

MINUTES — AUGUST 9, 2022
CITY OF INDIAN ROCKS BEACH
REGULAR CITY COMMISSION MEETING

The Indian Rocks Beach Regular City Commission Meeting was held on **TUESDAY, AUGUST 9, 2022**, in the City Commission Chambers, 1507 Bay Palm Boulevard, Indian Rocks Beach, Florida.

Mayor-Commissioner Kennedy called the meeting to order at 7:00 p.m., followed by the Pledge of Allegiance and a moment of silence in memory of Rick Walker, a former assistant chief of the Pinellas Suncoast Fire & Rescue District and current president of the IRB Rotary Club. Mr. Walker had been an integral part of the Fire District since the early 1980s. After Mr. Walker retired from the District, he served the citizens of Pinellas County as a hazardous material analyst with Emergency Management. He was a part of Indian Rocks Beach and loved Indian Rocks Beach.

PRESENT: Mayor-Commissioner Joanne Moston Kennedy, Vice Mayor-Commissioner Denise Houseberg, Commissioner Jude Bond, Commissioner Philip J. Hanna, Commissioner Joseph D. McCall, and City Manager Brently Gregg Mims.

STAFF PRESENT: City Attorney Randy D. Mora, City Clerk Deanne B. O'Reilly, MMC, and Planning Consultant Hetty C. Harmon, AICP.

(To provide continuity for research, items are listed in agenda order although not necessarily discussed in that order.)

1A. REPORT OF Pinellas County Sheriff's Office.

The Pinellas County Sheriff's Office presented the crime analysis report for June 2022.

1B. REPORT OF Pinellas Suncoast Fire & Rescue District.

Fire Chief Davidson presented the Fire District's report for July 2022.

Fire Chief Davidson asked if the Fire District could make a presentation to educate the City Commission and the public on the Fire District's November Referendum Question concerning a new ad valorem tax.

City Manager Mims stated he would make arrangements with the Fire Chief.

2. PUBLIC COMMENTS. None

3A. REPORTS OF the City Attorney.

City Attorney Mora stated he is working on regulations concerning the City's buoys, swim areas, and vessel exclusion areas. He has been in touch with the Florida Fish and Wildlife Conservation Commission and its attorney to get a better sense of what they are looking for from the City.

3B. REPORTS OF the City Manager.

Code Enforcement July Report

- 97 Parking Citations
- 5 VRBO Trash Violations & Notices to Appear issued
- 6 VRBO Trash Violations noted
- 1 Resident Trash Violation noted
- 5 Overgrown Lot Notices
- 1 Unregistered Boat Violation

Website — Vacation Rental Tab

A vacation rental tab has been added to the City's website. Included under that tab is the short-term vacation rental ordinance (Ordinance No. 2018-01), a list of all the registered VRBOs in the residential areas, a map that illustrates the area that is regulated by Ordinance No. 2018-01, and a business tax receipt application for vacation rentals.

Public Art

The City continues to establish public art throughout the City regarding public sculptures.

- Two sculptures are in front of City Hall that the IRB Homeowners' Association donated.
- One sculpture is located at the 5th Avenue Pocket Park donated by Crabby Bill's.
- One sculpture is located at the Nature Preserve's Entrance, donated by Action 2000, Inc.
- One sculpture will be located at the County Beach Park.

City Manager Mims stated he anticipates two other sculptures on Gulf Boulevard.

City Manager Mims stated he would like to publicly thank Public Works Director Scharmen and Office Administrator Lorin Kornijtschuk for working with him to select, secure, and install the sculptures.

City Manager Mims stated he also would like to thank Action 2000, Inc., and the IRB Homeowners' Association for their donations.

City Manager Mims stated the City would be sending letters out to all of the City's commercial property owners, encouraging them to install artwork on their own property. He said there would be sculptures not only on public but on private properties, and when

tourists visit IRB, that would be another unique thing about IRB. The City would have public sculptures and private sculptures/artwork throughout the City.

FY 2023 Budget

- The City Commission received the Adjusted FY2023 Budget on August 7, 2022.
- First reading of FY 2023 millage and budget is scheduled for Wednesday, September 7, 2022, at 6:00 p.m.
- Second and final reading of FY 2023 millage and budget is scheduled for Wednesday, September 21, 2022, at 6:00 p.m.

Employee Recognized

City Manager Mims recognized City Attorney Mora for his outstanding work. He provided a brief background on his education, his work history, his memberships, the committees he serves on, and his family.

City Manager Mims stated as his role as City Manager, he relies on the City Attorney. His operation in the City is critical. City Attorney Mora provides the City with guidance and access to a team of attorneys in his firm for additional consultation. He trusts his guidance because he is honest, responsive, and an expert in municipal law. It is important to have someone of his integrity to provide legal advice.

City Manager Mims thanked City Attorney Mora for what he does and the importance he plays on the City's team.

3C. REPORTS OF the City Commission.

COMMISSIONER HANNA:

- Oktoberfest: Action 2000, Inc., is looking for sponsors and volunteers for Oktoberfest.

4. ADDITIONS/DELETIONS. None.

5. CONSENT AGENDA:

- A. APPROVAL of the July 12, 2022 Regular City Commission Meeting Minutes.**
- B. APPROVAL of the July 26, 2022 Special City Commission Meeting Minutes.**
- C. CONFIRMING ACTION taken during the July 26, 2022 Special City Commission Meeting Minutes.**
- D. APPROVAL of the July 26, 2022 City Commission Budget Work Session Minutes.**
- E. AUTHORIZING the City Manager to sign a one-year agreement to renew group health coverage with the Public Risk Management (PRM) Group Health Trust for FY 2022-23.**

- F. RESOLUTION NO. 2022-05. A Resolution of the City Commission of the City of Indian Rocks Beach, Florida, nominating St. Pete Beach Mayor Alan Johnson to the Forward Pinellas Board to represent the BIG-C municipalities (excluding the City of Clearwater); and providing an effective date.**

City Attorney Mora read the Consent Agenda, consisting of Agenda Item Nos. 5A through 5F, by title only.

Mayor-Commissioner Kennedy stated she would like to correct the July 26, 2022 City Commission Budget Work Session Minutes on Page 14, under the City Clerk Budget. She said she was silent on a vote for the City Clerk's salary adjustment and wished to make her vote no, saying it was a no vote.

MOTION MADE BY COMMISSIONER McCALL, SECONDED BY COMMISSIONER HANNA, TO APPROVE THE CONSENT AGENDA, CONSISTING OF AGENDA ITEM NOS. 5A THROUGH 5F. UNANIMOUS APPROVAL BY ACCLAMATION.

- 6A. BOA CASE NO. 2022-11 — 2036- 20TH AVENUE PARKWAY**
Considering a variance request from Sec. 110-131(1)(f.)(2)(i) of the Code of Ordinance to encroach 3 feet into the required 25-foot rear yard setback, resulting in a total rear yard setback of 22 feet, to allow for an awning to be installed on the rear of the house for property located at 2036-20th Avenue Parkway, Indian Rocks Beach, Florida, and legally described as Lot 16, Ninth Addition to Re-Revised Map of Indian Beach as recorded in Plat Book 27, Page 56, of the Public Records of Pinellas County, Florida. Parcel #06-30-15-42192-000-0160.

[Beginning of Staff Report]

SUBJECT: BOA CASE NO. 2022-11 — 2036-20th Avenue Parkway

Variance request from Sec. 110-131(1)(f.)(2)(i) of the Code of Ordinance to encroach 3 feet into the required 25-foot rear yard setback, resulting in a total rear yard setback of 22 feet, to allow for the installation of an awning on the rear of the house, for property located at 2036-20th Avenue Parkway, Indian Rocks Beach, Florida, and legally described as Lot 16, Ninth Addition to Re-Revised Map of Indian Beach as recorded in Plat Book 27, Page 56, of the Public Records of Pinellas County, Florida. Parcel #06-30-15-42192-000-0160.

STAFF RECOMMENDATION: Based on the variance review criteria of Section 2-152, staff recommends denial of the request.

BOARD OF ADJUSTMENTS AND APPEALS RECOMMENDATION: The Board of Adjustments and Appeals recommended approval to the City Commission by a vote of 5-0.

OWNER Timothy S Davis Trust
 PROPERTY LOCATION: 2036-20th Avenue Parkway
 ZONING: S- Single Family Residential

Direction	Existing Use	Zoning Category
North	Intracoastal	N/A
East	Residential	S
South	Residential	S
West	Residential	S

BACKGROUND:

The applicant is requesting a variance of 3 feet into the rear yard setback to install an attached awning to the east side of the house. The current rear setback of the west half of the house is 17.5 feet from the seawall and was constructed in 1956.

Sec. 2-152. Variances.

(a) *Generally; criteria for granting variances from the terms of subpart B.*

(1) The Board of Adjustments and Appeals shall make recommendations on and the City Commission shall decide variance applications will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of subpart B will result in unnecessary and undue hardship. In order to recommend or decide any variance from the terms of subpart B, the Board or the City Commission shall consider each of the following:

- a. Special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same zoning district. *The house was built in 1956 and was approved before the new land development code was adopted in 1981. In 2014, the rear enclosed area on the west side was reconstructed.*
- b. The special conditions and circumstances do not result from the actions of the applicant. *The applicant did not create any special conditions or circumstances.*
- c. Granting the variance will not confer on the applicant any special privilege that is denied by subpart B to other lands, structures or buildings in the same

zoning district. *Granting the variance would confer special privileges to the applicant.*

- d. Literal interpretation of the provisions of subpart B would deprive other properties in the same zoning district under the terms of subpart B and would work unnecessary and undue hardship upon the applicant. *The approval of this variance request would not deprive other owners of use and enjoyment of their properties.*
- e. The variance granted is the minimum variance that will make possible the reasonable use of the land, structure or building. *This is the minimum variance to allow the owner to construct the awning as proposed.*
- f. The granting of the variance will be in harmony with the general intent and purpose of subpart B, and such variance will not be injurious to the area involved or be otherwise detrimental to the public welfare. *Granting the variance will not be in harmony with the general intent and purpose of subpart B.*

NOTICE: A public notice was mailed by first class mail to property owners within 150 feet in any direction of the subject property and posted on the subject property on July 25, 2022. (Sec. 2-149 of the Code of Ordinances.)

CORRESPONDENCE RECEIVED: Letters of no objection were received from Gordon Ross, 2038-20th Avenue Parkway (adjacent property owner), and Gail Lyders, 2034- 20th Avenue Parkway (adjacent property owner on the southwest side).

LEGAL NOTICE: A legal notice was published in the July 27, 2022-Edition, of the St. Pete Times Section of the Tampa Bay Times, for public hearing that has been scheduled for August 9, 2022, for BOA Case No. 2022-11.

[End of Staff Report]

City Attorney Mora read BOA Case No. 2022-11 — 2036- 20th Avenue Parkway by title only.

City Attorney Mora inquired of the City Commission Members if they had any ex-parte communications with the applicant or their agent, with all members responding negatively.

City Attorney Mora inquired of the City Commission Members if any of them had conducted a site visit for the limited purpose of evaluating the application before them, with all members responding negatively.

City Attorney Mora duly swore in all persons planning to give testimony during the quasi-judicial proceeding.

Planning Consultant Harmon presented the Agenda Item, BOA Case No. 2022-11, 2036-20th Avenue Parkway.

Planning Consultant Harmon stated the subject property is located at 2036-20th Avenue Parkway at the end of a cul de sac (on a curved lot). The applicant is requesting a variance from Section 110-131(1)(f.) (2)(i) of the Code of Ordinances to encroach 3 feet into the required 25-foot rear yard setback, resulting in a total rear yard setback of 22 feet, to allow for the installation of an awning on the rear of the house.

Planning Consultant Harmon presented a PowerPoint Presentation on BOA Case No. 2022-11 for the property located at 2036-20th Avenue Parkway. The presentation consisted of aerials of the property, a survey of the property, a sketch of the proposed awning, a photo of the awning location, and an example of the awning (photo) with details. She explained the variance request as she went through the presentation. The applicant replaced the pool and seawall. In 2014, the applicant rebuilt the rear of the enclosed porch. The distance to the seawall is 17 feet from the existing building. The applicant would like to install an awning with support. The City measures from the support because the City Code allows for overhangs of 30 inches. She noted that the awning is hurricane-proofed, the vents turn, and it has a drain in it.

Planning Consultant Harmon stated staff recommended denial because the awning encroached into the rear yard setback, and the Board of Adjustments and Appeals recommended unanimous approval.

Planning Consultant Harmon stated both adjacent property owners had submitted letters of no objections to the City.

Tim Davis, 2036-20th Avenue Parkway, stated he is trying to provide shade for his new pool area, which is his hardship. The awning compliments the house. It is hurricane safe. The awning does not protrude on any side. The awning would provide shade to allow them to enjoy the pool and to have a covered space next to the pool.

Susan Davis, 2036-20th Avenue Parkway, stated the awning has motorized louvers that can be adjusted according to the sun and rain. The awning would provide a tremendous amount of shade for them. It is a shame to have a backyard on the Intracoastal that no one can enjoy because there is no shade. They would like to use their backyard to the fullest.

Mayor-Commissioner Kennedy opened the public hearing.

Scott Shapiro, 2032-20th Avenue Parkway, stated the applicant lives one house away from him. He stated the City Commission would not believe the weather residents get whose homes face west across the bay direct unobstructed, whether it is wind or sun.

Mr. Shapiro stated the hardship is the shade, the weather. He noted the other hardship is the applicant's pie-shaped lot. He stated that they are permanent residents and are great neighbors.

Seeing/hearing no else wishing to speak, Mayor-Commissioner Kennedy closed the public hearing.

MOTION MADE BY COMMISSIONER McCALL, SECONDED BY COMMISSIONER HANNA, APPROVE BOA CASE NO. 2022-11 – 2036-20TH AVENUE PARKWAY. A VARIANCE REQUEST FROM SEC. 110-131(1)(f.) (2)(i) OF THE CODE OF ORDINANCE TO ENCROACH 3 FEET INTO THE REQUIRED 25-FOOT REAR YARD SETBACK, RESULTING IN A TOTAL REAR YARD SETBACK OF 22 FEET, TO ALLOW FOR THE INSTALLATION OF AN AWNING ON THE REAR OF THE HOUSE, FOR THE PROPERTY LOCATED AT 2036-20TH AVENUE PARKWAY, INDIAN ROCKS BEACH, FLORIDA, AND LEGALLY DESCRIBED AS LOT 16, NINTH ADDITION TO RE-REVISED MAP OF INDIAN BEACH AS RECORDED IN PLAT BOOK 27, PAGE 56, OF THE PUBLIC RECORDS OF PINELLAS COUNTY, FLORIDA.

ROLL CALL VOTE:

AYES: HOUSEBERG, BOND, HANNA, McCALL, KENNEDY

NAYS: NONE

MOTION TO APPROVE CARRIED UNANIMOUSLY.

7. OTHER LEGISLATIVE MATTERS: None.

8A. DISCUSSION OF regulating the restriction of smoking on any public beach and public parks that the City owns, except for unfiltered cigars.

[Background]

HB 105 — REGULATION OF SMOKING BY COUNTIES AND MUNICIPALITIES

HB 105 passed the House on February 24, 2022, and subsequently passed the Senate on March 2, 2022.

The Florida Clean Indoor Air Act (FCIAA), implements Article X, Section 20 of the Florida Constitution. Article X, Section 20 of the Florida Constitution prohibits a person from smoking tobacco or using a vapor-generating electronic device in an enclosed indoor

workplace, with certain exceptions. Current law preempts the regulation of smoking and does not allow counties or municipalities to regulate smoking.

HB 105 amends the FCIAA to allow counties and municipalities to restrict smoking within the boundaries of any public beach or park they own, except for unfiltered cigars.

The bill changes the title of the “Florida Clean Indoor Air Act” to the “Florida Clean Air Act” account for the broader application of the act proposed in the bill.

The bill has no fiscal impact on state government and an indeterminate, negative fiscal impact on local governments.

The bill was approved by the Governor on June 24, 2022, ch. 2022-213, L.O.F., and became effective on July 1, 2022.

[End of Background]

City Attorney Mora stated a legislative preemption within Florida Statute 386.209 that expressly preempted smoking regulations to the State and superseded any municipal or County ordinance. School districts do have the ability to restrict smoking by persons on school district property.

City Attorney Mora stated almost every year or every other year, there has been an attempt to remove that from the books. This year, was the first successful instance. While that preemption was in place, several court cases struck down municipal ordinances in Sarasota, Gulfport, St. Petersburg, and Key West. They were either stricken or had to amend their signs that prohibited smoking on their beaches or parks to go with a more passive "Thank You For Not Smoking" sign.

City Attorney Mora stated during this Legislative Session, the Legislature passed HB 105. The Governor approved the bill on June 24, 2022, and it took effect on July 1, 2022. The plain language of this bill generally allows the City to regulate smoking, except for unfiltered cigars. The statute reads as follows:

386.209. Regulation of smoking preempted to State. — This part expressly preempts regulation of smoking to the state and supersedes; any County or municipal ordinance on the subject; however, counties and municipalities may further restrict smoking within the boundaries of any public beaches and public parks that they own, except that they may not further restrict the smoking of unfiltered cigars. A municipality may further restrict smoking within the boundaries of public beaches and public parks that are within its jurisdiction but are owned by the County, unless such restriction conflicts with a County ordinance, except that they may not further restrict the smoking of unfiltered cigars. School districts may further restrict smoking by persons on school district property. This section does not

preclude the adoption of County or municipal ordinances that impose more restrictive regulation on the use of vapor-generating devices provided in this part.

City Attorney Mora stated the City Commission could prohibit smoking on the City's beaches, except for unfiltered cigars.

City Attorney Mora stated that while it may seem random, it was his understanding there were a few legislators, perhaps cigar aficionados, who pushed for this partly because cigars are rolled leaves that will decompose as opposed to the filters that are found on the beaches.

City Attorney Mora stated the City has ordinances prohibiting smoking in certain City parks that would have been previously subject to preemption. He is not aware of any enforcement measures or actions on that ordinance. These ordinances would need to be amended to be consistent with State Law and the City Code.

City Manager Mims stated if the City Commission adopts HS 105, the challenge would be with enforcement because of the exception of unfiltered cigars. It would have been a lot simpler if the Legislators wanted smoke-free beaches, then they should have passed a bill that prohibited all smoking on the beach without any exclusions.

PSCO Captain Leiner stated the sheriff's responsibility is to enforce all State, County, and City laws. He noted the enforcement of this ordinance would be challenging. There would need to be an educational period before any citations are issued.

PCSO Caption Leiner stated for a citation to be issued, the deputy would need to catch the individual smoking. The deputies would educate the smokers that smoking is prohibited on the beach and that placing cigarette butts on the beach is illegal. The deputies would advise them that both are misdemeanor crimes where a citation could be issued.

PCSO Captain Leiner stated he could understand the enforcement challenges, but the sheriff's office will enforce what the City Commission wants them to enforce because that is their job.

Mayor-Commissioner Kennedy asked PCSO Captain Leiner if other beach communities had decided on this issue.

PCSO Captain Leiner stated he has ten contract cities he deals with south of Gulf-to-Bay, and Indian Rocks Beach is the first to bring this issue up.

Commissioner Bond asked the difference between an unfiltered cigar and anything else that is unfiltered.

City Manager Mims stated that is an example of the statute being unclear and challenging to enforce.

Commissioner McCall asked what the definition of the beach is. Where does the beach begin and end? What is Pinellas County's position?

City Attorney Mora stated portions of the beach are not Pinellas County property. It is City property. He does not know if the City has portions of its beach that the County owns.

City Attorney Mora stated what and who owns the City's beach is a sensitive issue. The City has its sentiments as a municipal corporate entity on the customary use of the City's beaches, its public history, and its public uses. However, some property owners rightly or wrongly believe that they own this portion of the beach to the sunset because it is stated in their deed. The language in the statute only states within the boundaries of any public beaches.

City Attorney Mora stated if the City seeks to enforce in an area where somebody disputes that it is not the City's beach but their private property, then that may create an issue down the road.

City Attorney Mora stated if the City Commission desires to establish a policy like this, the staff will do its best. Still, he cannot tell the City Commission that the City will not see a different challenge or some controversy emerge based on that issue alone.

Commissioner McCall clarified that vaping devices are considered smoking devices.

City Attorney Mora stated that is correct and that the City could regulate vaping devices. The primary concern with vaping devices is the secondhand smoke, not the littering of cartridges.

Commissioner McCall stated how far a person could tell a person is smoking a cigarette, a cigar, or a vaping device. He noted that the statute is very ambiguous with the definition of beach, unfiltered cigars, etc.

Vice Mayor-Commissioner Houseberg stated this issue is not about smoking but rather about littering cigarette butts on the beach. She asked how the City could get rid of those nasty cigarette butts on the beach, and that is where the problem is.

City Attorney Mora stated that would violate the City's litter ordinance. However, as stated by PCSO Captain Leiner, law enforcement would have to catch the person in the act.

Commissioner Hanna asked what about smoking pipes.

City Attorney Mora stated that is not an exception within the statute. If the City Commission chooses to make it an exception, it can regulate smoking pipes. The City Commission can regulate everything about smoking, except one thing — unfiltered cigars.

Commissioner Hanna stated the statute is inefficient because it cannot be controlled or enforced. Law enforcement has better and more important things to do.

Mayor-Commissioner Kennedy opened the public comment session.

Kim Beer, 2003 Bayview Place, asked if someone could smoke pot or vape on the beach.

Mayor-Commissioner Kennedy stated a person could not smoke pot on the beach unless they have a medical marijuana card to the best of her knowledge.

Ms. Beer stated she does not smoke pot but can smell it up and down the beach. Marijuana cigarettes do not have filters, so can a person smoke marijuana on the beach? The City Commission is getting too picky.

City Attorney Mora stated smoking marijuana is against the law unless the person has a card. Unfiltered cigars have created challenges for law enforcement. Law enforcement is not going to respond based on smell alone because they may be employing resources to somebody who would show them that they have a medical marijuana card.

Scott Shapiro, 2032- 20th Avenue Parkway, stated law enforcement could not police the smell. The issue is cigarette butts in the sand. That is the issue. He suggested the City have a board to study this issue to find a way to reward smokers for bringing their butts off the beach. There must be a solution to reward smokers for doing the right thing. Like a small receptacle that gives money in return for cigarette butts.

Mayor-Commissioner Kennedy closed the public comment session.

Captain Leiner reiterated that the deputies would enforce whatever the City Commission decides. Some things are more challenging than others, but ultimately his only part in this is that he represents the enforcement of it.

Commissioner Houseberg asked what the fine would be.

City Attorney Mora stated the City Commission could establish that in the City Codes. Chapter 163 of Florida Statutes provides that the maximum fine for the first offense of any local ordinance violation is \$250. Most municipal ordinances fall between \$30 and \$115 on a first offense.

Commissioner McCall stated the issue concerns cigarette butts on the beach, not smoking. Cigarette butts have been a challenge on this beach for a long time. If there is a path down the litter side, he still has a positive look on humankind that sometimes if a person is asked to do something, they will do it. For example, a couple of years ago, volunteers handed out trash bags on the 4th of July, which changed the whole mindset. The City's July 5th cleanup was completely different. The volunteers did nothing but suggest that they do the right thing.

Commissioner McCall suggested placing a sign saying: "*Thank You For Not Smoking.*"

Commissioner McCall stated the Florida Statute looks pretty vague.

Commissioner Bond asked about the portable ashtrays the City used to give out.

City Manager Mims stated that the City still has them.

Commissioner Bond suggested putting the ashtrays on the beach side near the trash cans so the smokers could get them.

City Manager Mims stated anything is worth a try.

City Manager Mims stated cigarette butts are not only a problem on the beach but also at the traffic lights, especially at the intersection of 5th Avenue and Walsingham Road. Law enforcement can only write a citation for littering by observing the person throwing the cigarette butt on the ground.

Mayor-Commissioner Kennedy stated she was asked if the City could pass an ordinance prohibiting all smoking, including cigars. In other words, go against Florida Statutes. She knows why the City cannot adopt an ordinance like that because unfiltered cigars were explicitly put into the law that the Legislators passed. The City could be held liable if anyone was issued a citation for smoking an unfiltered cigar.

City Attorney Mora stated in the past two years, the Legislature further amended Florida Statutes. It used to be that cities had home rule powers, and the Legislature passed preemptions. Every now and again, some cities would test the limits of that preemption by either finding a creative legislative solution or doing it anyways and seeing what happens and waiting for a court to tell them that they cannot do it.

City Attorney Mora stated in the last few years, the Legislature amended the statute such that if a municipality passes an ordinance, that is challenged because a specific statute preempts the ordinance. That municipality has 30 days to respond to that person and 60 days to remove it from the City Code or begin the affirmative action toward removing the ordinance. If the municipality does not remove the ordinance, the municipality would be exposed to attorney's fees and potential other sanctions as a result.

City Manager Mims stated the beach used to be raked once a quarter. Now, the beach is being raked once a month.

City Manager Mims stated he could look at raking the beach more frequently than once a month. He said the beach rake would pick up cigarette butts, beer cans, concrete bricks, and plastic bottles.

Mayor-Commissioner Kennedy asked what the pleasure of the City Commission is.

Commissioner Hanna stated the problem with adopting a no-smoking ordinance would be the enforcement of it. Enforcement would be challenging. It is about littering cigarette butts and other items on the beach.

Commissioner Houseberg stated the problem is with litter on the beach, and it is just not on the beach. It is on the streets and in the parks.

Commissioner Bond asked to what extent is the litter ordinance enforced. He stated in reality, the only thing that the City can do is ask the tourist, residents, and the public not to litter because it is challenging to catch someone littering. He suggested raking the beach more than once a month.

Mayor-Commissioner Kennedy stated that raking the beach more frequently would help the situation with the cigarette butts on the beach.

Mayor-Commissioner Kennedy asked the City Manager if he had any other suggestions about the different areas and to put something on the City's Facebook page and website about littering.

City Manager Mims stated he is all for education. The beach is visited by people from all over the United States who are unaware of IRB rules. The garbage cans on the beach are picked up daily and on holidays twice a day.

City Manager Mims stated the City is very aggressive with litter enforcement throughout the neighborhoods. Garbage can-related litter or things people pile up and think the City will pick up that are not legal. Staff is very aggressively dealt with. The other category is things just tossed out car windows, like cigarette butts or things left on the beach. There is no way to enforce that unless they are seen doing it.

City Manager Mims stated staff currently does the following to clean the beach:

1. The City has more garbage and recycling cans than any other beach City.
2. Beach garbage/recycling cans are picked up daily and twice a day on holidays.
3. The beach is raked monthly. The beach rake picks up almost everything. The City is handicapped during turtle season because the City cannot rake the beach until the turtle patrol calls and gives the City permission, around 9:00 a.m.

City Attorney Mora stated since the City Commission talked about how this process works. The discussion that the City Commission is having is whether or not to adopt an ordinance on no smoking on the beach.

City Attorney Mora stated administrative decisions like when to rake the beach, how frequently to rake the beach, and what resources to allocate are management-level decisions that would happen independently of the City Commission's direction.

City Manager Mims stated staff wanted to bring forth the Florida Statute passed, discuss the statute and the City's ordinances pertaining to no smoking, and receive direction from the City Commission on the new Florida Statute.

City Manager Mims stated that just because the Legislature passed this new Florida Statute, the City is not obligated to do anything, or it can wait and do something later.

Commissioner Houseberg stated she does not have an opinion on this yet and would like to have some time to think about the issue. She said if the City cannot have some restrictions on smoking and littering with cigarette butts, she would like the City Commission to consider other marketing campaigns to educate people and make them responsible for their actions.

CONSENSUS OF THE CITY COMMISSION NOT TO PROCEED FORWARD WITH A NO SMOKING ON THE BEACH ORDINANCE AT THIS TIME.

9. **OTHER BUSINESS.** None.

10. **ADJOURNMENT.**

MOTION MADE BY COMMISSIONER HANNA, SECONDED BY VICE MAYOR-COMMISSIONER HOUSEBERG, TO ADJOURN THE MEETING AT 8:22 P.M. UNANIMOUS APPROVAL BY ACCLAMATION.

September 13, 2022

Date Approved

/DOR