domestic animal is delivered to the Shelter and is not suspected of having rabies or has not bitten or otherwise exposed any person to rabies, the Humane Society will impound the animal at the Impounding Agency's expense for a period of three (3) calendar days (unless the cat is referred to the Return to Field (RTF) program as described below). There will only be a 24-hour holding period for dogs under 6 months of age when 2 or more are impounded together and no holding period for cats under the age of 6 months provided there is no owner identification. If the owner has not retrieved the animal within the designated holding period, the Humane Society will thereafter, at its own expense, provide for the adoption or humane disposal of the animal in accordance with its routine methods and procedures.
- (d) When a stray cat is delivered to the Shelter and is not suspected of having rabies or has not bitten or otherwise exposed any person to rabies, the Humane Society will determine the eligibility of the animal for the RTF Program. After consultation, the Humane Society will decide whether the cat will be referred for impoundment or RTF and notify the Impounding Agency. The Impounding Agency's representative will expressly inform the Humane Society if a cat is brought in as part of the Trap, Neuter and Return Program (TNR) or Return to Field (RTF). The Humane Society will only

perform feline sterilization services for cats brought to the Humane Society by an Animal Control Officer (ACO) or other person designated by the Impounding Agency's Police Department. Cats brought to the Humane Society by any other person will not be eligible for reimbursement by the Impounding Agency. Fees for this service are listed in 3.b. under RTF/TNR Cats. The Impounding Agency will only be responsible for services or procedures that are requested and expressly included in this agreement. The Impounding Agency will not pay for any other service or procedure. The RTF/TNR Program requires the following:

- i. The Humane Society and the Impounding Agency shall mutually agree on the day(s) of the week that the Impounding Agency will bring cats to the designated Humane Society facility. Said schedule shall be subject to change by mutual agreement of the parties. The Impounding Agency shall at a minimum have one day reserved each week at a designated Humane Society facility to bring in cats for sterilization.
- ii. Surgeries may be completed at either:

Halifax Humane Society 2364 West LPGA Boulevard Daytona Beach, FL 32124 Or

HHS Redinger Clinic 600 Mason Ave #150 Daytona Beach, FL 32117

Hereafter "Humane Society" shall refer to both the location on LPGA Blvd. and the location on Mason Ave.

- iii. All regular sterilizations are the same price for neuters and spays (males and females). Each surgery includes complimentary ear tipping, FVRCP and rabies vaccines, and anesthesia. Ear tipping must be completed according to Alley Cat Allies recommendations by removing at least 3/8 of an inch from the top of the left ear.
- iv. If the Impounding Agency presents a cat for sterilization and the Humane Society finds the cat has already been sterilized, the Humane Society will provide anesthesia, ear tipping, FVRCP and rabies vaccine at the normal sterilization surgery cost of \$45.
- v. Upon presentation of a cat, the Humane Society, at its sole discretion, will determine if the cat is healthy enough to survive surgery and whether or not it should be euthanized. The Humane Society recognizes that the Impounding Agency does not have a licensed veterinarian on staff and does not have the ability to determine whether an animal should be euthanized. The cost for euthanasia is \$45.

- vi. All cats being returned to the Impounding Agency's staff from the Humane Society will have their ear tipped as described above. There will be no exceptions. If a cat is returned to the Impounding Agency's staff without an ear tip, or with an ear tip of less than 3/8 of an inch from the top of the left ear, the cat will be returned to the Humane Society for the procedure without any additional charge to the Impounding Agency.
- vii. No procedures other than those listed in this document will be paid for by the Impounding Agency. The Impounding agency will only reimburse for procedures that have been documented and provided to the Impounding Agency. The Humane Society must provide at least the following information in order to receive reimbursement for each cat:
 - Invoice number
 - Visit Date
 - Billing Date
 - Animal Name and/or Number
 - Impounding agency services provided
 - Cost for each service provided
 - Total cost
- viii. The Humane Society will combine and send all invoices to the Impounding Agency monthly.
- ix. Animal Control Officers will notify the Humane Society staff at the LPGA location whether a feline brought there is part of the TNR program orif it is for RTF oris wild, stray, confiscated, or a seized cat.
- x. The Humane Society will only release RTF cats to the Impounding Agency's Animal Control Officer unless the Impounding Agency provided written permission from the agency's authority for a 3rd party release..

3. BILLING & PAYMENT:

- (a) The Humane Society shall bill the Impounding Agency pursuant to Paragraph 3(b), as applicable, for:
 - (i) each dog or cat, domesticated animal, injured animal, deceased animal, livestock animal, wild animal, or quarantined/confiscated animal delivered to the Shelter by either the Impounding Agency's designated personnel, Law Enforcement, or Animal Control Officers;
 - (ii) each stray dog or cat, domesticated animal, injured animal, deceased animal, livestock animal or wild animal emanating from within the jurisdictional limits of the Impounding Agency and delivered to the Shelter by a private citizen. Owner surrendered animals will only be accepted via the Impounding Agency with

Supervisor approval from Halifax Humane Society. Owner requested surrenders in the field should be referred to Halifax Humane Society directly; and

- (iii) each dog or cat, domesticated animal, injured animal or deceased animal picked up at the request of the Impounding Agency by the Humane Society within the Impounding Agency's jurisdictional limits.
- (b) In consideration of the agreements and undertakings to be performed by the Humane Society, the Impounding agency agrees to pay the following applicable fee(s) per animal to the Humane Society on a monthly basis, in arrears:

| Type of Animal | Fee |
|--|--|
| Dog or cat (if the cat is not eligible for RTF/TNR program) Impoundment | \$156.00 |
| 2nd day of impoundment | |
| 3rd day of impoundment | |
| Other domesticated animal | \$130.00 |
| Livestock animal | \$195.00 |
| Wild animal (Euthanasia) | \$ 71.50 |
| Deceased on arrival (Disposal) | \$32.50 |
| Quarantined animal (e.g., Rabies) | \$390, \$39 per day
Quarantine period determined by Florida State Statute |
| Confiscated animal | \$130 for the 1st day of impoundment plus \$45.50 for each additional day of impoundment |
| Fees for RTF/TNR cats Sterilization Surgery Complimentary ear tipping, FVRCP, Rabies Vaccines | \$58.50 |
| Anesthesia Fee No surgery performed, ear tipping, FVRCP vaccine, rabies vaccine | \$58.50 |
| Euthanasia Veterinarian determined that patient cannot undergo surgery due to illness/disease | \$58.50 |
| Fees for Additional Services Forensic calls and staff assistance | Staff Support: \$32.50 |
| | Veterinarian Support \$162.50 per hr. |

(c) Payment must be made to the Humane Society within forty-five (45) days of the date of a proper invoice, as required by the Florida Local Government Prompt Payment Act (Part VII, Chapter 218, Florida Statutes) (the "Prompt Payment Act"). As provided by

the Prompt Payment Act, any payment that is not made by the Impounding Agency within such time period shall bear interest from thirty (30) days after the due date at a rate of one percent (1%) per month on the unpaid balance until paid in full. If the Impounding Agency has a dispute about a charge on its invoice, it must contact the Humane Society's Director of Administrative Services at 386-274-4703, extension 315, within fifteen (10) days of the date of the invoice.

- (d) The Humane Society will submit to the Impounding Agency, with its monthly invoice, a list of all pick up addresses of stray animals charged to the Impounding Agency's account for animals that were not impounded by the Impounding Agency's designated personnel, the names and addresses of all persons claiming any stray animals that are dropped off at the Shelter during normal operating hours, and, if known, the names and addresses of all persons claiming stray animals that are dropped off at the Shelter after-hours.
- (e) The Humane Society will use good faith efforts to try to collect from the animal's owner all costs for which the Impounding Agency is otherwise liable hereunder. In the event an owner pays any fees or charges to reclaim its animal, the Impounding Agency shall be credited half any such fees or charges paid.
- 4. **RABIES QUARANTINE**: The Humane Society will provide space for the confinement, observation and care of any stray animal suspected of rabies, or any stray animal which has bitten or otherwise exposed any person to rabies for a period of the state determined time for quarantine and will accept, care for and dispose of any such animal delivered to the Shelter. The Humane Society will notify the Volusia County Health Department of any rabies specimen animal that dies during the quarantine period, and will allow the Volusia County Health Department the opportunity to take custody of the remains of any such animal that becomes ill or dies while under confinement for such reasons. The Impounding Agency shall pay the applicable charges for quarantine service pursuant to Section 3(b) of this Agreement.
- 5. **CONFISCATED ANIMALS**: The Humane Society will agree to accept confiscated animals as strays or accept said animals as "confiscated" only when the provisions of Section 828.073, Florida Statutes are satisfied (*i.e.*, pursuant to a Court order after petition and hearing). The Impounding Agency shall be responsible for all charges and expenses incurred in confiscating an animal pursuant to § 828.073, Fla. Stat. The appropriate paperwork must be submitted by the seizing agent to the Humane Society within three (3) business days of impounding the confiscated animal. Failure to comply with this requirement will result in "confiscated" animals being deemed "stray" animals, at which point care of the animal will be charged to the Impounding Agency at the default "stray" rates provided in Section 3(b) of this Agreement. The Impounding Agency agrees to indemnify the Humane Society for any and all claims that may arise as a result of the Impounding Agency's decision to submit the animal as a stray, except that the cap on the amount and liability of the Impounding Agency for indemnification or damages under this contract, regardless of the number or nature of claims in tort, equity, or contract, shall not exceed the dollar amount expended by the Impounding Agency for Humane Society services in the contract

year in which the claim arises.

- DANGEROUS DOG LAW: Pursuant to Sections 767.12 and 767.13, Florida Statutes, it will be the sole responsibility of the Impounding Agency's animal control authority to determine whether a dog is dangerous and to submit to the Humane Society the necessary paperwork as required by the applicable statutes. If quarantine is necessary, pursuant to Sections 767.12 and 767.13, Florida Statutes a dog may be guarantined for ten (10) business days at a bona fide boarding kennel or veterinarian's office of the seizing agent's or owner's choice. Otherwise, the Humane Society will quarantine all dogs that the Impounding Agency's animal control authority determines to be dangerous for a maximum of ten (10) business days. The Impounding Agency shall pay the applicable charges for such service pursuant to Section 3(b) of this Agreement. If the owner of the dog is unknown by the end of the quarantine period, the Impounding Agency may request that euthanasia be performed by the Humane Society when it is the Impounding Agency's belief that the dog poses a threat to public safety. The Impounding Agency agrees to indemnify the Humane Society for any and all claims that may arise as a result of the Impounding Agency's decision to submit the animal under the Dangerous Dog Law, except that the cap on the amount and liability of the Impounding Agency for indemnification or damages under this contract, regardless of the number or nature of claims in tort, equity, or contract, shall not exceed the dollar amount expended by the Impounding Agency for Humane Society services in the contract year in which the claim arises.
- 7. CONFISCATED ANIMALS - OWNER OF ANIMAL IS IN CUSTODY / DECEASED / **HOSPITALIZED**: All animals whose owners are in police custody, deceased or hospitalized may be placed in a bona fide boarding kennel or veterinary clinic at the owner's expense. The Humane Society will accept any such animals that are seized or taken by the Impounding Agency. The Impounding Agency will pay the applicable charges for such service (i.e., "Confiscated Animal") pursuant to Section 3(b) of this Agreement. The Impounding Agency agrees to indemnify the Humane Society for any and all claims that may arise as a result of the Impounding Agency's decision submit Confiscated/Owner to the animal as of Animal Custody/Deceased/Hospitalized, except that the cap on the amount and liability of the Impounding Agency for indemnification or damages under this contract, regardless of the number or nature of claims in tort, equity, or contract, shall not exceed the dollar amount expended by the Impounding Agency for Humane Society services in the contract year in which the claim arises. The Impounding Agency agrees to provide next of kin, emergency contact or any other guardian information to the Human Society within three (3) days of impoundment. Failure to do so by the Impounding Agency will forfeit any hold on the animal other than the mandatory three (3) day holding period for stray animals.
- 8. **CONFISCATED ANIMALS DUE TO OWNER EVICTION**: Animals seized by the Impounding Agency because of an owner eviction will be held by the Humane Society for five (5) days. The Impounding Agency agrees to leave notice of impoundment at the eviction location listing the whereabouts and descriptions of animal confiscated. The Impounding Agency's representative will provide proof of such notice, an agency report or photograph of notice on the dwelling with

the address or writ of possession displayed. If not reclaimed by the owner, all charges accruing pursuant to Section 3(b) will be paid by the Impounding Agency.

If the Impounding Agency chooses not to have the Humane Society hold the animal for the entire reclamation period referenced above, the Impounding Agency may submit the animal to the Humane Society as a "stray," in which case the animal will be held for three (3) days prior to disposition. The Impounding Agency agrees to indemnify the Humane Society for any and all claims that may arise as a result of the Impounding Agency's decision to submit the animal as a "stray", except that the cap on the amount and liability of the Impounding Agency for indemnification or damages under this contract, regardless of the number or nature of claims in tort, equity, or contract, shall not exceed the dollar amount expended by the Impounding Agency for Humane Society services in the contract year in which the claim arises The Impounding Agency shall pay the applicable charges for such service pursuant to Section 3(b) of this Agreement.

- 9. **REMEDY IN THE EVENT OF BREACH**: If the Impounding Agency fails to make timely payment to the Humane Society for services rendered pursuant to this Agreement, the Humane Society, in its sole discretion, may elect to terminate this Agreement and cease providing services to the Impounding Agency. If the Humane Society exercises this option, it will provide the Impounding Agency with thirty (30) days written notice of its decision to terminate the Agreement. The Impounding Agency will remain responsible for payment for all services rendered by the Humane Society prior to and during the thirty (30) day notice period. Upon expiration of the thirty (30) day notice period, the Humane Society will no longer provide any services to the Impounding Agency.
- 10. **WAIVER OF BREACH**: The waiver by the Humane Society or the Impounding Agency of any breach or violation of this Agreement will not operate as or be construed to be a waiver of any subsequent breach of this Agreement.
- 11. **SOVEREIGN IMMUNITY:** The Impounding Agency expressly retains all rights, benefits, and immunities of sovereign immunity in accordance with §768.28, Florida Statutes. Notwithstanding anything set forth in any section of the Agreement to the contrary, nothing in the Agreement shall be deemed as a waiver of immunity of limits of liability of the Impounding Agency beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature or may be adopted by the Florida Legislature, and the cap on the amount and liability of the Impounding Agency for damages, regardless of the number or nature of claims in tort, equity, or contract, shall not exceed the dollar amount set by the legislature for tort. Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against the Impounding Agency, which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law.
- **12. PUBLIC RECORDS**: Pursuant to section 119.0701 (2)(a), Florida Statutes, the Impounding Agency is required to provide the Humane Society with this statement and establish the following

requirements as contractual obligations pursuant to the Agreement:

IF THE HUMANE SOCIETY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, RELATING TO THE HUMANE SOCIETY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS BY phone at 386-236-2150, email at kcherbano@ponce-inlet.org, or by mail, Town of Ponce Inlet, Attn: Public Records Agency Custodian, 4300 S. Atlantic Avenue, Ponce Inlet, FL 32127.

By entering into this Agreement, the Humane Society acknowledges and agrees that some records maintained, generated, received, or kept in connection with, or related to the performance of services provided under, this Agreement are public records subject to the public records disclosure requirements of section 119.07(1), Florida Statutes, and Article I, section 24 of the Florida Constitution. Pursuant to section 119.0701, Florida Statutes, any contractor entering a contract for services with the Impounding Agency, including the Humane Society, is required to comply with the following with respect to the applicable public records:

- a) Keep and maintain public records required by the Impounding Agency to perform the services and work provided pursuant to this Agreement.
- b) Upon request from the Impounding Agency's custodian of public records, provide the Impounding Agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the Impounding Agency.
- d) Upon completion of the contract, transfer, at no cost, to the Impounding Agency all public records in the possession of the contractor or keep and maintain public records required by the Impounding Agency to perform the service. If the contractor transfers all public records to the Impounding Agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Impounding Agency, upon request from the Impounding Agency's custodian of public records, in a format that is compatible with the information technology systems of the Impounding Agency.
- e) Requests to inspect or copy public records relating to the Impounding Agency's contract for services must be made directly to the Impounding Agency. If contractor receives any such request, contractor shall instruct the requestor to contact the Impounding Agency. If the Impounding Agency does not possess the records requested, the Impounding

Agency shall immediately notify the contractor of such request, and the contractor must provide the records to the Impounding Agency or otherwise allow the records to be inspected or copied within a reasonable time.

The Humane Society acknowledges that failure to provide the applicable public records to the Impounding Agency within a reasonable time may be subject to penalties under section 119.10, Florida Statutes. The Humane Society further agrees not to release any records that are statutorily confidential or otherwise exempt from disclosure without first receiving prior written authorization from the Impounding Agency. Humane Society shall indemnify, defend, and hold the Impounding Agency harmless for and against any and all claims, damage awards, and causes of action arising from Humane Society's failure to comply with the applicable public records disclosure requirements of section 119.07(1), Florida Statutes, or by Humane Society's failure to maintain any applicable public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorney's fees and costs arising therefrom. Humane Society authorizes Impounding Agency to seek declaratory, injunctive, or other appropriate relief against Humane Society from a Circuit Court in Volusia Impounding Agency on an expedited basis to enforce the requirements of this section.

- 13. **MEDIATION**: Any dispute arising from this Agreement, including, but not limited to, disputes over fees for services, will be mediated prior to a lawsuit being filed. Mediation will occur within sixty (60) days of written request by either party to mediate unless agreed to otherwise. The written request must be delivered in accordance with the provisions of Paragraph 19, below, of this Agreement. The cost of the mediator's fee will be borne equally by the parties.
- 14. **ATTORNEY'S FEES**: Both parties agree to bear the cost of their own attorneys' fees with respect to any disputes, lawsuits, or claims arising under this Agreement, except unless otherwise specifically allowed elsewhere in this Agreement or in the event of an action to recover amounts due under Part VII, Chapter 218, Florida Statutes, in which case, the court shall award court costs and reasonable attorney's fees, including fees incurred through appeal, to the prevailing party.
- 15. **GOVERNING LAW AND VENUE:** The parties further agree that this Agreement will be governed by the laws of the State of Florida and that venue for any and all suits arising out of or otherwise attributable to this Agreement will lie exclusively in the courts of Volusia County, Florida, unless the matter at issue is solely cognizable in federal court, in which case, venue shall be in the Middle District of Florida, Orlando Division.
- 16. **SEVERABILITY**: If any provision of this Agreement or any part of any provision of this Agreement is found to be invalid by a court of competent jurisdiction, such will not affect the validity of any other provision, or part thereof, of this Agreement.
- 17. **ENTIRE AGREEMENT**: This Agreement constitutes the entire and final understanding and agreement with respect to the subject matter hereof and supersedes all prior or contemporaneous negotiations, promises, covenants, agreements, or representations concerning all matters directly or indirectly, collaterally related to the subject matter of this

Agreement.

HALIFAX HUMANE SOCIETY INC

- 18. **AMENDMENTS**: This Agreement cannot be amended or modified except by a writing executed by both of the parties hereto or their respective administrators, trustees, personal representatives and successors.
- 19. **NOTICES**: Any written notice required to be given under this Agreement is to be mailed by registered or certified mail, postage prepaid, to the party's business address or any other address designated for that purpose by written notice and sent to the attention of the Impounding Agency's Manager with respect to the Impounding Agency and to the attention of the CEO with respect to the Humane Society.

IN WITNESS WHEREOF, the Humane Society and the Impounding Agency have executed this Agreement for Services between Halifax Humane Society Inc. and the Town of Ponce Inlet, effective on the date and year as set forth above.

THE TOWN OF PONCE INLET

| Ву: | Ву: |
|--------------------------------|-------------------------|
| Name: Sean Hawkins | Name: Lois Paritsky |
| Title: Chief Executive Officer | Title: Town Mayor |
| Date: | Date: |
| ATTEST: | ATTEST: |
| Ву: | Ву: |
| Name: Christina Sutherin | Name: Michael E. Disher |
| Title: Chief Operating Officer | Title: Town Manager |
| Date: | Date: |



Meeting Date: 11/21/2024

Agenda Item: 9-B

Report to Town Council

Topic: Request for co-sponsorship of the 14th annual Ponce Inlet

Christmas Parade with proposed changes to staging and

increased cost to the Town.

Summary: The request for co-sponsorship of the 14th annual

Christmas Parade includes closure of the boat ramp and boat ramp trailer parking lot; waiver of special event application fees (\$235); and waiver of all staff personnel

fees (\$2,930).

Suggested motion: Staff recommends approval of the request for co-

sponsorship as the criteria have been met.

Requested by: Ms. Alex, Cultural Services Manager

Approved by: Mr. Disher, Town Manager



MEMORANDUM

TOWN OF PONCE INLET – CULTURAL SERVICES DEPARTMENT

The Town of Ponce Inlet staff shall be professional, caring, and fair in delivering community excellence while ensuring Ponce Inlet citizens obtain the greatest value for their tax dollar.

To: Michael E. Disher, AICP, Town Manager

From: Jackie Alex, Cultural Services Manager

Date: November 14, 2024

Subject: Request for Co-Sponsorship of the 14th Annual Ponce Inlet Christmas Parade –

December 7, 2024

MEETING DATE: November 21, 2024

The 14th Annual *Christmas Parade* will be held on Saturday, December 7, 2024, along with the *Breakfast with Santa* event the morning of the parade. As with last year, the parade route will begin at Davies Lighthouse Park and proceed North along South Peninsula Drive to Harbour Village Boulevard.

The request for co-sponsorship from applicants Mark Oebbecke and Cherise Wintz includes closure of the boat ramp and boat ramp trailer parking lot; waiver of special event application fees; and waiver of all staff personnel fees (**Attachment 1**). This same request was also approved last year at the July 20, 2023, Town Council meeting.

There are two changes to this year's *Christmas Parade* to bring to the attention of the Town Council: the location of participant staging and an increase of \$315 to staff personnel fees.

Last year, staging was in various areas across town to accommodate the 60 participants. This year, the staging is proposed to take place within Lighthouse Point Park behind the park gate at the end of South Peninsula Drive, which will aid in the flow of traffic. The applicants received approval of this request from the Volusia County Council on October 15, 2024. The County Council also agreed to co-sponsor this event by waiving the toll fees for all registered parade participant vehicles staging within the park.

The Town's Special Event regulations include criteria for co-sponsorship approval, per Code of Ordinances Sec. 51-8(a) and (c), below.

Sec. 51-8. – Co-sponsorship or co-sponsored event criteria and standards

(a) Based on the Town's long tradition of co-sponsoring certain annual events based on repeated findings that they provide a local commemoration of a national holiday or provide historical, educational, cultural enrichment or recreational experiences to the public and

town residents, the town council, in its sole discretion, may grant full co-sponsorship to those long-standing events identified and approved via resolution.

(c) For an event for which co-sponsorship has never before been requested or for changes to a recurring event that would increase the costs incurred by the Town, Town staff may provide a report and recommendation to the town council based on the findings of the town's special event review committee. In such cases, the town council will consider whether the proposed event or changes to a reoccurring event provides a local commemoration of a national holiday and/or provides historical, educational, cultural enrichment or recreational experiences to the public and town residents. For *de minimus* changes to a recurring event that do not result in increased costs to the town, no report and recommendation from town staff is required.

Pursuant to Sec. 51-8(a) and Resolution 2023-07 (**Attachment 2**), the *Christmas Parade* <u>does</u> meet the criteria for full event co-sponsorship. However, based on the findings of the Town's special event review committee, event operations will require additional personnel, which will increase the cost incurred by the Town by \$315. Pursuant to Sec. 51-8(c), the increased cost to this recurring event requires Council's review for co-sponsorship.

The Town Council has sponsored this event entirely since the first Ponce Inlet Christmas Parade in 2009. If Council chooses to sponsor this event on the terms that the organizer is requesting, the following fees would be waived:

| Department | No of employees | No. of hours each | Cost/hour/
employee | Total Cost |
|-------------------------------------|-----------------|-------------------|--|------------|
| Public Works | 6 | 5.5 | \$35 (crew)
\$45 (supervisor) | \$1,265.00 |
| Police (off-duty) | 4 | 5 | \$50 (officer)
\$60 (supervisor) +
3% service charge | \$975.00 |
| Fire (off-duty) | 3 | 5 | \$30 | \$450.00 |
| Administrative Staff | 2 | 4 | Approx. \$30 | \$240.00 |
| Special Event permit fees | n/a | n/a | n/a | \$235.00 |
| Total Costs Absorbed
by the Town | | | | \$3,165.00 |

Summary

The request for sponsorship of the *Christmas Parade* scheduled for December 7, 2024, includes closure of the boat ramp and boat ramp trailer parking lot; waiver of special event application fees (\$235); and waiver of all staff personnel fees (\$2,930). With PIVMA as the event host, the applicant has submitted liability coverage for the event.

Staff has evaluated this request, and the currently adopted criteria have been met.

| Jacke Alex | November 14, 2024 |
|--|-------------------|
| Jackie Alex, Cultural Services Manager | Date |

Attachments:

- 1. Co-sponsorship request letter and event application for the *Christmas Parade* and *Breakfast with Santa* from Mark Oebbecke, President of the Ponce Inlet Veterans Memorial Association
- 2. Resolution 2023-07

Ponce Inlet

2024 Christmas Parade Organization, Logistics & Finances

Overview of Current Parade Organization – Mark Oebbecke, President of the Ponce Inlet Veterans Memorial Association (PIVMA) & Cherise Wintz, Secretary of Operation Changing Lives (OCL) are sharing the leadership role of the parade. Two other members of the Ponce Inlet community will participate in the planning and organization of the parade. The Town provides representatives from the following departments: Cultural Services, Fire, Police & Public Works.

Parade Participation – Participation in the parade will include individuals, clubs, and businesses within Ponce Inlet and from neighboring communities. Included in the parade will be three high school marching bands. Priority registration will be given to those Ponce Inlet individuals, clubs, and businesses. Vehicular participants in the parade will be required to be tastefully and appropriately decorated for the holiday season.

Parade Timing – The parade will officially commence at 2:00 PM. This timing is necessitated due to commitments by the bands to participate in other community parades. At approximately 1:50 PM, the DJ will announce and play the National Anthem. This will be the signal that all participants need to be in their assigned spot for the parade.

Health Considerations – Water will be available to all parade participants. Band members will be provided with lunch, including a beverage. A water 'station' will also be positioned at Inlet Harbor Road.

Parade Route

- Parade staging will form within the boat trailer parking lot, along Peninsula and if necessary, Lighthouse Drive. Each entrant will be provided a numbered sign which will be used upon their arrival at the staging area to position them correctly in the parade procession.
- The parade will proceed North from the Davies Lighthouse Park to Harbour Village Blvd.
- At the end of the parade all vehicular participants will make a right turn onto Harbour Village Blvd. and proceed to where their transportation is located.
- Marching bands will also turn right onto Harbour Village Blvd. and proceed to their buses.

- Any walking participants will turn around and walk South on the sidewalk parallel to S Peninsula.
- Should walkers need transport back to Davies Lighthouse Park, volunteers will provide that transportation from the Community Center once the parade is concluded and S Peninsula is reopened to traffic.

Financial Projection – We anticipate having up to 75 parade entrants. The registration fee is \$100 for each business entrant and \$50 for each PI club. The three bands are excluded from paying any fee.

- PIVMA will be the recipient of all registration forms and entrance fees.
 Representatives from PIVMA and OCL will notify the submitting registration forms if they are able to participate.
- PIVMA will deposit all registration fees from entrants into the separate account established last year for this purpose.
- As with last year, following the parade PIVMA, in partnership with OCL, will determine: 1) what reserves (if any) are necessary to be retained in the account, 2) pay for the bands and, 3) disperse (less any other expenses & reserves) funds equally between PIVMA and OCL.
- We still request that the Town provide 'in kind' contributions in the form of advertising, insurance coverage, permit fees, closure of the boat ramp parking lot and labor costs for Town's staff that assist in the parade.



Town of Ponce Inlet Cultural Services Department

Request Form: Event Co-Sponsorship

Pursuant to Chapter 51 of the Code of Ordinances

This co-sponsorship request form must be filled out accurately and completely and submitted along with a special event permit application. Incomplete forms cannot be reviewed.

This form and all supporting documents may be submitted up to 365 days in advance of the event, but no less than 60 days prior to the event date. If the applicant desires their co-sponsorship request to be heard at a specific Town Council meeting, these documents must be submitted no less than 20 days prior to the desired Council meeting date.

Request forms for co-sponsorship of eligible events will be presented to the Town Council for review if co-sponsorship has never been requested previously or if changes to a recurring event are proposed that would increase the costs incurred by the Town. Regardless of whether the event qualifies as a special event or is eligible for co-sponsorship, an applicant's co-sponsorship request shall comply with the content requirements below.

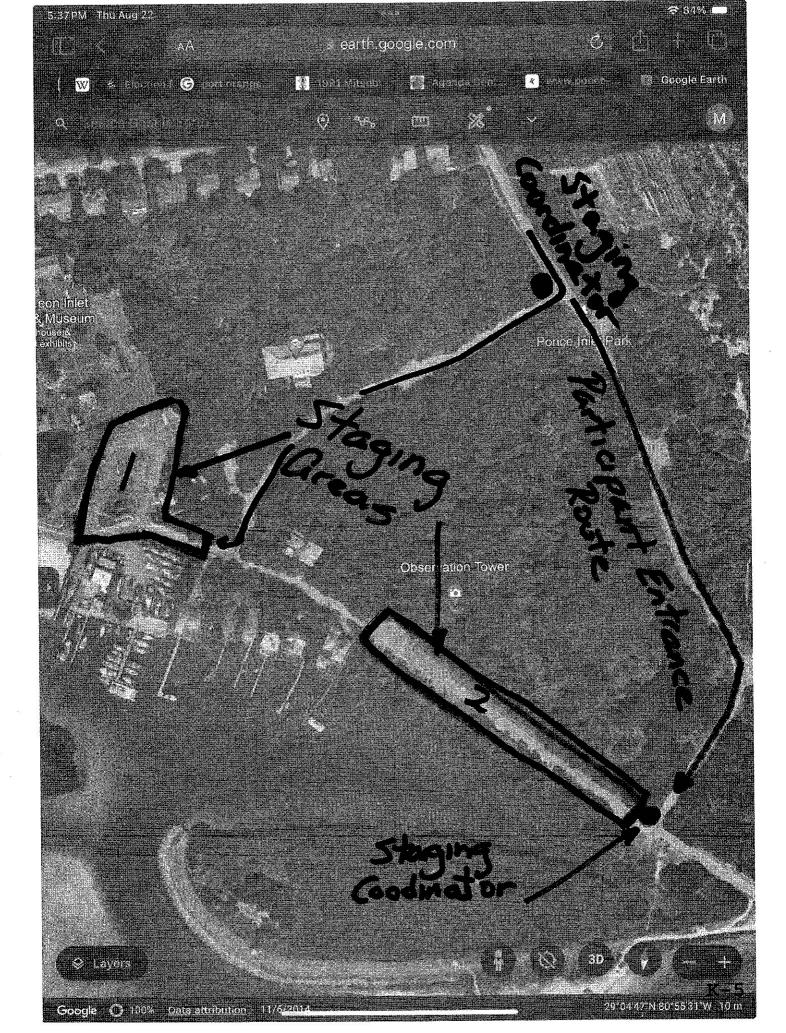
For event applicants requesting use of the Town's means of advertising, email jalex@ponce-inlet.org

| Event Name: PI Veterans Christmas Parade |
|---|
| Event Date(s): 12/7/2024 Event Location: 5. Peninsula De Business/ Organization Hosting Event: Pt Veterars Memorial assoc. |
| Business/Organization Hosting Event: PT Veterars Memorial assoc. |
| Event Applicant/ Contact: J. Mark Oebbecke |
| |
| Event (please select the one that best applies): |
| ☐ Historic North Turn Legends Beach Parade |
| □Ponce Inlet Veterans Memorial Association Memorial Day |
| □Ponce Inlet Veterans Memorial Association Veterans Day |
| ☑Christmas Parade |
| □Planned, organized, and conducted by the Ponce Inlet Community Center Board, Inc. |
| Hosted by the following non-profit Ponce Inlet club or organization*: Ponce Inlet Veterans Memorial Association Ponce Inlet Lions Club Ponce Inlet Garden Club Ponce Inlet Women's Club Ponce Inlet Art Guild Other |
| *All non-profit Ponce Inlet clubs and organizations must annually provide a copy of their currently valid IRS tax exemption certificate as an established 501(c)3 status with a Ponce Inlet address. |

| Please provide a brief description of the eve | ent and any important details: |
|--|--|
| Appeal Christmas Parade. | Parade will start at the Davies |
| 11 Harry Deck and DEAS | reed North clans & Denneyla Da |
| ZIGNINOVSE PAIR EARLY P. SC | 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 |
| to Harbour VIllage BIVE. Par | rade will consist of floats, bandles |
| decorated vehicles and man | chers from local businesses & clubs. |
| Please select your event needs and request for | or co-sponsorship: |
| Fees Incurred: | Town permission required: |
| Waiver of Special Event permit fees | ☐Closure of boat ramp |
| Waiver of Town personnel fees | Closure of boat ramp trailer parking |
| Waiver of Town Park pavilion rental fees | Placement of temporary signs on Town property |
| 1 | Street closures |
| | ☐ Use of Town facilities |
| | Parking on Town property |
| Other: Town advertising of pas | (+5 (0)) - 1 |
| 2. Estimated number of any animals by to 3. Purpose of the event: Kickoff the holiday see houseles of the acmed of | 4500, honor Citizens of the Year and forces. |
| 4. Nature and the types of activities that will Parade with mark | ll occur. |
| required to indemnify the Town for the negligen Attached | wor of the Town and included as part of the application, ed representative of the applicant. The organization will not be at acts of the Town's employees or agents. Community Center Board, Inc. and the Town has a copy |

| 5. Peninsula Dr. # Dav | les Lighthouse Park |
|--|--|
| 7. County roadway is to be used: | |
| Yes- County Right-of-Way Use | Permit is attached |
| We will request this Permit A | Permit is attached INO
From County Council & will provide upon receipt |
| 8. The event serves a valid public purpose either- | se benefiting the town and/ or its residents and the community by |
| Providing a local commemoral | tion of a national holiday, or |
| Providing historical, education in the public. | nal, cultural enrichment and/or recreational experiences to Ponce |
| Describe how: | |
| a celebratory event + | for Town residents to view as the greason. |
| Kickoff to the holida. | season. |
| | |
| | |
| | |
| | |
| organizations and clubs during the event with | will provide event space or facilities to established Ponce Inlet out cost. (If granting of such space will constitute a bona fide undue |
| reason for the hardship on the bottom of page one of the | lude a waiver of this request in their co-sponsorship request along with the |
| | ns torn.) |
| Albert Ochbecke | 5/15/2024 |
| Applicant signature | Date |
| , | Date • |
| | |
| FOR | OFFICE USE ONLY: |
| application received by: | Date: |
| Cotal Cost Incurred by Town: \$ | |
| ☐ Waiver of Special Event Permit fees | ☐Waiver of Park Pavilion Rental fee |
| Total Cost: □ Waiver of Town personnel fees | Total Cost: |
| □ Waiver of Town personnel fees | Total Cost: □Increase in costs since previous year: |
| Total Cost: | □Yes Total: □No |
| vent needs requiring permission from Town: | |
| Closure of boat ramp | |
| ☐Closure of boat ramp trailer parking | |
| ☐ Placement of temporary signs on Town pro | operty |
| ☐ Street closures | |
| ☐ Use of Town facilities | |
| ☐ Parking on Town property | |
| Other: | |
| | |
| | |

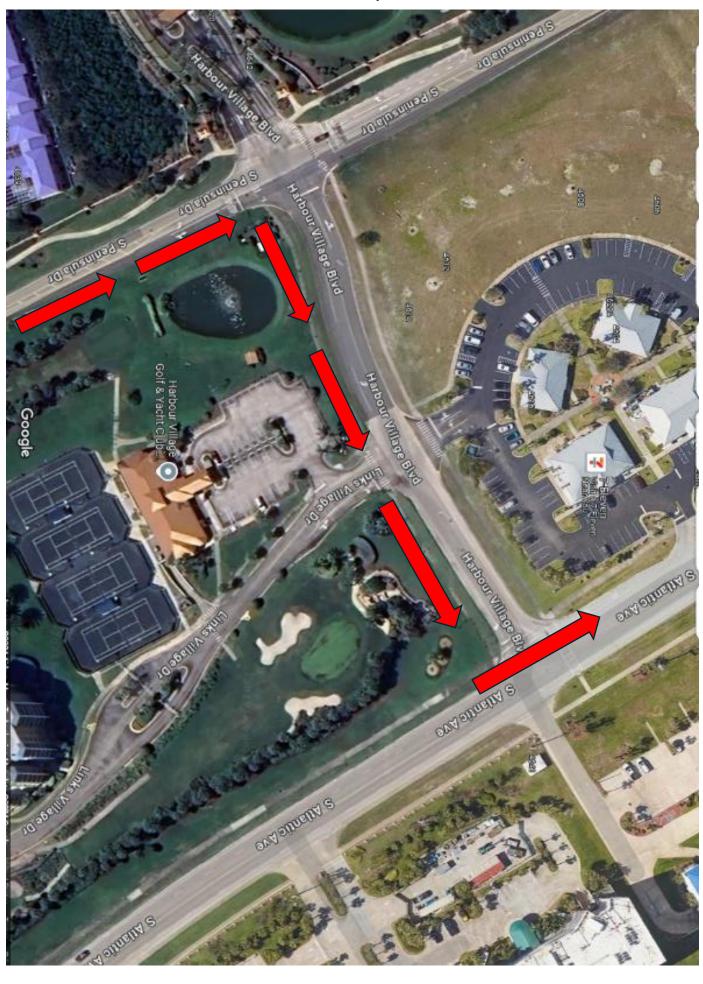
6. Describe any public right of way, property, buildings, facilities, or equipment utilized:



Christmas Parade 2023- Route Map



End of Route Dispersal





Town of Ponce Inlet Cultural Services Department 4300 S. Atlantic Avenue Ponce Inlet, FL 32127 386-322-6703

SPECIAL EVENT PERMIT APPLICATION

Pursuant to Chapter 51 of the Code of Ordinances

| Permit #: | |
|-----------------|--|
| Submittal Date: | |
| FEE PAID: | |
| A | |

APPLICATIONS MAY BE SUBMITTED UP TO 365 DAYS IN ADVANCE OF THE EVENT, BUT NO LESS THAN 28 DAYS PRIOR TO EVENT DATE, OR 60 DAYS PRIOR IF REQUESTING TOWN CO-SPONSORSHIP.

Please submit the following information with your application:

- A site plan of the event area(s) with all applicable information requested below.
- If the event is on town property, a certificate of insurance showing the town as additional insured in the amount of \$1,000,000 is required.

| A strategic con | SEC | CTION 1: F | EVENT INFORMATION | ON | |
|---|----------------|--|---|----------------------------------|--|
| Event Name: Annual Chr | ristmas Para | ade | TORMATIC | JIN . | |
| Event Location:Peninsul | a Drive fron | n Jettv to Ha | rbour Village Blvd. & Boa | t Ramp Parl | king Lot |
| Date(s) of Event: Decem | ber 7, 2024 | | Event Hours: 1:00 PM - | 3.00 DM | Mily Lot |
| | , | | | | |
| Brief Event Description: A | | | Parade statts an | t 2:00 DN | 3 |
| AAI | ii corisist oi | muluple mar | to celebrate the beginning ching bands, participation lyehicles and floats. | ig of the holi
n by local cli | dat season. Parade
ubs and businesses |
| Estimated Attendance: 300 | (Participants | & Spectators) | Repeat Event: OY | es ONo | |
| | SECTI | ON 2: APP | LICANT INFORMAT | TION | |
| Business/ Organization | n Hosting | Event: | | | |
| Authorized Head of Busine | ess/ Organiza | ation:Ponce Inl | et Veterans Memorial Associa | A: | |
| Phone Number: 610-716-0 | 0041 | | | | |
| Phone Number: 610-716-0041 Email Address: piveterans@yahoo.com Event Applicant/ Contact: Mark Oebbecke | | | | com | |
| | | Oebbecke | ! | | |
| Day-of Phone Number:610 | | | Email Address:piveterans | @yahoo.com | |
| Mailing Address:4670 S | Peninsula | a Drive, Por | nce Inlet FL 32127 | | |
| | SECT | TON 3: AD | DITIONAL INFORM | ATION | |
| Please answer the que | estions below | v. If answering | "Yes," indicate the locatio | n(s) on your | site plan, providino any |
| | au | dditional detai | ls on a separate sheet if nee | ded. | hand bearing and |
| Traffic Control Required? | • Yes | O No | Parade? | (Yes | ONo |
| Portable Restrooms? | Yes | ⊙ No | *Provide a map and streets to be | | |
| | O 103 | O NO | Private Security Firm? | O Yes | ⊙ No |
| Shuttle Transportation? | O Yes | No | Name of Security Firm | | |
| Off-Site Parking Required? | Yes | No | | | |
| *Provide written agreement with | | The same of the sa | f spaces needed* | | |
| | | | luding shuttle) and pedestrian | · | 1.0 |
| | 7.00 | - · · · · · · · · · · · · · · · · · · · | and pedesirian | mgress & egre | ess to and from the event. |

| SECTION 4: TEMPORARY USE - Additional Permits may be required. Please answer the questions below. If answering "Yes," indicate the location(s) on your site plan, providing any additional details on a separate sheet if needed. | | | | | | | |
|--|--|---|--|---|---|--|--|
| Barricades Required? | ⊙ Yes | ONo | | Traffic Cones | Required? | ⊙ Yes | ONo |
| Amplified Sound? 1 | Yes | ONo | | High-Intensity *Provide specifica | | O Yes | ⊙ No |
| # of Tents (over 10'x10')? | | # Stages/ Struct | ures | ? ³ D | # of Signs/ E | Banners? 4 | |
| Tent Size 3 (if over 10'x10') | | Stage Dimensio | ns: | | Sign permit application submitted to Building Division? Yes ON/A | | |
| N/A | | NA | | 1.0.1 | If yes, permit #: | | |
| How do you plan to collect a Volunteers will remove | | | | - | | t and Dav | vies Park |
| Food Prepared On-Site? 5 | OYes | ⊙ No | | | | | |
| # of Mobile Food Vendors (| MFV)?6 | | | rking Spaces R | • | FVs? | |
| DBPR Food Service License | # ./4 | | | lude on your site pl
PR Alcoholic B | | | |
| *Attach copy of License | NA | | | ach copy of Licens | | VA | |
| | | mentary Regi | | | | | |
| 1- See <u>Code of Ordinances Sec. 34</u>
allowable noise level limits and r | | | ode o | f Ordinances Sec. | 34-94 for permit | requirements t | o exceed maximum |
| 2- See Code of Ordinances Sec. 34 does not prohibit the temporary e | | | | | | | |
| 3- Tents larger than 10'x10' and sta | | | | | | | |
| 4- See <u>LUDC Sec. 3.30.6</u> and Reso
Sunshine State One Call at 1-800 | | | | | ent signs from inte | erfering with p | ublic utilities, contact |
| 5- Code of Ordinances Sec. 46-3.a
Davies Lighthouse Park. Within o | | | | | | | |
| 6- LUDC Sec. 3.34: Mobile Food vending is the sale of food, either prepared on location or pre-packaged, from a mobile food vending vehicle. Mobile food vendors shall comply with regulations from this section and shall be subject to an inspection pursuant to the NFPA and Florida Fire Prevention Code. | | | | | | | |
| 7- Code of Ordinances Sec. 6-7.a: within the town, or on any town p | | | | | | | |
| I hereby state that the above informand all conditions and costs of event. I hereby agree to defen claims, suits, actions and legal otherwise, to the full extent as per and shall remain in full force a administrative action against the Signature of Applicant STATE OF FLORIDA COUNTY OF VOLUSIA | the requi
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| This document was sworn to (or af | firmed) and | subscribed before onally known to me | he by | me of physical presented | | as identifi | ion, this <u>day</u> of |
| Notary Public, State of Florida | | Not | tary st | tamp/ seal: | Notary Public
Commission | CCA HUGLER
c - State of Florida
on # HH 056738
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ational Notary Assr | |

STANDARD CONDITIONS FOR SPECIAL EVENT PERMITS

Per Code of Ordinances Sec. 51-9.

Standards and conditions for issuance of permit. The special event review committee will review the special event permit application based upon the following standards and conditions:

- (a) The conduct of the event will not substantially interrupt the safe and orderly movement of other pedestrian or vehicular traffic in the vicinity of the event.
- (b) The conduct of the event will not require the diversion of so great a number of public safety personnel or equipment of the town to properly secure the event area and the areas contiguous thereto, as to prevent current level of public safety services from being furnished to other parts of the town.
- (c) The event shall not take place until inspections of the special event site have been conducted by the appropriate departments to determine whether this ordinance and any conditions of the special event permit have been met or satisfied.
- (d) The concentration of persons, animals and/or vehicles at the event will not unduly interfere with proper fire and/or police protection of, or ambulance service to, areas contiguous to the event area or other areas of the town.
- (e) The conduct of the special event is not reasonably likely to cause injury or intended to cause injury to persons or property, create an environment not compatible with a residential neighborhood if within or abutting a residential neighborhood, or to result in disorderly conduct as defined by town ordinance or state statutes, provided that the town may not deny a permit solely on the basis of the proposed content of speech or ideas of the group involved.
- (f) The conduct of the event shall not introduce extraordinary hazards to fire protection and/or life safety in the immediate or adjacent areas.
- (g) Adequate sanitation and other required health facilities are, or will be, made available in or adjacent to the event area. These include restrooms, trash receptacles, or anything normally required by the health department.
- (h) The conduct of the special event must be in accordance with the town's noise ordinance.
- (i) There are sufficient parking places on site and/or written approvals from off-site property owners where off-site parking is to occur, to accommodate the approximate number of automobiles expected to be driven to the special event.
- (j) Precautions will be taken to ensure protection of landscaping and irrigation systems.
- (k) The applicant has secured security personnel or police, fire/emergency medical services protection and public works services, if any, are required under this procedure. If applicant has secured police, fire/emergency medical services, or public works services from the town, (s)he must prepay the expenses thereof.
- (1) The applicant shall obtain public liability and property damage insurance, with the town named as an additionally insured party for any special event that is held on town property or that utilizes town facilities, in an amount approved by the town, as recommended by the town's insurance carrier. The applicant shall place on file with the town a certified insurance policy issued by a company authorized to do business in the state.
- (m) Application for a special event permit shall constitute an agreement by the applicant to pay for town personnel expenses and extraordinary services provided by the town, including any repairs, renovations and/or landscaping and turf restorations or replacement of town property which is necessitated by virtue of the special event.
- (n) Any temporary lighting will not adversely affect adjacent properties.
- (o) No applicant shall be granted a permit for an event that is to occur over a period longer than seven consecutive days.
- (p) No applicant shall be granted more than twelve special events permits in a single calendar year.

NOTE: The town may deny or revoke a permit for failure of the applicant to satisfy the applicable standards set forth in this chapter and the requirements of the permit, pursuant to <u>Code of Ordinances Sec. 51-10(b)</u>.

RESOLUTION 2023-07

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PONCE INLET, VOLUSIA COUNTY, FLORIDA GRANTING FULL CO-SPONSORSHIP TO CERTAIN LONG-STANDING ANNUAL EVENTS PURSUANT TO CHAPTER 51 OF THE PONCE INLET CODE OF ORDINANCES AS AMENDED; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTING RESOLUTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 51 of the Code of Ordinances of the Town of Ponce Inlet contains robust procedures and standards governing special events; and

WHEREAS, requests are frequently made to the Town to co-sponsor events in the Town of Ponce Inlet; and

WHEREAS, on August 17, 2023, the Town Council adopted Ordinance 2023-03, amending Chapter 51 of the Code of Ordinances to provide criteria and standards to guide the Town Council's decision to approve or deny a co-sponsorship request; and

WHEREAS, the Town has a long tradition of co-sponsoring certain annual events based on repeated findings that they provide a local commemoration of a national holiday or provide historical, educational, cultural enrichment or recreational experiences to the public and town residents; and

WHEREAS, Ordinance 2023-03 establishes the means for the Town council, in its sole discretion, to grant full co-sponsorship to such long-standing events by resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF PONCE INLET, FLORIDA:

Section 1. Identifying Long-Standing Annual Events for Full Co-sponsorship.

Pursuant to Code of Ordinances Sec. 51-8, as amended, the following long-standing annual events are hereby granted full co-sponsorship, based on

based on repeated findings that they provide a local commemoration of a national holiday or provide historical, educational, cultural enrichment or recreational experiences to the public and town residents:

- 1) Historic North Turn Legends Beach Parade (contingent upon co-sponsorship by Volusia County in any given year)
- 2) Ponce Inlet Veterans Memorial Association Memorial Day

- 3) Ponce Inlet Veterans Memorial Association Veterans Day
- 4) Town Holiday Parade

Section 2. Severability

If any section, sentence, clause or phrase of this Resolution is held to be invalid or unconstitutional by any court of competent jurisdiction, that holding shall in no way affect the validity of the remaining portions of this Resolution.

Section 3. Conflicting Resolutions

All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 4. Effective Date

This Resolution shall take effect immediately upon adoption.

It was moved by Councilmember Caswell and seconded by Councilmember Villanella that said Resolution be adopted. A roll call vote of the Town Council on said motion resulted as follows:

| Mayor Paritsky, Seat #1 | Yes |
|-----------------------------------|-----|
| Councilmember Milano, Seat #2 | Yes |
| Councilmember Caswell, Seat #3 | Yes |
| Councilmember Villanella, Seat #4 | Yes |
| Vice-Mayor Smith, Seat #5 | Yes |

Passed this 17th day of August 2023.

Town of Ponce Inlet, Florida

Lois A. Paritsky, Mayor

ATTEST:

Kim Cherbano, CMC

Town Clerk



Meeting Date: 11/21/2024

Agenda Item: 11-A

Report to Town Council

Topic: Second reading of Ordinance 2024-06, Amending Section 2.40 – Table of Permitted Uses in the Land Use and Development Code to include farmers markets as a major special exception use in the Public-Institutional (P-I) zoning district.

Summary: The Town Council approved first reading of this ordinance on October 17, 2024. The attached ordinance has been drafted in response to the Town Council's directive to amend the Land Use and Development Code (LUDC) to allow farmers markets as a special exception use in the Public-Institutional (P-I) zoning district.

Suggested motion: Staff recommends approval of proposed Ordinance 2024-06, amending Section 2.40 – Table of Permitted Uses to include farmers markets as a major special exception use in the P-I zoning district excluding 14 of the 17 P-I zoned properties.

Requested by: Mr. Lear, Planning & Development Director

Approved by: Mr. Disher, Town Manager



MEMORANDUM

TOWN OF PONCE INLET, PLANNING AND DEVELOPMENT DEPARTMENT

The Town of Ponce Inlet staff shall be professional, caring, and fair in delivering community excellence while ensuring Ponce Inlet residents obtain the greatest value for their tax dollar.

To: Michael E. Disher, AICP, Town Manager

From: Patty Rippey, AICP, Principal Planner

Through: Darren Lear, AICP, Planning & Development Director

Date: November 12, 2024

Subject: Ord. No. 2024-06 – Amending Section 2.40 – Table of Permitted Uses in the Land

Use and Development Code to include farmers markets as a major special exception

use in the Public-Institutional zoning district

MEETING DATE: November 21, 2024

1 Introduction

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This proposed ordinance has been drafted in response to the Town Council's directive to amend the Land Use and Development Code (LUDC) to allow farmers markets as a special exception use in the Public-Institutional (P-I) zoning district.

AUTHORITY AND PROCESS

Pursuant to LUDC Section 6.2.2.A, the Planning Board, "...serves as the local planning agency in accordance with the Community Planning Act (2011) F.S. § 163.3161 et. Seq." Pursuant to LUDC Section 6.2.2.D. "As the local planning agency, [the Board shall] ... review proposed land development regulations, determine their consistency with the comprehensive plan, and make recommendations to the town council as to whether the regulations should be adopted."

13 BACKGROUND

Town staff received a written request from the Ponce Inlet Community Center Board of Trustees earlier this year requesting that farmers markets be added as a permitted or special exception use in the P-I zoning district (**Attachment I**).

At the June 4, 2024 Special meeting with Planning Board and Town Council, the Council and Board discussed the request, after which the Town Council directed staff to move forward with

the amendment (Attachment II).

20 21 The Planning Board reviewed the proposed amendment at its regularly scheduled meeting on September 24, 2024. A motion to recommend approval of the amendment failed with two members voting in favor, two members voting against the motion, one member abstaining, and two members not present (Attachment III). Town Council approved this item at first reading on October 17, 2024.

DISCUSSION

Farmers markets are defined in the LUDC as a temporary or occasional outdoor retail sale of farm produce or seafood, typically located within a parking lot or approved location in a public right-of-way closed to vehicular traffic (Section 3.20.1.A). Farmers markets are only permitted by right in the PWD zoning district and are allowed as a minor special exception use in the B-1, B-2, and PUD zoning districts. In the P-I zoning classification, farmers markets are not a permitted or special exception use, although they may be allowed through a special event permit, limited to 12 times per calendar year.

According to LUDC Section 6.6.3, "A special exception is a use that would not be appropriate without restriction, but which, if controlled as to number, area, location or relation to the surrounding area, would promote the public health, safety and general welfare. These uses require more comprehensive review, and by their nature may necessitate specific conditions to mitigate any potential adverse impacts. Such uses may be permitted in a zoning district as a special exception only if identified as such in this code." The Planning Board serves as the decision-making authority for minor special exceptions (LUDC Section 6.4), while major special exceptions require a recommendation from the Planning Board and approval by the Town Council.

The request to add farmers markets as a major special exception use to the P-I zoning district would provide additional locations for farmers markets to serve the local population. Seventeen (17) properties within the Town limits are zoned Public-Institutional (Attachment IV). Those properties include Town-owned facilities and parks, County-owned facilities and parks, and private scientific facilities.

The Ponce Inlet Community Center Board of Trustees is in support of allowing a local farmers market to operate at the Community Center. Based on the safety, convenience and unique location, the Board has requested that farmers markets be added as a special exception use in the P-I zoning district in the LUDC, Section 2.40 Table of Permitted Uses. The Ponce Inlet Community Center is owned by the Town and is zoned P-I.

The proposed amendment will add a major special exception notation, "S^{MJ}" in the P-I zoning column in Section 2.40 of Table 2-5 (Table of Permitted Uses) under the section of the table titled "COMMUNITY FACILITIES AND PUBLIC ASSEMBLY". Footnote [10] is included with the "S^{MJ}" notation, with the note itself located on the last row of Table 2-5. Footnote [10] identifies certain P-I zoned properties from which this major special exception use is excluded.

The three P-I zoned properties where the farmers market would be allowed as a major special exception include the Ponce Inlet Community Center, Ponce Inlet Fire Rescue station, and Timothy Pollard Memorial Park.

The 14 P-I zoned properties where the farmers market major special exception use would be excluded are: Batelle Institute properties (S. Atlantic & Sailfish Drive), Jesse Linzy Boat Ramp, Kay and Ayres Davies Lighthouse Park, Lighthouse Point Park, Marine Science Center, Pacetti Hotel Museum, Ponce de Leon Lighthouse and Museum, Ponce Inlet Historic Museum, Ponce Preserve, Port Orange lift station (adjacent to Ponce Inlet Community Center), Public Works facility, Timucuan Oaks Garden, and Winter Haven Park.

It should be noted that adoption of this LUDC amendment does not automatically allow a farmers market at the Community Center. It only allows the Community Center Board to *apply* for a special exception at this location, which is a separate application process. As a major special exception, the application would first be reviewed by staff, then by the Planning Board for a recommendation, and then by the Town Council for a final decision.

COMPREHENSIVE PLAN

Staff reviewed the policies of the Comprehensive Plan and found the Ordinance will maintain consistency with the Town's desired vision and direction. The Future Land Use Element of the Comprehensive plan classifies the P-I land use category as land used for quasi-public and private activities or facilities which will serve the public interest in an educational, recreational, or scientific context.

RECOMMENDATION

Staff recommends approval of Ordinance No. 2024-06, amending Section 2.40 – Table of Permitted Uses to include farmers markets as a major special exception use in the P-I zoning district excluding 14 of the 17 P-I zoned properties.

Attachments

- 1. Ponce Inlet Community Center Board of Trustees letter
- 2. Special meeting with Planning Board & Town Council minutes
- 3. Draft Planning Board September 24, 2024 meeting minutes
- 4. Ponce Inlet zoning map

ATTACHMENT I PONCE INLET COMMUNITY CENTER BOARD OF TRUSTEES LETTER



Ponce Inlet Community Center 4670 S. Peninsula Drive Ponce Inlet, FL 32127

Mr. Darren Lear,

Recently our Board of Trustees were unanimous in support of allowing the local Farmers Market to operate at the North end of the parking area at the Community Center. We feel that this location provides the safety and convenience that would add significant value to the vendors and those enjoying the market.

In looking at our ability to have the market on the property we found that, per the current zoning, we are classified a PUBLIC/INSTITUTIONAL property. Based-on Table 2-5, TABLE OF PERMITTED USES we are precluded from having a Farmers Market on the property, as listed under the COMMUNITY FACILITIES AND PUBLIC ASSEMBLY section — even as a minor or major special exception.

Given the importance to the residents of Ponce Inlet of continuing to have a Farmers Market here in the Town and the unique location we provide, we are requesting that the COMMUNITY AND PUBLIC ASSEMBLY section be changed to - under the 'P/I' column - to either: P, S_{MIN} or S_{ML} . This will allow the Community Center to move forward with soliciting the Town to be a permanent 'home' for the Farmers Market at the Community Center – the center of community activities.

As the Farmers Market has lost their ability to operate at their current location, we ask that this reclassification of the abilities of a PUBLIC/INSTITUTIONAL entity is expedited.

(anny)

Respectfully submitted,

Kimberly Canny

President, Ponce Inlet Community Center.

ATTACHMENT II SPECIAL MEETING MINUTES



Town of Ponce Inlet TOWN COUNCIL SPECIAL JOINT MEETING MINUTES WITH PLANNING BOARD

5 TUESDAY 6 JUNE 4, 2024 at 10:00 AM 7

TOWN COUNCIL CHAMBERS 4300 S. ATLANTIC AVENUE, PONCE INLET, FL

1. **CALL TO ORDER**. Pursuant to proper notice, Mayor Paritsky called the meeting to order at 10:00 a.m. in the Council Chambers at 4300 South Atlantic Avenue, Ponce Inlet, Florida.

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2. PLEDGE OF ALLEGIANCE. Mayor Paritsky led the Pledge of Allegiance.

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3. ROLL CALL OF TOWN COUNCIL.

Mayor Paritsky, Seat #1

Councilmember Milano, Seat #2

Councilmember White, Seat #3

Councilmember Villanella, Seat #4

Vice-Mayor Smith, Seat #5

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ROLL CALL OF PLANNING BOARD.

21 Mr. Oebbecke, Seat #1

Mr. Kaszuba, Seat #2; Chair

Mr. Burge, Seat #3

Mr. Cannon, Seat #4 - Absent

Mr. Carney, Seat #5; Vice Chair - Absent

Mr. Revak, Alternate #1

Mr. Young, Alternate #2

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Staff Members Present:

Mr. Baker, Chief Building Official

Ms. Cherbano, Town Clerk

Mr. Disher, Town Manager

Ms. Gjessing, Assistant Deputy Clerk

Chief Glazier, Police Chief

Mr. Griffith, Public Works Director

Mr. Okum, IT Director

Ms. Pierce, Planning & Development Office Manager

Ms. Rippey, Principal Planner

Chief Scales, Public Safety Director

Ms. Stewart, Assistant Deputy Clerk

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4. ADDITIONS, CORRECTIONS OR DELETIONS TO THE AGENDA.

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Mayor Paritsky moved to approve the agenda as presented; seconded by Councilmember Villanella; The motion PASSED 5-0, consensus.

45 46 5. REVIEW AND APPROVAL OF WATERSHED MASTER PLAN TO MEET THE STATUTORY REQUIREMENTS **FOR CRS ACTIVITY** 450 **STORMWATER** MANAGEMENT. – Mr. Disher reviewed the history of this project, noting that it began with a Florida Department of Environmental Protection (FDEP) grant application in 2020; it then was shifted into the Resilient Florida Program in 2022 when that program was created. The Town hired a consultant at the beginning of 2023 and has been working with them since then to prepare the Watershed Master Plan for the Board and Council's review and approval today; it is due to the state by the end of the month per the term of the grant. Ms. Rippey explained the Watershed Master Plan analyzes the combined impacts on the Town's drainage system from existing and expected development; various long rainfall events, such as the 100-year storm; tidal flooding and projected sea level rise. Based on these projections, the Watershed Master Plan also provides policy recommendations for future decision making; it will also allow the Town to improve its community rating system (CRS) rating which will eventually lower insurance costs for our residents. Ms. Rippey introduced Ms. Elizabeth Perez and Mr. Joel Jordan, Collective Water Resources, LLC (CWR), to give the presentation on the Watershed Master Plan.

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Ms. Perez provided a Watershed Presentation.pptx and explained the Watershed Master Plan is a thorough assessment of the potential types of flooding that could impact the Town and includes recommendations for future decision-making and mitigation. The Watershed Master Plan is a term coined by FEMA under the CRS program; it is reviewed by national reviewers and assigned credit. A vulnerability assessment was conducted as part of this study that was funded by FDEP under the Resilient Florida Program. She explained that a watershed master plan is a comprehensive decision-making tool to assist communities with stormwater management; it provides an opportunity to enhance relevant datasets, address climate vulnerability, and update stormwater modeling to current standards. The plan looks at both existing and future conditions; FEMA asks that we look out to the year 2100. The consultants reviewed the impact of sea level rise and climate change; wetlands; applicable codes and regulations; and mitigation of potential impacts. Ms. Perez noted that the plan is not a comprehensive capital improvement plan, adaptation plan, or a detailed funding plan. She noted that currently, the Town is a Class 5 within the CRS program; this plan is essential to move to a higher rating which could result in residents receiving a lower insurance premium. She explained the CRS program and how the rating system provides incentives for communities that adopt and enforce flood management practices. Ms. Perez explained the vulnerability assessment and the three steps required under the Resilient Florida program for assessments of this type: conduct an exposure analysis; conduct a sensitivity analysis; and assign focus areas. She provided general definitions of terms used within the Watershed Master Plan including community assets, vulnerability and risk, and other related terms.

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Mr. Jordan continued the presentation with the hydrology and hydraulics overview; he explained that hydrology looks at how much runoff will be generated from a rainfall event, while hydraulics is how that runoff gets moved from wherever it collects. The topography, land use and land cover, soils, and climate and rainfall were reviewed for current and future conditions. He explained the hydraulics overview and provided a digital map. Ms. Perez resumed the presentation and stated that for the vulnerability assessment, the State of Florida requires you to look at critical and regionally significant assets. The first step is the exposure analysis which included flooding threats: tidal, storm surge, rainfall-induced, and compound; the time horizons up to the year 2100; and sea level rise projections. She reviewed the exposure analysis results from year 2023 to year 2100; and she provided digital maps for the results for rainfall-induced flooding, Category 2 storm surge flooding, and compound flooding. She reviewed the analysis results for the percentage of buildings exposed to flooding and the percentage of property assets exposed to flooding by flood type and scenario; she noted that this analysis will make

the Town compliant with Resilient Florida requirements. She also reviewed the roadway assets and the table showing the percentage of assets exposed to potential future flooding. Councilmember White referred to the buildings and properties assets and asked if a property had a building on it, would it not be an asset? Ms. Perez explained that for planning purposes, they look at properties; she noted that Mr. Jordan will explain more on the focus areas. Mr. Revak asked for clarification on the meaning of the total number of assets; the Town has more than the 65 buildings shown on the table. Ms. Perez explained that is as prescribed by the state of Florida; they specifically state what counts as a building. She continued the presentation and reviewed the sensitivity analysis results.

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Mr. Jordan reviewed the eight focus areas; they were analyzed using future land use changes and known flooding complaints. The analyzed areas were: Old Carriage Road and Anchor Drive area; Calumet Avenue; Michael Lane (Oceanside Village Subdivision); Las Olas Subdivision; Bay Harbour Drive to Beach Street; South Atlantic Avenue; and the Riverfront area. He reviewed each focus area individually and the proposed improvements for each. Councilmember Milano stated that years ago, the two developments at Old Carriage and Anchor Drive had trouble with the silt in the canal not draining; he asked if the suggestions provided in this report would include the cleaning of those canals. Mr. Jordan explained they did not look at any dredging in the intercoastal waterway; that is a costly process and it is not easy to obtain the needed permits. He continued to review the analysis results and recommended improvements for the focus areas; he noted that the Town contracted with Zev Cohen & Associates to evaluate the current system at Michael Lane (Oceanside Village Subdivision). Councilmember White commented that everything was connected through a series of pipes and ponds in the Bay Harbour area and asked where the water ends up. Mr. Jordan replied there is a 24" outfall pipe at Beach Street that runs to the intercoastal waterway; this is why it takes time for water to drain from yards and roadways after a rain event. This is a complex area; there were seven flood reports from Hurricane Ian from just this focus area. He continued with the presentation; the Bay Harbour area has a combination of alternative improvements recommended to alleviate flooding. He continued with South Atlantic Avenue, and reviewed the evaluated improvements which include swale improvements on both sides of the road, where practical. He noted that any improvements on this roadway would have to be coordinated with Volusia County as the County owns the roadway. Councilmember White asked if Volusia County Council Member Matt Reinhart could be provided with this presentation. Mayor Paritsky agreed that was an excellent idea. Mr. Jordan reviewed the analysis of the Riverfront area and recommended improvements. He noted that this area is subject to both rainfall-induced flooding and tidal flooding. He reviewed the recommended solutions including flap-gates and additional retention capacity. Councilmember Villanella commented that it does not seem that there are enough swales in the Town. Mr. Jordan explained there are some; and swales are encouraged as part of retention areas in the LUDC. Some swales in the town are perfectly adequate for a storm event but in other areas, due to soil conditions, etc., they cannot store the runoff. Retention would need to be combined with other potential improvements.

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Ms. Perez reviewed the recommended adaptation strategies, explaining that FEMA asks that as part of the Watershed Master Plan we document other strategies and mitigation measures. The adaption strategies include 1) regulation strategies (stormwater manual, LUDC); 2) public information (required by FEMA); 3) structural controls (flap-gates, seawalls, etc.); 4) non-structural controls (swales, improved site design, etc.); 5) protection of natural areas; and 6) acquisition of flood-prone properties. She explained these things are included in the plan to optimize the Town's ability to apply for funding; she reviewed funding examples including the Resilient Florida program. She noted that the Town will qualify for the second Resilient Florida funding grant with this plan. She briefly discussed other funding

Town Council
Special Meeting Minutes with the Planning Board

examples. Mayor Paritsky reminded the Council and Planning Board that this document is a foundation, and that the Town has methodically worked toward a resilient Ponce Inlet. The Town adopted a Resolution that memorializes the importance of resilience and identifying all our issues; whether it is flooding, or sea level rise, and how we are going to mitigate and adapt to the issues. She was recently in Washington D.C. representing Ponce Inlet for the American Flood Coalition when the Watershed Master Plan was completed, and it is a big deal – we are ahead of the curve; we were already ahead of the curve with the vulnerability assessment. This plan is also a diagnostic tool for the Town. Not only will we prioritize the funding opportunities presented in the plan, but we can forward it to Volusia County as Councilmember White suggested; she can also take it to the state legislature for appropriations requests. She pointed out that the Town Manager was the former Planning & Development Director for the Town so there has always been a focus on resiliency in our plans and codes. Mayor Paritsky opened discussion for the Council.

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Councilmember White commented he is trying to understand the ranking; noting that the challenge is going to be how we rank it. He asked if there are any current regulations for the Town to pump stormwater into the river; it will be a challenge if it must be treated before it goes into the river. Ms. Perez explained that Ponce Inlet is in the St. Johns River Water Management District who protects water quality vigilantly; therefore, along with the new stormwater rule, the Town will likely be required to provide pre-treatment. For a large storm event, it may not be possible to treat all the water; there are pump stations in the state that are permitted with nominal treatment but not the St. John's. She added that pump stations must be carefully engineered, and they consume a lot of power. There is no uniform requirement for pretreatment throughout the state currently. However, that will change with the new stormwater rule. Mayor Paritsky asked if the Town has been funded for the adaptation plan. Mr. Disher replied yes; the next step is to put it out for bid. Councilmember Milano referred to the objectives that the Town could start doing right away; one is the storm retention which is at 1"; the recommendation is 2.5". The next objective was land acquisition. He suggested the Town Manager and Planning Board review the retention now instead of when it comes up in the ranking; to do some of these smaller things now while we wait for funding to do the big projects. He understands the retention ponds are being dredged and cleaned. The Town has tried to be proactive with resiliency and do some of these things; perhaps we have not communicated that well to the residents. Councilmember White added that the Planning Board has been working on this for two years; the comprehensive plan has been adjusted based off the resiliency program. Mayor Paritsky opened discussion for the Planning Board.

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Mr. Burge asked if the river level is higher than the flap-gate if the outflow will still occur. Mr. Jordan replied yes, and explained how the flap-gate would work. Mr. Burge asked if the flap-gate prevents street litter or dirt from flowing into the river. Mr. Jordan explained devices can be installed that will catch it before it goes into the receiving body of water; however, they must be maintained. There is an option of installing concrete baffle boxes; however, they also must be maintained. Mr. Burge referred to the streets between Peninsula Drive and South Atlantic Avenue that frequently flood, and asked if there is a way to lower the water table so the rainfall would percolate into the ground. Mr. Jordan replied yes, from a technical standpoint, but it would be much more problematic from a permitting standpoint because that is where the natural vegetation has grown expecting the water table to be there. If it is lowered, the root systems may not be able to reach the water table and there would be adverse effects to plants and wildlife. Discussion continued regarding the water table. Planning Board Chair Kaszuba stated it is important for the Town to have a good working relationship with the other jurisdictions, particularly Volusia County and the federal government. He watched the County work on the swales last summer and it seemed inadequate. He hopes this report will get a more serious look at the suggested solutions. He understands

Town Council Special Meeting Minutes with the Planning Board some projects have hefty price tags but some smaller projects we could start doing. Mayor Paritsky agreed. Mr. Oebbecke commented that we need to get this information to our citizens; we need the committees such as the Land Acquisition Committee, etc., to get the citizens involved so they feel they are part of the solution.

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Mayor Paritsky opened public comment. Barbara Davis, 4871 Sailfish Drive, thanked the Council for recognizing that we need to be proactive. It flooded in 2004; we had a rain event in 2009; we did a resiliency report; in 2022 everything flooded during a tropical storm. She has been beating her drum for 16 years about the 1" retention; she explained why that needs to be changed. She mentioned several properties where the structures are being lifted instead of the lot being filled and why more properties should be allowed to do that. She referred to swales and stated there is a 75-foot right-of-way on Sailfish Drive that is supposed to be protected by resolution; however, people are putting sod on it and clearing it out. We need to legislate on the 1" retention and swales; and land acquisition. The Town bought a parcel on Sailfish Dr. and sold it for the same price instead of installing retention. The Land Acquisition Committee was disbanded so we cannot look for more retention areas. She referred to the Las Olas information provided and asked what will happen there; sewer water is in the water there when it floods. Until Mr. Griffith came to work here, we did not have a flap-gate on the river; water was backing up through the storm gates onto Sailfish Drive. We need more retention. The focus area recommended lowimpact development; we need legislation to stop people from filling and not putting in adequate plants to absorb the water. Improve site design. We have the right-of-way where we could install swales, particularly in the flood zones on Sailfish Drive. The north end of the right-of-way is 30 or 40 feet wide and 75 feet on the south end – swales could be installed all the way down in the flood area and increase retention. Let's get proactive; let's take this list and get started; let's legislate and get the 2.5" retention at least. Councilmember Milano agreed and referred to the slide depicting swales, noting their location. He provided the history of the 1" retention and how he tried to get it increased. He explained he had to go through the county's road and bridge department to have a swale installed near his property. They provided the dirt and built a mound to help direct water to the south to the stormwater drain. Mayor Paritsky closed public comment. Mayor Paritsky provided instructions to the Planning Board on what the motion should be: to recommend approval of the Watershed Master Plan; suggest modifications as part of the approval; or recommend rejection of the plan. Mayor Paritsky opened discussion to the Planning Board; there was no discussion.

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Mr. Young moved to recommend approval of the Watershed Master Plan as presented; seconded by Mr. Burge; The motion PASSED 5-0, with the following vote: Mr. Young — yes; Mr. Burge — yes — Mr. Oebbecke — yes; Mr. Kaszuba — yes; Mr. Revak - yes.

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Councilmember White moved to adopt the Watershed Master Plan to meet the requirements for CRS Activity 450 Stormwater Management as presented; seconded by Councilmember Villanella; The motion PASSED 5-0, following vote: Councilmember White — yes; Councilmember Villanella — yes; Mayor Paritsky — yes; Councilmember Milano — yes; Vice-Mayor Smith - yes.

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Councilmember Milano referred to the "near term recommendations" listed on page 57 and asked if we could start on those items now; hopefully the Town can submit for a grant for other items. Mr. Disher explained this will be entered into a list and sorted by area, priority, and timeframe. Councilmember Milano suggested sending a letter to residents that this plan is available for them to review. Mr. Disher explained notice was provided regarding today's meeting. Mayor Paritsky reiterated that the public is noticed; she explained staff will create an outline that will prioritize everything. Mr. Disher explained

Town Council Special Meeting Minutes with the Planning Board that Hurricane Ian was a wake-up call; that is when we began cleaning the stormwater pipes which was recently concluded; that had never been done before. Staff is currently designing two pond excavations. and stormwater flaps on a couple of roads are being installed. We are in the process of securing \$10.4 million to complete the septic-to-sewer project. We are being proactive and moving forward as best we can. He referred to the 2.5" recommended retention and explained that number was not arbitrarily picked; this was an incredible study with specific recommendations for us. It is a computerized model of the entire Town's watershed and drainage pattern and considers the groundwater table. These recommended projects are eligible for future grant funding through the Resilient Florida Program with up to 50% construction funding for some. Mr. Disher announced the Town has received grant funding for the adaptation plan which is the next step in these efforts; we are doing a combination of planning and construction to address these issues. He also added that lots that may have had stormwater drainage retention when they were first developed may have since filled in; each property must retain the first inch of rainfall that comes off the roof during a storm. Over time, and as properties change hands, these drainage areas have been filled in. That is another aspect that could be addressed if homeowners are unaware of what those holes in their yards are for. Mayor Paritsky thanked Ms. Perez and Mr. Jordan for being here today and requested a copy of the PowerPoint be provided to Council. Mr. Disher asked that it be provided to the Planning Board and posted on the Town's website.

Mayor Paritsky adjourned the meeting at 12:19 pm for lunch

Mayor Paritsky reconvened the meeting at 12:50 p.m.

6. REQUEST FOR DIRECTION ON AMENDING THE LAND USE & DEVELOPMENT CODE TO ALLOW FARMER'S MARKETS AS A PERMITTED SPECIAL EXCEPTION USE IN THE PUBLIC INSTITUTION (P-I) ZONING DISTRICT. - Ms. Rippey explained staff is requesting direction from the Council on amending the LUDC to allow farmer's markets as a permitted special use in the public institutional (P-I) zoning district, as Town staff received a written request from the Ponce Inlet Community Center Board requesting it. Code amendments are initiated in one of three ways: 1) sponsored or directed by a Councilmember; 2) proposed by staff to implement policies in the comprehensive plan or changes to state law; or 3) through an application with a fee payment. Barring these, staff can only devote time to such requests after other Council-directed goals and tasks have been completed. Farmers markets are a temporary or occasional outdoor retail sale of farm produce or seafood; typically located within a parking lot or approved location in a public right-of-way closed to vehicular traffic. Farmers markets are only permitted by right in the PUD and PWD zoning districts and are also allowed as a minor special exception in the B-1 and B-2 commercial zoning districts. The request to add farmers markets as a special exception use to the P-I zoning district would provide additional locations for farmers markets to serve the local population. In the P-I zoning classification, farmers markets are only allowed through a special event permit, limited to 12 times per calendar year. Mayor Paritsky asked for clarification that if this P-I zoning was amended, it would be applicable to any area zoned P-I. Ms. Rippey answered yes. Mayor Paritsky asked if the special event permit applications are submitted through the Cultural Services Department. Mr. Disher replied yes. Mayor Paritsky stated that if Council agrees to this amendment for the community center, the impact would be that every P-I zoned area would have the right to do this. Ms. Rippey answered yes. Mayor Paritsky stated the consequence of approving this is bigger than just for the community center. She asked if there was a way the community center could have a farmers market every Sunday without this sweeping change; she asked if there was anything in the code would allow that to happen.

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Special Meeting Minutes with the Planning Board

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Ms. Rippey explained she did not find anything in her research that would allow it without amending the zoning district and land use. Mr. Disher agreed and added that he has not had an opportunity to research if it could be allowed to occur inside the building. Mayor Paritsky commented that would be like renting the community center; they could also use the kitchen as she knows some of the vendors cook. Vice-Mayor Smith asked what the difference is between the food trucks there on that site periodically and a farmer's market. Mr. Disher explained the food trucks are through a special event permit, so it is limited to 12 times per year. Vice-Mayor Smith asked if there could be multiple special event permits. Discussion ensued regarding special event permits; the limitations of special events; the food trucks; and farmers market. Councilmember White noted that the responses he has received from residents is that they want to see a farmers market at the community center; and they feel very strongly about the location. He asked if there is a way to have the farmers market at the community center on a permanent day. Mayor Paritsky asked if his opinion would change if the consequence would then permit farmers markets in similarly zoned districts. Councilmember White explained no, if the vendors follow the permits and supply the documentation, whether it is at PICCI or another location, it is an added advantage for the residents of Ponce Inlet regardless of what a P-I property holds; it needs to benefit the residents. Vice-Mayor Smith asked if the farmers market would interfere with the church that is held at PICCI on Sunday morning. Councilmember Milano stated he supports the farmers market, but the church is a concern. He noted that PICCI has insurance, but if it opens it up to other locations, such as the museum, it puts the liability on the Town. Mr. Oebbecke explained he spoke to the pastor of the church about the possibility of having the farmers market at the community center; he is fine with it with one condition; that people attending the farmers market do not enter the community center. The external doors to the restrooms will be available to farmers market attendees but everything else will be restricted. Signs will be posted that church is in service. The pastor is there from 9:30 am to noon; church service starts at 10:30 am. The community center is requesting this be allowed as a special exception use; if another request is submitted for a Public-Institutional property, the Town could always deny it if it deemed not appropriate. He explained this would be a farmer's market; it will not be extended to include crafts or things not directly related to food stuffs. Mayor Paritsky asked if that would include food that is cooked on-site. Mr. Oebbecke replied yes, it would. Mayor Paritsky asked if this request was made at the Board of Directors of PICCI. Mr. Oebbecke answered yes, and it was a unanimous vote.

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Councilmember White asked what the process is to request a special exception. Mr. Disher explained that currently, someone would submit an application that is reviewed by staff; then it is reviewed by the Planning Board for approval. If the Council wants to review applications for Town-owned property, then it would be considered a major special exception, which is reviewed by the Planning Board for a recommendation, then by the Council for final approval. Mayor Paritsky asked what Town-owned property is not zoned Public-Institutional? Mr. Disher explained only the Green Mound and Lighthouse Point Park. Discussion continued; other locations were suggested and discussed. Councilmember Villanella stated he would like the farmers market at PICCI; however, he understands the legals concerns that we cannot say the special permit is only for PICCI. Councilmember White reiterated the number of residents that have voiced their opinion to hold the farmers market at PICCI, he feels we must move forward with this. Councilmember Milano and Vice-Mayor Smith agreed.

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Mayor Paritsky provided staff direction to move forward with the farmers market at the Ponce Inlet Community Center.

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7. DISCUSSION – AMENDING THE PLANNING BOARD BY-LAWS TO CHANGE THE MEETING TIME TO 2:00 P.M. AND SPECIFYING THE TIMING OF AGENDA PACKET DELIVERY.

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Mayor Paritsky asked the Planning Board members to explain what they are asking for. Planning Board Chair Kaszuba explained that some of the Planning Board meetings are held at 10:00 am and others are at 5:30 pm, depending on whether it was a quasi-judicial hearing. Some Planning Board members wanted a better idea of how much of their day would be consumed with a meeting for better planning purposes for their schedules. Mayor Paritsky asked for clarification that the new proposed meeting start time is 2:00 pm. Chair Kaszuba answered yes. Mr. Burge explained it was presented by a member for personal reasons; personally, he is happy with 10:00 am.

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Mr. Oebbecke moved to change the Planning Board meeting time to 2:00 pm for non-quasi-judicial items; seconded by Mr. Revak; The motion PASSED 4-1, with the following vote: Mr. Oebbecke — yes; Mr. Revak — yes; Mr. Kaszuba — yes; Mr. Burge — no; Mr. Young - yes.

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Mayor Paritsky stated the Planning Board bylaws will be brought to the Town Council for approval. She stated the next part of this item is specifying the timing of the agenda packet delivery; she explained the Planning Board packet is provided in the same timeframe and manner as for the Council and other Boards; one week in advance. She asked the reason for this request. Chair Kaszuba referred to the Sailfish Marina project and explained that Planning Board members had less than a week to review it. They are looking for more time to review the material; ensuring it is a week would be a step in the right direction. Mr. Young commented Board members heard that Sailfish marina had been in the process for two years, yet only received the packet a week in advance. He understands the quasi-judicial nature of that particular application and that the Board's role is to hear the case and decide it; however, when it is something so controversial, it would be helpful to have the information more in advance. Mayor Paritsky asked if they separated out that project (Sailfish Marina), if they were comfortable with the process as it stands today. Mr. Young answered yes. Mayor Paritsky explained there is one week in advance for Council and Boards because there is an internal process of dates; when staff works on something, it is reviewed by the Town Manager, etc. Planning Board materials are labor intensive and there is a lot to read; there are facts that must be applied to ordinances, etc. She suggested that if Board members feel ill-prepared on an item, they make a motion to table it for a month. She referred to Sailfish and reminded members that even if they hear of something for two years, they cannot discuss before the hearing it if it is quasi-judicial. Discussion continued regarding the timing of agenda packet delivery and consensus was reached to leave it as-is. Mr. Disher added that staff is always available to answer questions or explain anything if needed; and staff can provide updates on projects that are not quasi-judicial. Mayor Paritsky asked if anything like Sailfish Marina is coming, to inform the Planning Board and Council it is coming.

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8. ADJOURNMENT. — Mayor Paritsky adjourned the meeting at 1:43 P.M.

366 Respectfully submitted by:

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Kim Cherbano, CMC, Town Clerk

370 Prepa

Prepared by: Debbie Stewart, Assistant Deputy Clerk

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Attachment(s): None



ATTACHMENT III DRAFT PLANNING BOARD SEPTEMBER 24, 2024 MEETING MINUTES



Town of Ponce Inlet

Planning Board Regular Meeting Minutes September 24, 2024

CALL TO ORDER AND PLEDGE OF ALLEGIANCE: Pursuant to proper notice,
 Chair Kaszuba called the meeting to order at 2:00 p.m. in the Council Chambers, 4300 S. Atlantic
 Avenue, Ponce Inlet, FL, and led attendees in the Pledge of Allegiance.

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2. ROLL CALL AND DETERMINATION OF QUORUM:

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Board members present:

Mr. Oebbecke, Seat #1

Mr. Kaszuba, Seat #2; Chair

Mr. Burge, Seat #3

Mr. Cannon, Seat #4

Mr. Carney, Seat #5; Vice Chair

Mr. Revak, Alternate #1 - Absent

Mr. Young, Alternate #2 - Absent

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Staff present:

Ms. Dowling, HR Coordinator

Ms. Fisher, Senior Planner

Ms. Gjessing, Assistant Deputy Clerk

Mr. Hooker, Code Compliance Manager

Ms. Hugler, Fire Department Office Manager

Attorney Knight, Town Attorney

Mr. Lear, Planning & Development Director

Ms. Rippey, Principal Planner

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Other officials present:

Mayor Paritsky

Councilmember Villanella

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3. ADOPTION OF AGENDA: - <u>Mr. Cannon moved to adopt the agenda as presented;</u> seconded by Vice-Chair Carney. The motion PASSED by consensus, 5-0.

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4. APPROVAL OF MINUTES:

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A. July 23, 2024 - Mr. Cannon moved to approve the July 23, 2024, meeting minutes as presented; seconded by Vice-Chair Carney. The motion PASSED by consensus, 5-0

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5. REPORT OF STAFF:

A. Planning Division Reports – Mr. Lear announced there are three new employees in the Planning and Development Department: Bernadette Fisher, Senior Planner; Bailey Hornbuckle, Code Enforcement Administrative Assistant; and Heather Ricci, Permit Technician.

He announced a Town Hall landscaping project to replant the areas previously cleared by Public Works of the muscadine grape vines; planting is scheduled to begin in October. They will be installing 272 native plants varieties; once established, these plants will help reduce soil erosion, conserve water and water run-off, lower maintenance needs, and enhance wildlife habitat. Regarding the S. Peninsula Drive sidewalk, contractors were hired last month by Volusia County to conduct survey work from the northern town limits to Lighthouse Drive; the survey is expected to take approximately five months after which the county will engage an engineer for the design work. Chair Kaszuba asked if there is a completion date for the sidewalk project. Mr. Lear explained that will be finalized during the design phase; public meetings must still take place.

B. Other Updates and/or Reports - There were no other updates.

6. CORRESPONDENCE/DISCLOSURE OF EX-PARTE COMMUNICATION: Mr. Oebbecke stated he identified communications between Mr. Revak and himself that was forwarded to staff for the record regarding the ordinance change to the LUDC. Mr. Revak texted Mr. Oebbecke on September 23, 2024 at 5:28 PM indicating he had reviewed what was being presented and the only question he had was "with modification zoning district permitting uses with major special exceptions designation what are the next steps required to get the event approved?". Mr. Oebbecke replied he received the message; Mr. Revak responded that he should probably bring up his thoughts and potentially identify an issue with Sunshine requirements. Vice-Chair Carney commented he went to the farmers market on Sunday and spoke with the ladies that run it who discussed their concerns with him; he requested they send their concerns to Ms. Rippey which they have done.

7. **HEARING OF CASES:** None.

BUSINESS ITEMS/PUBLIC HEARINGS:

8.

Ordinance 2024-XX (proposed), Amending the LUDC, Article 2 "Zoning Districts", Section 2.40.1 "Interpretation of Uses and Structures Permitted, Table 2-5, "Table of Permitted Uses"; adding farmers markets as a major special exception to the **public-institutional district.** – Ms. Rippey explained this proposed ordinance has been drafted in response to the Town Council's directive at the June 4, 2024 special meeting with the Planning Board and Town Council to amend the Land Use and Development Code (LUDC) to allow farmers markets as a special exception use in the Public Institutional (P-I) zoning district. She explained how amendments are adopted and reviewed the background of this proposed amendment to the LUDC. Currently, farmers markets are only permitted in the planned waterfront development (PWD) zoning district and allowed as a minor special exception use in the B-1, B-2, and PUD zoning districts. In the P-I zoning classification, farmers markets are not a permitted or special exception use, although they may be allowed through a special event permit, limited to 12 times per calendar year. According to LUDC Section 6.6.3, a special exception is a use that would not be appropriate without restriction, but which, if controlled as to number, area, location or relation to the surrounding area, would promote the public health, safety and general welfare. These uses require more comprehensive review, and by their nature may necessitate specific conditions to mitigate any potential adverse impacts. The Planning Board serves as the decision-making authority for minor special exceptions while major special exceptions require a recommendation from the Planning Board and approval by the Town Council. The request to add farmers markets as a special exception use to the P-I zoning district would provide additional locations for farmers

markets to serve the local population; 16 properties within the town limits are zoned Public-Institutional. Those properties include town-owned facilities and parks, county-owned facilities and parks, and private scientific facilities. The Ponce Inlet Community Center Board of Trustees is in support of allowing a farmer's market to operate at the Community Center. Based on the safety, convenience and unique location, the Board has requested that farmers markets be added as a special exception use. The proposed amendment will add a major special exception notation in the P-I zoning column in Section 2.40 of Table 2-5 (Table of Permitted Uses) under the section of the table in the LUDC titled "Community Facilities and Public Assembly"; footnote 10 is included in the notation and is located on the last row of Table 2-5 to identify P-I zoned properties excluded from the major special exception. The three P-I zoned properties proposed to be included as a major special exception are: Ponce Inlet Community Center, Ponce Inlet Fire Rescue, and Timothy Pollard Memorial Park which are located adjacent to each other on S. Peninsula Drive. The P-I zoned properties excluded from the special exception are Ponce Preserve, Timucuan Oaks Garden, Winter Haven Park, Public Works facility, Ponce Inlet Historic Museum, the two Batelle Institute properties, Jesse Linzy Boat Ramp, Marine Science Center, and Lighthouse Point Park. Originally, the Pacetti Hotel Museum, Ponce de Leon Lighthouse and Museum, Kay and Ayres Davies Lighthouse Park were included; however, after a discussion with Ed Gunn, Director of the Historic Lighthouse Preservation Association, they did not want that to occur on those properties and upon further review, there are some restrictions on those properties that are included in the 10acre location. As reviewed regarding the comprehensive plan, the ordinance will maintain consistency with the Town's desired vision and direction. The Future Land Use Element of the comprehensive plan classifies the P-I land use category as land used for quasi-public and private activities or facilities which will serve the public interest in an educational, recreational, or scientific context. Staff recommends Ordinance 2024-##, amending Section 2.40 Table of Permitted Uses to include farmers markets as a major special exception use in the P-I zoning district excluding 13 of the 16 P-I zoned properties.

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Vice-Chair Carney referred to the email provided by Jair Kessler regarding this issue and her concern that Mr. Oebbecke has a conflict of interest as he is a Board Member of the Ponce Inlet Community Center. Attorney Knight explained Mr. Oebbecke will be recusing himself from the vote on this issue. Mr. Lear clarified that Ms. Kessler's email was forwarded to the Planning Board members. Members discussed the proposed amendment, the use of the Fire Department and Timothy Pollard Park properties, other uses than farmers markets, and potential parking issues. They discussed it being a major versus minor exception; they discussed the properties that are excluded and why. Board members discussed communication submitted from the Ponce Inlet Community Center Board of Directors and their decision to allow farmers markets. Mr. Oebbecke explained on behalf of the PICCI Board of Directors why a weekly farmers market will be a benefit to the community and their reasons for supporting this amendment. Discussion continued. Chair Kaszuba opened public comment; seeing none, he closed public comment. Chair Kaszuba opened the floor for more Board discussion or a motion. Mr. Cannon asked for clarification of the nature of a farmer's market; that it is an aggregation of vendors that are not beholden to anyone. There is no contractual agreement; it is only an assembly point. Mr. Oebbecke explained that is correct; there is no agreement, no contract is signed, and no fee is charged to the vendors; it is a place for them to congregate and sell their wares on a weekly basis. Mr. Lear clarified that the current farmers market operating at the North Turn Restaurant is under a special event permit that is allowable only 12 times per year. Mr. Cannon asked if this is approved, if there is anything that prohibited one market operating at will and another that is limited to 12 times per year. Vice-Chair Carney commented that the Board members recently received training, and he would like guidance on what the threshold should be for an exception like this or what they should be looking for to make this decision. Attorney Knight explained there is no set criteria, and this is not a quasi-judicial proceeding. Discussion continued; Attorney Knight explained the difference between a variance and a special exception.

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Mr. Cannon moved Ordinance 2024-XX, amending the LUDC, Article 2 "Zoning Districts", Section 2.40.1 "Interpretation of Uses and Structures Permitted, Table 2-5, "Table of Permitted Uses" to include farmers markets as a major special exception to the public-institutional district excluding 13 of the 16 P-I zoned properties be forwarded to the Town Council with a recommendation of APPROVAL; seconded by Chair Kaszuba. The motion FAILED 2-2, with the following vote: Mr. Cannon – yes; Chair Kaszuba – yes; Mr. Burge – no; Vice-Chair Carney – no.

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Mr. Oebbecke abstained, and his filed Form 8-B is attached as part of the record.

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В. Ordinance 2024-XX (proposed), Amending Articles 3, 8, and 9 of the LUDC to substitute references of Code Enforcement Board with Special Magistrate - Mr. Lear explained that this ordinance has been developed to implement the Town Council's directive to shift from a Code Enforcement Board process to a Special Magistrate process. The amendment changes references found throughout the LUDC pertaining to enforcement of land development regulations, Chapter 162, Florida Statutes, authorizes the use of a Special Magistrate to enforce the city's codes and ordinances. A Special Magistrate is an attorney and a member of the Florida bar who is appointed by the Town Council; he explained the duties of a Special Magistrate in relation to code enforcement. He noted that the Town of Ponce Inlet is the only municipality in Volusia County that exclusively uses a Code Enforcement Board rather than a Special Magistrate or a combination of both. At the July 18, 2024 Town Council meeting, Council directed staff to proceed with transitioning from a Code Enforcement Board to a Special Magistrate. Staff recommends approval for this item. Vice-Chair Carney commented he has heard that Ponce Inlet code, as it refers to housing and short-term leasing, is grandfathered and could not be changed; he wants to ensure that when we update this, we do not lose the grandfather status. Mr. Lear explained that would not affect this. Attorney Knight explained it is not a substantive change where we would lose the grandfathering status. Chair Kaszuba asked how long the Town has had a Code Enforcement Board. Mr. Hooker explained the first Code Enforcement Board meeting was in the 1980's. The Town has had the same attorney since that time, Mr. Charles Cino, who has indicated he will likely retire within the next year. The Special Magistrate would start in January; Mr. Hooker explained the process and noted that the Special Magistrate would only serve the Town of Ponce Inlet. He explained that the Special Magistrate will be chosen through an RFP process. He explained the appeal process and why the Town is transitioning to a Special Magistrate. Chair Kaszuba opened public comment; seeing none, he closed public comment.

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Mr. Cannon moved that Ordinance 2024-XX amending Articles 3, 8, and 9 of the Land Use Development Code to substitute references of the Code Enforcement Board with Special Magistrate be forwarded to the Town Council with a recommendation of APPROVAL; seconded by Vice-Chair Carney. The motion PASSED 5-0, with the following vote: Mr. Cannon – yes; Vice-Chair Carney – yes; Mr. Oebbecke – yes; Chair Kaszuba – yes; Mr. Burge – yes.

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9. **PUBLIC PARTICIPATION:** Chair Kaszuba opened public participation – hearing none, he closed public participation.

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10. BOARD DISCUSSION: None.

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11. ADJOURNMENT: The meeting was adjourned at 3:07 p.m.

189 Prepared and submitted by,

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191 <u>Draft</u>

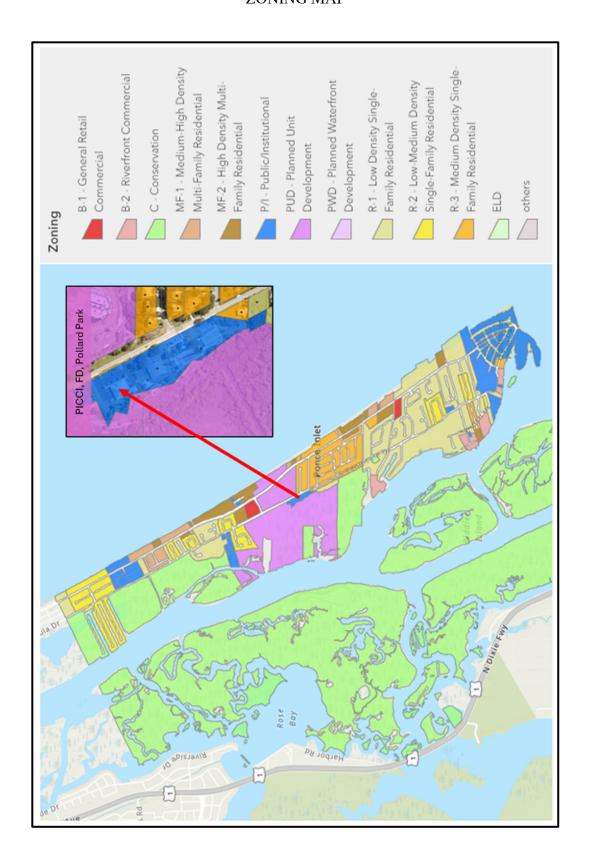
192 Debbie Stewart

193 Assistant Deputy Clerk

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ATTACHMENT IV ZONING MAP



| 1 | ORDINANCE NO. 2024-06 |
|----------|--|
| 2 | |
| 3 | AN ORDINANCE OF THE TOWN OF PONCE INLET, |
| 4 | FLORIDA, AMENDING THE LAND USE AND |
| 5 | DEVELOPMENT CODE, ARTICLE 2 "ZONING DISTRICTS", |
| 6 | SECTION 2.40.1 "INTERPRETATON OF USES AND |
| 7 | STRUCTURES PERMITTED", TABLE 2-5 "TABLE OF |
| 8 | PERMITTED USES"; ADDING FARMERS MARKETS AS A |
| 9 | MAJOR SPECIAL EXCEPTION USE TO THE PUBLIC- |
| 10 | INSTITUTIONAL ZONING DISTRICT; PROVIDING FOR |
| 11 | CODIFICATION; PROVIDING FOR SEVERABILITY; |
| 12 | PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN |
| 13 | EFFECTIVE DATE. |
| 14 | WHEDEAS Article 2 of the Dones Inlet Land Use and Development Code (LUDC) |
| 15
16 | WHEREAS, Article 2 of the Ponce Inlet Land Use and Development Code (LUDC) establishes regulations for zoning districts and permitted uses by zoning district; and |
| 17 | establishes regulations for zoning districts and permitted uses by zoning district, and |
| 18 | WHEREAS, Section 2.40 of Article 2 provides a table listing the permitted uses and |
| 19 | special exception uses in each zoning district; and |
| 20 | -r |
| 21 | WHEREAS, the Town Council directed staff at Town Council Special Joint Meeting with |
| 22 | the Planning Board held on June 4, 2024 to amend the LUDC to allow farmers markets as a special |
| 23 | exception use in the Public-Institutional zoning district; and |
| 24 | |
| 25 | WHEREAS, the Planning Board, at its regularly scheduled meeting on September 24. |
| 26 | 2024, reviewed the Ordinance in its capacity as the Local Planning Agency, but failed to pass a |
| 27 | motion recommending its approval to the Town Council; and |
| 28 | |
| 29 | WHEREAS, the Town Council affirms that this Ordinance is consistent with the |
| 30 | Comprehensive Plan and is in the best interest of the public welfare of the Town; and |
| 31
32 | WHEREAS, the Town has complied with all requirements and procedures of the LUDC |
| 33 | and Florida law in processing, noticing, and advertising this Ordinance; and |
| 34 | and I fortunated in processing, noticing, and advertising this ordinance, and |
| 35 | WHEREAS, this Ordinance is enacted under the general home rule and police powers of |
| 36 | the Town of Ponce Inlet. |
| 37 | |
| 38 | NOW, THEREFORE, BE IT ENACTED BY THE TOWN COUNCIL OF THE |
| 39 | TOWN OF PONCE INLET, FLORIDA: |
| 40 | |
| 41 | NOTE: <u>Underlined words</u> constitute additions to the Town of Ponce Inlet Land Use |
| 42 | Development Code (LUDC) as amended by Ordinance 2024-06, strikethrough constitutes |
| 43 | deletions, and asterisks (***) indicate an omission from the existing text of said LUDC as |
| 44 | amended which is intended to remain unchanged. |

SECTION 1. Recitals. The foregoing recitals are hereby ratified and confirmed as being

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| 47 | true and correct and are hereby made a part of this Ordinance. | | |
|----------|---|------------------------|-------------------------------------|
| 48
49 | SECTION 2 Incorporation of A | mondmonts. The pro | onosed amendments to Article ? |
| 50 | SECTION 2. Incorporation of Amendments. The proposed amendments to Article 2 . Section 2.40 of the Land Use and Development Code are attached to this Ordinance as Exhibit | | |
| 51 | "A" and are hereby incorporated into the t | | |
| 52 | verbatim as amendments to the Land Use as | | • |
| 53 | verbatim as amendments to the Land Ose an | iu Development Coc | ic. |
| 54 | SECTION 3. Codification. It is the | intent of the Town C | Council of the Town of Ponce Inlet |
| 55 | that the provisions of this Ordinance shall | | |
| 56 | authority in codifying the provisions of this | | affice is granted broad and moerar |
| 57 | authority in countying the provisions of this | Ordinance. | |
| 58 | SECTION 4. Severability. If any s | section subsection (| sentence clause phrase word or |
| 59 | provision of this Ordinance is for any rea | | |
| 60 | competent jurisdiction, whether for substant | | |
| 61 | be deemed a separate, distinct, and independent | | |
| 62 | validity of the remaining portions of this Or | _ | such holding shall het affect the |
| 63 | variately of the remaining portions of this of | | |
| 64 | SECTION 5. Conflicts. In any case | e where a provision of | of this Ordinance is found to be in |
| 65 | conflict with a provision of any other ordina | | |
| 66 | | ··, · | |
| 67 | SECTION 6. Effective date. This | Ordinance shall bed | come effective immediately upon |
| 68 | adoption by the Town Council of the Town of Ponce Inlet, Florida. | | |
| 69 | 1 7 | , | |
| 70 | It was moved by Councilmember V | illanella and seconde | ed by Councilmember Milano that |
| 71 | said Ordinance be passed on first reading. A roll call vote of the Town Council on said motion | | |
| 72 | resulted as follows: | | |
| 73 | | | |
| 74 | Mayor Paritsky, Seat | : #1 | YES |
| | | | |
| 75 | Councilmember Mila | ıno, Seat #2 | YES |
| | | aa | ***** |
| 76 | Councilmember Whi | te, Seat #3 | YES |
| 77 | C1 | 11 C 4 . 44 4 | VES |
| 77 | Councilmember Villa | anelia, Seat #4 | YES |
| 78 | Vice-Mayor Smith, S | Seat #5 | YES |
| 70 | vice-iviayor Simin, S | reat #5 | TES |
| 79 | | | |
| 80 | Approved on first reading this 17 th day of C | October 2024. | |
| 81 | | - | |
| 82 | It was moved by | and seconded by | that said Ordinance |
| 83 | be passed on second reading. A roll call v | vote of the Town Co | ouncil on said motion resulted as |
| 84 | follows: | | |
| 85 | | | |
| 86 | | | |
| 07 | Maryan Danital Cant | · #1 | |
| 87 | Mayor Paritsky, Seat | .#1 | |

| 88 | Councilmember Milano, Seat #2 | |
|-----|---|-------------------------------|
| 89 | Councilmember White, Seat #3 | |
| 90 | Councilmember Villanella, Seat #4 | |
| 91 | Vice-Mayor Smith, Seat #5 | |
| 92 | | |
| 93 | Approved and adopted on second reading thisday of _ | 2024. |
| 94 | | |
| 95 | | Town of Ponce Inlet, Florida: |
| 96 | | |
| 97 | | |
| 98 | | |
| 99 | | Lois A. Paritsky, Mayor |
| 100 | ATTEST: | |
| 101 | | |
| 102 | | |
| 103 | W' Cl 1 CMC | |
| 104 | Kim Cherbano, CMC | |
| 105 | Town Clerk | |

| 1 | EXHIBIT "A" |
|--------|---------------------------------------|
| 2 | |
| 3 | ARTICLE 2 – ZONING DISTRICTS |
| 4 | |
| 5 | *** |
| 6 | |
| 7 | SECTION 2.40 TABLE OF PERMITTED USES |
| ,
R | SECTION 2.10 TRIBLE OF TERMITTED COES |

2.40.1 Interpretation of uses and structures permitted.

A use or structure that is not expressly permitted in a zoning district is prohibited.

Table 2-5, Table of Permitted Uses

| | USE MATRIX | | | |
|-------------------------|------------|--|---|--|
| | | | | |
| P | = | Permitted use | | |
| S^{MN} | | Use requires minor special exception approval by planning board. | | |
| $\mathbf{S}^{	ext{MJ}}$ | = | Use requires major special exception approval by town council. | See section 6.6.3, for Permitting Process | |

Residential Commercial Public and Use Open Space Regulations Use PWD PUD R-1 COMMUNITY FACILITIES AND PUBLIC ASSEMBLY S^{MN} S^{MN} S^{MN} $S^{MJ[10]}$ Section 3.20 Farmers Market *** [10] Excludes Batelle Institute properties, Jesse Linzy Boat Ramp, Kay and Ayres Davies Lighthouse Park, Lighthouse Point Park, Marine Science Center, Pacetti Hotel Museum, Ponce de Leon Lighthouse and Museum, Ponce Inlet Historic Museum, Ponce Preserve, Port Orange Lift Station (adjacent to Ponce Inlet Community Center), Public Works Facility, Timucuan Oaks Garden and Winter Haven Park.

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Meeting Date: 11/21/2024

Agenda Item: 11-B

Report to Town Council

Topic: Second reading of Ordinance 2024-07, Amending Chapters 1, 2, 6, 10, 18, 34, 42, 46, 51, 62, 66, 70, 74, 78 and 82 of the Code of Ordinances to substitute references of the Code Enforcement Board with Special Magistrate.

Summary: The Town Council approved first reading of this ordinance on October 17, 2024. The amendment modifies references throughout the Code of Ordinances related to the enforcement process for various regulations.

Suggested motion: Staff recommends approval of proposed Ordinance 2024-07, amending Chapter 1, 2, 6, 10, 18, 34, 42, 46, 51, 62, 66, 70, 74, 78 and 82 of the Code of Ordinances to substitute references of the Code Enforcement Board with Special Magistrate.

Requested by: Mr. Lear, Planning & Development Director

Approved by: Mr. Disher, Town Manager



MEMORANDUM

TOWN OF PONCE INLET, PLANNING AND DEVELOPMENT DEPARTMENT

The Town of Ponce Inlet staff shall be professional, caring, and fair in delivering community excellence while ensuring Ponce Inlet residents obtain the greatest value for their tax dollar.

To: Michael E. Disher, AICP, Town Manager

From: Darren Lear, AICP, Planning & Development Director

Date: November 12, 2024

Subject: Ord. No. 2024-07 – Amending Chapters 1, 2, 6, 10, 18, 34, 42, 46, 51, 62, 66, 70, 74,

78 and 82 of the Code of Ordinances to substitute references of the Code Enforcement

Board with Special Magistrate.

MEETING DATE: November 21, 2024

Introduction

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This proposed ordinance has been created to fulfill the Town Council's directive to transition from a code enforcement system that relies on an appointed volunteer board to a special magistrate hired by the Town. The amendment modifies references throughout the Code of Ordinances related to the enforcement process for various regulations. Modifications to the code enforcement board references in the Land Use Development Code will be handled in a separate ordinance.

8 BACKGROUND

In June 2024, Town staff conducted a survey of 16 Volusia County agencies regarding their methods for prosecuting code cases. The findings indicated that the Town of Ponce Inlet is the only municipality that relies solely on a Code Enforcement Board, rather than a special magistrate or a combination of both. During the Town Council meeting on July 18, 2024, the Council directed staff to move forward with transitioning from the current code enforcement process using an appointed volunteer board to a Special Magistrate enforcement process. Town Council approved first reading of this item on October 17, 2024. The Town Attorney has reviewed the proposed ordinance for legal form and content and has provided additional verbiage after first reading and is highlighted in the attached ordinance.

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DISCUSSION

- 20 Florida Statutes Chapter 162 outlines the code enforcement process for municipalities in Florida.
- In the early 2000s, reforms were introduced to streamline this process by incorporating the role of
- 22 a hearing officer, commonly known as a special magistrate, into the statute. Over the past two

- decades, an increasing number of agencies have shifted from traditional code boards to employing
- special magistrates for code enforcement matters.
- 25 The special magistrate was introduced to address several concerns associated with the traditional
- 26 Code Enforcement Board process, including:

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- Lack of Volunteers: Difficulty in recruiting and maintaining sufficient board members.
- Attendance Requirements: Challenges in meeting attendance requirements for board members.
 - Expertise Gaps: Insufficient expertise in specific subject areas relevant to code violations.
- *Property Visits*: Board members visiting violating properties and engaging with property owners prior to hearings.
 - Post-Violation Assistance: Board members personally assisting violators in correcting issues after violations were identified.
 - Ex-Parte Communications: Failure to properly identify and manage ex-parte communications.
 - Sunshine Law Violations: Issues with compliance with Sunshine Law regulations.

Chapter 162 of the Florida Statutes, as amended, allows for the use of a Special Magistrate to enforce the City's codes and ordinances. "A charter county, a noncharter county, or a municipality may, by ordinance, adopt an alternate code enforcement system that gives code enforcement boards or special magistrates designated by the local governing body, or both, the authority to hold hearings and assess fines against violators of the respective county or municipal codes and ordinances. A special magistrate shall have the same status as an enforcement board under this chapter..."

The proposed amendments, particularly in Chapter 2 "Administration," include but are not limited to the following:

- Defining the role of a special magistrate.
- Updating procedures and clarifying powers and duties.
- Streamlining and revising existing language.

Recommendation

- 55 Staff recommends approval of Ordinance No. 2024-07, amending Chapters 1, 2, 6, 10, 18, 34, 42,
- 56 46, 51, 62, 66, 70, 74, 78 and 82 of the Code of Ordinances to substitute references of the Code
- 57 Enforcement Board with Special Magistrate.

ORDINANCE NO. 2024-07

1

AN ORDINANCE OF THE TOWN OF PONCE INLET, FLORIDA, AMENDING THE CODE OF ORDINANCES, CHAPTER 1 "GENERAL PROVISIONS". CHAPTER 2 "ALCOHOLIC "ADMINISTRATION", **CHAPTER** 6 BEVERAGES", CHAPTER 10 "ANIMALS", CHAPTER 18 "BUILDINGS AND BUILDING REGULATIONS", CHAPTER 34 "ENVIRONMENT", CHAPTER 42, "OFFENSES AND MISCELLANEOUS PROVISIONS", CHAPTER 46 "PARKS AND RECREATION", CHAPTER 51 "SPECIAL EVENTS", **CHAPTER 62** "SOLID WASTE", **CHAPTER** 66 "STORMWATER AND CONSERVATION", CHAPTER 70 "STREETS, SIDEWALKS AND OTHER PUBLIC PLACES", CHAPTER 74 "TRAFFIC AND VEHICLES", CHAPTER 78 "UTILITIES", AND CHAPTER 82 "VEGETATION" TO REPLACE REFERENCES TO THE "CODE ENFORCEMENT BOARD" WITH "SPECIAL MAGISTRATE" AND TO UPDATE RELATED DEFINITIONS AND PROCEDURES: PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS: AND PROVIDING FOR AN EFFECTIVE DATE.

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> 24 of Ordinances (Code) define the code enforcement process, code enforcement board, and certain 25

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WHEREAS, Chapter 162, Florida Statutes, as amended, authorizes the use of a Special Magistrate to enforce a local government's codes and ordinances; and WHEREAS, the Town Council has directed staff to transition from an appointed Code

enforcement responsibilities and functions granted to it; and

update related definitions and procedures; and

WHEREAS, Chapters 1, 2, 6, 10, 18, 34, 42, 46, 51, 62, 66, 70, 74, 78 and 82 of the Code

WHEREAS, for this transition to occur, it is necessary to amend the Code of Ordinances to replace all references to the "Code Enforcement Board" with "Special Magistrate"; and to

Enforcement Board to a Special Magistrate to perform said responsibilities and functions; and

WHEREAS, the Town Council affirms that this Ordinance is in the best interest of the public welfare of the Town; and

WHEREAS, the Town has complied with all requirements and procedures of the Code and Florida law in processing, noticing, and advertising this Ordinance; and

WHEREAS, this Ordinance is enacted under the general home rule and police powers of the Town of Ponce Inlet.

NOW, THEREFORE, BE IT ENACTED BY THE TOWN COUNCIL OF THE TOWN OF PONCE INLET, FLORIDA:

NOTE: <u>Underlined words</u> constitute additions to the Town of Ponce Inlet Code as amended by Ordinance 2024-07, <u>strikethrough</u> constitutes deletions, and asterisks (***) indicate an omission from the existing text of said Code as amended which is intended to remain unchanged.

SECTION 1. Recitals. The foregoing recitals are hereby ratified and confirmed as being true and correct and are hereby made a part of this Ordinance.

SECTION 2. Incorporation of Amendments. The proposed amendments to **Chapters 1**, **2**, **6**, **10**, **18**, **34**, **42**, **46**, **51**, **62**, **66**, **70**, **74**, **78** and **82** of the Code are attached to this Ordinance as Exhibit "A" and are hereby incorporated into the text of this Ordinance as though fully set forth herein verbatim as amendments to the Code.

SECTION 3. Codification. It is the intent of the Town Council of the Town of Ponce Inlet that the provisions of this Ordinance shall be codified. The codifier is granted broad and liberal authority in codifying the provisions of this Ordinance.

SECTION 4. Severability. If any section, subsection, sentence, clause, phrase, word, or provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 5. Conflicts. In any case where a provision of this Ordinance is found to be in conflict with a provision of any other ordinance of this Town, this Ordinance shall prevail.

SECTION 6. Effective date. This Ordinance shall become effective immediately upon appointment of a special magistrate by the Town Council of the Town of Ponce Inlet, Florida.

It was moved by Councilmember Villanella and seconded by Councilmember Milano_that said Ordinance be passed on first reading. A roll call vote of the Town Council on said motion resulted as follows:

| Mayor Paritsky, Seat #1 | YES |
|-----------------------------------|-----|
| Councilmember Milano, Seat #2 | YES |
| Councilmember White, Seat #3 | YES |
| Councilmember Villanella, Seat #4 | YES |
| Vice-Mayor Smith, Seat #5 | YES |

| 89 | Approved on first reading this 17th day of Octob | ber 2024. | | |
|------------|---|-------------|-----------------------|-----------------------|
| 90 | It was moved by | yaaandad by | ., | that said Ordinana |
| 91
92 | It was moved by and s be passed on second reading. A roll call vote | of the Tox | y
zn Council on sa | id motion resulted as |
| 93 | follows: | or the row | in council on su | id motion resuited us |
| 94 | | | | |
| 95 | Mayor Paritsky, Seat #1 | | | |
| 96 | Councilmember Milano, | Seat #2 | | |
| 97 | Councilmember White, S | eat #3 | | |
| 98 | Councilmember Villanell | a, Seat #4 | | |
| 99 | Vice-Mayor Smith, Seat | # 5 | | |
| 100 | | | | |
| 101 | Approved and adopted on second reading this _ | day of _ | | 2024. |
| 102 | | | Town of Ponce | Inlat Florida |
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104 | | | Town of Fonce | illet, Florida. |
| 105 | | | | |
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| 107 | | | Lois A. Paritsky | , Mayor |
| 108 | ATTEST: | | | |
| 109 | | | | |
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111 | | | | |
| 111 | Kim Cherbano, CMC | | | |
| 113 | Town Clerk | | | |
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EXHIBIT "A"

Chapters 1, 2, 6, 10, 18, 34, 42, 46, 51, 62, 66, 70, 74, 78 and 82 of the Code of Ordinances of the Town of Ponce Inlet, are hereby amended to read as follows:

Chapter 1 GENERAL PROVISIONS

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117 Sec. 1-11. General penalty.

- 118 (a) It shall be unlawful for any person to violate or fail to comply with any provision of this Code 119 or any ordinance of the town. Penalties for violations are as follows:
- (1) For noncriminal prosecution, by a fine not exceeding \$500.00.
- 121 (2) For criminal prosecution, by a fine to not exceed \$500.00 and/or a term of imprisonment not to exceed 60 days.
 - (3) For code enforcement board prosecution, by a fine not exceeding \$250.00 per day for a first offense, and not exceeding \$500.00 per day for repeat violations.
- (4) In accordance with all other available civil remedies.
- 126 (b) Each day any violation of any provision of this Code shall continue shall constitute a separate offense.
- 128 (c) Where a penalty is not specified for a violation of this Code, the penalty shall be limited to
 129 the penalties provided for noncriminal prosecution or code enforcement board prosecution in
 130 subsections (a)(1) and (3) of this section respectively.

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Chapter 2 ADMINISTRATION

133 ***

ARTICLE V. CODE ENFORCEMENT

135 Sec. 2-141. Intent; jurisdiction.

- 136 (a) It is the intent of this article to promote, protect, and improve the health, safety and welfare of the citizens and to safeguard property values of the town by providing an equitable, expeditious, effective and inexpensive method of enforcing the various codes of the town.
- 139 (b) Further, the provisions of this article are intended to provide an additional and supplemental
 140 means of enforcing the various codes of the town, and nothing contained in this article shall
 141 prohibit the town from enforcing its codes or ordinances by any other means, specifically
 142 including F.S. ch. 162.

143 **Sec. 2-142. Authority.**

Pursuant to F.S. 162.03(2), the Town hereby establishes an alternate code enforcement system by special magistrate.

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Sec. 2-142143. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Code means any section of the land use and development code for the town.

Code enforcement board attorney means the legal counselor for the code enforcement board of the town, as appointed by the town council.

Code enforcement officer means any authorized agent or employee of the town whose duty it is to ensure compliance with the various codes and ordinances in force in the town.

Enforcement board and code enforcement board mean the code enforcement board as provided for in F.S. § 162.03.

Ordinance means any section of the Code of Ordinances for the town.

Repeat violator means a violation of a provision of a code or ordinance by a person who has been previously found through a code enforcement board special magistrate, or any other quasijudicial or judicial process, to have violated or who has admitted violating the same provision within five years prior to the violation, notwithstanding that the violations occur at different locations.

<u>Special magistrate</u> means the <u>qualified individual appointed</u> by the town council to hear and decide code violations under this section and F.S. ch. 162 in lieu of a code enforcement board.

Town attorney means the town attorney or any assistant town attorney.

Secs. 2-143144—2-160. Reserved.

DIVISION 2. SPECIAL MAGISTRATE CODE ENFORCEMENT BOARD

Sec. 2-161. Procedures; powers and duties; legal counsel.

- (a) The <u>special magistrate code enforcement board</u> shall act in accordance with the Local Government Enforcement Boards Act, F.S. ch. 162, as it may be amended from time to time, and shall have all of the powers and duties set forth therein. The <u>code enforcement officertown attorney</u> shall serve as a prosecutor before the <u>special magistrate code enforcement board</u> at all code enforcement hearings, with <u>legal counsel</u> to the <u>prosecution provided by the town attorney</u>. <u>Legal counsel to the code enforcement board, if desired, shall be provided by the code enforcement board attorney</u>.
- (b) The special magistrate code enforcement board shall have the power to:
 - (1) Adopt rules for the conduct of hearings.
 - (2) <u>Hold code enforcement hearings and assess fines against violators of the various codes of the town.</u>
 - (3) Subpoena alleged violators and witnesses for hearings. Subpoenas may be served by any law enforcement officer of the town or as otherwise provided for by Florida Statutes. The police department of the town may serve subpoenas. Fees for the service of

- subpoenas by the police department shall be the same as that provided by law for service of witness subpoenas by sheriffs of the state.
- 187 (43) Subpoena evidence for hearing.
- 188 $(\underline{54})$ Take testimony under oath.
 - (65) Issue orders having the force of law to commanding whatever steps are necessary to bring a violation into compliance or otherwise resolve an administrative matter in accordance with the Codewith town codes or ordinances.
 - (76) Review and provide recommendations to the Town Council regarding cases suggested for foreclosure. The Town Council will then have the discretion to decide whether to proceed with any property foreclosures
 - (8) Hear certain appeals as provided by this code. Hear and decide appeals when authorized to do so pursuant to any ordinance in which the town council adopts a supplemental means of enforcing its codes.
- 198 Sec. 162 Composition

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- 199 The code enforcement board shall consist of five members and two alternates.
- 200 Sec. 2 163 162. Appointment and term of members of special magistrate.
- The members and alternates of the code enforcement board shall be appointed by the town council
- 202 and shall serve three-year staggered terms, with an exception for the current terms of members on
- 203 this board: terms for seats one and four shall expire in December 2018, terms for seats two and
- 204 five shall expire in December 2016, and the term for seat three shall expire in December 2017.
- 205 Alternate members shall be appointed to an annual term ending in December of each year.
- The Town Council, may, from time to time, appoint one or more special magistrates to adjudicate
- any code enforcement matter. The special magistrate appointed by the Town Council shall be an
- attorney licensed and in good standing to practice law in the state of Florida. The special magistrate
- shall be subject to all the provisions of this article unless specified in the order of appointment.
- 210 **Sec. 2-163. Term.**
- Special magistrates appointed by the Town Council shall serve a two-year term from the
- date of appointment. There shall be no limit on the number of terms one may serve as a special
- 213 magistrate for the Town.
- **Sec. 2-164. Compensation.**
- The special magistrate shall be compensated at a reasonable, fair market rate, as provided by
- 216 contract.

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217 Secs. 2-164165—2-180. Reserved.

219 **DIVISION 3. - CODE ENFORCEMENT PROCEDURE**

- Sec. 2-181. Initiation of proceedings.
- 221 It shall be the duty of the code enforcement officer, as provided in this article, to investigate
- or initiate complaints of violations of town codes and to initiate enforcement proceedings relative

- thereto. The code enforcement board special magistrate shall not have any independent authority
- 224 to conduct its own investigation of such complaints or to initiate enforcement proceedings.
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Sec. 2-183. Citation format.

- A citation issued by the code enforcement officer shall be on a form approved by the town manager and town attorney and shall include, but is not limited to, the following:
- 229 (1) The date and time of issuance.
- 230 (2) The name and address of the person to whom the citation is issued.
- 231 (3) The date and the time the violation was issued.
- 232 (4) The facts constituting reasonable cause for issuance.
- 233 (5) The specific section number of the code that has been violated and a description of the nature of the violation.
- 235 (6) The name and authority of the code enforcement officer.
- The statutory range of fines amount available to the <u>code enforcement boardspecial magistrate</u> to be imposed against the violator and subsequent purchasers, successors in interest or assigns.

Sec. 2-184. Notice of hearing.

If, upon personal investigation, the code enforcement officer has reasonable cause to believe that the violator has not corrected the violation within the prescribed period of time, he shall issue a notice of hearing on a form approved by the town manager and town attorney, which shall include, but not be limited to, the following:

- 244 (1) Notice of a scheduled hearing before the <u>special magistrate code enforcement board</u> which includes the date, time and location of the hearing.
- 246 (2) A provision that failure to attend such a hearing shall be deemed as a waiver of the violator's right to contest the citation.
- 248 (3) The statutory range of fines amount available to the <u>code enforcement boardspecial magistrate</u> 249 to be imposed against the violator and subsequent purchasers, successors in interest or 250 assigns.

Sec. 2-185. Record_keeping.

- 252 After issuing a citation and/or notice of hearing to a violator, the code enforcement officer shall
- 253 deposit the original citation in a file for the code enforcement board, and shall file the copies with
- 254 the code enforcement and/or street files. All code enforcement records shall be kept and maintained
- in accordance with the requirements of F.S. ch. 119.

Sec. 2-186. Failure to appear at hearing.

If a violator fails to appear at the hearing to contest the violation, the violator shall be deemed to have waived his right to contest the violation, and in such a case the <u>special magistrateeode</u> enforcement board may enter an order against the violator imposing a fine in an amount no more than allowed by section 2-193. Notice of the hearing shall be made in accordance with section 2-

195. If the violation is corrected and then recurs or if the violation is not corrected by the time specified for correction by the code enforcement officer, the case may be presented to the <u>special magistratecode enforcement board</u> even if the violation has been corrected prior to the hearing, and the notice shall so state.

Sec. 2-187. Repeat violations.

If a repeat violation is found, the code enforcement officer shall notify the violator and advise him of the nature of the repeat violation but is not required to give the violator a reasonable time to correct the repeat violation. The code enforcement officer shall, upon notifying the violator of a repeat violation, issue a citation to the violator in accordance with the requirements of section 2-183. Notice of the hearing shall be provided to the violator pursuant to section 2-195. If the repeat violation has been corrected prior to the hearing, the a code enforcement board special magistrate may determine and impose, as costs against the violator, reasonable enforcement fees incurred by the town. The repeat violator may choose to waive his rights to this hearing and pay such costs as determined by the code enforcement board special magistrate.

Sec. 2-188. Emergency violations.

If the code enforcement officer has reason to believe a violation presents a serious threat to the public health, safety and welfare or the violation is irreparable or irreversible in nature, the code enforcement officer shall make a reasonable effort to notify the violator of the violation and direct the violator to immediately remedy the violation, and may immediately schedule the matter for a hearing before the special magistratecode enforcement board.

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Sec. 2-190. Continuing violations.

Each day that a violation exists shall constitute a separate violation for the purpose of assessing a fine by the code enforcement boardspecial magistrate.

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Sec. 2-192. Conduct of hearings.

- (a) Code enforcement hearings shall be held at a time established by the <u>special magistrate</u> chairman of the code enforcement board upon coordination with the town attorney. Unless there are no cases set for hearing, code enforcement hearings shall be held on a monthly basis.
- 291 (b) The town manager or his designee shall provide clerical and administrative personnel to the
 292 special magistrate code enforcement board and town attorney as may be reasonably required
 293 for the performance of his duties.
- 294 (c) Each case before the <u>code enforcement boardspecial magistrate</u> shall be presented by the <u>code enforcement officer</u>, <u>with the town attorney providing legal counsel</u>. If the town prevails in prosecuting a case before the <u>code enforcement boardspecial magistrate</u>, it shall be entitled to recover all costs incurred in prosecuting the case and such costs may be included in any lien authorized by section 2-193.
 - (d) The <u>code enforcement boardspecial magistrate</u> shall proceed to hear the cases on the agenda for the respective hearing. All testimony shall be under oath and shall be recorded. The <u>code enforcement boardspecial magistrate</u> shall take testimony from the code enforcement officer,

- from the alleged violator, and from any witnesses presented by the town attorney or the alleged violator. Formal rules of evidence shall not apply; however, fundamental due process shall be observed and shall govern all proceedings. Both the town and alleged violator shall have the right to subpoena witnesses to testify at the hearing.
- (e) The code enforcement board special magistrate shall direct the code enforcement officer town attorney to state the section of the code or ordinance which the alleged violator is accused of violating and the nature of the violation. The code enforcement board shall first seek to determine whether or not the alleged violator admits the violation. If the alleged violator admits the violation, the code enforcement board shall hear such testimony and evidence as presented by the town attorney or the amount the code enforcement board deems necessary to determine the existence of the violation or to punish the alleged violator. If the alleged violator denies the violation, Tthe code enforcement board special magistrate shall first hear testimony and evidence first from the town, and the alleged violator shall have the right to cross examine the town's witnesses. At the close of the town's presentation, the violator shall be permitted to present testimony of witnesses and evidence. The town shall have the right to cross examine the alleged violator and his witnesses.
- (f) The town shall have the burden of proving the violation by a preponderance of the evidence.
 - (g) At the conclusion of the hearing, the code enforcement boardspecial magistrate shall issue findings of fact and conclusions of law based on the evidence of the record, and shall issue an order affording the proper relief consistent with the powers granted in this article. The order may include a notice that it must be complied with by a specified date, that a fine may be imposed for noncompliance, and that the cost of repairs may be included along with the fine under the conditions specified in section 2-193 if the order is not complied with by the prescribed date. A certified copy of this order shall be recorded in the public records of the county and shall constitute notice to any subsequent purchasers, successors in interest or assigns if the violation concerns real property, and Tthe findings therein shall be binding upon the violator and, if the violation concerns real property, any subsequent purchasers, successors in interest or assigns. When an order is recorded in the public records pursuant to this subsection and the order is complied with by the date specified in the order, the code enforcement boardspecial magistrate shall issue an order acknowledging compliance that shall be recorded in the public records. A hearing is not required for the issuance of such an order acknowledging compliance.

Sec. 2-193. Administrative fines and liens.

(a) Order imposing fine. The code enforcement board special magistrate, upon notification by the code enforcement officer that a previous order of noncompliance of the code enforcement board special magistrate has not been complied with by the prescribed time or upon finding that a repeat violation has been committed, may order the violator to pay a fine in an amount specified in this article for each day the violation continues past the date set by the code enforcement board special magistrate in an order of noncompliance; or, in the case of a repeat violation, for each day the repeat violation continues to exist, beginning with the date the repeat violation is found to have occurred by the code enforcement officer. Further, if the violation is an emergency violation as described in section 2-188, the code enforcement board special magistrate shall notify the town council, which may authorize and make all reasonable repairs that are required to bring the property into compliance, and the reasonable

cost of those repairs may be charged against the violator along with any fine imposed pursuant to this article. Making such repairs does not create a continuing obligation on the part of the town to make further repairs or to maintain the property and does not create any liability against the town for any damages to the property. If a finding of a violation or a repeat violation has been made as provided in this article, a hearing shall not be necessary for issuance of the order imposing a fine. If, after due notice and hearing, the code enforcement boardspecial magistrate finds a violation to be irreparable or irreversible in nature, the code enforcement boardspecial magistrate may order the violator to pay a fine as specified in subsection (b)(1) of this section.

- (b) Amount of fine. The code enforcement boardspecial magistrate may impose a civil fine as prescribed in this article, or may determine and impose a fine up to the following maximum amount:
 - (1) A fine imposed pursuant to this section shall not exceed \$250.00 per day for the first violation and shall not exceed \$500.00 per day for a repeat violation, and, in addition thereto, may include all costs of repairs pursuant to subsection (a) of this section. However, if the <u>code enforcement boardspecial magistrate</u> finds the violation to be irreparable or irreversible in nature, it may impose a fine not to exceed \$5,000.00 per violation.
 - (2) In determining the amount of the fine, if any, the <u>code enforcement boardspecial</u> <u>magistrate</u> shall consider the following factors:
 - a. The gravity of the violation.
 - b. Any corrective actions taken by the violator to remedy the violation.
 - c. Any previous violations committed by the violator.
 - (3) Each day a violation exists shall constitute a separate violation for the purpose of assessing a fine.
- 371 (c) Reduction or abatement of fine.

- (1) Prior to recordation as a lien, the <u>code enforcement boardspecial magistrate</u> may reduce any fine imposed pursuant to this article upon written request by the violator or subsequent purchasers, successors in interest or assigns <u>sent by certified mail, return receipt requested</u>, to the town's <u>planning and</u> development <u>services</u> department. The <u>code enforcement board may waive the requirement that the written request be made by certified mail, return receipt requested. The town's <u>planning and development services</u> department shall direct the request to the <u>code enforcement boardspecial magistrate</u> may reduce or abate the fine with a hearing based on the factors enumerated in subsection (b)(2) of this section and due consideration to any expenses incurred by the town to prosecute the violation. <u>However, a</u>Any fine recorded as a lien may not be reduced or abated by the <u>code enforcement boardspecial magistrate</u>.</u>
- (2) The town council may reduce or abate any fine recorded as a lien upon written request by the violator or subsequent purchasers, successors in interest or assigns sent by certified mail, return receipt requested, to the town's planning and development code

enforcement department. The town's planning and development code enforcement department shall then direct the request to the town council for consideration.

(d) Lien for unpaid fine. A certified copy of an order imposing a fine may be recorded in the public records of the county and shall thereafter constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator. Upon petition to the circuit court, such order may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the personal property, but such order shall not be deemed to be a court judgment except for enforcement purposes. A fine imposed pursuant to this section shall continue to accrue until the violator comes into compliance or until judgment is rendered in a suit to foreclose on a lien filed pursuant to this article, whichever occurs first. A lien arising from a fine imposed pursuant to this section runs in favor of the town and the town council may authorize the execution of a satisfaction and release of lien entered. The code enforcement boardspecial magistrate may authorize the town attorney to foreclose on a lien after three months from the filing of any such lien that remains unpaid. No such lien may be foreclosed on real property classified as a homestead pursuant to section 6, article VII of the Florida Constitution.

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Sec. 2-194. Appeals.

Final administrative orders of the <u>code enforcement boardspecial magistrate</u> may be appealed by an aggrieved party <u>within 30 days of the execution of the administrative order</u> to the circuit court as provided for in the Local Government Enforcement Act, F.S. ch. 162. The town attorney shall represent the town on all such appeals.

409 Sec. 2-195. Notices.

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- (b) In addition to providing notice as set forth in subsection (a) of this section, at the option of the <u>code enforcement boardspecial magistrate</u>, notice may also be served by publication or posting, as follows:
 - (1) Such notice shall be published once during each week for four consecutive weeks (four publications being sufficient) in a newspaper of general circulation in the county. The newspaper shall meet such requirements as are prescribed under F.S. ch. 50 for legal and official advertisements. Proof of publication shall be made as provided for in F.S. §§ 50.041 and 50.051.
 - (2) In lieu of publication as described in subsection (b)(1) of this section, such notice may be posted at least ten days prior to hearing, or prior to any deadline contained in the notice, in at least two locations, one of which shall be the property upon which the violation is alleged to exist and the other of which shall be at the town hall. Proof of posting shall be by affidavit of the person posting the notice, which affidavit shall include a copy of the notice posted and the date and places of its posting.
 - (3) Notice by publication or posting may run concurrently with, or may follow, an attempt to provide notice by hand delivery or by mail as required under subsection (a) of this section. Evidence that an attempt has been made to hand deliver or mail notice as

provided in subsection (a) of this section, together with proof of publication or posting as provided in subsection (b) of this section, shall be sufficient to show that the notice requirements of this article have been met, without regard to whether or not the alleged violator actually received such notice.

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ARTICLE IX. LIENS AGAINST PROPERTY

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435 Sec. 2-424. Liens included and excluded from affect of article.

- 436 (a) This section applies to all liens imposed that are due and owing to the town as set forth in this article.
- (b) Liens that are the subject of this article include, but are not limited to:
- 439 (1) Nuisance abatement liens;
 - (2) Sanitation (weeds, trash, and debris removal) liens;
- 441 (3) Stormwater utility liens;
 - (4) Water, sewer, and other related utility liens;
 - (5) Liens/debts relating to permits issued by the town; and
- 444 (6) Impact fee liens.
 - (c) Liens resulting from <u>code enforcement boardspecial magistrate</u> orders imposing fines are excluded from the provisions of this article, except for those specifically authorized by law. Liens arising from <u>code enforcement boardspecial magistrate</u> proceedings shall be subject to the controlling provisions of law. Liens may be satisfied upon full payment, or the town council or town manager, to the extent of delegated powers, may settle and satisfy liens at amounts less than the total amount of liens.

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452 Chapter 6 ALCOHOLIC BEVERAGES

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454 Sec. 6-2. Hours of sale.

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456 (c) Violators of this section shall be subject to criminal prosecution or code enforcement board 457 prosecution and subject to the penalties provided in section 1-11(a)(2) or 1-11(a)(3), 458 respectively.

Sec. 6-3. Sales to intoxicated persons.

No alcoholic beverages may be sold to, consumed by, or served to any intoxicated person, or permitted to be sold to, served to, or consumed by any intoxicated person, in any place holding a license to sell alcoholic beverages. Violators of this section shall be subject to criminal prosecution or code enforcement board prosecution and subject to the penalties provided in section 1-11(a)(2) or 1-11(a)(3), respectively.

- * * * 465 Sec. 6-6. Sale, possession or consumption on Lighthouse Reservation. 466 * * * 467 (d) Violators of this section shall be subject to criminal prosecution or code enforcement board 468 prosecution and subject to the penalties provided in section 1-11(a)(2) or 1-11(a)(3), 469 respectively. 470 471 **Chapter 10 ANIMALS** 472 473 ARTICLE III. OWNER'S/KEEPER'S RESPONSIBILITIES 474 **DIVISION 1 - GENERAL** 475 Sec. 10-51. Running at large. 476 477 (b) Dogs are permitted to be off leash while contained within the fenced boundaries of the town's 478 479 dog park, if the following conditions are met: (1) Dogs are well behaved, which for the purpose of this section shall mean that the dog does 480 not bite, growl, bark excessively, jump at other people or dogs, or behave in any manner 481 which is deemed disruptive by a town employee, and remains in direct control of the 482 owner or agent at all times. 483 (2) Dog owners or agents must adhere to all posted rules pertaining to the dog park and to 484 all town ordinances. 485 Violators of this section shall be subject to noncriminal prosecution or code enforcement 486 board prosecution and subject to the penalties provided in section 1-11(a)(1) or 1-11(a)(3) 487 respectively. 488 * * * 489 Sec. 10-53. Removal and disposal of excrement. * * * 491 (b) Violators of this section shall be subject to noncriminal prosecution or code enforcement 492 board prosecution and subject to the penalties provided in section 1-11(a)(2) or 1-11(a)(3), 493 respectively. 494 * * * 495 ARTICLE IV. DANGEROUS ANIMALS 496 * * * 497 Sec. 10-112. Hearing to determine if animal should be classified dangerous. 498
- 498 Sec. 10-112. Hearing to determine if animal should be classified dangerous.
- 499 (a) A hearing to determine if an animal should be classified dangerous shall be conducted by the code enforcement boardspecial magistrate whenever there is cause to believe that an animal

- may be dangerous or become dangerous as defined in section 10-111. This hearing shall be 501 conducted within five days of actual notice by hand delivery to the owner of the animal, or as 502 soon as practicable thereafter. 503
- (b) Pending the outcome of the hearing, the animal must be securely confined in a humane manner 504 either on the premises of the owner or with a licensed veterinarian or kennel. 505
- (c) The code enforcement board special magistrate of the town shall determine whether to declare 506 the animal to be a dangerous animal based upon evidence and the testimony presented at the 507 time of the hearing by the owner, witnesses to any incidents which may be considered material 508 to such a determination, health department personnel, animal control personnel, police or any 509 other persons possessing information material to a determination that the animal is dangerous. 510
 - (d) The code enforcement board special magistrate of the town shall issue written findings within five days after the determination hearing. The owner of the animal found to be dangerous by this hearing has the right to appeal the decision within ten days of receiving notice of the decision to the town council. Failure to appeal the decision of the code enforcement boardspecial magistrate constitutes a waiver of the right to appeal and failure to exhaust administrative remedies.

Sec. 10-113. Standards for determination as to whether animal should be classified as dangerous.

In determining whether an animal should be classified as dangerous and subject to the requirements of this article pursuant to the hearing process, the code enforcement boardspecial magistrate shall consider the standards set forth in section 10-111.

Sec. 10-114. Initiation of hearing process.

Upon receipt of an affidavit of complaint signed by one or more residents or police officers of the town made under oath before an individual authorized by law to take sworn statements, setting forth the nature and the date of the act, the owner of the animal, the address of the owner and the description of the animal doing such act, the code enforcement board special magistrate of the town shall schedule a hearing upon notice to the owner to investigate the complaint to determine if in fact the animal is dangerous.

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Sec. 10-116. Requirements imposed on owners of dangerous animals. 530

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(i) Violators of this section shall be subject to noncriminal prosecution or code enforcement board prosecution and subject to the penalties provided in section 1-11(a)(1) or 1-11(a)(3), respectively. 534

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Sec. 10-117. Confiscation; penalty. 536

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(d) Violators of subsections (b) and (c) above shall be subject to criminal prosecution or code 538 enforcement board prosecution and subject to the penalties provided in section 1-11(a)(2) or 539 1-11(a)(3), respectively. 540

- 541 ***
- Chapter 18 BUILDINGS AND BUILDING REGULATIONS
- 543 **ARTICLE I. IN GENERAL**
- Sec. 18-1. Key box required for multifamily buildings restricting public access.
- 545 ***
- 546 (c) All buildings listed in addendum A and as may be hereafter identified and constructed shall be in compliance with this section by June 1, 1986. The provisions of this section shall be subject to enforcement by the code enforcement boardspecial magistrate.
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550 Sec. 18-9. Violations and penalties.

Any person violating any of the provisions of this article shall be subject to all procedures and remedies available to the town under section 1-11, and upon conviction of any violation, shall be subject to the penalties designated in section 1-11. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as a separate offense pursuant to the provisions of section 1-11, or pursuant to the provisions of F.S. ch. 162 as enforced by the <u>code enforcement boardspecial magistrate</u>. Violation of the requirements of this article shall, in addition to the applicable penalties provided for in this code, subject the violator to cancellation of any building permit previously issued.

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- ARTICLE VIII RENTAL PROPERTY MAINTENANCE PROGRAM
- 561 ***
- 562 **Sec. 18-214. Enforcement.**
- The <u>code enforcement boardspecial magistrate</u> shall have jurisdiction to hear and decide cases related to the enforcement of the provisions of this article, and any person, firm, corporation, or agent determined to be in violation shall be subject to all penalties and remedies available to the <u>code enforcement boardspecial magistrate</u> as provided by law.
- 567 *** * ***
- **Chapter 34 ENVIRONMENT**
- 569 ***
- 570 ARTICLE II. SANITATION AND HEALTH
- 571 ***
- Sec. 34-34. Nuisances injurious to health designated.
- 573 ***
- 574 (7) Violators of this section shall be subject to noncriminal prosecution or code enforcement
- 575 board prosecution and subject to the penalties provided in section 1-11(a)(1) or 1-11(a)(3),
- 576 respectively.

* * * 577 ARTICLE IV – NOISE AND NUISANCE LIGHTING REGULATIONS 578 579 Sec. 34-98. Violation of restrictions on outside sound amplification. 580 581 (b) If any permit holder accumulates three written warnings for violation of any portion of this 582 article during a 30-day period, the town's code enforcement boardspecial magistrate shall 583 suspend the permit holder's permit for outside sound amplification for a period of 30 days if 584 it is determined the board determines that the permit holder violated this article in the manner 585 described in each written warning. Suspension shall be effective upon written notice thereof 586 by the town's code enforcement board special magistrate. 587 (c) If any permit holder accumulates six or more written warnings for violation of any portion of 588 this article within a period of 365 days during the duration of the period for which the permit 589 is issued, the town's code enforcement boardspecial magistrate shall suspend the permit 590 holder's permit for outside sound amplification for a period of 180 days if it is determined the 591 board determines that the permit holder violated this article in the manner described in each 592 written warning. Suspension shall be effective upon written notice thereof by the town's code 593 enforcement boardspecial magistrate. 594 * * * 595 Sec. 34-99.5. Compliance. 596 The violator of this section shall be entitled to an opportunity to correct the violation prior to 597 referral to the code enforcement boardspecial magistrate as provided in chapter 2, article V, 598 division 3 of this Code. 599 * * * 600 **Chapter 42 - OFFENSES AND MISCELLANEOUS PROVISIONS** 601 ARTICLE I. IN GENERAL 602 * * * 603 Sec. 42-4. Camping. 604 * * * 605 (d) Violators of this section shall be subject to noncriminal prosecution, criminal prosecution, or 606 code enforcement board prosecution and subject to the penalties provided in section 1-607 11(a)(1) or 1-11(a)(3), respectively. 608 609 Sec. 42-7. Spray or wash from sprinkler heads and other irrigation devices. 610

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(e) Enforcement. Violators of this section shall be subject to noncriminal prosecution or code enforcement prosecution and subject to the penalties provided in section 1-11(a)(1) or 1-11(a)(3), respectively. Upon the passage of 180 days from the effective date of the ordinance from which this section is derived, the chief building official shall initiate enforcement proceedings against those property owners that are not in compliance with the terms of this section. The building official shall be required to provide written notice to property owners that are in violation of this section. The notice provided by the chief building official shall notify the property owner of the terms of this section, the possible penalty for violation of this section and the steps necessary to comply with the terms of this section. Upon failure of the property owner to comply with the terms of this section within ten days from the date of notification by the chief building official, the chief building official or other authorized agent of the town shall institute proceedings to enforce compliance with the terms of this section. Enforcement proceedings may be instituted in a court of competent jurisdiction or before the code enforcement board, at the option of the chief building official. If the chief building official elects seeking enforcement in a court of competent jurisdiction, the town attorney shall be so informed and directed to institute prosecution of the ordinance violation.

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Sec. 42-9. Trespass warnings on public property.

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- (g) A person who is issued a trespass warning under this section may appeal as follows:
 - (1) The appeal of the trespass warning must be filed, in writing, within ten days of the issuance of the warning. The appeal shall include the appellant's name, address and phone number, if any. No fee shall be charged for filing the appeal.
 - (2) The appeal shall be filed at the location specified in the trespass warning.
 - (3) The appeals shall be heard by the <u>eode enforcement boardspecial magistrate</u>. The hearing shall be scheduled at the <u>special magistrate's board's</u> next regular meeting at least ten days after the filing of the appeal. Notice of the hearing shall be posted at town hall and on the <u>town's city's</u> website, as well as sent by mail to the trespassed individual.
 - (4) The <u>code enforcement boardspecial magistrate</u> shall first determine whether the appellant violated one or more statutes or town ordinances, rules or regulations as alleged by the town. Should the <u>special magistrate board</u> find that the town has proven a violation by a preponderance of the evidence, the <u>special magistrate board</u> may reduce the duration of the trespass warning at its discretion. The appellant and the town shall <u>each</u> have the right to attend with an attorney, to testify, to call witnesses, to cross-examine witnesses and to present evidence. Formal rules of evidence shall not apply; however, fundamental due process shall be observed and shall govern the proceeding.
 - (5) The <u>code enforcement boardspecial magistrate</u> shall issue a written decision on the appeal within five days of the hearing, which shall be provided to the appellant by mail. The decision of the <u>code enforcement boardspecial magistrate</u> shall be final. Such decision may be subject to judicial review by petition for writ of certiorari or as otherwise provided by law.

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654 | (6) The trespass warning shall remain in effect during the appeal and review process, including any judicial review. |
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| 655 | Secs. 42-10—42-30 Reserved. |
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| 657 | ARTICLE II. NUDITY AND SEXUAL CONDUCT |
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659 | Sec. 42-31. Nudity and sexual conduct prohibited in establishments dealing in alcoholic beverages. |
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663 | (h) Violators of this section shall be subject to criminal prosecution or code enforcement board prosecution and subject to the penalties provided in section 1-11(a)(2) or 1-11(a)(3), respectively. |
| 664 | Sec. 42-32. Nudity and sexual conduct prohibited in public. |
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668 | (d) <i>Penalty</i> . Violators of this section shall be subject to criminal prosecution or code enforcement board prosecution and subject to the penalties provided in section 1-11(a)(2) or 1-11(a)(3), respectively. |
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| 670 | Sec. 42-33. Urinating or defecating in public. |
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674 | (b) Violators of this section shall be subject to criminal prosecution or code enforcement board prosecution and subject to the penalties provided in section 1-11(a)(2) or 1-11(a)(3), respectively. |
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| 677 | Chapter 46 - PARKS AND RECREATION |
| 678 | ARTICLE I. IN GENERAL |
| 679 | * * * |
| 680 | Sec. 46-3. Behavior prohibited within public parks. |
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683 | (d) Violations of the section shall be subject to code enforcement board, noncriminal, and criminal prosecution under section 1-11. |
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685 | * * * |
| 686 | Chapter 51 - SPECIAL EVENTS |

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Sec. 51-18. Enforcement.

The town may immediately cause any special event conducted without a valid permit issued pursuant to this chapter to be ceased and disbanded. In addition, the town may bring any violations of this chapter before its-code enforcement board or special magistrate, which may make findings of violations and impose administrative fines as authorized by the Florida Statutes. Nothing in this section may be construed to prevent the town from seeking to enjoin violations of this article, or seeking damages caused by violations of this article, in a court of competent jurisdiction.

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696 Chapter 62 - SOLID WASTE

697 ARTICLE I. IN GENERAL

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699 Sec. 62-3. Removal of weeds and refuse.

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- (b) *Notice to owner required; contents.* If the town clerk, the code enforcement officer or the town clerk's designee determines a public nuisance exists on any lot, tract or parcel of land within the town, the owner of the land shall be notified of the following:
 - (1) It has been determined that a public nuisance exists on his land, setting forth in the notice what constitutes the nuisance.
 - (2) The owner shall have 20 days from the date of mailing the notice to remove the condition causing the nuisance from the land.
 - (3) If the conditions are not removed as stated in subsection (b)(2) of this section, the town may have the nuisance removed at the expense of the owner.
 - (4) The owner has 20 days from the date of receipt of the notice or 20 days from the mailing, whichever is less, to petition the town clerk for a hearing before the code enforcement boardspecial magistrate. The hearing shall be held at the normal hearing date, or by special hearing, within 20 days from the time the petition was received by the town clerk.
- (c) Determination by <u>eode enforcement boardspecial magistrate</u>. The issues to be determined at the hearing are whether the conditions do in fact exist, or, if they exist, whether they constitute a menace to life, property or the public health, or the public welfare, or create a fire hazard, and why the conditions should not be abated by the town.

* * *

(e) Abatement by town. If, after a hearing, the special magistrate board determines that the conditions which exist on the property constitute a public nuisance, the owner of the property shall have an additional ten days to remove the conditions, after which the town shall have the right to have the objectionable condition abated at the expense of the property owner. If the owner has not requested a hearing within the 20-day period, the town shall have the right to have the objectionable condition removed at the expense of the owner. If the town has the condition abated, the town shall place a lien against the property for the cost which the town has incurred in abating the public nuisance. Such costs shall include the cost of removing the

conditions together with any other actual expenses which the town has incurred. A lien for such costs shall be recorded and enforced as provided in the latest chapter of the state statutes,

F.S. ch. 162, the Local Government Code Enforcement Boards Act.

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ARTICLE III – LITTER

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733 **Sec. 62-73. Enforcement.**

In addition to any criminal penalty, the <u>code enforcement boardspecial magistrate</u> shall have jurisdiction to enforce this article. Any person determined to be in violation of any of the sections of this article shall be subject to all penalties and remedies available as provided by law.

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738 Chapter 66 STORMWATER AND CONSERVATION

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ARTICLE III - ILLICIT CONNECTIONS AND DISCHARGE TO THE TOWN'S SEPARATE STORM SEWER SYSTEM (MS4)

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Sec. 66-59. Violations, enforcement and penalties.

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- Notice of violation. Whenever the town finds that a person or an establishment has violated a prohibition or failed to meet a requirement of this article, the town manager or designee shall order compliance by written notice of violation to the responsible person.
- The notice of violation shall contain:

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vi. A statement that the town manager or designee's determination of violation may be appealed, de novo, to the town's <u>special magistratecode enforcement board</u> within seven days of service of notice of violation; and

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Sec. 66-60. Appeal of notice of violation.

Any person receiving a notice of violation may appeal the town manager or designee's determination of the violation to the town's code enforcement boardspecial magistrate. The written notice of appeal must be received within seven days from the date of service of the notice of violation. Hearing on the appeal before the code enforcement boardspecial magistrate shall take place within 30 days from the date of receipt of the notice of appeal. At the de novo hearing, the special magistrate may affirm, reverse, or affirm and modify the administrative determination of the town manager or designee that a violation was committed. The decision of the board-special magistrate shall be final.

Sec. 66-61. Enforcement measures after appeal.

If a violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal, within seven days of the decision of the code enforcement boardspecial magistrate affirming the decision of the town, then the town shall undertake those actions pursuant to section 66-59 of this article, take corrective action, and place a lien on the property of the owner for any unpaid penalty, costs, and expenses thereof.

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770 Chapter 70 STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

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ARTICLE I. IN GENERAL

773 Sec. 70-1. Obstruction of street or sidewalk.

It shall be unlawful for any person to obstruct any public street or sidewalk by displaying or placing thereon any goods, wares, or merchandise or otherwise except as may be permitted under the building codes. Violators of this section shall be subject to noncriminal prosecution or code enforcement board prosecution and subject to the penalties provided in sections 1-11(a)(1) or 1-11(a)(3), respectively.

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780 Chapter 74 TRAFFIC AND VEHICLES

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782 ARTICLE II – STOPPING, STANDING AND PARKIING

783 **DIVISION 1. - GENERALLY**

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Sec. 74-35. Parking prohibited for certain purposes.

No person shall park a motor vehicle, trailer, moped or boat upon any street or right-of-way for the principal purpose of:

- (1) Displaying such motor vehicle for sale.
- (2) Washing, greasing or repairing such motor vehicle, except repairs necessary in an emergency.
 - (3) Displaying advertising.
 - (4) Selling merchandise from such motor vehicle, except in a duly established market place, or when so authorized or licensed under the ordinances of the town.
 - (5) Storage or as junkage or dead storage for more than 24 hours.

Violators of this section shall be subject to noncriminal prosecution or code enforcement board prosecution and subject to the penalties provided in subsection 1-11(a)(1) or subsection 1-11(a)(3), respectively.

* * * 798 799 **Chapter 78 UTILITIES** 800 ARTICLE II. WATER AND SEWER SERVICE 801 802 **DIVISION 2 – WATER SERVICE** 803 804 805 Sec. 78-65. Cross-connection control. * * * 806 (b) Cross connection, as defined by Rule 62-550.200, Florida Administrative Code, is prohibited. 807 However, a person who owns or manages a public water system may interconnect to another 808 public water system if that system is operated and maintained in accordance with this chapter. 809 Any person making, or allowing to be made, such cross connection to the town water system 810 shall be subject to the penalties of sections 1-11 and 78-65(k) of this Code or may be brought 811 before the code enforcement board special magistrate, at the option of the town. 812 * * * 813 (k) *Violations and liability.* 814 815 (3) Any inspector, town officer, employee, or special magistrate, or member of the code 816 enforcement board, if any, who is or may be charged with or involved in the enforcement 817 of this section, in the discharge of such duties, shall not thereby be personally liable, and 818 is, to the extent permitted by law, hereby relieved from all and protected by the town 819 against any personal liability for any damage that may accrue to persons or property as 820 a result of any act required or permitted in the discharge of such duties. 821 * * * 822

DIVISION 5. - INDUSTRIAL PRETREATMENT PROGRAM

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Sec. 78-122. Enforcement.

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- (5) Hearings before a special magistratemaster.
 - a. Port Orange may order any industrial user who causes or allows an unauthorized discharge to enter the WWF to appear before a special <u>magistrate master</u> who has the authority, pursuant to the Port Orange Code of Ordinances sections 2-209 through 2-218, to issue orders having the force of law commanding whatever steps are necessary to bring a violation into compliance. All procedures for notice, conduct of hearing, and appeal procedures are governed by the Port Orange Code of Ordinances sections 2-209 through 2-218, F.S. Ch. 162, and the applicable rules and regulations adopted by the <u>Code Enforcement Boardspecial magistrate</u> for the City of Port Orange, and any amendments thereto.

(6) Administrative fines.

a. When Port Orange finds that an industrial user has violated, or continues to violate, any provision of this ordinance, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the special magistrate master—may order a fine against such industrial user and that a lien be recorded against the land where the violation exists if the fine is unpaid, in accordance with Port Orange Code of Ordinances sections 2-209 through 2-218, F.S. Ch. 162, and the applicable rules and regulations adopted by the code enforcement boardspecial magistrate for the City of Port Orange (and any amendments thereto). The fine imposed shall not exceed the maximum fines established in the section 2-193, Administrative fines, and any amendments thereto.

* * *

Sec. 78-123. - Penalty.

- (a) A person violating any of the terms, conditions, orders, rules, regulations, permits, limitations or provisions shall be punished in accordance with the provisions herein. Any continuing violations may be enjoined and restrained by an injunctive order of the circuit court in appropriate proceedings instituted for such purposes.
- (b) Violations of the industrial pretreatment program ordinance codified in this division may be referred to a special <u>magistratemaster</u> to issue orders, fines or liens as provided herein.

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ARTICLE III. - WATER CONSERVATION: LANDSCAPE IRRIGATION

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Sec. 78-142. Declaration; penalties.

- (a) The town council hereby finds and declares that a violation of this article presents a serious threat to the public health, safety and welfare and is irreparable or irreversible in nature. Warning notices and/or citations shall be as follows:
 - (1) First and second offenses: Warning notices. The violator may be given educational material and information regarding the requirements of this article.
 - (2) Third offense and subsequent offenses: \$50.00.
- (b) If a person has been previously found through a code enforcement board action or any other quasi-judicial or judicial process to have violated, or who has admitted violating, this article within five years prior to the violation, the civil penalty shall be \$100.00 for a second violation, \$250.00 for a third violation, and \$500.00 for a fourth or subsequent violation.
- (c) All fines shall be paid to the Town of Ponce Inlet within 30 days of receipt of the citation. Notice of the offense and fine shall be given in accordance with code enforcement procedures of Chapter 2 of the Code of Ordinances. Failure to pay the fines shall result in a code enforcement action being brought by the town against the violator.

* * *

Chapter 82 VEGETATION

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ARTICLE II. WEEDS AND NOXIOUS PLANTS

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Sec. 82-112. Notice to cut or remove.

The code enforcement officer is hereby authorized to notify persons who violate the provisions of section 82-111 that unless such grass or weeds are cut or removed within ten days after the serving of such notice, the violator of such provision will be summoned to appear before the code enforcement boardspecial magistrate. Upon the failure of any persons so violating the provisions of section 82-111 to comply with provisions of such notice within the time specified therein, it shall be the duty of the code enforcement officer to serve notice of hearing to appear before the code enforcement boardspecial magistrate pursuant to article V of chapter 2 of the Code of Ordinances.

* * *



Meeting Date: 11/21/2024

Agenda Item: 11-C

Report to Town Council

Topic: Second reading of Ordinance 2024-08, Amending Articles 3, 8, and 9 of the Land Use and Development Code to substitute references of the Code Enforcement Board with Special Magistrate.

Summary: The Town Council approved first reading of this ordinance on October 17, 2024. The amendment changes these references found throughout the Land Use and Development Code (LUDC) pertaining to the enforcement of land development regulations.

Suggested motion: Staff recommends approval of proposed Ordinance 2024-08, amending Articles 3, 8, and 9 of the Land Use and Development Code to substitute references of the Code Enforcement Board with Special Magistrate.

Requested by: Mr. Lear, Planning & Development Director

Approved by: Mr. Disher, Town Manager



MEMORANDUM

TOWN OF PONCE INLET, PLANNING AND DEVELOPMENT DEPARTMENT

The Town of Ponce Inlet staff shall be professional, caring, and fair in delivering community excellence while ensuring Ponce Inlet residents obtain the greatest value for their tax dollar.

To: Michael E. Disher, AICP, Town Manager

From: Darren Lear, AICP, Planning & Development Director

Date: November 12, 2024

Subject: Ord. No. 2024-08 – Amending Articles 3, 8, and 9 of the Land Use and Development

Code to substitute references of the Code Enforcement Board with Special Magistrate.

MEETING DATE: November 21, 2024

1 Introduction

2 This proposed ordinance has been developed to implement the Town Council's directive to shift

3 from a code enforcement process utilizing an appointed volunteer board to a special magistrate 4

hired by the Town. The amendment changes these references found throughout the Land Use and

5 Development Code (LUDC) pertaining to the enforcement of land development regulations.

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AUTHORITY AND PROCESS

According to Section 6.6.2 of the LUDC, the procedures for a text amendment are as follows:

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- Initiation, submission, and fees
- Staff review and referral
- Public notice
- Action by review and decision-making authorities

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16 17 Section 6.6.2 specifies that "the town council shall refer the application to the planning board to review and recommend approval, approval with conditions, or denial." Section 6.2.2 establishes the planning board as the local planning agency for the Town in accordance with the Community Planning Act (2011) F.S. § 163.3161 et seq.

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Chapter 163 of the Florida Statutes indicates that one of the local planning agency's responsibilities is to "review proposed land development regulations, land development codes, or amendments, and make recommendations to the governing body regarding the proposal's consistency with the adopted comprehensive plan, or any of its elements or portions. This applies

when the local planning agency serves as the land development regulation commission or when 24

the local government requires a review by both the local planning agency and the land development regulation commission."

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The Planning Board reviewed and unanimously approved the proposed amendment at its regularly scheduled meeting on September 24, 2024. Changes to the code enforcement process itself will be addressed in a separate ordinance amendment to the Code of Ordinances. Town Council approved this item at first reading on October 17, 2024.

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BACKGROUND

A recent survey conducted by Town staff in June 2024 examined the approaches of 16 Volusia County agencies for prosecuting code cases. The survey revealed that the Town of Ponce Inlet is the only municipality that exclusively uses a Code Enforcement Board rather than a special magistrate or combination of the two. At the Town Council meeting on July 18, 2024, the Council directed staff to proceed with transitioning from a code enforcement process utilizing an appointed volunteer board to a Special Magistrate enforcement process.

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DISCUSSION

- 42 Florida Statute Chapter 162 outlines the code enforcement process for municipalities in Florida.
- In the early 2000s, reforms were introduced to streamline the process by incorporating the role of
- a hearing officer, commonly referred to as a special magistrate, into the statute. Over the past two
- decades, a growing number of agencies have transitioned from traditional code boards to using
- 46 these special magistrates to handle code enforcement matters.
- 47 The special magistrate was introduced to address several concerns associated with the traditional
- 48 Code Enforcement Board process, including:
 - Lack of Volunteers: Difficulty in recruiting and maintaining sufficient board members.
 - Attendance Requirements: Challenges in meeting attendance requirements for board members.
 - Expertise Gaps: Insufficient expertise in specific subject areas relevant to code violations.
 - *Property Visits*: Board members visiting violating properties and engaging with property owners prior to hearings.
 - *Post-Violation Assistance*: Board members personally assisting violators in correcting issues after violations were identified.
 - *Ex-Parte Communications*: Failure to properly identify and manage ex-parte communications.
 - Sunshine Law Violations: Issues with compliance with Sunshine Law regulations.
- 60 Chapter 162, Florida Statutes, as amended, authorizes the use of a Special Magistrate to enforce 61 the City's codes and ordinances, "A charter county, a noncharter county, or a municipality may,
- by ordinance, adopt an alternate code enforcement system that gives code enforcement boards or
- special magistrates designated by the local governing body, or both, the authority to hold hearings
 and assess fines against violators of the respective county or municipal codes and ordinances. A
- and assess fines against violators of the respective county or municipal codes and ordinances. A
- 65 special magistrate shall have the same status as an enforcement board under this chapter..."

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The proposed amendments substitute references to the Code Enforcement Board with a Special Magistrate in LUCD Article 3 "Use Regulations," Article 8 "Enforcement," and Article 9 "Definitions and Rules of Interpretation."

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Comprehensive Plan

Staff reviewed the policies of the Comprehensive Plan and found the proposed amendments will not conflict with any goal, objective, or policy, and will maintain consistency with the Town's desired vision and direction.

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Recommendation

- 77 Staff recommends approval of Ordinance No. 2024-08, amending Articles 3, 8, and 9 of the LUDC
- 78 to substitute references of the Code Enforcement Board with Special Magistrate.

ORDINANCE NO. 2024-08 1 2 AN ORDINANCE OF THE TOWN OF PONCE INLET, 3 FLORIDA. **AMENDING** THE LAND **USE** 4 DEVELOPMENT CODE, ARTICLE 3 "USE REGULATIONS", 5 "ENFORCEMENT", AND ARTICLE 9 6 ARTICLE 8 "DEFINTIONS AND RULES OF INTERPRETATION" TO 7 REPLACE REFERENCES TO THE "CODE ENFORCEMENT 8 BOARD" WITH "SPECIAL MAGISTRATE"; PROVIDING 9 FOR SEVERABILITY; PROVIDING FOR CONFLICTS; 10 AND PROVIDING FOR AN EFFECTIVE DATE. 11 12 WHEREAS, Articles 3, 8 and 9 of the Ponce Inlet Land Use and Development Code 13 (LUDC) define the code enforcement board and certain enforcement functions granted to it; and 14 15 WHEREAS, Chapter 162, Florida Statutes, as amended, authorizes the use of a Special 16 Magistrate to enforce a local government's codes and ordinances; and 17 18 WHEREAS, the Town Council has directed staff to transition from an appointed Code 19 Enforcement Board to a Special Magistrate to perform these functions; and 20 21 22 WHEREAS, for this transition can occur, it is necessary to amend the LUDC to replace all references to the "Code Enforcement Board" with "Special Magistrate"; and 23 24 WHEREAS, the Planning Board, in its capacity as the Local Planning Agency, has 25 determined that this Ordinance is consistent with the Comprehensive Plan and has recommended 26 approval of this Ordinance to the Town Council; and 27 28 WHEREAS, the Town Council affirms that this Ordinance is consistent with the 29 Comprehensive Plan and is in the best interest of the public welfare of the Town; and 30 31 WHEREAS, the Town has complied with all requirements and procedures of the LUDC 32 and Florida law in processing, noticing, and advertising this Ordinance; and 33 34 WHEREAS, this Ordinance is enacted under the general home rule and police powers of 35 the Town of Ponce Inlet. 36 37 NOW, THEREFORE, BE IT ENACTED BY THE TOWN COUNCIL OF THE 38 **TOWN OF PONCE INLET, FLORIDA:** 39 40

NOTE: <u>Underlined words</u> constitute additions to the Town of Ponce Inlet Land Use Development Code (LUDC) as amended by Ordinance 2024-08, <u>strikethrough</u> constitutes deletions, and asterisks (***) indicate an omission from the existing text of said LUDC as amended which is intended to remain unchanged.

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| 46 | SECTION 1. Recitals. The foregoing recitals ar | • | | | | |
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| 47 | true and correct and are hereby made a part of this Ordinance. | | | | | |
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49 | SECTION 2. Incorporation of Amendments. | The proposed amendments to Articles 3 | | | | |
| 50 | 8, and 9 of the LUDC are attached to this Ordinance as | | | | | |
| 51 | into the text of this Ordinance as though fully set forth | | | | | |
| 52 | LUDC. | in northin voiceasini as annonanionis to the | | | | |
| 53 | 2020. | | | | | |
| 54 | SECTION 3. Codification. It is the intent of the | Γown Council of the Town of Ponce Inlet | | | | |
| 55 | that the provisions of this Ordinance shall be codified. | The codifier is granted broad and liberal | | | | |
| 56 | authority in codifying the provisions of this Ordinance. | J | | | | |
| 57 | , , , , | | | | | |
| 58 | SECTION 4. Severability. If any section, subse | ection, sentence, clause, phrase, word, or | | | | |
| 59 | provision of this Ordinance is for any reason held inv | alid or unconstitutional by any court of | | | | |
| 60 | competent jurisdiction, whether for substantive, procedur | | | | | |
| 61 | be deemed a separate, distinct, and independent provision, and such holding shall not affect the | | | | | |
| 62 | validity of the remaining portions of this Ordinance. | | | | | |
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| 64 | SECTION 5. Conflicts. In any case where a provision of this Ordinance is found to be in | | | | | |
| 65 | conflict with a provision of any other ordinance of this T | own, this Ordinance shall prevail. | | | | |
| 66 | CECTION (EC. 4: Jan This Outliness of | | | | | |
| 67 | SECTION 6. Effective date. This Ordinance shall become effective immediately upon adoption by the Town Council of the Town of Ponce Inlet, Florida. | | | | | |
| 68 | adoption by the Town Council of the Town of Ponce into | t, Florida. | | | | |
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70 | It was moved by Councilmember Milano and seco | anded by Councilmember Whitet hat said | | | | |
| 71 | It was moved by Councilmember Milano and seconded by Councilmember Whitet hat said
Ordinance be passed on first reading. A roll call vote of the Town Council on said motion resulted | | | | | |
| 72 | as follows: | ne Town Council on said motion resulted | | | | |
| 73 | as refrestign | | | | | |
| 74 | Mayor Paritsky, Seat #1 | YES | | | | |
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| 75 | Councilmember Milano, Seat #2 | YES | | | | |
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| 76 | Councilmember White, Seat #3 | YES | | | | |
| 77 | Councilmember Villanella, Seat # | 4 YES | | | | |
| 77 | Councilinemoet vinaliena, Seat# | + IES | | | | |
| 78 | Vice-Mayor Smith, Seat #5 | YES | | | | |
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| 80 | Approved on first reading this 17th day of October 2024 | | | | | |
| 81 | | | | | | |
| 82 | It was moved by and seconded be passed on second reading. A roll call vote of the To | by that said Ordinance | | | | |
| 83 | | own Council on said motion resulted as | | | | |
| 84 | follows: | | | | | |
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| Town of Ponce Inlet, Florida |
| Town of Ponce Infet, Florida |
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| Lois A. Paritsky, Mayor |
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EXHIBIT "A"

AMENDMENTS TO ARTICLES 3, 8 AND 9.

Articles 3, 8 and 9 of the Town of Ponce Inlet Land Use Development Code, are hereby amended to read as follows:

ARTICLE 3 USE REGULATIONS

SECTION 3.18. DWELLING RENTALS

* * *

3.18.4 General regulations.

The following regulations shall pertain to the rental of dwellings:

- A. A contact person must be available 24 hours per day, seven days per week to respond to complaints regarding the conduct of the occupants of the subject dwelling.
- B. Occupancy of individual units shall conform to the occupancy limits of all applicable building codes.
- C. The owner or manager shall maintain a tenant and vehicle registration that includes the name and address of each unit's tenant and the make, year and tag number of the tenant's vehicle.
- D. There shall be a written lease between the owner and tenant and that includes an explicit statement that the tenant agrees to follow these regulations.
- E. Violation of these provisions may result in revocation of the rental permit for cause, upon notice and opportunity to be heard by the town council and subject to prosecution before the <u>code enforcement boardspecial magistrate</u>, and any other penalties, as provided for in section 3.18.6 below.
- F. The rental permit application shall be filed with the town prior to rental of the subject property.

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3.18.7 Annual reporting requirements.

- A. Annual summary report.
 - 1. An annual summary report must be filed by:
 - 2. All licensed real estate agents, brokers, agents or other parties who represent an owner of a property rented at any time during a calendar year; and
 - 3. All owners of dwellings rented at any time during a calendar year.
 - 4. The summary report is due by February 1 of each year.

- 5. The report shall reflect the rental activities of all subject dwellings within the town for the previous calendar year. This report shall include, at a minimum, the address of subject property and length of rental period per tenant.
- 6. The town shall maintain a third-party rental summary report form and make it available to the public upon request.
- 7. Violation of this requirement subjects violators to prosecution before the eode enforcement boardspecial magistrate and other penalties in section 3.18.6.

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SECTION 3.34 MOBILE FOOD VENDORS

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- B. *Temporary use permit*. A mobile food vendor shall be required to obtain a temporary use permit, pursuant to LUDC Sec. 6.6.17, prior to operating on any property within the town, subject to the following:
 - 1. *Duration*. Temporary use permits shall be valid for the duration of time specified pursuant to 6.6.17.F. (Expiration).
 - 2. *Permit revocation*. In addition to the provisions of section 6.6.17.H.1, a temporary use permit for a mobile food vendor may be revoked by the town for any one of the following violations:
 - a. Operating outside of the approved mobile food vending site.
 - b. Operating without the required state licenses.
 - c. Creating a public nuisance as defined in this code.
 - 3. Violation and penalties. No person shall violate the provisions of this section, nor shall any person fail to comply with all state and town laws, codes, ordinances, rules, or regulations. The code enforcement boardspecial magistrate shall have jurisdiction to enforce these provisions pursuant to F.S. Ch. 162 and this code. Any person determined to be in violation will be subject to penalties and remedies available as provided by law.

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(Ord. No. 2022-07, § 2, 11-17-2022)

ARTICLE 8 ENFORCEMENT

SECTION 8.2. ENFORCEMENT PROCEDURES AND PENALTIES

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8.2.2 Enforcement penalties.

Any person who violates any provision of the LUDC, fails to secure a permit or certificate of occupancy as required by the LUDC, or fails to comply with any order issued by the authorities set forth in section 8.1.2, is punishable in accordance with section 1-11 of the Code of Ordinances. Penalties shall be assessed upon finding of violation by the <u>code enforcement boardspecial magistrate</u> or any court of competent jurisdiction.

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ARTICLE 9 DEFINITIONS AND RULES OF INTERPRETATION

SECTION 9.4. DEFINITIONS

* * *

Code enforcement board. The code enforcement board of the Town of Ponce Inlet, Florida. See Code of Ordinances chapter 2, article V.

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<u>Special magistrate</u>. The qualified individual appointed by the town council to hear and decide code violations under this section and F.S. ch. 162 in lieu of a code enforcement board.

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Meeting Date: 11/21/2024

Agenda Item: 12-A

Report to Town Council

Topic: First reading of Ordinance 2024-09, Prohibiting the non-medical, personal use of marijuana on public property within the Town of Ponce Inlet.

Summary: The attached ordinance has been drafted in response to the Town Council's directive at the June 20, 2024 Town Council meeting to take pro-active measures prohibiting the use of marijuana on public property within Ponce Inlet.

Suggested motion: Staff recommends approval of proposed Ordinance

2024-09, prohibiting the non-medical, personal use of marijuana on public property within the Town of

Ponce Inlet.

Requested by: Mr. Disher, Town Manager

Approved by: Mr. Disher, Town Manager



MEMORANDUM

TOWN OF PONCE INLET, OFFICE OF THE TOWN MANAGER

The Town of Ponce Inlet staff shall be professional, caring and fair in delivering community excellence while ensuring Ponce Inlet obtain the greatest value for their tax dollar.

To: Town Council

From: Michael, E. Disher AICP, Town Manager

Date: November 11, 2024

Subject: Ordinance No. 2024-09 - Prohibiting the non-medical, personal use of marijuana on

public property within the Town of Ponce Inlet

MEETING DATE: November 21, 2024

Introduction

At its June 20, 2024 meeting, the Town Council agreed to take pro-active measures prohibiting the use of marijuana on public property within Ponce Inlet. The Council's interest in this matter was prompted by the inclusion of Amendment No. 3 on the November 5, 2024 general election ballot. The proposed constitutional amendment would have allowed the personal use of marijuana for adults 21 and over throughout the state of Florida, as described below.

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Adult Personal Use of Marijuana

Allows adults 21 years or older to possess, purchase, or use marijuana products and marijuana accessories for non-medical personal consumption by smoking, ingestion, or otherwise; allows Medical Marijuana Treatment Centers, and other state licensed entities, to acquire, cultivate, process, manufacture, sell, and distribute such products and accessories. Applies to Florida law; does not change, or immunize violations of, federal law. Establishes possession limits for personal use. Allows consistent legislation. Defines terms. Provides effective date.

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However, the constitutional amendment was not self-implementing – the Florida legislature would still have needed to enact legislation to implement the amendment. Adopting a local prohibition in the Town before then would have potentially allowed it to be grandfathered from any new state pre-emptions.

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As it turns out, Amendment No. 3 did not pass during the November 5th election. While it was approved by a majority of voters 55.9% to 44.1%, it failed to cross the 60% super-majority threshold required for constitutional amendments in Florida. Although Amendment No. 3 did not pass, the Council may still enact a local prohibition on marijuana use in public spaces.

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Discussion

- 27 In addition to federal regulations, the use of marijuana is currently governed to varying degrees by
- 28 State, County, and local law. State law currently only allows marijuana use for medical purposes,

as authorized by a physician's certification¹. Medical use specifically *does not* include its use in the following locations:

- a. On any form of public transportation, except for low-THC cannabis not in a form for smoking.
- b. In any public place, except for low-THC cannabis not in a form for smoking.
- c. In a qualified patient's place of employment, except when permitted by his or her employer.
- d. In a state correctional institution, as defined in s. 944.02, or a correctional institution, as defined in s. 944.241.
- e. On the grounds of a preschool, primary school, or secondary school, except as provided in s. 1006.062.
- f. In a school bus, a vehicle, an aircraft, or a motorboat, except for low-THC cannabis not in a form for smoking.

The Volusia County Code of Ordinances already prohibits the possession of 20 grams or less of cannabis on the beach or any beach approach² and within the unincorporated areas of the county³. The Town's Code of Ordinances currently prohibits the smoking of marijuana and tobacco only in Town parks⁴, but does not prohibit it anywhere else.

The proposed ordinance has been drafted by the Town Attorney's office pursuant to Council direction. It expands the location of the Town's current prohibition of marijuana smoking to include all public property, defined as any public right-of-way, road, sidewalk, park, playground, school, beach, beach access, golf course, marina, walkway, boardwalk, or other facility or public place which is owned, operated, leased or managed by the Town. The ordinance also broadens the prohibited substance and method of delivery to include smoking or vaping of any cannabis, marijuana, or hemp product on public property, except as otherwise provided by State law.

It should be noted that the regulation of *tobacco* smoking is preempted to the State⁵. However, State law still allows cities and counties to prohibit tobacco smoking (other than unfiltered cigars, and not including vaping) in city and county parks and beaches, but nowhere else.

Recommendation

62 Staff recommends approval of Ordinance 2024-09, as directed by the Town Council.

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¹ F.S. § 381.986(1)(k)5 - Medical use of marijuana

² Volusia County Code of Ordinances Sec. 20-128

³ Volusia County Code of Ordinances Sec. 78-3

⁴ Ponce Inlet Code of Ordinances Sec. 46-3(a)(10)

⁵ F.S. § 386.209 - Regulation of smoking preempted to state

| 1 | ORDINANCE NO. 2024-09 | | | | |
|----------|---|--|--|--|--|
| 2 | AN OPPONANCE OF THE TOWN OF PONCE WATER | | | | |
| 3 | AN ORDINANCE OF THE TOWN OF PONCE INLET, | | | | |
| 4 | FLORIDA, AMENDING CHAPTER 42 - OFFENSES AND | | | | |
| 5 | MISCELLANEOUS PROVISIONS; RELATING TO THE REGULATION OF NON-MEDICAL PERSONAL | | | | |
| 6 | CONSUMPTION OF MARIJUANA; PROVIDING A | | | | |
| 7
8 | PURPOSE AND DEFINITIONS; PROHIBITING THE | | | | |
| 9 | SMOKING AND VAPING OF CANNABIS, MARIJUANA, OR | | | | |
| 10 | HEMP PRODUCTS ON PUBLIC PROPERTY; PROVIDING | | | | |
| 11 | FOR CODIFICATION, SEVERABILITY, CONFLICTS, AND | | | | |
| 12 | AN EFFECTIVE DATE. | | | | |
| 13 | | | | | |
| 14 | WHEREAS, the Town finds that the smoking or vaping of marijuana in public spaces, | | | | |
| 15 | including, but not limited to, sidewalks, streets, parks, and public transportation facilities, may | | | | |
| 16 | adversely affect public health, safety, and welfare; and | | | | |
| 17 | | | | | |
| 18 | WHEREAS, the public smoking or vaping of marijuana can create secondhand smoke | | | | |
| 19 | exposure, which may be detrimental to non-users, including children, the elderly, and individuals | | | | |
| 20 | with health conditions that could be aggravated by such exposure; and | | | | |
| 21 | | | | | |
| 22 | WHEREAS, the Town is committed to maintaining public spaces that are safe, clean, and | | | | |
| 23 | free from activities that could pose risks or disturbances to the general public; and | | | | |
| 24 | WWW.DDDAG EL 11 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 | | | | |
| 25 | WHEREAS, Florida law authorizes municipalities to regulate activities within their | | | | |
| 26 | jurisdiction to protect the health, safety, and welfare of the community; and | | | | |
| 27 | WHEDEAS the Town Council has determined that muchibiting the smalring and/on youing | | | | |
| 28
29 | | | | | |
| 30 | | | | | |
| 31 | users and preserve the quanty of public spaces for all restuents and visitors, and | | | | |
| 32 | WHEREAS, this Ordinance is enacted under the general home rule and police powers of | | | | |
| 33 | | | | | |
| 34 | | | | | |
| 35 | NOW, THEREFORE, BE IT ENACTED BY THE TOWN COUNCIL OF THE | | | | |
| 36 | TOWN OF PONCE INLET, FLORIDA: | | | | |
| 37 | | | | | |
| 38 | [Words in strike through type are deletions; words in underscore type are additions; asterisks | | | | |
| 39 | (* * * *) indicate an omission from the existing text which is intended to remain unchanged.] | | | | |
| 40 | | | | | |
| 41 | SECTION 1. Recitals. The foregoing recitals are hereby ratified and confirmed as being | | | | |
| 42 | true and correct and are hereby made a part of this Ordinance. | | | | |
| 43 | CECTION 2 Amendment Classics 42 CM | | | | |
| 44 | SECTION 2. Amendment. Chapter 42 - Offenses and Miscellaneous Provisions of the | | | | |
| 45
46 | Town's Code of Ordinances is hereby amended as follows: | | | | |

47

ARTICLE I. – IN GENERAL

49 ****

Sec. 42-10. - Smoking cannabis, marijuana, or hemp in public places.

(a) Purpose. This Section is adopted to protect public health, safety, and welfare by prohibiting the smoking and vaping of cannabis, marijuana, or hemp products on public property. This ban is intended to reduce exposure to secondhand smoke, prevent public disturbances, and promote a safe and healthy environment in public spaces, while ensuring compliance with applicable laws and regulations concerning the use of cannabis, marijuana, and hemp products in public areas.

(b) Definitions.

(1) <u>Cannabis</u> or <u>marijuana</u> means all parts of any plant of the genus <u>Cannabis</u>, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin, including low-THC cannabis.

(2) <u>Hemp</u> means the plant <u>Cannabis sativa L.</u> and any part of that plant, including the seeds thereof, and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers thereof, whether growing or not, that has a total delta-9-tetrahydrocannabinol concentration that does not exceed 0.3 percent on a dry-weight basis.

 (3) <u>Public property</u> means any land, building, or space owned, leased, or otherwise controlled by a governmental entity, including, but not limited to, parks, sidewalks, streets, alleys, rights-of-way, beaches, government buildings, publicly accessible parking lots, recreational facilities, and any other area to which the public has lawful access within the corporate jurisdiction of the Town.

(4) <u>Smoke or smoking means inhaling, exhaling, burning, carrying, igniting, or possessing a lighted cannabis, marijuana, or hemp product.</u>

(5) <u>Vape</u> or <u>vaping</u> means to inhale or exhale vapor produced by a vapor-generating electronic device or to possess a vapor-generating electronic device while that device is actively employing an electronic, a chemical, or a mechanical means designed to produce vapor or aerosol from a cannabis, marijuana, or hemp product or any other substance. The term does not include the mere possession of a vapor-generating electronic device.

(6) <u>Vapor means aerosolized or vaporized cannabis, marijuana, or hemp product, or other aerosolized or vaporized substance produced by a vapor-generating electronic device or exhaled by the person using such a device.</u>

(7) <u>Vapor-generating electronic device</u> means any product that employs an electronic, a chemical, or a mechanical means capable of producing vapor or aerosol from a cannabis, marijuana, or hemp product or any other substance, including, but not limited to, an

| 94 | electronic cigarette, electronic cigar, electronic ciga | * * | | | |
|-----|---|--|--|--|--|
| 95 | device or product, any replacement cartridge for suc | | | | |
| 96 | solution or other substance intended to be used with or within an electronic cigarette, | | | | |
| 97 | electronic cigar, electronic cigarillo, electronic pipe | or other similar device or product. | | | |
| 98 | | | | | |
| 99 | (c) <u>Prohibition</u> . It shall be unlawful to smoke or vape any | cannabis, marijuana, or hemp product | | | |
| 100 | on public property, except as otherwise provided by St | ate law. | | | |
| 101 | | | | | |
| 102 | | | | | |
| 103 | Secs. 42- <u>11</u> 10—42-30 Reserved | | | | |
| 104 | | | | | |
| 105 | * * * * | | | | |
| 106 | | | | | |
| 107 | SECTION 3. Codification. It is the intent of the To | wn Council of the Town of Ponce Inlet | | | |
| 108 | that the provisions of this Ordinance shall be codified. The | e codifier is granted broad and liberal | | | |
| 109 | authority in codifying the provisions of this Ordinance. | 5 | | | |
| 110 | <i>y y y y</i> 1 | | | | |
| 111 | SECTION 4. Severability. If any section, subsection | ion, sentence, clause, phrase, word, or | | | |
| 112 | provision of this Ordinance is for any reason held invalid | | | | |
| 113 | competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall | | | | |
| 114 | be deemed a separate, distinct, and independent provision, and such holding shall not affect the | | | | |
| 115 | validity of the remaining portions of this Ordinance. | | | | |
| 116 | variately of the remaining portions of this Ordinance. | | | | |
| 117 | SECTION 5 Conflicts In any case where a pro- | vision of this Ordinance is found to | | | |
| 117 | SECTION 5. Conflicts. In any case where a provision of this Ordinance is found to conflict with a provision of any other ordinance of this Town, this Ordinance shall prevail. | | | | |
| | conflict with a provision of any other ordinance of this fow | in, uns Ordinance snan prevan. | | | |
| 119 | SECTION (Effective data This Outliness shall | 1 1 | | | |
| 120 | SECTION 6. Effective date. This Ordinance shall adoption by the Toyre Council of the Toyre of Pence Inlet. | • • | | | |
| 121 | adoption by the Town Council of the Town of Ponce Inlet, | riorida. | | | |
| 122 | 14 | 414 | | | |
| 123 | It was moved by and seconded by | that said Ordinance | | | |
| 124 | be passed on first reading. A roll call vote of the Town Cour | icii on said motion resulted as follows: | | | |
| 125 | M D 11 C . 11 | | | | |
| 126 | Mayor Paritsky, Seat #1 | | | | |
| 127 | G 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 | | | | |
| 128 | Councilmember Milano, Seat #2 | | | | |
| 129 | | | | | |
| 130 | Councilmember White, Seat #3 | | | | |
| 131 | | | | | |
| 132 | Councilmember Villanella, Seat #4 | | | | |
| 133 | | | | | |
| 134 | Vice-Mayor Smith, Seat #5 | | | | |
| 135 | | | | | |
| 136 | Approved on first reading this day of 2024. | | | | |
| 137 | | | | | |
| 138 | It was moved by and see that said Ordinance be passed on second reading. A roll c | conded by | | | |
| 139 | that said Ordinance be passed on second reading. A roll c | all vote of the Town Council on said | | | |

| 140 | motion resulted as follows: | |
|------------|---|-------------------------------|
| 141 | | |
| 142 | Mayor Paritsky, Seat #1 | |
| 143 | | |
| 144 | Councilmember Milano, Seat #2 | |
| 145 | | |
| 146 | Councilmember White, Seat #3 | |
| 147 | | |
| 148 | Councilmember Villanella, Seat #4 | |
| 149 | *** ** * * * * *** | |
| 150 | Vice-Mayor Smith, Seat #5 | |
| 151 | | 2024 |
| 152 | Approved and adopted on second reading thisday of | 2024. |
| 153 | , | F CD L-1-4 F1 1 |
| 154 | | Гоwn of Ponce Inlet, Florida: |
| 155 | | |
| 156 | | |
| 157
158 | | Lois A. Paritsky, Mayor |
| 159 | ATTEST: | Lois A. I artisky, Mayor |
| 160 | ATTEST. | |
| 161 | | |
| 162 | | |
| 163 | Kim Cherbano, CMC | |
| 164 | Town Clerk | |
| 165 | · · · - · · · · · · · · · · · · · · | |



Meeting Date: 11/21/2024

Agenda Item: 14-A

Report to Town Council

Topic: Discussion – Amending the Land Acquisition Fund to allow

vehicle and equipment purchases.

Summary: Please see attached staff report and supporting documents.

Suggested motion: At Council's discretion.

Requested by: Mr. Disher, Town Manager

Approved by: Mr. Disher, Town Manager



MEMORANDUM

OFFICE OF THE TOWN MANAGER

The Town of Ponce Inlet staff shall be professional, caring and fair in delivering community excellence while ensuring Ponce Inlet citizens obtain the greatest value for their tax dollar.

To: Town Council

From: Michael E. Disher, AICP, Town Manager

Date: November 12, 2024

Subject: Discussion – Amending the Land Acquisition Fund to allow vehicle and equipment

purchases

MEETING DATE: November 21, 2024

Introduction

- 2 During its meetings on September 19, 2024 and October 17, 2024, the Town Council discussed
- 3 amending the limitations on how monies from the Land Acquisition Fund can be used. Currently,
- 4 these non-ad valorem revenues can only be used to acquire real estate and construct public
- 5 facilities. The question was raised in response to the purchase and financing of a new 75' Quint
- 6 fire apparatus; specifically, whether the Land Acquisition Fund monies could help pay for it rather
- 7 than with property taxes. This purpose of this memo is to provide information and potential options
- 8 for discussion should the Council decide to make changes to the Land Acquisition Fund.

10 Background

The L.A. Fund was established on April 16, 2003 via Ordinance 2003-05, creating Section 2-322 of the Code of Ordinances. The section reads:

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"All revenue generated and collected by the town from franchise fees pursuant to section 62-41 for the collection of garbage and the public service tax pursuant to section 72-101 et seq. on the sale of electricity, metered natural gas, liquefied petroleum and manufactured gas shall be deposited into the town public land acquisition and facility fund, and shall be expended from that fund only for the purposes of acquiring real estate, construction of public facilities and payment of administrative, engineering and legal expenses related to those tasks. In the event of a natural disaster or financial emergency, the town manager may request the town council to permit the expenditure of funds from the town public land acquisition and facility fund for other purposes and the town council may grant this request only by a four-fifths vote of the members present. The town manager is authorized to make expenditures from this fund within the parameters of this section."

2425

The 10% franchise fee and public utility service tax had been enacted two months prior, via Ordinance 02-37. The Council meeting minutes from the time note that these fees and taxes were necessary to create an alternate source of revenue besides ad valorem taxes, for funding the construction of the new Town Hall facility and acquiring properties for conservation, recreation, and historic preservation. The new fees and taxes were expected to bring in between \$270,000 to \$300,000 per year.

Section 2-322 was amended on September 17, 2020 via Ordinance 2020-08 to require a supermajority four-fifths vote to amend or withdraw any portion of this section or its subsections. If the Council wishes to change how the L.A. Fund monies are used, such an amendment must be adopted by ordinance with at least a four-fifths vote.

Discussion

To date, the Fund has been used to pay for \$7,748,896 worth of purchases of property and construction of new facilities. This fiscal year, \$643,557 has been budgeted to pay the last installment of the 20-year Town Hall loan and to replace Public Works Building "B." A list of major purchases over time is provided on **Attachment 1**.

The historic and projected Fund revenues are shown on **Attachment 2**. A trendline analysis has been applied to project Fund revenues out to the year FY 32/33. The Fund's recent and projected reserves are shown on **Attachment 3**. Together, they show that there is sufficient revenue available should the Council decide to use this Fund to pay for the new Quint fire truck over its 7-year loan period. At the start of Fiscal Year 25/26, the Fund is projected to have a reserve balance of \$596,117. Even after making the 7 annual payments of \$209,839, the Fund is projected to have a reserve balance of \$3,226,963 by the start of FY 32/33.

Questions

Revising the built-in restrictions of this fund raises questions that should be addressed before amending the ordinance itself. These include, but may not be limited to, the following:

- 1. Should the change be permanent or limited to one-time purchases (e.g., the fire apparatus)?
- 2. If permanent, what other uses for this money are acceptable? Ideas may include:
 - Setting aside a certain amount or percentage each year for the Disaster Recovery Fund, Capital Facility Maintenance Fund, and/or Capital Fire Equipment Fund;
 - o Paying off existing vehicle leases; or
 - o Funding future significant vehicle/equipment purchases, like the new back-hoe needed for Public Works.

Regardless of any changes, the Fund will need to play a significant role in funding future improvements related to the Town's short- and long-term resilience, as outlined in the recently completed Watershed Master Plan. These will include the acquisition of repetitive-loss, flood-prone properties for additional stormwater retention; expanding the capacity of the existing

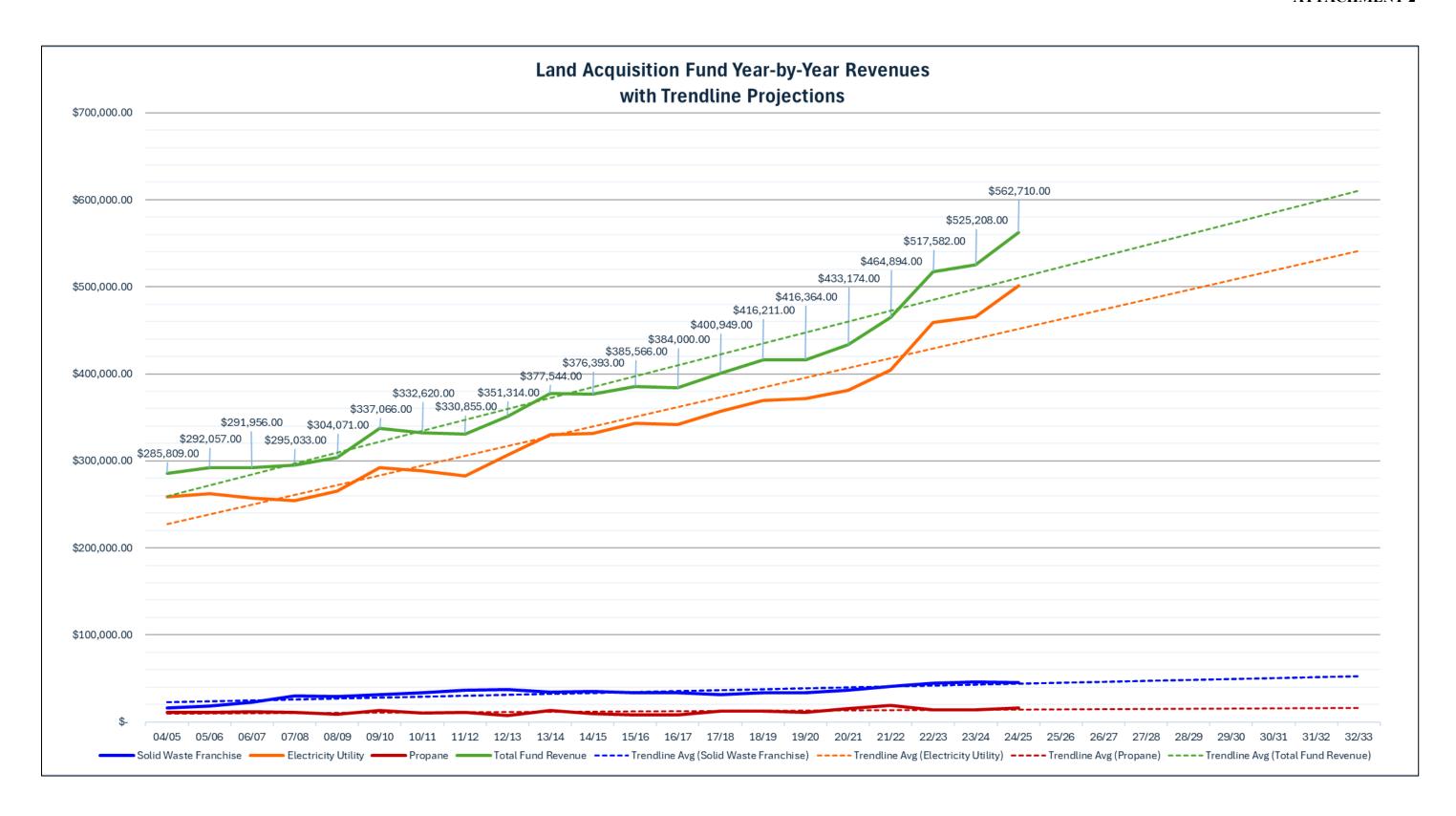
stormwater drainage system; and reconstruction of low-lying Town-owned buildings above the flood plain (e.g. the fire station). The Resilient Florida grant program will not pay for the architectural/engineering design for such projects, although it will pay up to 50% of the construction. However, such grants are always in the form of a reimbursement, meaning the Town would need to cover the initial costs up front.

Conclusion

Staff requests direction from the Town Council on the potential use of this fund for significant purchases once the Town Hall loan is paid off. Based on this direction, Staff will draft an ordinance for an upcoming meeting for approval or further discussion. Any changes authorized by this ordinance will be used in preparation of the FY 25/26 budget, effective October 1, 2025.

ATTACHMENT 1

| Major Expenses for Land Acquisition (302) Fund | | | | | | |
|---|----------------|---------------------------|--|--|--|--|
| Purchase | Amount | Fiscal Year(s) | | | | |
| Town Hall | \$6,174,910.82 | FY 05/06 through FY 24/25 | | | | |
| Pay off remainder of 15-year loan for purchase of Diocese property | 403,963.00 | FY 08/09 | | | | |
| Purchase property at S. Peninsula (NW corner of Public Works) | 16,532.00 | FY 09/10 | | | | |
| Purchase vacant land - 121 Beach Street (later sold) | 235,364.00 | FY 11/12 | | | | |
| Purchase vacant land - NE corner of S. Peninsula & Beach Street (Public Works parking expansion site) | 255,000.00 | FY 14/15 | | | | |
| Pollard Park redevelopment | 700,749.00 | FY 17/18 through FY 19/20 | | | | |
| Davie's Lighthouse Park enhancement | 110,608.00 | FY 18/19 | | | | |
| Town Hall remodel (new conference room and Clerks office) | 146,636.81 | FY 22/23 | | | | |
| Pollard Park pickleball court shade structures | 73,690.00 | FY 22/23 | | | | |
| Building B reconstruction (estimated) | 275,000.00 | FY 24/25 | | | | |
| Total | \$8,392,453.63 | | | | | |



ATTACHMENT 3

302 Fund Reserves Projection

| FY 23/24 Beginning Reserves | | 439,546.00 |
|---|--------------|--------------|
| FY 23/24 Revenues | | 525,208.00 |
| FY 23/24 Town Hall Payment | | (328,400.00) |
| FY 24/25 Beginning Reserves | | 636,354.00 |
| FY 24/25 Estimated Revenue | | 562,710.00 |
| FY 24/25 Town Hall Payment | | (327,947.00) |
| FY 24/25 Building B | | (275,000.00) |
| FY 25/26 Estimated Reserves | | 596,117.00 |
| FY 25/26 Estimated Revenues | | 568,337.00 |
| FY 25/26 - 1st Fire Truck Payment | | (209,839.00) |
| FY 26/27 Estimated Reserves | | 954,615.00 |
| FY 26/27 Estimated Revenues | | 574,020.00 |
| FY 26/27 - 2nd Fire Truck Payment | | (209,839.00) |
| FY 27/28 Estimated Reserves | | 1,318,796.00 |
| FY 27/28 Estimated Revenues | | 579,761.00 |
| FY 27/28 - 3rd Fire Truck Payment | | (209,839.00) |
| FY 28/29 Estimated Reserves | | 1,688,718.00 |
| FY 28/29 Estimated Revenues | | 585,558.00 |
| FY 28/29 - 4th Fire Truck Payment | | (209,839.00) |
| FY 29/30 Estimated Reserves | | 2,064,437.00 |
| FY 29/30 Estimated Revenues | | 591,414.00 |
| FY 29/30 - 5th Fire Truck Payment | | (209,839.00) |
| FY 30/31 Estimated Reserves | | 2,446,012.00 |
| FY 30/31 Estimated Revenues | | 597,328.00 |
| FY 30/31 - 6th Fire Truck Payment | | (209,839.00) |
| FY31/32 Estimated Reserves | | 2,833,501.00 |
| FY 31/32 Estimated Revenues | | 603,301.00 |
| FY 31/32 - 7th and Final Fire Truck Payment | (209,839.00) | |
| FY 32/33 Estimated Reserves | | 3,226,963.00 |

Note: FY 25/26 - FY 31/32 estimated revenues were projected to increase 1% each year.

This projection appeared to be relatively close to the trendline projection.



Meeting Date: 11/21/2024

Agenda Item: 14-B

Report to Town Council

Topic: Discussion of proposed county-wide moratorium for new

residential development from the November 19, 2024 County

Council agenda.

Summary: Please see attached staff report and supporting documents.

Suggested motion: At Council's discretion.

Requested by: Councilmember White

Approved by: Mr. Disher, Town Manager



MEMORANDUM OFFICE OF THE TOWN MANAGER

The Town of Ponce Inlet staff shall be professional, caring and fair in delivering community excellence while ensuring Ponce Inlet citizens obtain the greatest value for their tax dollar.

To: Town Council

From: Michael E. Disher, AICP, Town Manager

Date: November 14, 2024

Subject: Discussion of proposed county-wide moratorium for new residential development

from the November 19, 2024 County Council agenda – requested by Councilmember

White

MEETING DATE: November 21, 2024

On the November 19, 2024 County Council agenda is request from County Chairman Brower to discuss a temporary county-wide moratorium on new residential development. The proposal is in response to the heavy flooding experienced across the county from the past three hurricanes. The stated purpose of the moratorium is to provide time (up to two years) for communities to evaluate the current building requirements for storm water management and maintenance, complete watershed studies, and establish new requirements for development. The Chairman asserts that the moratorium could be enacted under the same legal authority under the County Charter as the county's minimum environmental standards and beach lighting regulations, which apply equally in both cities and unincorporated areas of the county.

Related to this agenda item is an e-mail sent from County Councilmember At Large Jake Johansson to the Mayor in her capacity as President of the Volusia League of Cities, encouraging participation by all municipalities in the county. Both documents are provided with this memo for review.

I will be attending the November 19th County Council meeting and will be able to report back on this issue at next week's Town Council meeting. Both the Mayor and Councilman White have told me individually that they will be attending as well.

Attachments

- 1. E-mail from County Councilmember At Large Jake Johansson
- 2. County Council agenda item requested by Chairman Brower

ATTACHMENT 1

Subject:Volusia County Moratorium discussion **Date:** Wed, 13 Nov 2024 03:59:08 +0000

From: Jake Johansson <<u>JJohansson@volusia.org</u>>
To: Keallen@stetson.edu <<u>Keallen@stetson.edu</u>>
CC: PI 5 - Paritsky, Lois <<u>lparitsky@ponce-inlet.org</u>>

Karen, Mayor-

I would like to draw the Volusia League of Cities attention to the upcoming Volusia County Council meeting on November 19th, specifically item #4 on the agenda, which will discuss implementing a countywide moratorium on development for an undetermined period. This item was introduced by the Chairman. I consider this a local attempt at preemption between the county and the city and believe that each city should consider moratoria as they see fit (Edgewater is on that path).

I have already reached out to stakeholders, including the Volusia County Association for Responsible Development (VCARD), Volusia Building Industry Association (VBIA), the Farm Bureau, the Cattlemen's Association, and the Daytona Regional Chamber of Commerce. This week, I am connecting with additional chambers of commerce on both the east and west sides of the county. My goal is to ensure that stakeholders, to include mayors, councils, and commissions within Volusia County are informed, as this decision could impact every part of the county.

In my view, such a moratorium would have far-reaching effects and seems to be a hasty reaction. There are already multiple initiatives underway to address flooding and nutrient loading in the region, many of which are nearing completion. For instance, the Army Corps of Engineers' Midtown Study, the state's efforts to clean Nova Canal, canal cleaning projects recently undertaken by the county post-Hurricane Milton, and other significant capital improvement programs are all addressing these concerns.

While the Chairman has encouraged public participation in this meeting, which is positive, I urge you to ensure that the full population across Volusia County is represented—not only the minority affected by recent flooding. While I am sympathetic to those who experienced flooding, a moratorium on residential, commercial and industrial development for up to 12 months, especially during this critical period post-election, could harm our economic stability in the long term.

Furthermore, I am concerned that such a move could prompt a response from the state legislature or the Governor, who is pro-growth, potentially leading to preemptive action that would restrict our local control permanently.

I strongly encourage maximum participation of all 16 cities and would appreciate it if you could provide this information to them for consideration.

Best, Jake

Jake Johansson Councilmember At Large Volusia County FL 386-747-9006

ATTACHMENT 2

File Number: 12306 Page 1 of 1

| Date: 11/19/2024 AGENDA ITEM Item: 04 | | | | | | | |
|---|-------------------------------------|---|---------|---|--|---------|--|
| | | tesolution [] Budget Resolu | | ution | [] Other | | |
| County Goals | | | | | | | |
| 0 | More Efficient
Regulatory Framew | ework [] Increase Effici
Effectiveness
Operations | | | | | Implement a Plan for Expanded Recreation |
| 0 | Enhance Fiscal
Stewardship | | 0 | Support a Solution-Oriented [X] Culture | | [X] | NA |
| | tment: Leadership
on: Leadership |) | | | | | |
| Subje | ct: Discussion of | coun | ıtywide | moratorium o | n residential de | evelopr | ment |
| Suzanne Konchan Director Leadership Approved By: Suyanne Konchan Department Approval Suzanne Konchan | | | | | Legal Michael Dyer County Attorney Approved By: Michael Dyer | | County Manager's Office Ryan Ossowski Chief Financial Officer Approved By: Ryan Ossowski |
| Approv
Suzan | ne Konchan Approval | | | | Approved as to and Legality | Form | |
| | cil Action: | | | | <u> </u> | | |
| Modification: | | | | | | | |
| Account Number(s): NA Total Item Budget: NA | | | | | | | |
| Staff Contact(s): Phone: Ext. Jeff Brower 386 736 5920 17026 | | | | | | | |
| Summary/Highlights: Chairman Brower requested this agenda item by the attached email on Saturday, November 9, 2024. | | | | | | | |
| Recommended Motion: Discussion | | | | | | | |

Non Budget 1 **04-1**

Jeff Brower From:

grectenwald@volusia.org; Michael Dyer To:

Jeff Brower Cc:

Subject: [EX] Temporary Moratorium on Development Date: Saturday, November 9, 2024 3:38:35 PM

Attachments:

Moritorium ok Tahoe-Sierra Preservation Council Inc USSCT .rtf Factual background for a countywide moratorium in Volusia County.docx

CAUTION: This email originated from outside Volusia County's email system. DO NOT CLICK links or attachments unless you recognize the sender and/or know the content is safe.

Temporary Moratorium Agenda Item.

In view of the devastating flood damage from the last three hurricanes, and localized flooding after normal heavy rain fall, this temporary countywide moratorium on residential development is necessary for debate and implementation by the Volusia County Council.

The city of Edgewater is considering its own 12-month moratorium and the city of New Smyrna Beach currently has a local moratorium on further development in the Venetian Bay area. This moratorium should be county wide to include all of our municipalities in their entirety since flooding is occurring in most, if not all of our municipalities.

Provided below are the compelling arguments for this Council's responsibility and legal protection to take this responsible step to protect our residents and environment from now and well into the future. There is legal precedent to ban residential construction and prohibit the issuance of building permits for up to two years, while the mechanics of determining a city or county's carrying capacity is determined.

This council should debate the time required for a temporary moratorium in order to evaluate the current building requirements for storm water management and maintenance. That discussion should include the necessity of finishing the required water shed studies and evaluation of the capacity of countywide storm water pumping, storage, and retention that does not adversely affect surrounding neighborhoods. Furthermore, this debate should require the addition of certain established requirements for any future development to proceed including, but not limited to the following items in order for the moratorium to be lifted:

- 1. Requiring Low Impact Development Standards and eliminating LID as an option or as a list of a few requirements that may be selected from a menu.
- 2. Prohibiting the current practice of draining the watersheds and wetlands, bringing in fill to raise these areas, and conducting high density home construction. Raise the homes, not the land.
- 3. The county and every municipality should reevaluate their stormwater management practices and maintenance. a. The County and municipalities should work together to make sure every swale, drainage ditch and canal are clear of any obstruction and able to carry water.
 - b. Any existing or new home should be required to have the proper swales and culverts so as to not impede the flow of water.
 - c. Each governing authority should provide a plan to reduce the water levels in retention ponds and lakes before a storm arrives with the location and carrying capacity of the terminal water body.
 - d. No development should be allowed to direct their excess water to surrounding neighborhoods.
 - e. Retention ponds should not be artificially filled for aesthetic purposes.
 - f. The ability to pump, with a schedule of when that pumping will begin, to what location, and available pumps, prior to storms should be evaluated and listed in their storm water management practices.
 - g. There should be a countywide study of the carrying capacity for more stormwater storage.
- 4. Each council member may add their own evaluation measures, development practices, and any

- other suggestions they have to be completed in the approved moratorium period.
- 5. Single homes built on private lots may be able to continue with the approved storm water management plans and inclusion of storm water conveyance.

The suffering of our constituents and the increased danger to every resident and county property has made this complicated but important responsibility a priority for this council. I believe we can and will accept the challenge put before us by the recent devastating damage and loss of our constituent's property and future. I thank you for your consideration and I believe the public expects us to act decisively, boldly ,and thoughtfully.

Factual background for a countywide moratorium in Volusia County.

Volusia County is presently experiencing massive flooding, water quality collapse, septic tank pollution, wetland dredge and fill, quality of life deterioration and the host of ecological/social/economic problems that are attendant to our development pattern. The consequences of our development requirements, special exceptions, land use and zoning changes that drives county and municipal land use are now plain to see. Flooding and pollution are not a "one off" but will continue and likely intensify as more development occurs in flood prone areas. The property and personal losses of our constituents cannot be ignored.

This discussion of a temporary moratorium countywide centers on two legal points:

- 1. The United States Supreme Court expressly authorized a two-year land development moratorium in
- I. Tahoe Sierra: A temporary moratorium on development in order to protect water resources is a proper use of local government power and does not affect an unlawful taking in violation of the US Constitution.

The Tahoe Sierra case is included below. Indeed, every Floridian who cares about the state's current development level should read this court decision. The opinion completely refutes local government's frequent lamentation that "we can't control development." As stated in this opinion, the express job of government is precisely to control development. The Supreme Court states that establishment and implementation of carrying capacity principles should be enshrined into law and land use decision in order to protect the public interest.

Tahoe Sierra centers on the ruinous impact of growth on famed Lake Tahoe, and the efforts by state, local and federal government to preserve the unique, dazzling clarity of that "noble sheet of blue water." In its decision, the Supreme Court notes how an "upsurge of development" is destroying the lake: "The lake's unsurpassed beauty, it seems, is the wellspring of its undoing." Volusia County (and the entire state) should come to mind when reading the Supreme Court's decision.

The agency formed in 1980 by California, Nevada, the Congress and the President to protect and preserve Lake Tahoe was directed to determine the lake's "carrying capacity"—how much development the area could absorb without ruining the lake's trademark clear blue and leaving it "green and opaque for eternity." The agency was authorized to "halt temporarily works of development in the region" until the agency got a handle on how best to protect the lake. It proceeded to ban residential construction and

prohibit the issuance of building permits for two years, while the mechanics of determining the lake's carrying capacity were determined. When the carrying capacity determination was not made by the deadline, yet another ten-month moratorium was enacted. Developers responded to the moratorium by filing suit, claiming that the building freeze constituted a "taking" of their property by government without compensation, in violation of the United States Constitution.

The Supreme Court found that the moratorium did not violate the Constitution. Instead, the Court found that "the consensus in the planning community appears to be that moratorium, or "interim development controls" are an essential tool of successful development."

The Supreme Court cited to long standing law that says that government regulation does not "take" property when (1) it advances a substantial governmental interest and (2) it does not permanently deprive the owner of all economically viable use of his property.

In Tahoe Sierra, there was no real dispute that protecting the lake through the establishment of carrying capacity controls is a vital government interest. In the case of Volusia County, figuring out how much development can occur and where it should occur without flooding existing development, overwhelming infrastructure and restoring water quality is a prime government interest.

Determining the carrying capacity of Volusia County is also a prime government interest and responsibility. The Supreme Court further ruled that the temporary nature of the moratorium did not permanently deprive the landowner of all use of his property. Interestingly, the Court said: "To the extent that communities are forced to abandon using moratoria, landowners will have incentives to develop their property quickly before a comprehensive plan can be enacted, thereby fostering inefficient and ill-conceived growth."

So, given the Supreme Court's opinion, developer litigation against a well-crafted, limited moratorium to determine and enforce water carrying capacity limits and the ability to safely control storm water management in Volusia County is an immediately necessary responsibility of County and local governments considering the extensive losses experienced by our constituents. SCOTUS has determined moratorium is not an unconstitutional taking and will withstand legal challenge.

II: The Volusia County Charter authorizes a countywide temporary moratorium to protect water resources and prevent flooding. The Volusia County Charter includes the following provisions, which provide, in relevant part:

Sec. 202.2. - Security of citizens' property rights. In order to secure to the citizens of the county protection against unlawful taxes, improper use of public property or taxing power, and abuse of the environment, the county shall have the duty to defend and enforce the following rights, and shall have the power to investigate violations of these rights within the county and by ordinance, or by civil or criminal legal action where appropriate, to prevent:

(3) Abuse of the environment. The county shall prevent the development or use of land or the commission of other acts by persons, partnerships or corporations which will tend to destroy or have a substantially adverse effect on the environment of the county. Such destruction or adverse effects may include any or all of the following:

- (a) Pollution of the air, land or water by foreign substances, including noxious liquids, gases or solid wastes.
- (b) Pollution of the air, land or water by the creation of potentially harmful conditions therein, including the creation of unnecessarily injurious heat, noise or odor.

Sec. 202.4. - Minimum standards for environmental protection. The council, after consideration of such advice and comment as may be submitted by the governing bodies comments of municipalities within the county, shall establish minimum standards, procedures, requirements and regulations for the protection of the environment. Such minimum standards, procedures, requirements and regulations may include, but shall not be limited to, tree protection, aquifer protection, stormwater management, wastewater management, river and waterway protection, hazardous waste disposal, wetlands protection, beach and dune protection, environmental protection including air pollution, and the protection from destruction of the resources of the county belonging to the general public, and such other environmental standards as the council determines to be necessary for the protection of the public health, safety, and welfare of the citizens throughout Volusia County.

The council shall establish such minimum standards, procedures, requirements and regulations shall apply within all the incorporated and unincorporated areas of Volusia County. In the event of a conflict between any standard, procedure, requirement or regulation established by a county ordinance, the county ordinance shall prevail within the municipality to the extent of any conflict; provided, however, the governing body of each municipality may establish more restrictive standards, procedures, requirements or regulations within the municipality for the protection of the environment.

The express language of these two charter provisions vests the Volusia County Council with the power to 1) protect the entire county from "environmental abuse" and

2) set minimum environmental protection standards for the county and municipalities.

This countywide power expressly extends to water pollution, wetlands protection, and stormwater management. To the extent that municipal standards are less protective than county standards, the municipal standards are expressly preempted.

The primacy of the charter in ensuring high standards for environmental protection can be reviewed in the Volusia sea turtle litigation, Loggerhead Turtle v. County Council of Volusia County. The Eleventh Circuit Court of Appeals addressed the county charter's "minimum standards for environmental protection" supremacy over lesser municipal standards in its 1998 ruling regarding different standards amongst the municipalities regarding turtle friendly lighting, finding:

This court resolution shows a sufficient causal connection to seek to hold Volusia County liable for "harmfully" inadequate regulation of artificial beachfront lighting in the non-party municipalities of Daytona Beach, Daytona Beach Shores, Ormond Beach and New Smyrna Beach. First, Volusia County possesses primary authority to regulate artificial beachfront lighting county-wide. The county charter expressly grants Volusia County the authority—and arguably a duty--to "establish minimum standards ... for the protection of the environment by ordinance that apply within all the incorporated and

unincorporated areas of Volusia County." Volusia County, Fla., Home Rule Charter, Art. II, § 202.4. Volusia County did just that. [**54] It mandated a floor of, that is, minimum, lighting standards that Ormond Beach and New Smyrna Beach must implement and enforce.

Loggerhead Turtle v. County Council of Volusia County, 148 F.3d 1231, 1249 (11th Cir. 1998)2. As the Eleventh Circuit ruled, the Volusia County Charter expressly grants the county the "authority—and arguably a duty" to establish minimum standards for environmental protection. This authority and duty unquestionably extends to wetlands protection, flooding prevention, water quality and whatever else falls under the umbrella of "environmental protection" and preventing "abuse of the environment." This authority is broad and expansive.

Because the Volusia County Council has this broad power, it is within its rights to adopt an ordinance establishing a temporary countywide moratorium on development while the flooding/water quality/development practices are addressed, and plans are laid for a more sustainable future. Such a moratorium is legal, and the Volusia County Council has an obligation to provide leadership and seek changes to mitigate this debacle.

122 S.Ct. 1465, 54 ERC 1129, 152 L.Ed.2d 517, 70 USLW 4260...

KeyCite Yellow Flag - Negative Treatment
Declined to Extend by Casitas Mun. Water Dist. v. U.S., Fed.Cir.,
September 25, 2008

122 S.Ct. 1465 Supreme Court of the United States

TAHOE-SIERRA PRESERVATION COUNCIL,

INC., et al., Petitioners,

TAHOE REGIONAL PLANNING AGENCY, et al.

No. 00–1167. | Argued Jan. 7, 2002. | Decided April 23, 2002.

Synopsis

Association of landowners brought action against regional planning agency, claiming that agency's temporary moratoria on development effected unconstitutional regulatory takings of property. The United States District Court for the District of Nevada, 34 F.Supp.2d 1226, Edward C. Reed, Jr., J., found that moratoria constituted taking, and agency appealed. The United States Court of Appeals for the Ninth Circuit, 216 F.3d 764, held that moratoria did not constitute categorical taking. Certiorari was granted. The Supreme Court, Justice Stevens, held that: (1) moratoria did not constitute per se taking, and (2) question whether Takings Clause compensation when government enacts temporary regulation denying property owner all viable economic use of property is to be decided by applying factors of Penn Central Transp. Co. v. New York City, not by applying any categorical rule.

Affirmed.

Chief Justice Rehnquist filed dissenting opinion in which Justices Scalia and Thomas joined.

Justice Thomas filed dissenting opinion in which Justice Scalia joined.

Procedural Posture(s): On Appeal.

West Headnotes (29)

[1] Eminent Domain Zoning, Planning, or Land Use; Building Codes

A moratorium on development imposed during the process of devising a comprehensive land-use plan does not constitute a per se taking of property requiring compensation under the Takings Clause. U.S.C.A. Const.Amend. 5.

70 Cases that cite this headnote

[2] Eminent Domain Constitutional provisions

The Fifth Amendment's Just Compensation Clause, prohibiting the taking of private property for public use without just compensation, applies to the States as well as the Federal Government. U.S.C.A. Const.Amend. 5.

80 Cases that cite this headnote

[3] Eminent Domain Wetlands and coastal protection

Moratoria on development, covering 32-month period, ordered by environmental planning agency to maintain status quo while studying impact of development on lake and designing strategy for environmentally sound growth, did not constitute per se taking. U.S.C.A. Const.Amend. 5.

19 Cases that cite this headnote

[4] Federal Courts Presentation of Questions Below or on Review; Record; Waiver

Question whether regional plan adopted by environmental agency constituted taking was not 122 S.Ct. 1465, 54 ERC 1129, 152 L.Ed.2d 517, 70 USLW 4260...

before Supreme Court, where both district court and court of appeals held that it was federal injunction against implementing plan, rather than plan itself, that caused landowners' alleged injuries, and those rulings were not encompassed within Supreme Court's limited grant of certiorari. U.S.C.A. Const.Amend. 5.

[5] Eminent Domain What Constitutes a Taking; Police and Other Powers Distinguished

The Takings Clause analysis of *Penn Central Transp. Co. v. New York City* involves a complex of factors including the regulation's economic effect on the landowner, the extent to which the regulation interferes with reasonable investment-backed expectations, and the character of the government action. U.S.C.A. Const.Amend. 5.

50 Cases that cite this headnote

[6] Eminent Domain → Zoning, Planning, or Land Use; Building Codes

The answer to the question whether a temporary moratorium effects a taking depends upon the particular circumstances of the case. U.S.C.A. Const.Amend. 5.

22 Cases that cite this headnote

[7] Eminent Domain Constitutional provisions

The plain language of the Fifth Amendment requires the payment of compensation whenever the government acquires private property for a public purpose, whether the acquisition is the result of a condemnation proceeding or a physical appropriation. U.S.C.A. Const.Amend. 5.

22 Cases that cite this headnote

[8] Eminent Domain What Constitutes a Taking; Police and Other Powers Distinguished

When the government condemns or physically appropriates property, the fact of a taking is typically obvious and undisputed, but when the owner contends a taking has occurred because a law or regulation imposes restrictions so severe that they are tantamount to a condemnation or appropriation, the predicate of a taking is not self-evident, and the analysis is more complex. U.S.C.A. Const.Amend. 5.

29 Cases that cite this headnote

[9] Eminent Domain What Constitutes a Taking; Police and Other Powers Distinguished

When the government physically takes possession of an interest in property for some public purpose, it has a categorical duty under the Takings Clause to compensate the former owner, regardless of whether the interest that is taken constitutes an entire parcel or merely a part thereof. U.S.C.A. Const.Amend. 5.

115 Cases that cite this headnote

[10] Eminent Domain ← Easements and other rights in real property Eminent Domain ← Temporary Use

Compensation is mandated under the Takings Clause when a leasehold is taken and the government occupies the property for its own purposes, even though that use is temporary. U.S.C.A. Const.Amend. 5.

27 Cases that cite this headnote

[11] Eminent Domain What Constitutes a Taking; Police and Other Powers Distinguished

The distinction between acquisitions of property for public use, on the one hand, and regulations prohibiting private uses, on the other, makes it inappropriate to treat Takings Clause cases involving physical takings as controlling precedents for the evaluation of a claim that there has been a regulatory taking, and vice versa. U.S.C.A. Const.Amend. 5.

109 Cases that cite this headnote

[12] Eminent Domain What Constitutes a Taking; Police and Other Powers Distinguished

For the same reason that the Supreme Court does not ask whether a physical appropriation advances a substantial government interest or whether it deprives the owner of all economically valuable use, the Supreme Court does not apply its precedent from the physical takings context to regulatory takings claims. U.S.C.A. Const.Amend. 5.

146 Cases that cite this headnote

[13] Eminent Domain What Constitutes a Taking; Police and Other Powers Distinguished

Under *Lucas v. South Carolina Coastal Council,* a narrow exception to the rules governing regulatory takings exists for the extraordinary circumstance of a permanent deprivation of all beneficial use. U.S.C.A. Const.Amend. 5.

25 Cases that cite this headnote

[14] Eminent Domain → What Constitutes a Taking; Police and Other Powers Distinguished

If regulation goes too far it will be recognized as a taking, U.S.C.A. Const.Amend. 5.

22 Cases that cite this headnote

[15] Eminent Domain What Constitutes a Taking; Police and Other Powers Distinguished

Neither a physical appropriation nor a public use is a necessary component of a regulatory taking. U.S.C.A. Const.Amend. 5.

10 Cases that cite this headnote

[16] Eminent Domain → What Constitutes a Taking; Police and Other Powers Distinguished

The Supreme Court resists the temptation to adopt per se rules in cases involving partial regulatory takings, preferring to examine a number of factors rather than a simple mathematically precise formula. U.S.C.A. Const.Amend. 5.

26 Cases that cite this headnote

[17] Eminent Domain What Constitutes a Taking; Police and Other Powers Distinguished

Even though multiple factors are relevant in the analysis of regulatory takings claims, in such cases the Supreme Court must focus on the parcel as a whole. U.S.C.A. Const.Amend. 5.

28 Cases that cite this headnote

[18] Eminent Domain What Constitutes a Taking; Police and Other Powers Distinguished

Takings jurisprudence does not divide a single parcel into discrete segments and attempt to determine whether rights in a particular segment have been entirely abrogated; in deciding whether a particular governmental action has effected a taking, the Supreme Court focuses rather both on the character of the action and on the nature and extent of the interference with rights in the parcel as a whole. U.S.C.A. Const.Amend. 5.

27 Cases that cite this headnote

[19] Eminent Domain → Zoning, Planning, or Land Use; Building Codes

District court applied wrong standard for determining whether regulatory taking had occurred when it disaggregated property in question into temporal segments corresponding to regulations at issue and then analyzed whether owners were deprived of all economically viable use during each period; starting point for court's analysis should have been to ask whether there was a total taking of entire parcel, and, if there was not, it should have applied factors of *Penn Central Transp. Co. v. New York City.* U.S.C.A. Const.Amend.

120 Cases that cite this headnote

[20] **Property** Estates in property in general

An interest in real property is defined by the metes and bounds that describe its geographic dimensions and the term of years that describes the temporal aspect of the owner's interest. Restatement of Property §§ 7–9.

8 Cases that cite this headnote

[21] Eminent Domain What Constitutes a Taking; Police and Other Powers Distinguished

For a court to view an interest in property in its entirety, as required for consideration of a regulatory takings claim, a court must consider both the metes and bounds that describe the property's geographic dimensions and the term of years that describes the temporal aspect of the owner's interest. U.S.C.A. Const.Amend. 5; Restatement of Property §§ 7–9.

18 Cases that cite this headnote

[22] Eminent Domain What Constitutes a Taking; Police and Other Powers Distinguished

The categorical rule of regulatory takings in *Lucas v. South Carolina Coastal Council* was carved out for the extraordinary case in which a regulation permanently deprives property of all value; the default rule remains that, in the regulatory taking context, a more fact specific inquiry is required. U.S.C.A. Const.Amend. 5.

51 Cases that cite this headnote

[23] Federal Courts Scope and Extent of Review

Theory that environmental planning agency enacted "rolling moratoria" that were functional equivalent of permanent taking was not available to landowners' association in Takings Clause action, where association had presented such theory in its petition for certiorari, but order granting certiorari did not encompass that issue. U.S.C.A. Const.Amend. 5.

2 Cases that cite this headnote

[24] Federal Courts Scope and Extent of Review

Recovery on bad faith theory or theory that state interests were insubstantial was foreclosed in Takings Clause action by district court's unchallenged findings of fact. U.S.C.A. Const.Amend. 5.

[25] Federal Courts—Review of federal district courts

Recovery by landowners' association under analysis of *Penn Central Transp. Co. v. New York City* was foreclosed in Takings Clause action where association expressly disavowed that theory and failed to appeal from district court's conclusion that the evidence would not support it. U.S.C.A. Const.Amend. 5.

1 Cases that cite this headnote

[26] Eminent Domain What Constitutes a Taking; Police and Other Powers Distinguished

The question whether the Takings Clause requires compensation when the government enacts a temporary regulation that, while in effect, denies a property owner all viable economic use of her property is to be decided by applying the factors of *Penn Central Transp. Co. v. New York City,* not by applying any categorical rule. U.S.C.A. Const.Amend. 5.

92 Cases that cite this headnote

[27] Eminent Domain What Constitutes a Taking; Police and Other Powers Distinguished

A claim that a regulation has effected a temporary taking requires careful examination and weighing of all the relevant circumstances. U.S.C.A. Const.Amend. 5.

31 Cases that cite this headnote

[28] Eminent Domain → Zoning, Planning, or Land Use; Building Codes

The temporary nature of a land-use restriction does not necessarily preclude a finding that it effects a taking; rather, it should not be given exclusive significance one way or the other. U.S.C.A. Const.Amend. 5.

2 Cases that cite this headnote

[29] Eminent Domain What Constitutes a Taking; Police and Other Powers Distinguished

The duration of the restriction is one of the important factors that a court must consider in the appraisal of a regulatory takings claim, but with respect to that factor as with respect to other factors, the temptation to adopt what amount to per se rules in either direction must be resisted. U.S.C.A. Const.Amend. 5.

20 Cases that cite this headnote

**1468 *302 Syllabus*

Respondent Tahoe Regional Planning Agency (TRPA) imposed two moratoria, totaling 32 months, on development in the Lake Tahoe Basin while formulating a comprehensive land-use plan for the area. Petitioners, real estate owners affected by the moratoria and an association representing such owners, filed parallel suits, later consolidated, claiming that TRPA's actions constituted a taking of their property without just compensation. The District Court found that TRPA had not effected a "partial taking" under the analysis set out in Penn Central Transp. Co. v. New York City, 438 U.S. 104, 98 S.Ct. 2646, 57 L.Ed.2d 631; however, it concluded that the moratoria did constitute a taking under the categorical rule announced in Lucas v. South Carolina Coastal

Council, 505 U.S. 1003, 112 S.Ct. 2886, 120 L.Ed.2d 798, because TRPA temporarily deprived petitioners of all economically viable use of their land. On appeal, TRPA successfully challenged the District Court's takings determination. Finding that the only question in this facial challenge was whether Lucas' rule applied, the Ninth Circuit held that because the regulations had only a temporary impact on petitioners' fee interest, no categorical taking had occurred; that Lucas applied to the relatively rare case in which a regulation permanently denies all productive use of an entire parcel, whereas the moratoria involved only a temporal slice of the fee interest; and that First English Evangelical Lutheran Church of Glendale v. County of Los Angeles, 482 U.S. 304, 107 S.Ct. 2378, 96 L.Ed.2d 250, concerned the question whether compensation is an appropriate remedy for a temporary taking, not whether or when such a taking has occurred. The court also concluded that Penn Central's ad hoc balancing approach was the proper framework for analyzing whether a taking had occurred, but that petitioners had not challenged the District Court's conclusion that they could not make out a claim under Penn Central's factors.

Held: The moratoria ordered by TRPA are not *per se* takings of property requiring compensation under the Takings Clause. Pp. 1478–1490.

(a) Although this Court's physical takings jurisprudence, for the most part, involves the straightforward application of per se rules, its regulatory takings jurisprudence is characterized by "essentially ad hoc, *303 factual inquiries," Penn Central, 438 U.S., at 124, 98 S.Ct. 2646, designed to allow "careful examination and weighing of all the relevant circumstances," Palazzolo v. Rhode Island, 533 U.S. 606, 636, 121 S.Ct. 2448, 150 L.Ed.2d 592 (O'CONNOR, J., concurring). The longstanding distinction between physical and regulatory takings makes it inappropriate to treat precedent from one as controlling on the other. Petitioners rely on First English and Lucas—both regulatory takings cases—to argue for a categorical rule that whenever the government imposes a deprivation of all economically viable use of property, no matter how brief, it effects a taking. In First English, 482 U.S., at 315, 318, 321, 107 S.Ct. 2378, the Court addressed the separate remedial question of how compensation is measured once a regulatory taking is established, but not the different and prior question whether the temporary regulation was in fact a taking. To the extent that the Court referenced that ante **1469 cedent question, it recognized that a regulation temporarily denying an

owner all use of her property might not constitute a taking if the denial was part of the State's authority to enact safety regulations, or if it were one of the normal delays in obtaining building permits, changes in zoning ordinances, variances, and the like. Thus, First English did not approve, and implicitly rejected, petitioners' categorical approach. Nor is Lucas dispositive of the question presented. Its categorical rule—requiring compensation when a regulation permanently deprives an owner of "all economically beneficial uses" of his land, 505 U.S., at 1019, 112 S.Ct. 2886—does not answer the question whether a regulation prohibiting any economic use of land for 32 months must be compensated. Petitioners attempt to bring this case under the rule in Lucas by focusing exclusively on the property during the moratoria is unavailing. This Court has consistently rejected such an approach to the question. See, e.g., Keystone "denominator" Bituminous Coal Assn. v. DeBenedictis, 480 U.S. 470, 497, 107 S.Ct. 1232, 94 L.Ed.2d 472. To sever a 32-month segment from the remainder of each fee simple estate and then ask whether that segment has been taken in its entirety would ignore Penn Central's admonition to focus on "the parcel as a whole," 438 U.S., at 130–131, 98 S.Ct. 2646. Both dimensions of a real property interest—the metes and bounds describing its geographic dimensions and the term of years describing its temporal aspect—must be considered when viewing the interest in its entirety. A permanent deprivation of all use is a taking of the parcel as a whole, but a temporary restriction causing a diminution in value is not, for the property will recover value when the prohibition is lifted. Lucas was carved out for the "extraordinary case" in which a regulation permanently deprives property of all use; the default rule remains that a fact specific inquiry is required in the regulatory taking context. Nevertheless, the Court will consider petitioners' argument that the interest in protecting property owners *304 from bearing public burdens "which, in all fairness and justice, should be borne by the public as a whole," Armstrong v. United States, 364 U.S. 40, 49, 80 S.Ct. 1563, 4 L.Ed.2d 1554, justifies creating a new categorical rule. Pp. 1478–1484.

(b) "Fairness and justice" will not be better served by a categorical rule that any deprivation of all economic use, no matter how brief, constitutes a compensable taking. That rule would apply to numerous normal delays in obtaining, *e.g.*, building permits, and would require changes in practices that have long been considered permissible exercises of the police power. Such an important change in the law should be the product of legislative rulemaking, not adjudication. More importantly, for the reasons set out in Justice

O'CONNOR's concurring opinion in Palazzolo, 533 U.S., at 636, 121 S.Ct. 2448, the better approach to a temporary regulatory taking claim requires careful examination and weighing of all the relevant circumstances—only one of which is the length of the delay. A narrower rule excluding normal delays in processing permits, or covering only delays of more than a year, would have a less severe impact on prevailing practices, but would still impose serious constraints on the planning process. Moratoria are an essential tool of successful development. The interest in informed decisionmaking counsels against adopting a per se rule that would treat such interim measures as takings regardless of the planners' good faith, the landowners' reasonable expectations, or the moratorium's actual impact on property values. The financial constraints of compensating property owners during a moratorium may force officials to rush through the planning process or abandon the practice altogether. And the interest in protecting the decisional process is even stronger when an agency is developing a regional plan than when it is considering a permit for a single parcel. Here, TRPA obtained the benefit of comments and criticisms **1470 from interested parties during its deliberations, but a categorical rule tied to the deliberations' length would likely create added pressure on decisionmakers to quickly resolve land-use questions, disadvantaging landowners and interest groups less organized or familiar with the planning process. Moreover, with a temporary development ban, there is less risk that individual landowners will be singled out to bear a special burden that should be shared by the public as a whole. It may be true that a moratorium lasting more than one year should be viewed with special skepticism, but the District Court found that the instant delay was not unreasonable. The restriction's duration is one factor for a court to consider in appraising regulatory takings claims, but with respect to that factor, the temptation to adopt per se rules in either direction must be resisted. Pp. 1484–1490.

216 F.3d 764, affirmed.

*305 STEVENS, J., delivered the opinion of the Court, in which O'CONNOR, KENNEDY, SOUTER, GINSBURG, and BREYER, JJ., joined. REHNQUIST, C.J., filed a dissenting opinion, in which SCALIA, J., and THOMAS, J., joined, *post*, p. 1490. THOMAS, J., filed a dissenting opinion, in which SCALIA, J., joined, *post*, p. 1496.

Attorneys and Law Firms

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John G. Roberts, Jr., Washington, DC, for respondents.

Theodore B. Olson, for United States as amicus curiae, by special leave of the Court, supporting respondents.

Opinion

*306 Justice STEVENS delivered the opinion of the Court.

[1] [2] [3] The question presented is whether a moratorium on development imposed during the process of devising a comprehensive land-use plan constitutes a per se taking of property requiring compensation under the Takings Clause of the United States Constitution.1 This case actually involves two moratoria ordered by respondent Tahoe Regional Planning Agency (TRPA) to maintain the status quo while studying the impact of development on Lake Tahoe and designing a strategy for environmentally sound growth. The first, Ordinance 81-5, was effective from August 24, 1981, until August 26, 1983, whereas the second more restrictive Resolution 83-21 was in effect from August 27, 1983, until April 25, 1984. As a result of these two directives, virtually all development on a substantial portion of the property subject to TRPA's jurisdiction was prohibited for a period of 32 months. Although the question we decide relates only to that 32-month period, a brief description of the events leading up to the moratoria and a comment on the two permanent *307 plans that TRPA adopted thereafter will clarify the narrow scope of our holding.

Ι

The relevant facts are undisputed. The Court of Appeals, while reversing the District Court on a question of law, accepted all of its findings of fact, and no party challenges those findings. All agree that Lake Tahoe is "uniquely beautiful," 34 F.Supp.2d 1226, 1230 (D.Nev.1999), that President Clinton was right to call it a "'national treasure that must be protected and preserved," *ibid.*, and that Mark **1471 Twain aptly described the clarity of its waters as "'not *merely* transparent, but dazzlingly, brilliantly so,'" "ibid. (emphasis added) (quoting M. Twain, Roughing It 174–175 (1872)).

Lake Tahoe's exceptional clarity is attributed to the

absence of algae that obscures the waters of most other lakes. Historically, the lack of nitrogen and phosphorous, which nourish the growth of algae, has ensured the transparency of its waters.² Unfortunately, the lake's pristine state has deteriorated rapidly over the past 40 years; increased land development in the Lake Tahoe Basin (Basin) has threatened the "'noble sheet of blue water'" beloved by Twain and countless others. 134 F.Supp.2d, at 1230. As the District Court found, "[d]ramatic decreases in clarity first began to be noted in the late 1950's/early 1960's, shortly after development at the lake began in earnest." 11d., at 1231. The lake's unsurpassed beauty, it seems, is the wellspring of its undoing.

*308 The upsurge of development in the area has caused "increased nutrient loading of the lake largely because of the increase in impervious coverage of land in the Basin resulting from that development."

"Impervious coverage—such as asphalt, concrete, buildings, and even packed dirt—prevents precipitation from being absorbed by the soil. Instead, the water is gathered and concentrated by such coverage. Larger amounts of water flowing off a driveway or a roof have more erosive force than scattered raindrops falling over a dispersed area—especially one covered with indigenous vegetation, which softens the impact of the raindrops themselves."

Given this trend, the District Court predicted that "unless the process is stopped, the lake will lose its clarity and its trademark blue color, becoming green and opaque for eternity."³

Those areas in the Basin that have steeper slopes produce more runoff; therefore, they are usually considered "high hazard" lands. Moreover, certain areas near streams or wetlands known as "Stream Environment Zones" (SEZs) are especially vulnerable to the impact of development because, in their natural state, they act as filters for much of the debris that runoff carries. Because "[t]he most obvious response to this problem ... is to restrict development around the lake—especially in SEZ lands, as well as in areas already naturally prone to runoff," id., at 1232, conservation efforts have focused on controlling growth in these high hazard areas.

In the 1960's, when the problems associated with the burgeoning development began to receive significant attention, *309 jurisdiction over the Basin, which occupies 501 square miles, was shared by the States of California and Nevada, five counties, several municipalities, and the Forest Service of the Federal

Government. In 1968, the legislatures of the two States adopted the Tahoe Regional Planning Compact, see 1968 Cal. Stats., no. 998, p.1900, § 1; 1968 Nev. Stats. p. 4, which Congress approved in 1969, Pub.L. 91–148, 83 Stat. 360. The compact set goals for the protection and preservation of the lake and created TRPA as the agency assigned "to coordinate and regulate development in the Basin and to conserve its natural resources." Lake Country Estates, Inc. v. Tahoe Regional **1472 Planning Agency, 440 U.S. 391, 394, 99 S.Ct. 1171, 59 L.Ed.2d 401 (1979).

Pursuant to the compact, in 1972 TRPA adopted a Land Use Ordinance that divided the land in the Basin into seven "land capability districts," based largely on steepness but also taking into consideration other factors affecting runoff. Each district was assigned a "land coverage coefficient—a recommended limit on the percentage of such land that could be covered by impervious surface." Those limits ranged from 1% for districts 1 and 2 to 30% for districts 6 and 7. Land in districts 1, 2, and 3 is characterized as "high hazard" or "sensitive," while land in districts 4, 5, 6, and 7 is "low hazard" or "non-sensitive." The SEZ lands, though often treated as a separate category, were actually a subcategory of district 1.

Unfortunately, the 1972 ordinance allowed numerous exceptions and did not significantly limit the construction of new residential housing. California became so dissatisfied with TRPA that it withdrew its financial support and unilaterally imposed stricter regulations on the part of the Basin located in California. Eventually the two States, with the approval of Congress and the President, adopted an extensive amendment to the compact that became effective on December 19, 1980. Pub.L. 96–551, 94 Stat. 3233; Cal. *310 Govt. Code Ann. § 66801 (West Supp.2002); Nev.Rev.Stat. § 277.200 (1980).

The 1980 Tahoe Regional Planning Compact (Compact) redefined the structure, functions, and voting procedures of TRPA, App. 37, 94 Stat. 3235–3238; 34 F.Supp.2d, at 1233, and directed it to develop regional "environmental threshold carrying capacities"—a term that embraced "standards for air quality, water quality, soil conservation, vegetation preservation and noise." 94 Stat. 3235, 3239. The Compact provided that TRPA "shall adopt" those standards within 18 months, and that "[w]ithin 1 year after" their adoption (i.e., by June 19, 1983), it "shall" adopt an amended regional plan that achieves and maintains those carrying capacities. *Id.*, at 3240. The Compact also contained a finding by the

legislatures of California and Nevada "that in order to make effective the regional plan as revised by [TRPA], it is necessary to halt temporarily works of development in the region which might otherwise absorb the entire capability of the region for further development or direct it out of harmony with the ultimate plan." *Id.*, at 3243. Accordingly, for the period prior to the adoption of the final plan ("or until May 1, 1983, whichever is earlier"), the Compact itself prohibited the development of new subdivisions, condominiums, and apartment buildings, and also prohibited each city and county in the Basin from granting any more permits in 1981, 1982, or 1983 than had been granted in 1978.⁴

During this period TRPA was also working on the development of a regional water quality plan to comply with the Clean Water Act, 33 U.S.C. § 1288 (1994 ed.). Despite *311 the fact that TRPA performed these obligations in "good faith and to the best of its ability," 34 F.Supp.2d, at 1233, after a few months it concluded that it could not meet the deadlines in the Compact. On June 25, 1981, it therefore enacted Ordinance 81–5 imposing the first of the two moratoria on development that petitioners challenge in this proceeding. The ordinance provided that it would become effective on August 24, 1981, and remain in effect pending the adoption of the permanent plan required by the Compact. App. 159, 191.

**1473 The District Court made a detailed analysis of the ordinance, noting that it might even prohibit hiking or picnicking on SEZ lands, but construed it as essentially banning any construction or other activity that involved the removal of vegetation or the creation of land coverage on all SEZ lands, as well as on class 1, 2, and 3 lands in California. 34 F.Supp.2d, at 1233–1235. Some permits could be obtained for such construction in Nevada if certain findings were made. 1d., at 1235. It is undisputed, however, that Ordinance 81–5 prohibited the construction of any new residences on SEZ lands in either State and on class 1, 2, and 3 lands in California.

Given the complexity of the task of defining "environmental threshold carrying capacities" and the division of opinion within TRPA's governing board, the District Court found that it was "unsurprising" that TRPA failed to adopt those thresholds until August 26, 1982, roughly two months after the Compact deadline. "Ibid. Under a liberal reading of the Compact, TRPA then had until August 26, 1983, to adopt a new regional plan. 94 Stat. 3240. "Unfortunately, but again not surprisingly, no regional plan was in place as of that

date." 34 F.Supp.2d, at 1235. TRPA therefore adopted Resolution 83–21, "which completely suspended all project reviews and approvals, including the acceptance of new proposals," and which remained in effect until a new regional plan was adopted on April 26, 1984. Thus, Resolution *312 83–21 imposed an 8-month moratorium prohibiting all construction on high hazard lands in either State. In combination, Ordinance 81–5 and Resolution 83–21 effectively prohibited all construction on sensitive lands in California and on all SEZ lands in the entire Basin for 32 months, and on sensitive lands in Nevada (other than SEZ lands) for eight months. It is these two moratoria that are at issue in this case.

On the same day that the 1984 plan was adopted, the State of California filed an action seeking to enjoin its implementation on the ground that it failed to establish land-use controls sufficiently stringent to protect the Basin. It ld., at 1236. The District Court entered an injunction that was upheld by the Court of Appeals and remained in effect until a completely revised plan was adopted in 1987. Both the 1984 injunction and the 1987 plan contained provisions that prohibited new construction on sensitive lands in the Basin. As the case comes to us, however, we have no occasion to consider the validity of those provisions.

II

Approximately two months after the adoption of the 1984 plan, petitioners filed parallel actions against TRPA and other defendants in federal courts in Nevada and California that were ultimately consolidated for trial in the District of Nevada. The petitioners include the Tahoe-Sierra Preservation Council, Inc., a nonprofit membership corporation representing about 2,000 owners of both improved and unimproved parcels of real estate in the Lake Tahoe Basin, and a class of some 400 individual owners of vacant lots located either on SEZ lands or in other parts of districts 1, 2, or 3. Those individuals purchased their properties prior to the effective date of the 1980 Compact, App. 34, primarily for the purpose of constructing "at a time of their choosing" a single-family home "to serve as a permanent, retirement or *313 vacation residence," id., at 36. When they made those purchases, they did so with the understanding that such construction was authorized provided that "they complied with all reasonable requirements for building." Ibid.5

**1474 [4] Petitioners' complaints gave rise to protracted litigation that has produced four opinions by the Court of Appeals for the Ninth Circuit and several published District Court opinions.6 For present purposes, however, we need only describe those courts' disposition of the claim that three actions taken by TRPA-Ordinance 81-5, Resolution 83-21, and the 1984 regional plan—constituted takings of petitioners' property without just compensation. Indeed, the challenge to the 1984 plan is not before us because both the District Court and the Court of Appeals held that it was the federal injunction against implementing that plan, rather than the plan itself, that caused the post-1984 injuries that petitioners allegedly suffered, and those rulings are not encompassed within our limited grant of certiorari.8 Thus, *314 we limit our discussion to the lower courts' disposition of the claims based on the 2-year moratorium (Ordinance 81–5) and the ensuing 8-month moratorium (Resolution 83-21).

^[5] The District Court began its constitutional analysis by identifying the distinction between a direct government appropriation of property without just compensation and a government regulation that imposes such a severe restriction on the owner's use of her property that it produces "nearly the same result as a direct appropriation." 34 F.Supp.2d, at 1238. The court noted that all of the claims in this case "are of the 'regulatory takings' variety." [Id., at 1239. Citing our decision in Agins v. City of Tiburon, 447 U.S. 255, 100 S.Ct. 2138, 65 L.Ed.2d 106 (1980), it then stated that a "regulation will constitute a taking when either: (1) it does not substantially advance a legitimate state interest; or (2) it denies the owner economically viable use of her land." 34 F.Supp.2d, at 1239. The District Court rejected the first alternative based on its finding that "further development on high hazard lands such as [petitioners'] would lead to significant additional damage to the lake." Pald., at 1240.9 With **1475 respect *315 to the second alternative, the court first considered whether the analysis adopted in Penn Central Transp. Co. v. New York City, 438 U.S. 104, 98 S.Ct. 2646, 57 L.Ed.2d 631 (1978), would lead to the conclusion that TRPA had effected a "partial taking," and then whether those actions had effected a "total taking."10

Emphasizing the temporary nature of the regulations, the testimony that the "average holding time of a lot in the Tahoe area between lot purchase and home construction is twenty-five years," and the failure of petitioners to offer specific evidence of harm, the District Court concluded that "consideration of the *Penn Central* factors clearly leads to the conclusion that there was no taking."

regarding any of the individual plaintiffs, the court evaluated the "average" purchasers' intent and found that such purchasers "did not have reasonable, investment-backed expectations that they would be able to build single-family homes on their land within the six-year period involved in this lawsuit."

*316 The District Court had more difficulty with the "total taking" issue. Although it was satisfied that petitioners' property did retain some value during the moratoria, 12 it found that they had been temporarily deprived of "all economically viable use of their land." Id., at 1245. The court concluded that those actions therefore constituted "categorical" takings under our decision in Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 112 S.Ct. 2886, 120 L.Ed.2d 798 (1992). It rejected TRPA's response that Ordinance 81-5 and Resolution 83–21 were "reasonable temporary planning moratoria" that should be excluded from Lucas' categorical approach. The court thought it "fairly clear" that such interim actions would not have been viewed as takings prior to our decisions in *Lucas* and *First* English Evangelical Lutheran Church of Glendale v. County of Los Angeles, 482 U.S. 304, 107 S.Ct. 2378, 96 L.Ed.2d 250 (1987), because "[z]oning boards, cities, counties and other agencies used them all the time to 'maintain the status quo pending study and governmental decision making.' " 34 F.Supp.2d, at 1248–1249 (quoting Williams v. Central, 907 P.2d 701, 706 (Colo.App.1995)). After expressing uncertainty as to whether those cases required a holding that moratoria on development automatically effect takings, the court concluded that TRPA's actions did so, partly because neither the ordinance nor the resolution, even though intended to be temporary **1476 from the beginning, contained an *317 express termination date. 234 F.Supp.2d, at 1250–1251.13 Accordingly, it ordered TRPA to pay damages to most petitioners for the 32-month period from August 24, 1981, to April 25, 1984, and to those owning class 1, 2, or 3 property in Nevada for the 8-month period from August 27, 1983, to April 25, 1984. *Id.*, at 1255.

Both parties appealed. TRPA successfully challenged the District Court's takings determination, and petitioners unsuccessfully challenged the dismissal of their claims based on the 1984 and 1987 plans. Petitioners did not, however, challenge the District Court's findings or conclusions concerning its application of *Penn Central*.

With respect to the two moratoria, the Ninth Circuit noted that petitioners had expressly disavowed an argument "that the regulations constitute a taking under the ad hoc balancing approach described in Penn Central" and that they did not "dispute that the restrictions imposed on their properties are appropriate means of securing the purpose set forth in the Compact."14 Accordingly, the only question before the court was "whether the rule set forth in Lucas applies—that is, whether a categorical *318 taking occurred because Ordinance 81-5 and Resolution 83-21 denied the plaintiffs 'all economically beneficial or productive use of land.' " 216 F.3d 764, 773 (C.A.9 2000). Moreover, because petitioners brought only a facial challenge, the narrow inquiry before the Court of Appeals was whether the mere enactment of the regulations constituted a taking.

Contrary to the District Court, the Court of Appeals held that because the regulations had only a temporary impact on petitioners' fee interest in the properties, no categorical taking had occurred. It reasoned:

"Property interests may have many different dimensions. For example, the dimensions of a property interest may include a physical dimension (which describes the size and shape of the property in question), a functional dimension (which describes the extent to which an owner may use or dispose of the property in question), and a temporal dimension (which describes the duration of the property interest). At base, the plaintiffs' argument is that we should conceptually sever each plaintiff's fee interest into discrete segments in at least one of these dimensions—the temporal one—and treat each of those segments as separate and distinct property interests for purposes of takings analysis. Under this theory, they argue that there was a categorical taking of one of those temporal segments." *Id.*, at 774.

Putting to one side "cases of physical invasion or occupation," *ibid.*, the court read our cases involving regulatory taking claims to focus on the impact of a regulation on the parcel as a whole. In its view a "planning regulation that prevents the development of a parcel for a temporary period of time is conceptually no different than a land-use restriction that permanently denies all use on a discrete portion of property, or that permanently restricts **1477 a type *319 of use across all of the parcel." *Id.*, at 776. In each situation, a regulation that affects only a portion of the parcel—whether limited by time, use, or space—does not deprive the owner of all economically beneficial use.¹⁵

The Court of Appeals distinguished Lucas as applying to

the "'relatively rare' " case in which a regulation denies all productive use of an entire parcel, whereas the moratoria involve only a "temporal 'slice' " of the fee interest and a form of regulation that is widespread and well established. 216 F.3d, at 773-774. It also rejected petitioners' argument that our decision in First English was controlling. According to the Court of Appeals, First English concerned the question whether compensation is an appropriate remedy for a temporary taking and not whether or when such a taking has occurred. 216 F.3d, at 778. Faced squarely with the question whether a taking had occurred, the court held that Penn Central was the appropriate framework for analysis. Petitioners, however, had failed to challenge the District *320 Court's conclusion that they could not make out a taking claim under the Penn Central factors.

Over the dissent of five judges, the Ninth Circuit denied a petition for rehearing en banc. 228 F.3d 998 (C.A.9 2000). In the dissenters' opinion, the panel's holding was not faithful to this Court's decisions in *First English* and *Lucas*, nor to Justice Holmes admonition in *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 416, 43 S.Ct. 158, 67 L.Ed. 322 (1922), that "'a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change.' "228 F.3d, at 1003. Because of the importance of the case, we granted certiorari limited to the question stated at the beginning of this opinion. 533 U.S. 948, 121 S.Ct. 2589, 150 L.Ed.2d 749 (2001). We now affirm.

III

Petitioners make only a facial attack on Ordinance 81–5 and Resolution 83–21. They contend that the mere enactment of a temporary regulation that, while in effect, denies a property owner all viable economic use of her property gives rise to an unqualified constitutional obligation to compensate her for the value of its use during that period. Hence, they "face an uphill battle," **Keystone Bituminous Coal Assn. v. DeBenedictis, 480 U.S. 470, 495, 107 S.Ct. 1232, 94 L.Ed.2d 472 (1987), that is made especially steep by their desire for a categorical rule requiring compensation whenever the government imposes such a moratorium on development. Under their proposed rule, there is no need to evaluate the landowners' investment-backed expectations, the actual

impact of the regulation on any individual, the importance of the public interest served by the regulation, or **1478 the reasons for imposing the temporary restriction. For petitioners, it is enough that a regulation imposes a temporary deprivation—no matter how brief—of all economically viable use to trigger a *per se* rule that a taking has occurred. Petitioners assert that our opinions in *First English* and *Lucas* have *321 already endorsed their view, and that it is a logical application of the principle that the Takings Clause was "designed to bar Government from forcing some people alone to bear burdens which, in all fairness and justice, should be borne by the public as a whole."

**Armstrong v. United States, 364 U.S. 40, 49, 80 S.Ct. 1563, 4 L.Ed.2d 1554 (1960).

their proposed categorical rule—indeed, fairly read, they implicitly reject it. Next, we shall explain why the *Armstrong* principle requires rejection of that rule as well as the less extreme position advanced by petitioners at oral argument. In our view the answer to the abstract question whether a temporary moratorium effects a taking is neither "yes, always" nor "no, never"; the answer depends upon the particular circumstances of the case. 16 Resisting "[t]he temptation to adopt what amount to *per se* rules in either direction," Palazzolo v. Rhode Island, 533 U.S. 606, 636, 121 S.Ct. 2448, 150 L.Ed.2d 592 (2001) (O'CONNOR, J., concurring), we conclude that the circumstances in this case are best analyzed within the *Penn Central* framework.

IV

basis for drawing a distinction between physical takings and regulatory takings. Its plain language requires the payment of compensation whenever the government acquires private property for a public purpose, whether the acquisition is the result of a condemnation proceeding or a physical appropriation. But the Constitution contains no comparable reference to regulations that prohibit a property owner from *322 making certain uses of her private property.¹⁷ Our jurisprudence involving condemnations and physical takings is as old as the Republic and, for the most part, involves the straightforward application of *per se* rules. Our regulatory takings jurisprudence, in contrast, is of more recent vintage and is characterized by "essentially ad hoc,

factual inquiries," Penn Central, 438 U.S., at 124, 98 S.Ct. 2646, designed to allow "careful examination and weighing of all the relevant circumstances." Palazzolo, 533 U.S., at 636, 121 S.Ct. 2448 (O'CONNOR, J., concurring).

[9] [10] When the government physically takes possession of an interest in property for some public purpose, it has a categorical duty to compensate the former owner, United States v. Pewee Coal Co., 341 U.S. 114, 115, 71 S.Ct. 670, 95 L.Ed. 809 (1951), regardless of whether the interest that is taken constitutes an entire parcel or merely a part thereof. Thus, compensation is mandated when a leasehold is taken and the government occupies **1479 the property for its own purposes, even though that use is temporary. United States v. General Motors Corp., 323 U.S. 373, 65 S.Ct. 357, 89 L.Ed. 311 (1945); United States v. Petty Motor Co., 327 U.S. 372, 66 S.Ct. 596, 90 L.Ed. 729 (1946). Similarly, when the government appropriates part of a rooftop in order to provide cable TV access for apartment tenants, Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 102 S.Ct. 3164, 73 L.Ed.2d 868 (1982); or when its planes use private airspace to approach a government airport, United States v. Causby, 328 U.S. 256, 66 S.Ct. 1062, 90 L.Ed. 1206 (1946), it is required to pay for that share no matter how small. But a government regulation that merely prohibits landlords from evicting *323 tenants unwilling to pay a higher rent, Block v. Hirsh, 256 U.S. 135, 41 S.Ct. 458, 65 L.Ed. 865 (1921); that bans certain private uses of a portion of an owner's property, Village of Euclid v. Ambler Realty Co., 272 U.S. 365, 47 S.Ct. 114, 71 L.Ed. 303 (1926); Keystone Bituminous Coal Assn. v. DeBenedictis, 480 U.S. 470, 107 S.Ct. 1232, 94 L.Ed.2d 472 (1987); or that forbids the private use of certain airspace, Penn Central Transp. Co. v. New York City, 438 U.S. 104, 98 S.Ct. 2646, 57 L.Ed.2d 631 (1978), does not constitute a categorical taking. "The first category of cases requires courts to apply a clear rule; the second necessarily entails complex factual assessments of the purposes and economic effects of government actions." Yee v. Escondido, 503 U.S. 519, 523, 112 S.Ct. 1522, 118 L.Ed.2d 153 (1992). See also Loretto, 458 U.S., at 440, 102 S.Ct. 3164; Keystone, 480 U.S., at 489, n. 18, 107 S.Ct. 1232.

^[11] ^[12] ^[13] This longstanding distinction between acquisitions of property for public use, on the one hand, and regulations prohibiting private uses, on the other, makes it inappropriate to treat cases involving physical

takings as controlling precedents for the evaluation of a claim that there has been a "regulatory taking," 18 and vice versa. For the same reason that we do not ask whether a physical appropriation advances a substantial government interest or whether it deprives the owner of all economically valuable use, we do not apply our precedent from the physical takings context *324 to regulatory takings claims. Land-use regulations are ubiquitous and most of them impact property values in some tangential way-often in completely unanticipated ways. Treating them all as per se takings would transform government regulation into a luxury few governments could afford. By contrast, physical appropriations are relatively rare, easily identified, and usually represent a greater affront to individual property rights.¹⁹ **1480 "This case does not present the 'classi[c] taking' in which the government directly appropriates private property for its own use," Eastern Enterprises v. Apfel, 524 U.S. 498, 522, 118 S.Ct. 2131, 141 L.Ed.2d 451 (1998); instead the interference with property rights "arises from some public program adjusting the benefits and burdens of economic *325 life to promote the common good," Penn Central, 438 U.S., at 124, 98 S.Ct. 2646.

Perhaps recognizing this fundamental distinction, petitioners wisely do not place all their emphasis on analogies to physical takings cases. Instead, they rely principally on our decision in **Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 112 S.Ct. 2886, 120 L.Ed.2d 798 (1992)—a regulatory takings case that, nevertheless, applied a categorical rule—to argue that the *Penn Central* framework is inapplicable here. A brief review of some of the cases that led to our decision in *Lucas*, however, will help to explain why the holding in that case does not answer the question presented here.

[14] [15] As we noted in Lucas, it was Justice Holmes' opinion in Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 43 S.Ct. 158, 67 L.Ed. 322 (1922),20 that gave birth to our regulatory takings jurisprudence.21 *326 In subsequent opinions we have repeatedly and consistently endorsed Holmes' observation that "if regulation goes too far it will be recognized as a taking." Id., at 415, 43 S.Ct. 158. Justice Holmes did not provide a standard for determining when a regulation goes "too far," but he did reject the view expressed **1481 in Justice Brandeis' dissent that there could not be a taking because the property remained in the possession of the owner and had not been appropriated or used by the public.22 After Mahon, neither a physical appropriation nor a public use has ever been a necessary component of a "regulatory taking."

"generally eschewed" any set formula for determining how far is too far, choosing instead to engage in "essentially ad hoc, factual inquiries.' "Lucas, 505 U.S., at 1015, 112 S.Ct. 2886 (quoting Penn Central, 438 U.S., at 124, 98 S.Ct. 2646). Indeed, we still resist the temptation to adopt per se rules in our cases involving partial regulatory takings, preferring to examine "a number of factors" rather than a simple "mathematically precise" formula.²³ Justice Brennan's opinion for the Court in Penn *327 Central did, however, make it clear that even though multiple factors are relevant in the analysis of regulatory takings claims, in such cases we must focus on "the parcel as a whole":

"'Taking' jurisprudence does not divide a single parcel into discrete segments and attempt to determine whether rights in a particular segment have been entirely abrogated. In deciding whether a particular governmental action has effected a taking, this Court focuses rather both on the character of the action and on the nature and extent of the interference with rights in the parcel as a whole—here, the city tax block designated as the 'landmark site.'"

Id., at 130–131, 98 S.Ct. 2646.

This requirement that "the aggregate must be viewed in its entirety" explains why, for example, a regulation that prohibited commercial transactions in eagle feathers, but did not bar other uses or impose any physical invasion or restraint upon them, was not a taking. Andrus v. Allard, 444 U.S. 51, 66, 100 S.Ct. 318, 62 L.Ed.2d 210 (1979). It also clarifies why restrictions on the use of only limited portions of the parcel, such as setback ordinances, Gorieb v. Fox, 274 U.S. 603, 47 S.Ct. 675, 71 L.Ed. 1228 (1927), or a requirement that coal pillars be left in place to prevent mine subsidence, Kevstone Bituminous Coal Assn. v. DeBenedictis, 480 U.S., at 498, 107 S.Ct. 1232, were not considered regulatory takings. In each of these cases, we affirmed that "where an owner possesses a full 'bundle' of property rights, the destruction of one 'strand' of the bundle is not a taking." Andrus, 444 U.S., at 65–66, 100 S.Ct. 318.

*328 While the foregoing cases considered whether particular regulations had "gone too far" and were therefore invalid, none **1482 of them addressed the separate remedial question of how compensation is measured once a regulatory taking is established. In his dissenting opinion in San Diego Gas & Elec. Co. v. San Diego, 450 U.S. 621, 636, 101 S.Ct. 1287, 67

L.Ed.2d 551 (1981), Justice Brennan identified that question and explained how he would answer it:

"The constitutional rule I propose requires that, once a court finds that a police power regulation has effected a 'taking,' the government entity must pay just compensation for the period commencing on the date the regulation first effected the 'taking,' and ending on the date the government entity chooses to rescind or otherwise amend the regulation." Id., at 658, 101 S.Ct. 1287.

Justice Brennan's proposed rule was subsequently endorsed by the Court in First English, 482 U.S., at 315, 318, 321, 107 S.Ct. 2378. First English was certainly a significant decision, and nothing that we say today qualifies its holding. Nonetheless, it is important to recognize that we did not address in that case the quite different and logically prior question whether the temporary regulation at issue had in fact constituted a taking.

In First English, the Court unambiguously and repeatedly characterized the issue to be decided as a "compensation question" or a "remedial question." Id., at 311, 107 S.Ct. 2378 ("The disposition of the case on these grounds isolates the remedial question for our consideration"); see also id., at 313, 318, 107 S.Ct. 2378. And the Court's statement of its holding was equally unambiguous: "We merely hold that where the government's activities have already worked a taking of all use of property, no subsequent action by the government can relieve it of the duty to provide compensation for the period during which the taking was effective." Id., at 321, 107 S.Ct. 2378 (emphasis added). In fact, First English expressly disavowed any ruling on the *329 merits of the takings issue because the California courts had decided the remedial question on the assumption that a taking had been alleged. Id., at 312-313, 107 S.Ct. 2378 ("We reject appellee's suggestion that ... we must independently evaluate the adequacy of the complaint and resolve the takings claim on the merits before we can reach the remedial question"). After our remand, the California courts concluded that there had not been a taking, First English Evangelical Church of Glendale v. County of Los Angeles, 210 Cal.App.3d 1353, 258 Cal.Rptr. 893 (1989), and we declined review of that decision, 493 U.S. 1056, 110 S.Ct. 866, 107 L.Ed.2d 950 (1990).

To the extent that the Court in *First English* referenced the antecedent takings question, we identified two reasons why a regulation temporarily denying an owner all use of

her property might not constitute a taking. First, we recognized that "the county might avoid the conclusion that a compensable taking had occurred by establishing that the denial of all use was insulated as a part of the State's authority to enact safety regulations." 482 U.S., at 313, 107 S.Ct. 2378. Second, we limited our holding "to the facts presented" and recognized "the quite different questions that would arise in the case of normal delays in obtaining building permits, changes in zoning ordinances, variances, and the like which [were] not before us." *Id.*, at 321, 107 S.Ct. 2378. Thus, our decision in *First English* surely did not approve, and implicitly rejected, the categorical submission that petitioners are now advocating.

Similarly, our decision in *Lucas* is not dispositive of the question presented. Although Lucas endorsed and applied a categorical rule, it was not the one that petitioners propose. Lucas purchased two residential lots in 1988 for \$975,000. These lots were rendered "valueless" by a statute enacted two years later. The trial court found that a taking had occurred and ordered compensation of \$1,232,387.50, representing the value of the fee simple estate, plus interest. As the statute read **1483 at the time of the trial, it effected a taking that "was unconditional and permanent." *330 505 U.S., at 1012, 112 S.Ct. 2886. While the State's appeal was pending, the statute was amended to authorize exceptions that might have allowed Lucas to obtain a building permit. Despite the fact that the amendment gave the State Supreme Court the opportunity to dispose of the appeal on ripeness grounds, it resolved the merits of the permanent takings claim and reversed. Since "Lucas had no reason to proceed on a 'temporary taking' theory at trial," we decided the case on the permanent taking theory that both the trial court and the State Supreme Court had addressed. Ibid.

The categorical rule that we applied in *Lucas* states that compensation is required when a regulation deprives an owner of "all economically beneficial uses" of his land.

Id., at 1019, 112 S.Ct. 2886. Under that rule, a statute that "wholly eliminated the value" of Lucas' fee simple title clearly qualified as a taking. But our holding was limited to "the extraordinary circumstance when *no* productive or economically beneficial use of land is permitted."

Id., at 1017, 112 S.Ct. 2886. The emphasis on the word "no" in the text of the opinion was, in effect, reiterated in a footnote explaining that the categorical rule would not apply if the diminution in value were 95% instead of 100%.

Id., at 1019, n. 8, 112 S.Ct. 2886.²⁴ Anything less than a "complete elimination of value," or a "total loss," the Court acknowledged, would require the

kind of analysis applied in *Penn Central*. Lucas, 505 U.S., at 1019–1020, n. 8, 112 S.Ct. 2886.²⁵

[19] Certainly, our holding that the permanent "obliteration of the value" of a fee simple estate constitutes a categorical taking does not answer the question whether a regulation *331 prohibiting any economic use of land for a 32-month period has the same legal effect. Petitioners seek to bring this case under the rule announced in Lucas by arguing that we can effectively sever a 32-month segment from the remainder of each landowner's fee simple estate, and then ask whether that segment has been taken in its entirety by the moratoria. Of course, defining the property interest taken in terms of the very regulation being challenged is circular. With property so divided, every delay would become a total ban; the moratorium and the normal permit process alike would constitute categorical takings. Petitioners' "conceptual severance" argument is unavailing because it ignores Penn Central's admonition that in regulatory takings cases we must focus on "the parcel as a whole." 438 U.S., at 130–131, 98 S.Ct. 2646. We have consistently rejected such an approach to the "denominator" question. Keystone, 480 U.S., at 497, 107 S.Ct. 1232. See also Concrete Pipe & Products of Cal., Inc. v. Construction Laborers Pension Trust for Southern Cal., 508 U.S. 602, 644, 113 S.Ct. 2264, 124 L.Ed.2d 539 (1993) ("To the extent that any portion of property is taken, that portion is always taken in its entirety; the relevant question, however, is whether the property taken is all, or only a portion of, the parcel in question"). Thus, the District Court erred when it disaggregated petitioners' property into temporal segments corresponding to the regulations at issue and then analyzed whether petitioners were deprived of all economically viable use during each period. 24 F.Supp.2d, at 1242–1245. The starting point for the court's analysis should have been to ask whether there was a total taking of the **1484 entire parcel; if not, then Penn Central was the proper framework.26

| 120 | 121 | An interest in real property is defined by the metes and bounds that describe its geographic dimensions and the *332 term of years that describes the temporal aspect of the owner's interest. See Restatement of Property §§ 7–9 (1936). Both dimensions must be considered if the interest is to be viewed in its entirety. Hence, a permanent deprivation of the owner's use of the entire area is a taking of "the parcel as a whole," whereas a temporary restriction that merely causes a diminution in value is not. Logically, a fee simple estate cannot be rendered valueless by a temporary prohibition on economic use,

because the property will recover value as soon as the prohibition is lifted. Cf. Agins v. City of Tiburon, 447 U.S., at 263, n. 9, 100 S.Ct. 2138 ("Even if the appellants' ability to sell their property was limited during the pendency of the condemnation proceeding, the appellants were free to sell or develop their property when the proceedings ended. Mere fluctuations in value during the process of governmental decisionmaking, absent extraordinary delay, are 'incidents of ownership. They cannot be considered as a "taking" in the constitutional sense' " (quoting Danforth v. United States, 308 U.S. 271, 285, 60 S.Ct. 231, 84 L.Ed. 240 (1939))).

leaving taking cases compels us to accept petitioners' categorical submission. In fact, these cases make clear that the categorical rule in *Lucas* was carved out for the "extraordinary case" in which a regulation permanently deprives property of all value; the default rule remains that, in the regulatory taking context, we require a more fact specific inquiry. Nevertheless, we will consider whether the interest in protecting individual property owners from bearing public burdens "which, in all fairness and justice, should be borne by the public as a whole," *Armstrong v. United States*, 364 U.S., at 49, 80 S.Ct. 1563, justifies creating a new rule for these circumstances.²⁷

*333 V

Considerations of "fairness and justice" arguably could support the conclusion that TRPA's moratoria were takings of petitioners' property based on any of seven different theories. First, even though we have not previously done so, we might now announce a categorical rule that, in the interest of fairness and justice, compensation is required whenever government temporarily deprives an owner of all economically viable use of her property. Second, we could craft a narrower rule that would cover all temporary land-use restrictions except those "normal delays in obtaining building permits, changes in zoning ordinances, variances, and the like" which were put to one side in our opinion in First English, 482 U.S., at 321, 107 S.Ct. 2378. Third, we could adopt a rule like the one suggested by an amicus supporting petitioners that would "allow a short fixed period for deliberations to take place without compensation—say maximum one year—after which the

just compensation requirements" would "kick in."28 Fourth, **1485 with the benefit of hindsight, we might characterize the successive actions of TRPA as a "series of rolling moratoria" that were the functional equivalent of a permanent taking.²⁹ Fifth, were it not for the findings of the District Court that TRPA acted diligently and in good faith, we might have concluded that the agency was stalling in order to avoid promulgating the environmental threshold carrying capacities and regional plan mandated by the 1980 Compact. Cf. Monterey v. Del Monte Dunes at *334 Monterey, Ltd., 526 U.S. 687, 698, 119 S.Ct. 1624, 143 L.Ed.2d 882 (1999). Sixth, apart from the District Court's finding that TRPA's actions represented a proportional response to a serious risk of harm to the lake, petitioners might have argued that the moratoria did not substantially advance a legitimate state interest, see Agins and Monterey. Finally, if petitioners had challenged the application of the moratoria to their individual parcels, instead of making a facial challenge, some of them might have prevailed under a *Penn Central* analysis.

[23] [24] [25] As the case comes to us, however, none of the last four theories is available. The "rolling moratoria" theory was presented in the petition for certiorari, but our order granting review did not encompass that issue, 533 U.S. 948, 121 S.Ct. 2589, 150 L.Ed.2d 749 (2001); the case was tried in the District Court and reviewed in the Court of Appeals on the theory that each of the two moratoria was a separate taking, one for a 2-year period and the other for an 8-month period. 216 F.3d, at 769. And, as we have already noted, recovery on either a bad faith theory or a theory that the state interests were insubstantial is foreclosed by the District Court's unchallenged findings of fact. Recovery under a Penn Central analysis is also foreclosed both because petitioners expressly disavowed that theory, and because they did not appeal from the District Court's conclusion that the evidence would not support it. Nonetheless, each of the three per se theories is fairly encompassed within the question that we decided to answer.

l²⁶ With respect to these theories, the ultimate constitutional question is whether the concepts of "fairness and justice" that underlie the Takings Clause will be better served by one of these categorical rules or by a *Penn Central* inquiry into all of the relevant circumstances in particular cases. From that perspective, the extreme categorical rule that any deprivation of all economic use, no matter how brief, constitutes a compensable taking surely cannot be sustained. Petitioners' broad submission would apply to numerous *335 "normal delays in obtaining building permits, changes in zoning ordinances, variances, and the like,"

482 U.S., at 321, 107 S.Ct. 2378, as well as to orders temporarily prohibiting access to crime scenes, businesses that violate health codes, fire-damaged buildings, or other areas that we cannot now foresee. Such a rule would undoubtedly require changes in numerous practices that have long been considered permissible exercises of the police power. As Justice Holmes warned in Mahon, "[g]overnment hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law." 260 U.S., at 413, 43 S.Ct. 158. A rule that required compensation for every delay in the use of property would render routine government processes prohibitively expensive or encourage hasty decisionmaking. Such an important change in the law should be the product of legislative rulemaking rather than adjudication.30

**1486 [27] [28] More importantly, for reasons set out at some length by Justice O'CONNOR in her concurring opinion in Palazzolo v. Rhode Island, 533 U.S., at 636, 121 S.Ct. 2448, we are persuaded that the better approach to claims that a regulation has effected a temporary taking "requires careful examination and weighing of all the relevant circumstances." In that opinion, Justice O'CONNOR specifically considered the role that the "temporal relationship between regulatory enactment and title acquisition" should play in the 2448. We have no occasion to address that particular issue in this case, because it involves a different *336 temporal relationship—the distinction between a temporary restriction and one that is permanent. Her comments on the "fairness and justice" inquiry are, nevertheless, instructive:

"Today's holding does not mean that the timing of the regulation's enactment relative to the acquisition of title is immaterial to the *Penn Central* analysis. Indeed, it would be just as much error to expunge this consideration from the takings inquiry as it would be to accord it exclusive significance. Our polestar instead remains the principles set forth in *Penn Central* itself and our other cases that govern partial regulatory takings. Under these cases, interference with investment-backed expectations is one of a number of factors that a court must examine. ...

"The Fifth Amendment forbids the taking of private property for public use without just compensation. We have recognized that this constitutional guarantee is "designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." "Penn Central, [438 U.S.], at 123–124[, 98

S.Ct. 2646] (quoting Armstrong v. United States, 364 U.S. 40, 49[, 80 S.Ct. 1563, 4 L.Ed.2d 1554] (1960)). The concepts of 'fairness and justice' that underlie the Takings Clause, of course, are less than fully determinate. Accordingly, we have eschewed 'any "set formula" for determining when "justice and fairness" require that economic injuries caused by public action be compensated by the government, rather than remain disproportionately concentrated on a few persons.' Penn Central, supra, at 124[, 98 S.Ct. 2646] (quoting Goldblatt v. Hempstead, 369 U.S. 590, 594[, 82 S.Ct. 987, 8 L.Ed.2d 130] (1962)). The outcome instead 'depends largely "upon the particular circumstances [in that] case." Penn Central, supra, at 124[, 98 S.Ct. 2646] (quoting United States v. Central Eureka Mining Co., 357 U.S. 155, 168[, 78 S.Ct. 1097, 2 L.Ed.2d 1228] (1958))." *Id.*, at 633, 121 S.Ct. 2448.

*337 In rejecting petitioners' *per se* rule, we do not hold that the temporary nature of a land-use restriction precludes finding that it effects a taking; we simply recognize that it should not be given exclusive significance one way or the other.

A narrower rule that excluded the normal delays associated with processing permits, or that covered only delays of more than a year, would certainly have a less severe impact on prevailing practices, but it would still impose serious financial constraints on the planning process.31 Unlike **1487 the "extraordinary circumstance" in which the government deprives a property owner of all economic use, Lucas, 505 U.S., at 1017, 112 S.Ct. 2886, moratoria like Ordinance 81-5 and Resolution 83–21 are used widely among land-use planners to preserve the status quo while formulating a more permanent development strategy.32 In fact, the consensus in the planning community *338 appears to be that moratoria, or "interim development controls" as they are often called, are an essential tool of successful development.33 Yet even the weak version of petitioners' categorical rule would treat these interim measures as takings regardless of the good faith of the planners, the reasonable expectations of the landowners, or the actual impact of the moratorium on property values.34

*339 The interest in facilitating informed decisionmaking by regulatory agencies counsels against adopting a *per se* rule that would impose such severe costs on their deliberations. Otherwise, the financial **1488 constraints of compensating property owners during a moratorium may force officials to rush through the planning process

or to abandon the practice altogether. To the extent that communities are forced to abandon using moratoria, landowners will have incentives to develop their property quickly before a comprehensive plan can be enacted, thereby fostering inefficient and ill-conceived growth. A finding in the 1980 Compact itself, which presumably was endorsed by all three legislative bodies that participated in its enactment, attests to the importance of that concern. 94 Stat. 3243 ("The legislatures of the States of California and Nevada find that in order to make effective the regional plan as revised by the agency, it is necessary to halt temporarily works of development in the region which might otherwise absorb the entire capability of the region for further development or direct it out of harmony with the ultimate plan").

As Justice KENNEDY explained in his opinion for the Court in *Palazzolo*, it is the interest in informed decisionmaking that underlies our decisions imposing a strict ripeness requirement on landowners asserting regulatory takings claims:

"These cases stand for the important principle that a landowner may not establish a taking before a land-use authority has the opportunity, using its own reasonable procedures, to decide and explain the reach of a challenged regulation. Under our ripeness rules a takings claim based on a law or regulation which is alleged to go too far in burdening property depends upon the landowner's first having followed reasonable *340 and necessary steps to allow regulatory agencies to exercise their full discretion in considering development plans for the property, including the opportunity to grant any variances or waivers allowed by law. As a general rule, until these ordinary processes have been followed the extent of the restriction on property is not known and a regulatory taking has not yet been established. See Suitum [v. Tahoe Regional Planning Agency, 520 U.S. 725, 736, and n. 10, 117 S.Ct. 1659, 137 L.Ed.2d 980 (1997)] (noting difficulty of demonstrating that 'mere enactment' of regulations restricting land use effects a taking)." 533 U.S., at 620–621, 121 S.Ct. 2448.

We would create a perverse system of incentives were we to hold that landowners must wait for a takings claim to ripen so that planners can make well-reasoned decisions while, at the same time, holding that those planners must compensate landowners for the delay.

Indeed, the interest in protecting the decisional process is even stronger when an agency is developing a regional plan than when it is considering a permit for a single parcel. In the proceedings involving the Lake Tahoe

Basin, for example, the moratoria enabled TRPA to obtain the benefit of comments and criticisms from interested parties, such as the petitioners, during its deliberations.³⁵ Since a categorical rule tied to the length of deliberations would likely create added pressure on decisionmakers to reach a quick resolution of land-use questions, it would only serve to disadvantage those landowners and interest groups who are not as organized *341 or familiar with the planning process. Moreover, with a temporary ban on development there is a lesser risk that individual landowners will be "singled out" to bear a special burden that should be shared by the public as a whole. Nollan v. California **1489 Coastal Comm'n, 483 U.S. 825, 835, 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987). At least with a moratorium there is a clear "reciprocity of advantage," Mahon, 260 U.S., at 415, 43 S.Ct. 158, because it protects the interests of all affected landowners against immediate construction that might be inconsistent with the provisions of the plan that is ultimately adopted. "While each of us is burdened somewhat by such restrictions, we, in turn, benefit greatly from the restrictions that are placed on others." Keystone, 480 U.S., at 491, 107 S.Ct. 1232. In fact, there is reason to believe property values often will continue to increase despite a moratorium. See, e.g., Growth Properties, Inc. v. Klingbeil Holding Co., 419 F.Supp. 212, 218 (D.Md.1976) (noting that land values could be expected to increase 20% during a 5-year moratorium on development). Cf. Forest Properties. Inc. v. United States, 177 F.3d 1360, 1367 (C.A.Fed.1999) (record showed that market value of the entire parcel increased despite denial of permit to fill and develop lake-bottom property). Such an increase makes sense in this context because property values throughout the Basin can be expected to reflect the added assurance that Lake Tahoe will remain in its pristine state. Since in some cases a 1-year moratorium may not impose a burden at all, we should not adopt a rule that assumes moratoria always force individuals to bear a special burden that should be shared by the public as a whole.

lt may well be true that any moratorium that lasts for more than one year should be viewed with special skepticism. But given the fact that the District Court found that the 32 months required by TRPA to formulate the 1984 Regional Plan was not unreasonable, we could not possibly conclude that every delay of over one year is constitutionally *342 unacceptable.³⁶ Formulating a general rule of this kind is a suitable task for state legislatures.³⁷ In our view, the duration of the restriction is one of the important factors that a court must consider in the appraisal of a regulatory takings claim, but with respect to that factor as with respect to other factors, the

"temptation to adopt what amount to per se rules in either direction must be resisted." Palazzolo, 533 U.S., at 636, 121 S.Ct. 2448 (O'CONNOR, J., concurring). There may be moratoria that last longer than one year which interfere with reasonable investment-backed expectations, but as the District Court's opinion illustrates, petitioners' proposed rule is simply "too blunt an instrument" for identifying those cases. Vec conclude, therefore, that the interest in "fairness and justice" will be best served by relying on the familiar Penn Central approach when deciding cases like this, rather than by attempting to craft a new categorical rule.

**1490 *343 Accordingly, the judgment of the Court of Appeals is affirmed.

It is so ordered.

Chief Justice REHNQUIST, with whom Justice SCALIA and Justice THOMAS join, dissenting.

For over half a decade petitioners were prohibited from building homes, or any other structures, on their land. Because the Takings Clause requires the government to pay compensation when it deprives owners of all economically viable use of their land, see **Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 112 S.Ct. 2886, 120 L.Ed.2d 798 (1992), and because a ban on all development lasting almost six years does not resemble any traditional land-use planning device, I dissent.

I

"A court cannot determine whether a regulation has gone 'too far' unless it knows how far the regulation goes."

MacDonald, Sommer & Frates v. Yolo County, 477

U.S. 340, 348, 106 S.Ct. 2561, 91 L.Ed.2d 285 (1986) (citing Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 415, 43 S.Ct. 158, 67 L.Ed. 322 (1922)). In failing to undertake this inquiry, the Court *344 ignores much of the impact of respondent's conduct on petitioners. Instead, it relies on the flawed determination of the Court

of Appeals that the relevant time period lasted only from August 1981 until April 1984. *Ante,* at 1473, 1474. During that period, Ordinance 81–5 and Regulation 83–21 prohibited development pending the adoption of a new regional land-use plan. The adoption of the 1984 Regional Plan (hereinafter Plan or 1984 Plan) did not, however, change anything from petitioners' standpoint. After the adoption of the 1984 Plan, petitioners still could make no use of their land.

The Court of Appeals disregarded this post-April 1984 deprivation on the ground that respondent did not "cause" it. In a 42 U.S.C. § 1983 action, "the plaintiff must demonstrate that the defendant's conduct was the actionable cause of the claimed injury." 216 F.3d 764, 783 (C.A.9 2000). Applying this principle, the Court of Appeals held that the 1984 Plan did not amount to a taking because the Plan actually allowed permits to issue for the construction of single-family residences. Those permits were never issued because the District Court immediately issued a temporary restraining order, and later a permanent injunction that lasted until 1987, prohibiting the approval of any building projects under the 1984 Plan. Thus, the Court of Appeals concluded that the "1984 Plan itself could not have constituted a taking," because it was the injunction, not the Plan, that prohibited development during this period. —Id., at 784. The Court of Appeals is correct that the 1984 Plan did not cause petitioners' injury. But that is the right answer to the wrong question. The causation question is not limited to whether the 1984 Plan caused petitioners' **1491 injury; the question is whether respondent caused petitioners' injury.

requirement in the context of a regulatory takings claim, though language in Penn Central Transp. Co. v. New York City, 438 U.S. 104, 98 S.Ct. 2646, 57 L.Ed.2d 631 (1978), suggests that ordinary principles of proximate cause *345 govern the causation inquiry for takings claims. Id., at 124, 98 S.Ct. 2646. The causation standard does not require much elaboration in this case, because respondent was undoubtedly the "moving force" behind petitioners' inability to build on their land from August 1984 through 1987. Monell v. New York City Dept. of Social Servs., 436 U.S. 658, 694, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978) (\$ 1983 causation established when government action is the "moving force" behind the alleged constitutional violation). The injunction in this case issued because the 1984 Plan did not comply with the 1980 Tahoe Regional Planning Compact (Compact)

and regulations issued pursuant to the Compact. And, of course, respondent is responsible for the Compact and its regulations.

On August 26, 1982, respondent adopted Resolution 82-11. That resolution established "environmental thresholds for water quality, soil conservation, air quality, vegetation preservation, wildlife, fisheries, noise, recreation, and scenic resources." California v. Tahoe Regional Planning Agency, 766 F.2d 1308, 1311 (C.A.9 1985). The District Court enjoined the 1984 Plan in part because the Plan would have allowed 42,000 metric tons of soil per year to erode from some of the single-family residences, in excess of the Resolution 82-11 threshold for soil conservation. Id., at 1315; see also id., at 1312. Another reason the District Court enjoined the 1984 Plan was that it did not comply with article V(g) of the Compact, which requires a finding, "with respect to each project, that the project will not cause the established [environmental] thresholds to be exceeded." *Ibid.* Thus, the District Court enjoined the 1984 Plan because the Plan did not comply with the environmental requirements of respondent's regulations and of the Compact itself.

Respondent is surely responsible for its own regulations, and it is also responsible for the Compact as it is the governmental agency charged with administering the Compact. Compact, Art. I(c), 94 Stat 3234. It follows that respondent was the "moving force" behind petitioners' inability to develop *346 their land from April 1984 through the enactment of the 1987 plan. Without the environmental thresholds established by the Compact and Resolution 82–11, the 1984 Plan would have gone into effect and petitioners would have been able to build single-family residences. And it was certainly foreseeable that development projects exceeding the environmental thresholds would be prohibited; indeed, that was the very purpose of enacting the thresholds.

Because respondent caused petitioners' inability to use their land from 1981 through 1987, that is the appropriate period of time from which to consider their takings claim.

II

I now turn to determining whether a ban on all economic development lasting almost six years is a taking. *Lucas* reaffirmed our "frequently expressed" view that "when the owner of real property has been called upon to

sacrifice all economically beneficial uses in the name of the common good, that is, to leave his property economically idle, he has suffered a taking." 505 U.S., at 1019, 112 S.Ct. 2886. See also Agins v. City of Tiburon, 447 U.S. 255, 258-259, 100 S.Ct. 2138, 65 L.Ed.2d 106 (1980). The District Court in this case held that the ordinances and resolutions in effect between August 24, 1981, and April 25, 1984, "did in fact deny the plaintiffs all economically viable use of their land." ²4 F.Supp.2d 1226, 1245 (D.Nev.1999). The Court of Appeals did not overturn this **1492 finding. And the 1984 injunction, issued because the environmental thresholds issued by respondent did not permit the development of single-family residences, forced petitioners to leave their land economically idle for at least another three years. The Court does not dispute that petitioners were forced to leave their land economically idle during this period. See *ante*, at 1473. But the Court refuses to apply Lucas on the ground that the deprivation was "temporary."

Neither the Takings Clause nor our case law supports such a distinction. For one thing, a distinction between *347 "temporary" and "permanent" prohibitions is tenuous. The "temporary" prohibition in this case that the Court finds is not a taking lasted almost six years.² The "permanent" prohibition that the Court held to be a taking in Lucas lasted less than two years. See 505 U.S., at 1011-1012, 112 S.Ct. 2886. The "permanent" prohibition in Lucas lasted less than two years because the law, as it often does, changed. The South Carolina Legislature in 1990 decided to amend the 1988 Beachfront Management Act to allow the issuance of "'special permits' for the construction or reconstruction of habitable structures seaward of the baseline." Id., at 1011–1012, 112 S.Ct. 2886. Land-use regulations are not irrevocable. And the government can even abandon condemned land. See United States v. Dow, 357 U.S. 17, 26, 78 S.Ct. 1039, 2 L.Ed.2d 1109 (1958). Under the Court's decision today, the takings question turns entirely on the initial label given a regulation, a label that is often without much meaning. There is every incentive for government to simply label any prohibition on development "temporary," or to fix a set number of years. As in this case, this initial designation does not preclude the government from repeatedly extending the "temporary" prohibition into a long-term ban on all development. The Court now holds that such a designation by the government is conclusive even though in fact the moratorium greatly exceeds the time initially specified. Apparently, the Court would not view even a 10-year moratorium as a taking under Lucas because the moratorium is not "permanent."

Our opinion in First English Evangelical Lutheran Church of Glendale v. County of Los Angeles, 482 U.S. 304, 107 S.Ct. 2378, 96 L.Ed.2d 250 (1987), rejects any distinction between temporary and permanent takings when a landowner is deprived of all economically beneficial use of his land. First English stated that "temporary takings which, as here, deny a landowner all use of his property, are not different in kind from permanent *348 takings, for which the Constitution clearly requires compensation." Id., at 318, 107 S.Ct. 2378. Because of First English's rule that "temporary deprivations of use are compensable under the Takings Clause," the Court in Lucas found nothing problematic about the later developments that potentially made the ban on development temporary. 505 U.S., at 1011–1012, 112 S.Ct. 2886 (citing First English, supra); see also 505 U.S., at 1033, 112 S.Ct. 2886 (KENNEDY, J., concurring in judgment) ("It is well established that temporary takings are as protected by the Constitution as are permanent ones" (citing First English, supra, at 318, 107 S.Ct. 2378)).

More fundamentally, even if a practical distinction between temporary and permanent deprivations were plausible, to treat the two differently in terms of takings law would be at odds with the justification for the Lucas rule. The Lucas rule is derived from the fact that a "total deprivation of beneficial use is, from the landowner's point of view, the equivalent of a physical appropriation." 505 U.S., at 1017, 112 S.Ct. 2886. The regulation in Lucas was the "practical equivalence" of a long-term physical appropriation, i.e., a condemnation, so the Fifth Amendment required **1493 compensation. The "practical equivalence," from the landowner's point of view, of a "temporary" ban on all economic use is a forced leasehold. For example, assume the following situation: Respondent is contemplating the creation of a National Park around Lake Tahoe to preserve its scenic beauty. Respondent decides to take a 6-year leasehold over petitioners' property, during which any human activity on the land would be prohibited, in order to prevent any further destruction to the area while it was deciding whether to request that the area be designated a National Park.

Surely that leasehold would require compensation. In a series of World War II-era cases in which the Government had condemned leasehold interests in order to support the war effort, the Government conceded that it was required *349 to pay compensation for the leasehold

interest.³ See United States v. Petty Motor Co., 327 U.S. 372, 66 S.Ct. 596, 90 L.Ed. 729 (1946); United States v. General Motors Corp., 323 U.S. 373, 376, 65 S.Ct. 357, 89 L.Ed. 311 (1945). From petitioners' standpoint, what happened in this case is no different than if the government had taken a 6-year lease of their property. The Court ignores this "practical equivalence" between respondent's deprivation and the deprivation resulting from a leasehold. In so doing, the Court allows the government to "do by regulation what it cannot do through eminent domain—i.e., take private property without paying for it." 228 F.3d 998, 999 (C.A.9 2000) (Kozinski, J., dissenting from denial of rehearing en banc).

Instead of acknowledging the "practical equivalence" of this case and a condemned leasehold, the Court analogizes to other areas of takings law in which we have distinguished between regulations and physical appropriations, see ante, at 1478-1479. But whatever basis there is for such distinctions in those contexts does not apply when a regulation deprives a landowner of all economically beneficial use of his land. In addition to the "practical equivalence" from the landowner's perspective of such a regulation and a physical appropriation, we have held that a regulation denying all productive use of land does not implicate the traditional justification for differentiating between regulations and physical appropriations. In "the extraordinary circumstance when no productive or economically beneficial use of land is permitted," it is less likely that "the legislature is simply *350 'adjusting the benefits and burdens of economic life' ... in a manner that secures an 'average reciprocity of advantage' to everyone concerned," Lucas, supra, at 1017–1018, 112 S.Ct. 2886 (quoting Penn Central Transp. Co. v. New York City, 438 U.S., at 124, 98 S.Ct. 2646, and Pennsylvania Coal Co. v. Mahon, 260 U.S., at 415, 43 S.Ct. 158), and more likely that the property "is being pressed into some form of public service under the guise of mitigating serious public harm," Lucas, supra, at 1018, 112 S.Ct. 2886.

The Court also reads *Lucas* as being fundamentally concerned with value, *ante*, at 1482–1484, rather than with the denial of "all economically beneficial or productive use of land," 505 U.S., at 1015, 112 S.Ct. 2886. But *Lucas* repeatedly discusses its holding as applying where "no productive or economically beneficial use of land is permitted." Id., at 1017, 112 S.Ct. 2886; see also *ibid*. ("[T]otal deprivation of beneficial use is, from the landowner's **1494 point of view, the

equivalent of a physical appropriation"); -id., at 1016, 112 S.Ct. 2886 ("[T]he Fifth Amendment is violated when land-use regulation ... denies an owner economically viable use of his land"); id., at 1018, 112 S.Ct. 2886 ("[T]he functional basis for permitting the government, by regulation, to affect property values without compensation ... does not apply to the relatively rare situations where the government has deprived a landowner of all economically beneficial uses"); ibid. ("[T]he fact that regulations that leave the owner of land without economically beneficial or productive options for its use ... carry with them a heightened risk that private property is being pressed into some form of public service"); -id., at 1019, 112 S.Ct. 2886 ("[W]hen the owner of real property has been called upon to sacrifice all economically beneficial uses in the name of the common good, that is, to leave his property economically idle, he has suffered a taking"). Moreover, the Court's position that value is the sine qua non of the Lucas rule proves too much. Surely, the land at issue in Lucas retained some market value based on the contingency, which soon came to fruition (see supra, at 1492), that the development ban would be amended.

*351 Lucas is implicated when the government deprives a landowner of "all economically beneficial or productive use of land." 505 U.S., at 1015, 112 S.Ct. 2886. The District Court found, and the Court agrees, that the moratorium "temporarily" deprived petitioners of "all economically viable use of their land." Ante, at 1475. Because the rationale for the Lucas rule applies just as strongly in this case, the "temporary" denial of all viable use of land for six years is a taking.

Ш

The Court worries that applying *Lucas* here compels finding that an array of traditional, short-term, land-use planning devices are takings. *Ante*, at 1485, 1486–1487. But since the beginning of our regulatory takings jurisprudence, we have recognized that property rights "are enjoyed under an implied limitation." *Mahon, supra,* at 413, 43 S.Ct. 158. Thus, in *Lucas*, after holding that the regulation prohibiting all economically beneficial use of the coastal land came within our categorical takings rule, we nonetheless inquired into whether such a result "inhere[d] in the title itself, in the restrictions that

background principles of the State's law of property and nuisance already place upon land ownership." 505 U.S., at 1029, 112 S.Ct. 2886. Because the regulation at issue in *Lucas* purported to be permanent, or at least long term, we concluded that the only implied limitation of state property law that could achieve a similar long-term deprivation of all economic use would be something "achieved in the courts—by adjacent landowners (or other uniquely affected persons) under the State's law of private nuisance, or by the State under its complementary power to abate nuisances that affect the public generally, or otherwise."

When a regulation merely delays a final land-use decision, we have recognized that there are other background principles of state property law that prevent the delay from being deemed a taking. We thus noted in First English that our discussion of temporary takings did not apply "in the case *352 of normal delays in obtaining building permits, changes in zoning ordinances, variances, and the like." 482 U.S., at 321, 107 S.Ct. 2378. We reiterated this last Term: "The right to improve property, of course, is subject to the reasonable exercise of state authority, including the enforcement of valid zoning and land-use restrictions." Palazzolo v. Rhode Island, 533 U.S. 606, 627, 121 S.Ct. 2448, 150 L.Ed.2d 592 (2001). Zoning regulations existed as far back as colonial Boston, see Treanor, The Original Understanding of the Takings Clause and the Political Process, 95 Colum. L.Rev. 782, 789 (1995), and New York City enacted the first comprehensive zoning ordinance in 1916, see 1 **1495 Anderson's American Law of Zoning § 3.07, p. 92 (K. Young rev. 4th ed.1995). Thus, the short-term delays attendant to zoning and permit regimes are a longstanding feature of state property law and part of a landowner's reasonable investment-backed expectations. See Lucas, supra, at 1034, 112 S.Ct. 2886 (KENNEDY, J., concurring in judgment).

But a moratorium prohibiting all economic use for a period of six years is not one of the longstanding, implied limitations of state property law. Moratoria are "interim controls on the use of land that seek to maintain the status quo with respect to land development in an area by either 'freezing' existing land uses or by allowing the issuance of building permits for only certain land uses that would not be inconsistent with a contemplated zoning plan or zoning change." 1 E. Ziegler, Rathkopf's The Law of Zoning and *353 Planning § 13:3, p. 13–6 (4th ed.2001). Typical moratoria thus prohibit only certain categories of development, such as fast-food restaurants, see

Schafer v. New Orleans, 743 F.2d 1086 (C.A.5 1984), or adult businesses, see Renton v. Playtime Theatres, Inc., 475 U.S. 41, 106 S.Ct. 925, 89 L.Ed.2d 29 (1986), or all commercial development, see Arnold Bernhard & Co. v. Planning & Zoning Comm'n, 194 Conn. 152, 479 A.2d 801 (1984). Such moratoria do not implicate *Lucas* because they do not deprive landowners of all economically beneficial use of their land. As for moratoria that prohibit all development, these do not have the lineage of permit and zoning requirements and thus it is less certain that property is acquired under the "implied limitation" of a moratorium prohibiting all development. Moreover, unlike a permit system in which it is expected that a project will be approved so long as certain conditions are satisfied, a moratorium that prohibits all uses is by definition contemplating a new land-use plan that would prohibit all uses.

But this case does not require us to decide as a categorical matter whether moratoria prohibiting all economic use are an implied limitation of state property law, because the duration of this "moratorium" far exceeds that of ordinary moratoria. As the Court recognizes, ante, at 1489, n. 37, state statutes authorizing the issuance of moratoria often limit the moratoria's duration. California, where much of the land at issue in this case is located, provides that a moratorium "shall be of no further force and effect 45 days from its date of adoption," and caps extension of the moratorium so that the total duration cannot exceed two years. Cal. Govt.Code Ann. § 65858(a) (West Supp.2002); see also Minn.Stat. § 462.355, subd. 4 (2000) (limiting moratoria to 18 months, with one permissible extension, for a total of two years). Another State limits moratoria to 120 days, with the possibility of a single 6-month extension. Ore.Rev.Stat. Ann. § 197.520(4) (1997). Others limit moratoria to six *354 months without any possibility of an extension. See Colo.Rev.Stat. § 30-28-121 (2001); N.J. Stat. Ann. § 40:55D-90(b) (1991).5 Indeed, it has long been understood that moratoria on development exceeding these short time periods are not **1496 a legitimate planning device. See, e.g., Holdsworth v. Hague, 9 N.J.Misc. 715, 155 A. 892 (1931).

Resolution 83–21 reflected this understanding of the limited duration of moratoria in initially limiting the moratorium in this case to 90 days. But what resulted—a "moratorium" lasting nearly six years—bears no resemblance to the short-term nature of traditional moratoria as understood from these background examples of state property law.

Because the prohibition on development of nearly six

years in this case cannot be said to resemble any "implied limitation" of state property law, it is a taking that requires compensation.

* * *

Lake Tahoe is a national treasure, and I do not doubt that respondent's efforts at preventing further degradation of the lake were made in good faith in furtherance of the public interest. But, as is the case with most governmental action that furthers the public interest, the Constitution requires that the costs and burdens be borne by the public at large, not by a few targeted citizens. Justice Holmes' admonition of 80 years ago again rings true: "We are in danger of forgetting that a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change."

Mahon, 260 U.S., at 416, 43 S.Ct. 158.

*355 Justice THOMAS, with whom Justice SCALIA joins, dissenting.

I join THE CHIEF JUSTICE's dissent. I write separately to address the majority's conclusion that the temporary moratorium at issue here was not a taking because it was not a "taking of 'the parcel as a whole.' " Ante, at 1484. While this questionable rule* has been applied to various alleged regulatory takings, it was, in my view, rejected in the context of temporal deprivations of property by First English Evangelical Lutheran Church of Glendale v. County of Los Angeles, 482 U.S. 304, 318, 107 S.Ct. 2378, 96 L.Ed.2d 250 (1987), which held that temporary and permanent takings "are not different in kind" when a landowner is deprived of all beneficial use of his land. I had thought that First English put to rest the notion that the "relevant denominator" is land's infinite life. Consequently, a regulation effecting a total deprivation of the use of a so-called "temporal slice" of property is compensable under the Takings Clause unless

background principles of state property law prevent it from being deemed a taking; "total deprivation of use is, from the landowner's point of view, the equivalent of a physical appropriation." Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 1017, 112 S.Ct. 2886, 120 L.Ed.2d 798 (1992).

A taking is exactly what occurred in this case. No one seriously doubts that the land-use regulations at issue rendered petitioners' land unsusceptible of any economically beneficial use. This was true at the inception of the moratorium, *356 and it remains true today. These individuals and families were deprived of the opportunity to build single-family homes as permanent, retirement, or vacation residences on land upon which such construction was authorized when purchased. The Court assures them that "a temporary prohibition on economic use" cannot be a taking because **1497 "[1]ogically ... the property will recover value as soon as the prohibition is lifted." Ante, at 1484. But the "logical" assurance that a "temporary restriction ... merely causes a diminution in value," ibid., is cold comfort to the property owners in this case or any other. After all, "[i]n the long run we are all dead." J. Keynes, Monetary Reform 88 (1924).

I would hold that regulations prohibiting all productive uses of property are subject to *Lucas* ' *per se* rule, regardless of whether the property so burdened retains theoretical useful life and value if, and when, the "temporary" moratorium is lifted. To my mind, such potential future value bears on the amount of compensation due and has nothing to do with the question whether there was a taking in the first place. It is regrettable that the Court has charted a markedly different path today.

All Citations

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Footnotes

The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Timber & Lumber Co., 200 U.S. 321, 337, 26 S.Ct. 282,

50 L.Ed. 499.

- Often referred to as the "Just Compensation Clause," the final Clause of the Fifth Amendment provides: "... nor shall private property be taken for public use without just compensation." It applies to the States as well as the Federal Government. Chicago, B. & Q.R. Co. v. Chicago, 166 U.S. 226, 239, 241, 17 S.Ct. 581, 41 L.Ed. 979 (1897); Webb's Fabulous Pharmacies, Inc. v. Beckwith, 449 U.S. 155, 160, 101 S.Ct. 446, 66 L.Ed.2d 358 (1980).
- According to a Senate Report: "Only two other sizable lakes in the world are of comparable quality—Crater Lake in Oregon, which is protected as part of the Crater Lake National Park, and Lake Baikal in the [former] Soviet Union. Only Lake Tahoe, however, is so readily accessible from large metropolitan centers and is so adaptable to urban development." S.Rep. No. 91–510, pp. 3–4 (1969)S.Rep. No. 91–510, pp. 3–4 (1969).
- The District Court added: "Or at least, for a very, very long time. Estimates are that, should the lake turn green, it could take over 700 years for it to return to its natural state, if that were ever possible at all." \$\frac{1}{2} \frac{3}{4}\$ F.Supp.2d, at 1231.
- App. 104–107. This moratorium did not apply to rights that had vested before the effective date of the 1980 Compact. *Id.*, at 107–108. Two months after the 1980 Compact became effective, TRPA adopted its Ordinance 81–1 broadly defining the term "project" to include the construction of any new residence and requiring owners of land in districts 1, 2, or 3, to get a permit from TRPA before beginning construction of homes on their property. F.Supp.2d 1226, 1233 (D.Nev.1999).
- As explained *supra*, at 1471–1472, the petitioners who purchased land after the 1972 compact did so amidst a heavily regulated zoning scheme. Their property was already classified as part of land capability districts 1, 2, and 3, or SEZ land. And each land classification was subject to regulations as to the degree of artificial disturbance the land could safely sustain.
- ⁶ 911 F.2d 1331 (1990); 938 F.2d 153 (1991); 34 F.3d 753 (1994); 216 F.3d 764 (2000); 611 F.Supp. 110 (1985); 808 F.Supp. 1474 (1992); 808 F.Supp. 1484 (1992).
- In 1991, petitioners amended their complaint to allege that the adoption of the 1987 plan also constituted an unconstitutional taking. Ultimately both the District Court and the Court of Appeals held that this claim was barred by California's 1–year statute of limitations and Nevada's 2–year statute of limitations. See 216 F.3d, at 785–789. Although the validity of the 1987 plan is not before us, we note that other litigants have challenged certain applications of that plan. See Suitum v. Tahoe Regional Planning Agency, 520 U.S. 725, 117 S.Ct. 1659, 137 L.Ed.2d 980 (1997).

- In his dissent, THE CHIEF JUSTICE contends that the 1984 plan is before us because the 1980 Compact is a proximate cause of petitioners' injuries, *post*, at 1490–1491. Petitioners, however, do not challenge the Court of Appeals' holding on causation in their briefs on the merits, presumably because they understood when we granted certiorari on the question "[w]hether the Court of Appeals properly determined that a temporary moratorium on land development does not constitute a taking of property requiring compensation under the Takings Clause of the United States Constitution," 533 U.S. 948, 121 S.Ct. 2589, 150 L.Ed.2d 749 (2001), we were only interested in the narrow question decided today. Throughout the District Court and Court of Appeals decisions the phrase "temporary moratorium" refers to two things and two things only: Ordinance 81–5 and Resolution 83–21. The dissent's novel theory of causation was not briefed, nor was it discussed during oral argument.
- As the District Court explained: "There is a direct connection between the potential development of plaintiffs' lands and the harm the lake would suffer as a result thereof. Further, there has been no suggestion by the plaintiffs that any less severe response would have adequately addressed the problems the lake was facing. Thus it is difficult to see how a more proportional response could have been adopted. Given that TRPA's actions had widespread application, and were not aimed at an individual landowner, the plaintiffs would appear to bear the burden of proof on this point. They have not met this burden—nor have they really attempted to do so. Although unwilling to stipulate to the fact that TRPA's actions substantially advanced a legitimate state interest, the plaintiffs did not seriously contest the matter at trial."
- The *Penn Central* analysis involves "a complex of factors including the regulation's economic effect on the landowner, the extent to which the regulation interferes with reasonable investment-backed expectations, and the character of the government action." *Palazzolo v. Rhode Island,* 533 U.S. 606, 617, 121 S.Ct. 2448, 150 L.Ed.2d 592 (2001).
- The court stated that petitioners "had plenty of time to build before the restrictions went into effect—and almost everyone in the Tahoe Basin knew in the late 1970s that a crackdown on development was in the works." In addition, the court found "the fact that no evidence was introduced regarding the specific diminution in value of any of the plaintiffs' individual properties clearly weighs against a finding that there was a partial taking of the plaintiffs' property."

 34 F.Supp.2d, at 1241.
- The pretrial order describes purchases by the United States Forest Service of private lots in environmentally sensitive areas during the periods when the two moratoria were in effect. During the 2–year period ending on August 26, 1983, it purchased 215 parcels in California at an average price of over \$19,000 and 45 parcels in Nevada at an average price of over \$39,000; during the ensuing 8–month period, it purchased 167 California parcels at an average price of over \$29,000 and 27 Nevada parcels at an average price of over \$41,000. App. 76–77. Moreover, during those periods some owners sold sewer and building allocations to owners of higher capability lots "for between \$15,000 and \$30,000." *Id.*, at 77.
- Ordinance 81–5 specified that it would terminate when the regional plan became finalized. And Resolution 83–21 was limited to 90 days, but was renewed for an additional term. Nevertheless, the District Court distinguished these measures from true "temporary" moratoria because there was no fixed date for when they would terminate.

34 F.Supp.2d, at 1250–1251.

Lucas [v. South Carolina Coastal Council, 505 U.S. 1003, 112 S.Ct. 2886, 120 L.Ed.2d 798 (1992)]. See Tahoe–Sierra Preservation Council, 34 F.Supp.2d at 1238–1245. The defendants appealed the district court's latter holding, but the plaintiffs did not appeal the former. And even if arguments regarding the Penn Central test were fairly encompassed by the defendants' appeal, the plaintiffs have stated explicitly on this appeal that they do not argue that the regulations constitute a taking under the ad hoc balancing approach described in Penn Central." 216 F.3d, at 773.

15 The Court of Appeals added:

"Each of these three types of regulation will have an impact on the parcel's value, because each will affect an aspect of the owner's 'use' of the property—by restricting when the 'use' may occur, where the 'use' may occur, or how the 'use' may occur. Prior to Agins [v. City of Tiburon, 447 U.S. 255, 100 S.Ct. 2138, 65 L.Ed.2d 106 (1980)], the Court had already rejected takings challenges to regulations eliminating all 'use' on a portion of the property, and to regulations restricting the type of 'use' across the breadth of the property. See Penn Central, 438 U.S. at 130–31[, 98 S.Ct. 2646] ...; Keystone Bituminous Coal Ass'n, 480 U.S. at 498–99[, 107 S.Ct. 1232] ...; Village of Euclid v. Ambler Realty Co., 272 U.S. 365, 384, 397[, 47 S.Ct. 114, 71 L.Ed. 303] ... (1926) (75% diminution in value caused by zoning law); see also William C. Haas & Co. v. City & County of San Francisco, 605 F.2d 1117, 1120 (9th Cir.1979) (value reduced from \$2,000,000 to \$100,000). In those cases, the Court 'uniformly reject[ed] the proposition that diminution in property value, standing alone, can establish a "taking.' Penn Central, 438 U.S. at 131[, 98 S.Ct. 2646] ...; see also Concrete Pipe and Products, Inc. v. Construction Laborers Pension Trust, 508 U.S. 602, 645[, 113 S.Ct. 2264, 124 L.Ed.2d 539] ... (1993). There is no plausible basis on which to distinguish a similar diminution in value that results from a temporary suspension of development."

- Despite our clear refusal to hold that a moratorium never effects a taking, THE CHIEF JUSTICE accuses us of "allow[ing] the government to '... take private property without paying for it,' " post, at 1493. It may be true that under a Penn Central analysis petitioners' land was taken and compensation would be due. But petitioners failed to challenge the District Court's conclusion that there was no taking under Penn Central. Supra, at 1476, and n. 14.
- In determining whether government action affecting property is an unconstitutional deprivation of ownership rights under the Just Compensation Clause, a court must interpret the word "taken." When the government condemns or physically appropriates the property, the fact of a taking is typically obvious and undisputed. When, however, the owner contends a taking has occurred because a law or regulation imposes restrictions so severe that they are tantamount to a condemnation or appropriation, the predicate of a taking is not self-evident, and the analysis is more complex.
- To illustrate the importance of the distinction, the Court in Loretto, 458 U.S., at 430, 102 S.Ct. 3164, compared two wartime takings cases, United States v. Pewee Coal Co., 341 U.S. 114, 116, 71 S.Ct. 670, 95 L.Ed. 809 (1951),

in which there had been an "actual taking of possession and control" of a coal mine, and **United States v. Central Eureka Mining Co., 357 U.S. 155, 78 S.Ct. 1097, 2 L.Ed.2d 1228 (1958), in which, "by contrast, the Court found no taking where the Government had issued a wartime order requiring nonessential gold mines to cease operations" 458 U.S., at 431, 102 S.Ct. 3164. Loretto then relied on this distinction in dismissing the argument that our discussion of the physical taking at issue in the case would affect landlord-tenant laws. "So long as these regulations do not require the landlord to suffer the physical occupation of a portion of his building by a third party, they will be analyzed under the multifactor inquiry generally applicable to nonpossessory governmental activity." Id., at 440, 102 S.Ct. 3164 (citing **Penn Central**).

According to THE CHIEF JUSTICE's dissent, even a temporary, use-prohibiting regulation should be governed by our physical takings cases because, under Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 1017, 112 S.Ct. 2886, 120 L.Ed.2d 798 (1992), "from the landowner's point of view," the moratorium is the functional equivalent of a forced leasehold, post, at 1493. Of course, from both the landowner's and the government's standpoint there are critical differences between a leasehold and a moratorium. Condemnation of a leasehold gives the government possession of the property, the right to admit and exclude others, and the right to use it for a public purpose. A regulatory taking, by contrast, does not give the government any right to use the property, nor does it dispossess the owner or affect her right to exclude others.

THE CHIEF JUSTICE stretches "Lucas' "equivalence" language too far. For even a regulation that constitutes only a minor infringement on property may, from the landowner's perspective, be the functional equivalent of an appropriation. Lucas carved out a narrow exception to the rules governing regulatory takings for the "extraordinary circumstance" of a permanent deprivation of all beneficial use. The exception was only partially justified based on the "equivalence" theory cited by THE CHIEF JUSTICE's dissent. It was also justified on the theory that, in the "relatively rare situations where the government has deprived a landowner of all economically beneficial uses," it is less realistic to assume that the regulation will secure an "average reciprocity of advantage," or that government could not go on if required to pay for every such restriction. 505 U.S., at 1017–1018, 112 S.Ct. 2886. But as we explain, infra, at 1487–1489, these assumptions hold true in the context of a moratorium.

- The case involved "a bill in equity brought by the defendants in error to prevent the Pennsylvania Coal Company from mining under their property in such way as to remove the supports and cause a subsidence of the surface and of their house." Mahon, 260 U.S., at 412, 43 S.Ct. 158. Mahon sought to prevent Pennsylvania Coal from mining under his property by relying on a state statute, which prohibited any mining that could undermine the foundation of a home. The company challenged the statute as a taking of its interest in the coal without compensation.
- In *Lucas*, we explained: "Prior to Justice Holmes's exposition in Pennsylvania Coal Co. v. Mahon, 260 U.S. 393[, 43 S.Ct. 158, 67 L.Ed. 322] (1922), it was generally thought that the Takings Clause reached only a 'direct appropriation' of property, Legal Tender Cases, 12 Wall. 457, 551[, 20 L.Ed. 287] (1871), or the functional equivalent of a 'practical ouster of [the owner's] possession,' Transportation Co. v. Chicago, 99 U.S. 635, 642[, 25 L.Ed. 336] (1879). ... Justice Holmes recognized in Mahon, however, that if the protection against physical appropriations of private property was to be meaningfully enforced, the government's power to redefine the range of interests included in the ownership of property was necessarily constrained by constitutional limits. 260 U.S., at 414–415[, 43 S.Ct. 158]. If, instead, the uses of private property were subject to unbridled, uncompensated qualification under the police power, 'the natural tendency of human nature [would be] to extend the qualification

more and more until at last private property disappear[ed].' — Id., at 415[, 43 S.Ct. 158]. These considerations gave birth in that case to the oft-cited maxim that, 'while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking.' Ibid." — 505 U.S., at 1014, 112 S.Ct. 2886 (citation omitted).

- Justice Brandeis argued: "Every restriction upon the use of property imposed in the exercise of the police power deprives the owner of some right theretofore enjoyed, and is, in that sense, an abridgment by the State of rights in property without making compensation. But restriction imposed to protect the public health, safety or morals from dangers threatened is not a taking. The restriction here in question is merely the prohibition of a noxious use. The property so restricted remains in the possession of its owner. The State does not appropriate it or make any use of it. The State merely prevents the owner from making a use which interferes with paramount rights of the public."

 Mahon, 260 U.S., at 417, 43 S.Ct. 158 (dissenting opinion).
- In her concurring opinion in Palazzolo, 533 U.S., at 633, 121 S.Ct. 2448, Justice O'CONNOR reaffirmed this approach: "Our polestar instead remains the principles set forth in Penn Central itself and our other cases that govern partial regulatory takings. Under these cases, interference with investment-backed expectations is one of a number of factors that a court must examine." Plbid. "Penn Central does not supply mathematically precise variables, but instead provides important guideposts that lead to the ultimate determination whether just compensation is required." Id., at 634, 121 S.Ct. 2448. "The temptation to adopt what amount to per se rules in either direction must be resisted. The Takings Clause requires careful examination and weighing of all the relevant circumstances in this context."
- Justice KENNEDY concurred in the judgment on the basis of the regulation's impact on "reasonable, investment-backed expectations." 505 U.S., at 1034, 112 S.Ct. 2886.
- It is worth noting that *Lucas* underscores the difference between physical and regulatory takings. See *supra*, at 1478–1480. For under our physical takings cases it would be irrelevant whether a property owner maintained 5% of the value of her property so long as there was a physical appropriation of any of the parcel.
- THE CHIEF JUSTICE's dissent makes the same mistake by carving out a 6–year interest in the property, rather than considering the parcel as a whole, and treating the regulations covering that segment as analogous to a total taking under *Lucas*, *post*, at 1494.
- Armstrong, like Lucas, was a case that involved the "total destruction by the Government of all value" in a specific property interest. 364 U.S., at 48–49, 80 S.Ct. 1563. It is nevertheless perfectly clear that Justice Black's oft-quoted comment about the underlying purpose of the guarantee that private property shall not be taken for a public use without just compensation applies to partial takings as well as total takings.
- ²⁸ Brief for the Institute for Justice as Amicus Curiae 30. Although amicus describes the 1-year cutoff proposal as the

"better approach by far," *ibid.*, its primary argument is that *Penn Central* should be overruled, *id.*, at 20 ("All partial takings by way of land use restriction should be subject to the same prima facie rules for compensation as a physical occupation for a limited period of time").

- ²⁹ Brief for Petitioners 44. See also Pet. for Cert. i.
- In addition, we recognize the anomaly that would be created if we were to apply *Penn Central* when a landowner is permanently deprived of 95% of the use of her property, Lucas, 505 U.S., at 1019, n. 8, 112 S.Ct. 2886, and yet find a *per se* taking anytime the same property owner is deprived of all use for only five days. Such a scheme would present an odd inversion of Justice Holmes' adage: "A limit in time, to tide over a passing trouble, well may justify a law that could not be upheld as a permanent change."

 Block v. Hirsh, 256 U.S. 135, 157, 41 S.Ct. 458, 65 L.Ed. 865 (1921).
- Petitioners fail to offer a persuasive explanation for why moratoria should be treated differently from ordinary permit delays. They contend that a permit applicant need only comply with certain specific requirements in order to receive one and can expect to develop at the end of the process, whereas there is nothing the landowner subject to a moratorium can do but wait, with no guarantee that a permit will be granted at the end of the process. Brief for Petitioners 28. Setting aside the obvious problem with basing the distinction on a course of events we can only know after the fact—in the context of a facial challenge—petitioners' argument breaks down under closer examination because there is no guarantee that a permit will be granted, or that a decision will be made within a year. See, e.g., Dufau v. United States, 22 Cl.Ct. 156 (1990) (holding that 16—month delay in granting a permit did not constitute a temporary taking). Moreover, under petitioners' modified categorical rule, there would be no per se taking if TRPA simply delayed action on all permits pending a regional plan. Fairness and justice do not require that TRPA be penalized for achieving the same result, but with full disclosure.
- See, e.g., Santa Fe Village Venture v. Albuquerque, 914 F.Supp. 478, 483 (D.N.M.1995) (30-month moratorium on development of lands within the Petroglyph National Monument was not a taking); Williams v. Central, 907 P.2d 701, 703-706 (Colo.App.1995) (10-month moratorium on development in gaming district while studying city's ability to absorb growth was not a compensable taking);

 Woodbury Place Partners v. Woodbury, 492 N.W.2d 258 (Minn.App.1992) (moratorium pending review of plan for land adjacent to interstate highway was not a taking even though it deprived property owner of all economically viable use of its property for two years); **Dilber v.** Town of Moraga, 692 F.Supp. 1195 (N.D.Cal.1988) (18-month development moratorium during completion of a comprehensive scheme for open space did not require compensation). See also Wayman, Leaders Consider Options for Town Growth, Charlotte Observer, Feb. 3, 2002, p. 15M (describing 10-month building moratorium imposed "to give town leaders time to plan for development"); Wallman, City May Put Reins on Beach Projects, Sun-Sentinel, May 16, 2000, p. 1B (2-year building moratorium on beachfront property in Fort Lauderdale pending new height, width, and dispersal regulations); Foderaro, In Suburbs, They're Cracking Down on the Joneses, N.Y. Times, Mar. 19, 2001, p. A1 (describing moratorium imposed in Eastchester, New York, during a review of the town's zoning code to address the problem of oversized homes); Dawson, Commissioners recommend Aboite construction ban be lifted, Fort Wayne News Sentinel, May 4, 2001, p. 1A (3-year moratorium to allow improvements in the water and sewage treatment systems).

- See J. Juergensmeyer & T. Roberts, Land Use Planning and Control Law §§ 5.28(G) and 9.6 (1998); Garvin & Leitner, Drafting Interim Development Ordinances: Creating Time to Plan, 48 Land Use Law & Zoning Digest 3 (June 1996) ("With the planning so protected, there is no need for hasty adoption of permanent controls in order to avoid the establishment of nonconforming uses, or to respond in an ad hoc fashion to specific problems. Instead, the planning and implementation process may be permitted to run its full and natural course with widespread citizen input and involvement, public debate, and full consideration of all issues and points of view"); Freilich, Interim Development Controls: Essential Tools for Implementing Flexible Planning and Zoning, 49 J. Urb. L. 65 (1971).
- THE CHIEF JUSTICE offers another alternative, suggesting that delays of six years or more should be treated as *per se* takings. However, his dissent offers no explanation for why 6 years should be the cutoff point rather than 10 days, 10 months, or 10 years. It is worth emphasizing that we do not reject a categorical rule in this case because a 32–month moratorium is just not that harsh. Instead, we reject a categorical rule because we conclude that the *Penn Central* framework adequately directs the inquiry to the proper considerations—only one of which is the length of the delay.
- Petitioner Preservation Council, "through its authorized representatives, actively participated in the entire TRPA regional planning process leading to the adoption of the 1984 Regional Plan at issue in this action, and attended and expressed its views and concerns, orally and in writing, at each public hearing held by the Defendant TRPA in connection with the consideration of the 1984 Regional Plan at issue herein, as well as in connection with the adoption of Ordinance 81–5 and the Revised 1987 Regional Plan addressed herein." App. 24.
- We note that the temporary restriction that was ultimately upheld in the *First English* case lasted for more than six years before it was replaced by a permanent regulation. *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 210 Cal.App.3d 1353, 258 Cal.Rptr. 893 (1989).
- Several States already have statutes authorizing interim zoning ordinances with specific time limits. See Cal. Govt.Code Ann. § 65858 (West Supp.2002) (authorizing interim ordinance of up to two years); Colo.Rev.Stat. § 30–28–121 (2001) (six months); Ky.Rev.Stat. Ann. § 100.201 (2001) (one year); Mich. Comp. Laws Ann. § 125.215 (West 2001) (three years); Minn.Stat. § 394.34 (2000) (two years); N.H.Rev.Stat. Ann. § 674:23 (West 2001) (one year); Ore.Rev.Stat. Ann. § 197.520 (1997) (10 months); S.D. Codified Laws § 11–2–10 (2001) (two years); Utah Code Ann. § 17–27–404 (1995) (18 months); Wash. Rev.Code § 35.63.200 (2001); Wis. Stat. § 62.23(7)(d) (2001) (two years). Other States, although without specific statutory authority, have recognized that reasonable interim zoning ordinances may be enacted. See, e.g., S.E.W. Friel v. Triangle Oil Co., 76 Md.App. 96, 543 A.2d 863 (1988); New Jersey Shore Builders Assn. v. Dover Twp. Comm., 191 N.J.Super. 627, 468 A.2d 742 (1983); SCA Chemical Waste Servs., Inc. v. Konigsberg, 636 S.W.2d 430 (Tenn.1982); Sturges v. Chilmark, 380 Mass. 246, 402 N.E.2d 1346 (1980); Lebanon v. Woods, 153 Conn. 182, 215 A.2d 112 (1965).
- We are not bound by the Court of Appeals' determination that petitioners' claim under 42 U.S. C § 1983 (1994 ed., Supp. V) permitted only challenges to Ordinance 81–5 and Regulation 83–21. Petitioners sought certiorari on

the Court of Appeals' ruling that respondent Tahoe Regional Planning Agency (hereinafter respondent) did not cause petitioners' injury from 1984 to 1987. Pet. for Cert. 27–30. We did not grant certiorari on any of the petition's specific questions presented, but formulated the following question: "Whether the Court of Appeals properly determined that a temporary moratorium on land development does not constitute a taking of property requiring compensation under the Takings Clause of the United States Constitution?" 533 U.S. 948, 949, 121 S.Ct. 2589, 150 L.Ed.2d 749 (2001). This Court's Rule 14(1)(a) provides that a "question presented is deemed to comprise every subsidiary question fairly included therein." The question of how long the moratorium on land development lasted is necessarily subsumed within the question whether the moratorium constituted a taking. Petitioners did not assume otherwise. Their brief on the merits argues that respondent "effectively blocked all construction for the past two decades." Brief for Petitioners 7.

- Even under the Court's mistaken view that the ban on development lasted only 32 months, the ban in this case exceeded the ban in *Lucas*.
- There was no dispute that just compensation was required in those cases. The disagreement involved how to calculate that compensation. In **United States v. General Motors Corp., 323 U.S. 373, 65 S.Ct. 357, 89 L.Ed. 311 (1945), for example, the issues before the Court were how to value the leasehold interest (*i.e.*, whether the "long-term rental value [should be] the sole measure of the value of such short-term occupancy," **id., at 380, 65 S.Ct. 357), whether the Government had to pay for the respondent's removal of personal property from the condemned warehouse, and whether the Government had to pay for the reduction in value of the respondent's equipment and fixtures left in the warehouse. **Id., at 380–381, 65 S.Ct. 357.
- Six years is not a "cutoff point," ante, at 1487, n. 34; it is the length involved in this case. And the "explanation" for the conclusion that there is a taking in this case is the fact that a 6–year moratorium far exceeds any moratorium authorized under background principles of state property law. See *infra*, 1495, 1496. This case does not require us to undertake a more exacting study of state property law and discern exactly how long a moratorium must last before it no longer can be considered an implied limitation of property ownership (assuming, that is, that a moratorium on all development is a background principle of state property law, see *infra*, this page).
- These are just some examples of the state laws limiting the duration of moratoria. There are others. See, e.g., Utah Code Ann. §§ 17–27–404(3)(b)(i)–(ii) (1995) (temporary prohibitions on development "may not exceed six months in duration," with the possibility of extensions for no more than "two additional six-month periods"). See also ante, at 1486–1487, n. 31.
- The majority's decision to embrace the "parcel as a whole" doctrine as settled is puzzling. See, e.g., Palazzolo v. Rhode Island, 533 U.S. 606, 631, 121 S.Ct. 2448, 150 L.Ed.2d 592 (2001) (noting that the Court has "at times expressed discomfort with the logic of [the parcel as a whole] rule"); Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 1017, n. 7, 112 S.Ct. 2886, 120 L.Ed.2d 798 (1992) (recognizing that "uncertainty regarding the composition of the denominator in [the Court's] 'deprivation' fraction has produced inconsistent pronouncements by the Court," and that the relevant calculus is a "difficult question").

| Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional, 535 U.S. 302 (2002) |
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| 122 S.Ct. 1465, 54 ERC 1129, 152 L.Ed.2d 517, 70 USLW 4260 |

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November 15, 2024

Dear Volusia County City Mayors and Commissioners/Council members

As you have likely heard, I have placed a disc3ussion for a temporary moratorium on new residential development County wide. I have proposed an exemption for single homes built on private lots to continue with the approved storm water management plans and inclusion of storm water conveyance. I am asking for your support for this temporary moratorium so we can pause long enough to consider if and how our current development pattern, and carrying capacity, is affecting the property rights and quality of life of every Volusia County resident. It is my hope the temporary moratorium can be short and result in a better understanding of how we can manage stormwater without seeing further unintended damage. My greatest concern is for our constituents who have lost their most valuable investment in their homes and personal belongings. Each one of you serves because you care deeply about the quality of life for our constituents.

I have heard the concern expressed by members of our community that this is a drastic measure that will hurt our economy. The fact is that continuing with our current drain and fill development pattern has already caused undo economic damage and loss to a growing number of our constituents. Furthermore, it will itself be ruinous to our economy if we continue to build without assessing our flooding issues and the carrying capacity of our County to safely drain and hold excess water. It is no longer a problem just in 100- or 500-year storms, there are now areas flooding repeatedly after heavy seasonal rains. Each day we allow this to proceed without clear answers concerning the cause, prevention, and restoration is adding to the costs we already see no hope in paying. This is a difficult task to accomplish. Some of you have already had, or now have, temporary moratoriums in limited locations. Those were tough decisions you made for the benefit of your residents. I admire you for having the political courage to take those steps.

My hope is that we can all work together in solving this pressing problem that has caused so much suffering to our constituents already. I am asking for you to join me in this process because I have witnessed your concern for the people we serve. I believe Volusia County, including all our cities, have an opportunity to set a standard for the entire state in dealing with this statewide issue through a timely and constructive process that we develop together. Please call or email with any questions or concerns you may have. I want to hear your ideas.

Best regards,

Jeff Brower

Volusia County Chair





Meeting Date: 11/21/2024

Agenda Item: 16

Report to Town Council

Topic: From the Town Manager

Summary: Please see attached report.

Requested by: Mr. Disher, Town Manager

Approved by: Mr. Disher, Town Manager



MEMORANDUM OFFICE OF THE TOWN MANAGER

The Town of Ponce Inlet staff shall be professional, caring and fair in delivering community excellence while ensuring Ponce Inlet citizens obtain the greatest value for their tax dollar.

To: Town Council

From: Michael E. Disher, AICP, Town Manager

Date: November 12, 2024

Subject: Town Manager's Report

MEETING DATE: November 21, 2024

- 1. At its <u>November 19, 2024</u> meeting, in addition to the county-wide moratorium proposal, the County Council will consider the following:
 - <u>Item Z</u> Agreement with Volusia Sheriff's Office for parking enforcement in unincorporated areas east of the intercoastal. The agreement delegates enforcement of the County's parking rules to the County's parking vendor on county-owned or leased parking areas both inside and outside municipal boundaries.
 - <u>Item AA</u> Beach Special Event application 13th Annual Historic North Turn Legends Beach Parade on February 8, 2025. Due to the beach restoration project in 2025, the parade route will be a road course only, running down S. Atlantic Avenue into Lighthouse Point Park and back.
- 2. Public Works update:
 - The repair of the fence at the Ponce Inlet Historical Museum will begin the week of November 18th.
 - The Community Center roof repairs will be finished by Friday, November 15th.
 - Pond dredging by Sea Level Development, LLC was completed on November 8, 2024. The contractor also shaped the pond edges and will be adding new sod at no extra cost to the Town. Approximately 120 cubic yards of muck and silt were removed. The same contractor will be installing the one-way storm valves on Old Carriage Rd., Anchor Dr., and Front St. The valves are being manufactured and will be installed in the next few months.
 - The bids for the new emergency generators at the Community Center and the Fire station have been advertised. Following a state-mandated 45-day bid period, the bids for both will be opened on Monday, December 30th.

3. Hurricane Milton:

- We have made our application to FEMA for public assistance and are documenting all damage and storm-related activities for reimbursement.
- Debris hauling by Crowder Gulf started October 24th and finished November 9th. Over 7,000 cubic yards of debris were removed. We were able to reduce the pick-up time by having Public Works consolidate smaller piles for more efficient pick-up. Waste Pro continued to pick up yard waste in cans and bags per normal schedule.
- 4. October marked a significant milestone for the Fire Department by completing the draft of its Self-Assessment Manual (SAM). The Department welcomed a Technical Advisory Team from the Center for Public Safety Excellence for a "mock" accreditation site visit. This exercise offered invaluable insights, allowing department staff to review policies, refine procedures, and gain guidance to ensure a successful final site evaluation scheduled for this summer.

5. Septic-to-sewer update:

- The design documents have been reviewed and approved for permitting by FDEP, but still need to be reviewed by a separate FDEP division as part of the loan agreement. All FDEP approvals are anticipated by January 2025.
- The Phase 1 formal bid process is expected to begin in February 2025.

6. Building permit activity:

| | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec | Total | Avg |
|---------------------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-------|-----|
| Permit applications | 94 | 112 | 112 | 111 | 142 | 124 | 102 | 115 | 89 | 105 | | | 1,106 | 111 |
| Permits issued | 85 | 118 | 113 | 96 | 147 | 119 | 121 | 88 | 95 | 110 | | | 1,092 | 109 |
| Plan
reviews | 85 | 118 | 113 | 118 | 137 | 115 | 120 | 117 | 90 | 86 | | | 1,104 | 110 |
| Inspections | 243 | 242 | 274 | 292 | 254 | 238 | 255 | 258 | 210 | 236 | | | 2,502 | 250 |

- 7. On October 24th, we received our score from FDEM for our F-ROC application, 36 out of 50. The score reflects the need to have written internal procedures in place more in line with state and federal procurement guidelines. FDEM will be providing us with a report and guidance to develop these procedures to improve our score. The higher the score, the more we will be able to take advantage of this program in terms of disaster recovery funding.
- 8. The Town's Watershed Master Plan is still being reviewed by FDEP, after which the Town will receive the remaining grant money as reimbursement. Staff is in the process of pulling together the many resiliency improvement projects recommended in the plan and the earlier Vulnerability Assessment for presentation at a joint workshop with the Town Council and ESAB. The goal of this workshop will be to prioritize and schedule these projects for future budgets.

- 9. The Town's Development Review Team has received a site development plan application for a proposed commercial/office building on the former bank outparcel at Fisherman's Harbour Village. Once the plan complies with code, it will be scheduled for public hearings before the Cultural Services Board, Planning Board, and Town Council for review, recommendation, and approval.
- 10. The Town's 25-year lease agreement for the cell tower expires next February. Staff has been in discussions with representatives from Cingular Wireless and will present the key terms to the Council next month for discussion. These points will be used to finalize the new agreement with the goal of presentation at the January Council meeting for approval.
- 11. We are in Year 2 of our cyber-security agreement with the State of Florida's Digital Service office. In exchange for being part of its security network, the Town has received security software upgrades worth \$124,586 this year. If we were not part of this network, the Town would have to purchase this software on its own, which would likely be less expensive and less effective.
- 12. The RFQ has been advertised for the Special Magistrate. Bids will be opened on Friday, December 6th. The contract with the most qualified responsible bidder will be presented to the Town Council for approval.
- 13. Mr. Joseph paid his \$48,000 code enforcement lien to the Town on November 13, 2024.
- 14. Finally, the Town's annual Tree Lighting event at Pollard Park will held on Friday, December 6th at 6:00 p.m. The Merry Old-Fashioned Christmas event will be at the Museum on Saturday, December 14th at 10:00 am.