

Town of Melbourne Beach

TOWN COMMISSION WORKSHOP WEDNESDAY MARCH 4, 2020 at 6:00 p.m. MASNY ROOM – 507 OCEAN AVENUE

MINUTES

**The Town Commission conducted a Town Commission Workshop
on Wednesday March 4, 2020 in the Masny Room
to address the items below.**

Commission Members:

Mayor Jim Simmons
Vice Mayor Wyatt Hoover
Commissioner Steve Walters
Commissioner Sherrie Quarrie
Commissioner Corey Runte

Staff Members:

Town Manager Elizabeth Mascaro
Building Assistant Beth Crowell
Town Attorney Cliff Repperger
Minutes complied by Interim Town Clerk Jennifer Torres

I. Call to Order – Led by Mayor Simmons

Mayor Simmons called the meeting to order at 6:00 p.m.

II. Roll Call

Building Assistant Crowell conducted the roll call.

Commissioners Present:

Mayor Jim Simmons

Vice Mayor Wyatt Hoover

Commissioner Steve Walters

Commissioner Sherri Quarrie

Commissioner Corey Runte

Staff Present:

Town Manager Elizabeth Mascaro

Building Assistant Beth Crowell

Town Attorney Clifford Repperger

III. Pledge of Allegiance and Moment of Silence

Led by Mayor Simmons

IV. Presentation

No presentations

V. Public Comment

No public comments

VI. Old Business

- A. Discussion regarding proposed verbiage for short-term rental draft ordinance
- Town Attorney Repperger

The Town Attorney gave an overview:

- This ordinance does not prohibit vacation rentals; instead it operates similarly to what was done in Flagler County, Indian Harbour Beach and Cocoa Beach and relates to the regulation of vacation rentals. While the town cannot regulate short term rentals based on duration, it can regulate/legislate with regard to their operational components.

- The framework of the ordinance is based on data used for similar regulatory ordinances and takes into consideration U.S. Census information and the Short Term Rental Housing Restrictions White Paper prepared for the National Association of Realtors. The Town Attorney noted Melbourne Beach census data may be a little different but the general concept is the same. These vacation rentals are located in residential areas and the purpose of the registration requirement and various life/safety requirements ensure they have limited impact and are utilized and operated consistent with the residential uses and character of the neighborhoods in which they are located.
- The definition section is based on the interpretation of Florida Statutes and what is allowable currently, notwithstanding current legislative bills working their way through, and is also based on findings of the court in the Flagler case that provides the regulatory structure allows for this type of regulation.
- Instead of listing vacation rental homes as a separate and allowable use under the land development code as Flagler County has done - this draft ordinance recognizes a vacation rental home as a residential use. They are residences and some homeowners are utilizing their residences for this purpose. Indian Harbour Beach and Cocoa Beach also do it this way.

Mayor Simmons noted that it's similar as operating any other business out of the home.

The Town Attorney then addressed the ordinance sections that detail registration requirements: maximum occupancy, building codes, Town codes and standards related to having a responsible party available for complaints, enforcement, and methods of appeal.

- Registration is tentatively required by June 1, 2020 and based on the anticipated adoption schedule with a first reading at the next RTCM and a second reading in April 15. Registration paperwork could be made available May 1, 2020.
- The crux of the registration process is: 1.) Provide the name of owner or a responsible party if the owner not available. 2) Provide a sketch of interior and exterior of the building. 3) Require landline telephone requirement for the purpose of calling 911.

Mayor Simmons explained the reasoning behind requiring a landline comes from the concern that cellphones provide unreliable 911 services, including location information. A visitor may not know exactly where they are in an emotional moment and with a landline, location is recorded.

Commissioner Runte said the landline requirement feels outdated.

Commissioner Quarrie said location is easier to ascertain on a landline making rescue easier and faster.

Mayor Simmons added that cellphones don't work in half the homes here.

Mayor Simmons then asked if a PO Box on the registration form suffices or should a physical address be provided. The Town Attorney responded that a physical address is better because it provides the ability to directly serve the owner with any notice. Mayor Simmons then requested requiring a physical address on the registration. The Town Manager asked if the owner is not a Florida resident, are they required to have a local responsible party. Mayor Simmons responded that either the owner or the designated responsible party must be able to get here within three hours.

In regard to the sketch requirement, Mayor Simmons said he thought it should be drawn to scale with dimensions. Commissioner Runte added that the sketch should also identify where the smoke detectors, fire extinguisher, and other safety equipment is located.

The Town Attorney reviewed the registration process.

- An inspection will be scheduled when the application for registration is received and once issued the registration certificate must be renewed annually.
- The owner will affirm compliance with the parking requirement and disclose the number of rooms in the residence - which will then be used to determine occupancy.
- If property ownership is transferred, a new registration must be obtained.

Commissioner Quarrie asked if the owners are not from Florida would we be prepared to provide them with a copy of local codes for reference to which the Town Attorney replied he didn't know if we could provide copies but we could advise them of what they need to do to be in compliance. He also advised that in addition to being in compliance with the vacation rental ordinance, owners must also be compliance with all other town code requirements and it is the duty of the owner or responsible party to be available and responsive to any complaints that are raised.

Mayor Simmons asked about the three hour owner/responsible party response time after seeing a few other communities cap the time to two hours – the Town Attorney said he felt three hours was an appropriate time.

Mayor Simmons brought up the fact that Flagler County requires the vacation rental lease agreement to list complete names and ages of all occupants and the license plate number of all vehicles on the premises and this information is retained by the owner/responsible party for one year following the rental period of rental period.

The Town Attorney said he would add similar verbiage to the draft ordinance

Discussion followed regarding the owner/responsible party.

- The Town Attorney said the name and contact information of the owner/responsible party must be posted in unit so the guest knows who to call if necessary.
- Commissioner Quarrie asked if there is a way for the “responsible party” to confirm they are the responsible party. The Town Attorney responded that it is the responsibility of the property owner to ensure they have a valid responsible party. Mayor Simmons asked how we ascertain that the responsible party is aware of the designation. The Town Attorney stated that if the owner designates someone who doesn’t respond to calls, the owner will be fined – so it is in their best interest to designate someone responsible and therefore should not be an issue.

Addressing Article III: Standards and Requirements for Vacation Rentals, Commissioner Quarrie asked if the safety standard is similar to a hotel/motel where sprinklers are required and the Town Attorney said no.

Mayor Simmons said one issue being brought up is that some see it as unfair to have higher standards for hotels/motels. As an example, he cited regulations governing pools are much more stringent and expensive in a hotel/motel which serves many occupants and that a home filtration systems is less expensive (and stringent) because a standard filtration system is designed for a family.

Commissioner Runte said the vacation rental home code limits rentals to 12 people or less.

Mayor Simmons then addressed section (3) smoke and carbon monoxide detection and notification system and said there should be both visual and audible warnings with a flashing beacon. He also asked about ADA requirements or other safety measures that could be required like shower

handrails, wheelchair accessible countertops, and hot water temperature sensors.

The Town Attorney said they didn't include ADA because there is a bit of a grey area as to whether they apply to vacation rentals and ultimately at the end of the day, the Town in the best position to regulate compliance and something like a handrail requirement could be written in.

Mayor Simmons clarified that it was a safety issue – not an ADA issue.

Commissioner Quarrie asked about requiring hardwired safety detectors, not just the battery operated variety. The Town Attorney said Town code requires battery backup. Commissioner Quarrie suggested they table shower handrails and require flashing lights on safety detectors.

The Town Attorney discussed maximum occupancy, which is two occupants per bedroom and two people per common living area, with the maximum occupancy capped at 12. There is a grandfathering in of existing vacation rentals allowed greater occupancy for a period not to exceed ten years.

Commissioner Runte asked if we can make guests participate in the composting program and Commissioner Quarrie suggested posting a notice inside the building with instructions on recycling and solid waste disposal. The Town Attorney said he would add that language.

Mayor Simmons asked if we should allow the vehicles used by occupants and their visitors to park on the street – or limit them to the driveway only.

Commissioner Runte said he didn't want people parking in others yards, which is against the code and could create a problem.

Mayor Simmons said if you force all cars to be on the driveway that limits it. The Town Attorney said we can regulate occupant parking but any other parking – including street parking is governed by Town code.

Mayor Simmons expressed concern over guests that throw large week-long parties and the effect their vehicles may have on the streets.

Commissioner Wyatt responded saying, we are not an HOA, we have public streets and he'd be happy to limit the number of vehicles to the space available in the driveway – but then the owner may just expand their driveway.

Commissioner Quarrie asked if they can prohibit grass or sidewalk parking.

The Town Attorney told the commission that they are getting into areas difficult to enforce. The goal is to limit the impact of the use. If the occupants or their guests have vehicles parking they must be in compliance with what the Town code requires.

Vice Mayor Hoover said his neighbors have a vacation rental and live on the property. In terms of the rental they only allow four renters who are not allowed to have guests. The Town can also suggest rental terms.

Mayor Simmons said he understands both sides of the issue because he and his wife often stay in these rentals when traveling, but they are not college kids with ten people in one unit.

The Town Attorney explained that the intent of this ordinance is to preserve the integrity of the neighborhood. From time to time in a residential neighborhood you will have a neighbor who has a party. In a rental unit that impact will come and go as guests come and go, so the goal is to limit effects. If Town code allows parking on the streets and that is something the commission wants to change, they can adjust the Town code, otherwise there isn't a lot that can be done to limit parking.

Moving on, the Town Attorney addressed the section pertaining to the posting within the building of the unit's landline number, address, responsible party contact information, maximum occupancy, phone numbers for Holmes Regional and Health First Viera Hospitals, and solid waste information where details about the trash protocol/composting could also be added.

Other suggestions from the commission included; rip-current information, Melbourne Beach Police and Fire contacts, and evacuation instructions.

Commissioner Runte asked if a backyard mother-in-law suite can be used as a vacation rental unit.

Building Assistant Crowell said per the current land development code, an accessory structure can't be used for living quarters.

Commissioner Quarrie asked if an owner can turn a garage into a living space that could be used as a vacation rental.

Building Assistant Crowell said residences are required to maintain a two car garage.

Commissioner Runte asked what defines an accessory structure.

Commissioner Quarrie asked if we need to have a description of what a rental structure can be.

The Town Attorney said that a vacation rental is currently defined as a transient public lodging establishment but it can be modified with clarifying language making it only applicable to a residential unit that is a proper residential unit under building regulations.

Commissioner Quarrie thought that was a good idea.

Commissioner Runte expressed concern about affordability for older residents. I am for vacation rentals for people who predominantly live here—who may have guest house or travel and may need financial assistance to live here. I don't want to make it difficult for people to do that – I want our residents, people who live here to be able to make money. If someone has a pool house they should be permitted to use it as a vacation rental.

Building Assistant Crowell said the land development code would need to be changed in order to allow that.

Commissioner Quarrie worried that an elderly couple may reside in the pool house in order to rent their residence and expressed concern about using a hot plate in a small room in order to rent a room.

Commissioner Runte asked if there are currently places in town where accessory structures are allowed to be used as rentals.

Mayor Simmons said accessory structures are not living structures; they are sheds, pool houses, campers – not living spaces. Commissioner Runte asked if this restricts anyone grandfathered in from using one as a vacation rental. Because if they don't address the terminology of what an accessory structure is - they may be used as vacation rentals.

The Town Attorney asked if the commission would allow for existing grandfathered-in accessory structures (those built prior to 1972 and not covered by the land development code) to be used as vacation rentals as non-conforming livable accessory structures.

Mayor Simmons said he was hesitant to allow someone to turn a non-conforming house into a specific use because that gives them the ability to rebuild if destroyed.

The Town Attorney said we would just be exempting it from a restriction as vacation rental.

Commissioner Runte felt that if properties are using accessory structures as vacation rentals then we need to decide if we want them to continue to be grandfathered in - or if we completely restrict them.

Mayor Simmons said he didn't think they could be restricted because if they have been renting already, we have to continue to allow this – because we have allowed it in the past.

Vice Mayor Hoover suggested they allow those grandfathered in to continue that use as long as it's made iron-clad clear the owner can't rebuild and retain that use.

The Town Attorney agreed to look at the wording and adjust the language if necessary.

Melissa Goldman
Space Coast Association of Realtors

Ms. Goldman said she was in attendance to make sure no private property rights were violated. She asked if the ordinance applied only to rentals that are for a period of 30-31 days or less.

Mayor Simmons confirmed those offered less than one month must comply and those over do not.

Ms. Goldman said she's looking out for small guy because not everyone is a corporation. She stated that if her aunt leaves her home in Melbourne Beach to her and she's a single mom, she wants to be able to rent that house out in a reasonable manner without jumping through hoops. She went on to say that Palm Bay just allowed accessory structures into their codes.

Ms. Goldman expressed concern over the language in 74-2 (13) which states: "Vacation rental use and longer-term residential use and ownership are generally incompatible due to rapid turnover associated with short term vacation residential use and its disruptive effect on the peaceful use and enjoyment of residential areas."

She said it was scary to have that language in there.

Commissioner Quarrie asked her why she felt it was scary and Ms. Goldman asked how the Town can make a definitive statement that short-term rentals create disruption and are unharmonious to other residents.

Mayor Simmons replied that it's been fairly well documented, to which Ms. Goldman asked him if he stayed in rentals, did he create disruptions?

He responded – no, but many do and that is what they are trying to solve.

Commissioner Runte said he understood where Ms. Goldman was coming from in that it is a pretty bold statement.

The Town Attorney explained that the purpose of the language is not to say that every one of them is disruptive – but generally the use of bringing in a turnover of occupants– is generally incompatible with standard residential use in neighborhoods.

Mayor Simmons told Ms. Goldman she was not here representing individuals, rather she is here representing the corporation's who want to come in, buy homes and turn them into rentals. He believes her agenda is to show that short-term rentals are good for the economy – as referenced in Palm Bay - but he disagrees and believes they are not good for this community as a residential community.

Commissioner Quarrie said we are a small town not a large acreage community like Palm Bay and we service our community as a bedroom community – comparing what works in Palm Bay to what works in Melbourne Beach is like comparing grapefruit to komquat – larger communities can absorb better – while we struggle to pave roads and control storm water.

Commissioner Runte said the phrasing could be tweaked a bit to change the tone, perhaps by changing the word “incompatible”.

Mayor Simmons said he genuinely believes vacation rentals are incompatible with the Town charter because they don't promote community and many are not small homeowners. He does believe they can be compatible in some areas but not in the suburbs where people live and work.

Ms. Goldman asked if the commission could just review the language, She then asked if registration fees would be reasonable.

Commissioner Quarrie said the fees would be closely tied to what the actual costs of inspections are – and the Town Attorney said the intent is not to make them prohibitive.

Ms. Goldman asked if – when a vacation rental home inspection is being conducted – and other code violations are noted – how that comes into play.

Mayor Simmons said the owner will be cited.

Ms. Goldman asked if the Town has the time to do inspections and can they accommodate out-of-town homeowners who come in on a timeline.

Mayor Simmons said they will work with building inspectors in a reasonable fashion.

Vice Mayor Hoover asked if inspection fees will be a revenue source and if so, for what use.

The Town Attorney said he envisions it falling under building and fire and treated as those inspection fees are.

Mayor Simmons added that it's not a money maker and Town Manager Mascaro said they will likely just break even.

Vice Mayor Hoover suggested that if the department becomes overwhelmed we should use any additional funds to add staff.

Ms. Goldman then asked about the one-hour initial response time of the owner/responsible party saying this would not allow someone to ever go to a movie or any activity lasting more than one hour.

Commissioner Runte asked what defined "responding" and Mayor Simmons by clarified the initial response is by phone.

Ms. Goldman wanted to know the process for changing an owner's designated responsible party and if it is required in writing. She also wanted to know if there was a new registration fee to do so. She noted that the section wording indicates there is a fee assessed every time this change is requested.

Commissioner Quarrie said any change would require written notification. Ms. Goldman wanted to know how to do this on a weekend when Town Hall is closed.

Mayor Simmons and the Town Attorney both stated it is the owner's responsibility to adhere to the rules and responsibilities.

Ms. Goldman then referred to the section pertaining to the duties of the owner/responsible party that includes ensuring guests who are sexual offenders/predators register as required with the BCSO 48 hours in advance of their stay. She said she has never seen this type of language in any other cities.

Commissioner Runte said he would not vote to delete that verbiage because this is a family community and if you want to rent a room, the owner needs to make sure the person or people they rent to are safe.

Frances Nealon
419 Ocean Ave #501

Ms. Nealon suggested requiring that an emergency button is preprogrammed into the landline phone because 911 is not a universal number.

Kimberly Adkinson-Cowles
214 Surf Rd.

Ms. Adkinson-Cowles suggested requiring two responsible parties instead of one.

The Town Attorney said it's an enforcement issue and if the Town attempts to reach one party – and can't - the Town knows who to hold responsible.

Mark Emerson
512 Ocean Ave.

Mr. Emerson said he is uncomfortable with asking guests if they are sexual offenders and asked if anyone has ever walked into a hotel or motel and been asked this question.

He said sexual predators are already required on their own to register and inform the police of their visit in advance. He feels that is the responsibility of the offender and not his.

Commissioner Runte –said he did not want a sexual predator living next to him – even temporarily. He feels if they are going to commit that crime to become a sexual predator they have to live with the consequences and being asked directly is a catch all. He went on to add that this is not a hotel – this is a neighborhood.

Commissioner Quarrie said they will have they will comply with Florida law and noted that our community is nothing but playgrounds, schools, and churches. She thought it would be prudent for the owner to show the distance of these places from the location of the rental.

Mayor Simmons asked if we wanted to put the burden on the owner of the property.

Commissioner Runte said we should.

Vice Mayor Hoover said the owner is not asking the guest personally, it is just part of the rental agreement they sign.

Mr. Emerson said his understanding is that it is his responsibility to make this inquiry and if he fails to do so, he could be charged with committing a felony. He said that other than his own personal website, he has no control how the guest finds him.

Commissioner Runte asked if he finds that troublesome because it is his property and establishments like Airbnb won't approve stays without 4-5 stars and would he want a sexual predator staying in his home – asking - if that person rapes someone, what happens? Continuing, he said we should leave it in if it keeps the community safer.

Commissioner Quarrie asked if the Town should state that there is not enough distance from the places a sexual predator/offender is prohibited from – and no one registered for these crimes can stay in town given the radius of these establishments. She suggested the Police Chief look into this to see if it's the case.

Commissioner Runte said he didn't understand what was so hard about asking the question because he thinks there should be a second check and balance.

Vice Mayor Hoover said, with the way the community is structured, you don't have to put that burden on the homeowner – you add the language – and if you are a sexual predator, you are not able to rent here.

Mayor Simmons noted that the Town was carefully surveyed – with parks strategically placed throughout the community and only one very small area that may not meet the regulation requirement.

Commissioner Runte said the requirement placed upon the owner is not a burden, while Mayor Simmons thought it was.

Moving on to the inspection process, Mr. Emerson stated that he is currently inspected by state and by the Town fire inspector and now he will have to pay a Town official to inspect the vacation rental amounting to three separate fees.

Commissioner Quarrie asked if there is a way to have just one inspection presented to the Town because ongoing inspections seem like a waste of time.

Building Assistant Crowell said the Town fire inspection is a required annual inspection but the Town does not require a separate annual building inspection if the annual state inspection doesn't reveal any issues.

Mayor Simmons explained Mr. Emerson is the owner of Pineapple Manor on Ocean Ave. which was once a single family residence that was remodeled into a four-unit apartment building.

Mr. Emerson said that he and his wife live in one unit and he is the responsible party. He has three units he rents out on either a weekly or monthly basis and created his own set of restrictions that he feels are even more rigid than the Town code because he doesn't want any issues – technically classified as transient hotel?

Mayor Simmons questioned whether Mr. Emerson was even covered by this ordinance as someone running a long and short term rooming house.

The Town Attorney said he would look into it further.

Mayor Simmons suggested that Mr. Emerson fill out an exemption form.

Mr. Emerson told the commission that in relation to the discussion over requiring flashing strobe lights on safety detectors in each unit – the hotel requirement is that there is just one available that can be affixed in any unit when requested by a hearing impaired guest.

Mayor Simmons asked if he was suggesting they eliminate this requirement. Mr. Emerson said that requiring one hardwired in each room is a lot – but one should always be available if requested.

Lynn & Rob Whelplay
Space Coast Association of Realtors

In addition to using the vacation rental service, *HomeAway*, Mrs. Whelplay said she and her husband also own a beachside home used as a vacation rental. She said they are never asked how much money they make or if they committed any felonies. It's a simple and enjoyable process. They follow the rules, park in the driveway, obey the requirements – and she said she is 100-percent sure that 99.9 percent most people who stay in vacation rental homes are the same way. She is sorry the town has such a problem with it they felt the needs to create a complex ordinance to deal with a few bad apples – who are the expectation, not the rule. And while she understands some of the requirements - she feels many are redundant.

Mayor Simmons said the Town is doing this because the state is trying to take away control over our community. He has heard many horror stories about corporations building up 14-bedroom homes and renting the rooms out as vacation rentals. They pay premium prices, so no residents can afford to buy

these houses or lots because they are making them party homes, and – he continued – that is not what Melbourne Beach is.

Patricia Weeks
Space Coast Association of Realtors

Ms. Weeks wanted to know what defines excessive or boisterous noise.

Mayor Simmons responded that the neighbors do – and if there is a continuous problem, the responsible person is called.

Ms. Weeks asked if there are kids out in the pool making noise and neighbors complain is that a violation?

The Town Attorney said it depends on the time of day and the duration of the noise.

Ms. Weeks told the commission she has a neighbor who owns their home and they party all the time. She would rather have a short term rental because they eventually leave.

Rob Whelplay
Space Coast Association of Realtors

Mr. Whelplay asked the commission if they are aware of how many shadow vacation rentals exist and said there are a lot.

Commissioner Simmons said the property appraiser is looking into those carefully and identifying them.

The commission asked the Town Attorney to make requested changes and he was excused.

B. Discussion regarding salary ranges for Town employees – Town Manager Mascaro

Town Manager Mascaro gave an overview of salary information collected from various communities based on certain variables including proximately and taking into account how far someone may be willing to drive for a good salary. Therefore, Cape Canaveral and Fellsmere - communities not normally included - are included - because she felt it was best to look at as many communities as possible.

The report findings showed almost all municipalities have minimums and maximums and in order to set upper-end limits for each position, the report

looked at percentage of increase over minimum to find a mid-range for the Town .

Commissioner Quarrie said our numbers are good.

Mayor Simmons said he was surprised we are higher than Indian Harbour Beach but in line with Indian Harbour Beach and Satellite Beach. He thought we would be lower than some communities.

Vice Mayor Hoover said it was a very thorough report. Town Manager Mascaro said it was just a first step.

Mayor Simmons suggested removing a few municipalities including; Melbourne Village, Satellite Beach, Cocoa Beach, Fellsmere and West Melbourne, in order to have more comparable data.

Commissioner Quarrie thought West Melbourne should remain part of the data.

Town Manager Mascaro said for a good job opportunity most would be willing to drive over to West Melbourne. She then asked for input about how to handle longtime staff members who reach their maximum.

Vice Mayor Hoover felt that if you are in a position, doing the same thing for years and maxed out – salary increases should only be given for taking on more responsibilities, in addition, when comparing cities – a position in one city may be very different from another with more specific responsibilities?

Mayor Simmons questioned why we give across the board raises and felt if a staff member is on the low end of the salary scale and a top performer – they should get a good raise - however, if they are top performer and at the top of the salary range – their increase would be much smaller.

Town Manager Mascaro agreed to make edits to the report

C. Discussion regarding sheds on corner lots

Tabled until next meeting

VI. New Business

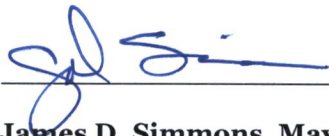
No new business

VI. New Business

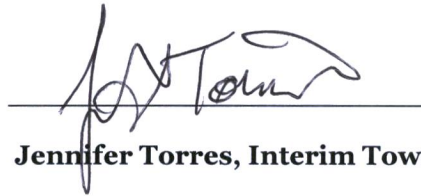
VII. Adjournment

Commissioner Quarrie made a motion to adjourn; Vice Mayor Hoover seconded. Motion carried 5-0. The meeting adjourned at 8:53 p.m.

ATTEST

A handwritten signature in blue ink, appearing to read 'J.D. Simmons', written over a horizontal line.

James D. Simmons, Mayor

A handwritten signature in blue ink, appearing to read 'Jennifer Torres', written over a horizontal line.

Jennifer Torres, Interim Town Clerk