

Monday, April 5, 2021
7:00 pm



Town Hall Commission Chambers
247 Edwards Lane
Palm Beach Shores, FL 33404

Reconvene Town's Reorganization Meeting
Alan Fiers, Mayor

Commissioner Scott McCranels
Commissioner Tracy Larcher
Commissioner Open Seat (2-year term)
Commissioner Open Seat (1-year term)

Town Attorney Keith Davis
Town Administrator Wendy Wells
Town Clerk Evyonne Browning

<https://townofpalmbeachshores.my.webex.com/townofpalmbeachshores.my/j.php?MTID=m1ab7a6ab06d629ed889bfb85ec4e3eef>

Meeting Number: **132 661 5863**

Password: **0405**

To join meeting by phone (voice only)

Phone Number: +1-408-418-9388 United States Toll

Access Code: **132 661 5863**

Password: **0405**

The entire agenda packet is available on the Town's website: www.palmbeachshoresfl.us

1. CALL TO ORDER

- a. Pledge of Allegiance
- b. Roll Call

2. SELECTION OF A COMMISSIONERS

- a. Resolution R-1-21 Appoint one Commissioner to fill vacancy after March 9, 2021 election (2-year term).
- b. Resolution R-2-21 Appoint one Commissioner to fill vacancy created by Tom Mills resignation (1 year remaining from original term).

3. SWEARING IN CEREMONY

- a. Swearing in of two appointed Commissioners.

4. OTHER APPOINTMENTS

- a. Appoint a Vice Mayor for a 1-year term (Resolution R-3-21).
- b. Appoint a Commissioner to serve on the Election Canvassing Board (Resolution R-4-21).
- c. Appoint Town Clerk and Town Treasurer (Resolution R-5-21).
- d. Appoint Members to the Planning and Zoning Board (Resolution R-6-21).
- e. Appoint a Commissioner to serve on DRC as Chairperson for a 1-year term.
- f. Appoint a Resident Member to DRC for a 1-year term.

5. LEGAL UPDATE BY TOWN ATTORNEY

6. ADJOURNMENT

PLEASE TAKE NOTICE AND BE ADVISED, that if any interested person desires to appeal any decision made by the Town Commission with respect to any matter considered at this meeting or hearing, such interested person will need a record of the proceedings, and for such purpose may need to insure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is based. The meeting/hearing will be continued from day to day, time to time, place to place, as may be found necessary during the aforesaid meeting. IN ACCORDANCE WITH THE PROVISIONS OF THE AMERICANS WITH DISABILITIES ACT (ADA), THIS DOCUMENT CAN BE MADE AVAILABLE IN AN ALTERNATE FORMAT (LARGE PRINT) UPON REQUEST AND SPECIAL ACCOMODATIONS CAN BE PROVIDED UPON REQUEST WITH THREE (3) DAYS ADVANCE NOTICE. FOR HEARING ASSISTANCE: If any person wishes to use a hearing device, please contact the Town Clerk.

RESOLUTION NO. R-1-21

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF PALM BEACH SHORES, FLORIDA, APPOINTING A COMMISSIONER TO FILL THE VACANDY CREATED BY THE RESIGNATION OF FORMER COMMISSIONER TOM MILLS; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, Article III, Section 3.12, of the Charter of the Town of Palm Beach Shores requires that the Town Commission shall, by resolution, appoint a commissioner to fill a vacancy for the remaining term or until his/her successor shall be appointed and qualified.

NOW, THEREFORE, BE IT RESOLVED by the Town Commission of the Town of Palm Beach Shores, Florida, that:

Section 1. _____ is hereby appointed as a Commissioner of the Town of Palm Beach Shores to fill the vacancy created by Tom Mills for the remaining one year or until his/her successor shall be appointed and qualified.

Section 2: This Resolution shall take effect immediately upon passage.

DULY PASSED AND ADOPTED this 5th day of April 2021.

Alan Fiers, Mayor

ATTEST:

Evyonne Browning, Town Clerk

(Seal)

RESOLUTION NO. R-2-21

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF PALM BEACH SHORES, FLORIDA, APPOINTING A COMMISSIONER TO FILL THE VANCANCY FOLLOWING QUALIFICATION FOR ELECTION IN 2021; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, Article III, Section 3.12, of the Charter of the Town of Palm Beach Shores requires that the Town Commission shall, by resolution, appoint a commissioner who shall fill the vacancy following the 2021 election for a term of two years or until his/her successor shall be appointed and qualified.

NOW, THEREFORE, BE IT RESOLVED by the Town Commission of the Town of Palm Beach Shores, Florida, that:

Section 1. _____ is hereby appointed as a Commissioner of the Town of Palm Beach Shores for a term of two years or until his/her successor shall be appointed and qualified.

Section 2: This Resolution shall take effect immediately upon passage.

DULY PASSED AND ADOPTED this 5th day of April 2021.

Alan Fiers, Mayor

ATTEST:

Evyonne Browning, Town Clerk

(Seal)

RESOLUTION NO. R-3-21

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF PALM BEACH SHORES, FLORIDA, APPOINTING A VICE MAYOR FOR A TERM OF ONE YEAR; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, Article III, Section 3.9, of the Charter of the Town of Palm Beach Shores requires that the Town Commission shall, by resolution, appoint one of its members as Vice Mayor who shall hold the office for a term of one year or until his/her successor shall be appointed and qualified.

NOW, THEREFORE, BE IT RESOLVED by the Town Commission of the Town of Palm Beach Shores, Florida, that:

Section 1. _____ is hereby appointed Vice Mayor of the Town of Palm Beach Shores for a term of one year or until his/her successor shall be appointed and qualified.

Section 2: This Resolution shall take effect immediately upon passage.

DULY PASSED AND ADOPTED this 5th day of April 2021.

Alan Fiers, Mayor

ATTEST:

Evyonne Browning, Town Clerk

(Seal)

RESOLUTION NO. R-4-21

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF PALM BEACH SHORES, FLORIDA, MAKING THE ANNUAL APPOINTMENT OF A COMMISSIONER TO THE PALM BEACH SHORES ELECTIONS CANVASSING BOARD; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, Section 22-6. Canvassing board; method of voting of the Code of Ordinances of the Town of Palm Beach Shores requires the Town Commission to make an annual appointment of a Commissioner to the Palm Beach Shores Elections Canvassing Board; and

WHEREAS, the Town Commission desires to appoint Commissioner _____ whose position is currently unopposed or whose position is not scheduled to be voted upon at the election being canvassed, as a member of the Town Canvassing Board in order that he/she may be the Town's designee to canvass the municipal elections on behalf of the Town.

NOW, THEREFORE, BE IT RESOLVED by the Town Commission of the Town of Palm Beach Shores, Florida, that:

Section 1. The Town Commission of the Town of Palm Beach Shores, Florida, hereby appoints _____, whose position is currently unopposed or whose position is not scheduled to be voted upon at the election being canvassed, as a member of the Town Canvassing Board and requests said Commission member act as the Town Commission's designee to canvass the municipal elections on behalf of the Town.

Section 2. The Town Clerk of the Town of Palm Beach Shores is hereby authorized to submit a copy of this resolution to the Palm Beach County Supervisor of Elections, and to do all other necessary things in order to accomplish the desire of the Town Commission.

Section 3: This Resolution shall take effect immediately upon passage.

PASSED AND ADOPTED this 5th day of April 2021.

TOWN OF PALM BEACH SHORES

Alan Fiers, Mayor

ATTEST:

Evyonne Browning, Town Clerk
(SEAL)

RESOLUTION NO. R-5-21

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF PALM BEACH SHORES, FLORIDA, APPOINTING EYONNE BROWNING AS TOWN CLERK, AND APPOINTING WENDY WELLS AS TOWN TREASURER PURSUANT TO SECTION 3.10, ARTICLE III OF THE TOWN CHARTER.

WHEREAS, Article III, Section 3.10, of the Charter of the Town of Palm Beach Shores requires that the Town Commission shall appoint a Town Clerk for a term of one year and a Town Treasurer for a term of one year and until his/her successor shall be appointed and qualified.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF PALM BEACH SHORES, FLORIDA, THAT:

Section 1. Pursuant to the provision of Section 3.10 of Article III of the Town Charter, **Evyonne Browning** shall be and is hereby appointed and designated as Town Clerk. It is understood that the duties and responsibilities of the Town Clerk shall be under the supervision and at the direction of the Mayor, subject to the ultimate and final control of the Town Commission.

Section 2. Pursuant to the provision of Section 3.10 of Article III of the Town Charter, **Wendy Wells** shall be and is hereby appointed and designated as Town Treasurer. It is understood that the duties and responsibilities of the Town Treasurer shall be under the supervision and at the direction of the Mayor, subject to the ultimate and final control of the Town Commission.

Section 3. The above named officers shall take and subscribe the oath before an officer duly qualified to administer oaths that they will faithfully and impartially execute the duties of the office according to the best of their abilities and understanding, which oath will then be filed with the Town Clerk and appended to the minutes for the Town Commission re-organization meeting.

Section 4. The above named officers shall hold office for a term of one year and until their successors are appointed and qualified.

Section 5. This Resolution shall take effect upon its passage.

DULY PASSED AND ADOPTED this 5th day of April 2021.

Alan Fiers, Mayor

ATTEST:

Evyonne Browning, Town Clerk

(Seal)

RESOLUTION NO. R-6-21

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF PALM BEACH SHORES, FLORIDA, APPOINTING A PLANNING AND ZONING BOARD PURSUANT TO SECTION 3.10, ARTICLE III OF THE TOWN CHARTER; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, Article III, Section 3.10, of the Charter of the Town of Palm Beach Shores requires the Town Commission to appoint a Planning and Zoning Board for a term of one year or until such board members' successors shall be appointed and qualified; and

WHEREAS, Section 2-51 of the Town's Code of Ordinances provides that such appointments shall occur at the Town's annual re-organization meeting; and

WHEREAS, the Town Commission of the Town of Palm Beach Shores desires to appoint the individuals specified in this Resolution to the Planning and Zoning Board as required by Town Charter and Code.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF PALM BEACH SHORES, FLORIDA, THAT:

Section 1. Pursuant to the provision of Section 3.10 of Article II of the Town Charter, regular members 1. _____ 2. _____ 3. _____ 4. _____ 5. _____ shall be and are hereby appointed and designated as regular members; _____ and _____ are hereby appointed as alternate members of the Planning and Zoning Board. It is understood that the duties and responsibilities of the Planning and Zoning Board shall be as set forth in Section 4.7 of the Town Charter.

Section 2. The above-named officers shall take and subscribe the oath before an officer duly qualified to administer oaths that they will faithfully and impartially execute the duties of the office according to the best of their abilities and understanding, which oath will then be filed with the Town Clerk and appended to the minutes of the Town Commission.

Section 3. The above-named officers shall hold office until successors shall be appointed and shall qualify, and at the pleasure of the Town Commission.

Section 4. This Resolution shall take effect immediately upon passage.

DULY PASSED AND ADOPTED this 5th day of April 2021.

Alan Fiers, Mayor

ATTEST:

Evyonne Browning, Town Clerk

(Seal)

Town of Palm Beach Shores
Reconvened Commission Reorganization Meeting
April 5, 2021

Item 4d
attachment

FINAL TABULATION SHEET FOR
PLANNING AND ZONING BOARD SELECTION

Please mark **FIVE (5) NAMES** for the Members.

All others will have option to be an alternate.

CANDIDATES		Place an "X" in 5 boxes for member
Steven Smith (New submittal)	215 Bravado Lake	<input type="checkbox"/>
Jerald Cohn (Current Member)	180 Lake Drive, Unit 2302	<input type="checkbox"/>
Timothy Blash (Current Member)	324 Linda Lane	<input type="checkbox"/>
Kevin Banks (Current Member)	325 Claremont Lane	<input type="checkbox"/>
Jason Prince (Served in the past)	307 Blossom Lane	<input type="checkbox"/>
Tony Lembo (Served in the past)	305 Claremont Lane	<input type="checkbox"/>
Tom Martin (New submittal)	320 Sandal Lane	<input type="checkbox"/>
Myra Koutzen (Previous Mayor)	125 S. Ocean Ave., #802	<input type="checkbox"/>
Robert Stanton (Previous Commissioner)	237 Tacoma Lane	<input type="checkbox"/>
Russ Ahern (Previous DRC Member)	219 Blossom Lane	<input type="checkbox"/>

Name: _____



ITEM 5
4 5 2021

Keith W. Davis, Esq.

*Florida Bar Board Certified Attorney in
City, County and Local Government Law*
Email: keith@davislawteam.com

MEMORANDUM

TO: Mayor Fiers, Town Commissioners, and Commissioners-Elect
FROM: Town Attorney Davis
CC: Town Clerk Browning
DATE: March 29, 2021

RE: Legal Update

I am providing you with the following information, representing the most important and directly applicable legal and ethical items you each should keep in mind as you serve on the Town Commission:

1. FORM OF GOVERNMENT:

- a. COMMISSIONERS are elected by the citizens and the Commission is vested with LEGISLATIVE authority. The Commission is the policy maker. (The Commission decides on the destination)
- b. The MAYOR is also elected by the citizens. The Mayor is both a voting member of the Commission, and designated as the Chief Executive Officer of the Town, responsible for oversight (subject to the final control of the Town Commission) of the manager, clerk, police department, fire department and the Planning and Zoning Board (Charter Sec. 4.2).
- c. The MANAGER (if any) is a professional administrator hired by the Commission to serve as Chief ADMINISTRATIVE Official. The Manager (under the oversight of the Mayor) administers and enforces the policy made by the Commission (Charter Sec. 4.6). (The Manager decides the best way to get to the destination – in the absence of a Manager, the Mayor generally serves in this capacity – though this operational structure is limited by Sunshine Law restrictions as explained below).

2. SUNSHINE LAW

- a. Meetings of Commissioners (including the Mayor) where official action or discussion about official action take place must be open to the public, noticed, and recorded via minutes (*Fla. Stat. Sec. 286.011*).

- b. Commissioners (including the Mayor) may not discuss any matter on which foreseeable action will be taken by the Commission, except in a public, noticed, and recorded Sunshine meeting.
- c. Knowing and intentional violations carry criminal penalties.
- d. The Sunshine Law does not apply to the Manager or the Attorney. **When the Mayor acts in an administrative capacity in the absence of a Manager, the Sunshine Law DOES limit the Mayor's ability to speak to Commissioners about any matter on which foreseeable action will be taken by the Commission.** Thus, any one Commissioner (including the Mayor) may have private discussions about Town Commission action items (or about anything else) with these persons at any time.
- e. One way communication from one Commissioner (including the Mayor) to all others (via e-mail or written memo for example) does not *technically* violate Sunshine Law requirements. However, if interaction/discussion/response ensues, then there would be a violation.
- f. Sunshine Law Exceptions include litigation "shade" meetings, and collective bargaining meetings with the Town's negotiating team.

3. PUBLIC RECORDS

- a. Any document, regardless of medium within which it is created, made, or received in connection with Town business, is a public record (*Fla. Stat. Ch. 119*).
- b. Includes e-mail, text messages, and social media messages.
- c. If created on your personal e-mail, any correspondence that is a public record is your personal responsibility: YOU are responsible for maintaining the document pursuant to state records retention guidelines, and turning it over in response to a records request. Therefore, my strong recommendation is that all Town related communications be made via your Town issued and maintained e-mail accounts. **Avoid text messages and avoid using social media for Town related matters. To the extent that these mediums generate a public record, that record must be properly preserved.**
- d. Knowing and intentional violations carry criminal penalties.

4. QUASI JUDICIAL PROCEEDINGS

- a. Land development or use requests including special exceptions and variances. All quasi-judicial proceedings involve the application of codified criteria to an application or request. These matters are handled at publicly noticed hearings and decisions must be based on the evidence received at such hearing.
 - 1. Variances are requests to develop land contrary to codified code criteria. The applicant must prove (among other criteria) that application of the code creates a hardship that does not allow reasonable use of the land.
 - 2. Special Exceptions are requests to use land in a manner that has been determined to be permissible so long as certain protections are in place.
 - 3. In both cases, the Planning & Zoning Board hears the application and makes a recommendation prior to the Town Commission taking final action.
- b. Conditions of Approval may be imposed on quasi-judicial requests; however, any condition must be reasonably related to the request being made and must be

proportional to the request being made. Violation of this concept can, under recent case law, expose the Town to takings claims.

- c. Regarding ex-parte communications, pursuant to Sec. 286.0115(1), Fla. Stat., a municipality may adopt an ordinance or resolution removing the presumption of prejudice from ex parte communications with local public officials by establishing a process to disclose ex parte communications with such officials before or during the public meeting at which a vote is taken on such matters pursuant to this subsection or by adopting an alternative process for such disclosure. By doing so, persons who have opinions to the contrary to those expressed in the ex parte communication are given a reasonable opportunity to refute or respond to the communication. ***The Town of Palm Beach Shores HAS adopted such a resolution.***

5. GIFTS

- a. Any gift from a vendor or lobbyist with annual aggregate value that exceeds \$100.00 is prohibited (Sec. 2-444 Palm Beach County Code of Ethics; Fla. Stat. Sec. 112.3148).
- b. Otherwise, any gifts valued at \$100.00 or more must be reported to the state (with a copy to the county) quarterly. Gifts from relatives are exempt from this reporting requirement (Sec. 2-444 Palm Beach County Code of Ethics; Fla. Stat. Sec. 112.3148).

6. VOTING CONFLICTS

- a. Any item before the Town Commission for action that would result in a personal financial benefit or loss, or a financial benefit or loss to family member or spouse, or principal or business associate (Sec. 2-443 Palm Beach County Code of Ethics; Fla. Stat. Sec. 112.3143). There are no other legally recognized voting conflicts, and in the absence of this recognized category of conflict, you must vote on the matter before you.
- b. The affected Commissioner must abstain from participation and voting, must disclose the nature of the conflict, and must complete a voting conflict form which gets appended to meeting minutes and a copy of which is provided to the Palm Beach County Commission on Ethics (Sec. 2-443 Palm Beach County Code of Ethics; Fla. Stat. Sec. 112.3143).

7. CONFLICT OF INTEREST- DOING BUSINESS WITH THE TOWN

- a. Section 112.313(3), Fla. Stat., and the Palm Beach County Code of Ethics prohibit a public officer (elected or appointed) in his official capacity (including action taken by the collegial body) from directly or indirectly acquiring (purchase, lease, rent) anything for his agency from a business that the public officer or his spouse or child is an officer or owner of a "material interest" (5%). This applies to profit and non-profit businesses alike.
- b. Section 112.313(3), Fla. Stat., and the Palm Beach County Code of Ethics also prohibit a public officer (elected or appointed) acting in his capacity as a private businessperson from providing (sell, lease, rent) anything from his business to his agency or the political subdivision served by his agency.
 1. ***Donations*** to the Town ***are allowed.***

2. Merely being an employee, and being uninvolved with the provision is also allowed.
 - c. Three general exceptions:
 1. Rotation list containing all qualified suppliers.
 2. Sealed bid process.
 3. Health, Safety, Welfare emergency provision/acquisition.
 - d. Finally, Section 112.313(7), Fla. Stat., and the Palm Beach County Code of Ethics prohibit a public officer from having a contractual relationship or employment with his agency OR with any business entity that is subject to the regulation of his agency OR is doing business with his agency.
 1. Examples: A port authority regulating a shipping company; a Planning Board regulating general contractors doing business in the Town. Business Tax Receipt is not included, nor is the enforcement of laws of general applicability.
 2. **The key is that you cannot serve two masters** (both the Town and the business interest).
 3. **The statute and code are written in an attempt to prevent situations where private economic considerations may override the faithful discharge of public duties. It is concerned with what might happen, with the temptation to dishonor.**
8. MISUSE OF PUBLIC POSITION
- a. Section 112.313(6), Fla. Stat., and the Palm Beach County Code of Ethics prohibit public officers from corruptly using or attempting to use their official position or any property or resource within their trust, or perform their official duties, to secure any special privilege, benefit, or exemption for themselves or for another. Corruptly means “with wrongful intent.”
9. LOBBYISTS
- a. Anyone who is employed and **for compensation, seeks to influence a decision** of the Town Commission or other Town Board, through oral or written means, **or attempts to obtain the goodwill** of any Commissioner or Town personnel (Palm Beach County Lobbyist Registration Ordinance).
 - b. Exceptions are: Town personnel acting on behalf of the Town; someone hired solely to appear at a quasi-judicial hearing or comp plan hearing; expert witness hired to offer expert testimony; someone speaking on their own behalf; a League of Cities employee speaking on behalf of the League. Attorneys representing a client in an administrative or judicial proceeding, or at mediation or arbitration are not considered to be lobbyists (Palm Beach County Lobbyist Registration Ordinance).
 - c. **Prior to lobbying, a lobbyist must register** at the county’s central lobbyist registration site and pay the requisite fee (\$25.00).
 - d. Former elected officials must wait two (2) years from the end of their service prior to lobbying in front of their former governing body (*Fla. Stat. Sec. 112.313*).

10. ANNUAL FINANCIAL DISCLOSURE

- a. All Commissioners (including the Mayor) must submit an annual statement of Financial Interests no later than July 1 of each calendar year they are in service. (*Fla. Stat. Sec. 112.3145*).
- b. Failure to submit timely carries civil penalties (\$25.00 per day for each day of delinquency up to a maximum of \$1,500.00) (*Fla. Stat. Sec. 112.3145*).

11. MANDATORY ETHICS TRAINING

- a. Each year, all elected Town Commissioners (including the Mayor) must complete a minimum of four (4) hours of ethics training. The content must include the Code of Ethics (s. 8, Art. II Florida Constitution and *Fla. Stat. Ch. 112 Part III*), the Sunshine Law, and Public Records. Compliance is reported on the annual statement of financial interests and is on the "honor system". Commissioners (including the Mayor) members should complete the required state-mandated training as close as possible to the date they assume office. A newly elected Commissioner who assumes a new office on or before March 31 must complete the annual training on or before December 31 of that year. However, if the individual takes office *after* March 31, he or she is not required to complete the training until the next calendar year.
- b. In addition, Pursuant to Article XIII, sec. 2-446 of the Palm Beach County Code of Ethics, all Commissioners (including the Mayor) are required to read the Palm Beach County Code of Ethics, receive training on the requirements of the Code of Ethics and sign an acknowledgement form. All Town elected officials must receive initial training within sixty (60) days of taking office. After initial training, periodic mandatory follow-up training is required of all Town elected and appointed officials upon re-election or re-appointment, as applicable, and should be completed in accordance with Town policy.

12. PERSONAL LIABILITY

- a. Acting pursuant to the Town Attorney's advice insulates and protects you from personal liability.
- b. Conversely, should you decide to disregard such advice, you are exposed to personal liability. Even if I am wrong (difficult to comprehend, I KNOW!!), you are insulated from personal liability.