

**CITY COUNCIL SPECIAL MEETING
JANUARY 22, 2007**

Mayor Johnston called the meeting to order at 9:08 a. m.

Vice Mayor Denham gave the Invocation and led the Pledge of Allegiance.

Mr. Cuyler explained the following:

- Proposed emergency ordinance
- An emergency ordinance would be where Council determined there was an emergency situation
- There was not the normal first reading and publication of a second reading public hearing
- Requirements of the City charter and state it be enacted by 2/3's vote of City Council and translates into a 4/5's vote of a 5-member Council
- Charter designates the emergency ordinance stands to be repealed on the 61st day after adoption
- Council could decide to bring the ordinance back for 1st and 2nd reading then adoption

ORDINANCE 07-001 AN EMERGENCY ORDINANCE AMENDING CITY OF SANIBEL ORDINANCE NO. 05-011 RELATING TO ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICES (“EPAMDs”); AMENDING FINDINGS AND SETTING FORTH ADDITIONAL FINDINGS; DELETING AND REMOVING THE AUTHORIZATION FOR LIMITED USE OF EPAMDs BY THE OWNER OR EMPLOYEES OF A TOUR BUSINESS OR THE CUSTOMERS OR USERS OF SUCH TOUR BUSINESS; PROVIDING FOR CONFLICT AND SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE

Ms. Zimomra read the title of Ordinance 07-001.

Discussion ensued regarding the agreement with Billy's Bike Rentals and operating under the agreement.

Mr. Cuyler spoke to the sequence of events regarding segways:

- Conditional use applications by Mr. Kirkland for a tour using segways
- Conditional Use was granted by the Planning Commission for 18-months
- Safety issue reviewed by Council
- He read the following from the statute, “It provides that a county or municipality May prohibit operation of electric personal assisted mobility devices on any road, street or bicycle path under its jurisdiction if the governing body of the county of municipality determines that such prohibition is necessary in the interest of safety”
- The above-mentioned was preceded by the state statute that allows segways statewide on roads, streets and bicycle paths where the posted speed limit was 25 m.p.h. or less
- Council considered the issue of safety and adopted an ordinance in 2005 that in general segways were prohibited in Sanibel
- Allowed segways to be used on a limited basis in a tour operation and the basic conditions were adopted by Council as adopted by the Planning Commission
- 18-month period nearing its end and Mr. Kirkland applied for an additional conditional use
- Planning Commission considered the facts and certain conditions Mr. Kirkland was to adhere to
- Discussion centered around the report of accidents during the tour operation
- Differing testimony and several accidents not reported to the City Manager as required
- Mr. Kirkland's position was that several accidents were reported by a police report, but not in compliance with the conditional use permit

- Was appropriate to grant another time certain conditional use
- Reporting form designed and reporting to the Police Department would not meet the requirements

Discussion ensued regarding conditional use given by the Planning Commission, Council's responsibility was for safety, could safety apply to the Shared Use Path when adding new mobility, Mr. Cuyler stated absolutely Council could determine and find circumstances that seways would be unsafe on the Shared Use Paths, was there a liability issue, Mr. Cuyler spoke to the unusual thing was a specific statute that allows segways, Mr. Cuyler further stated the general rule for municipal liability and a known hazardous condition could be binding for Council, any policy that J. N. Ding Darling would allow segways, Mr. Cuyler stated the federal property was not under the jurisdiction of Sanibel and outside the scope of Sanibel ordinances, research shows that segways could be used in a lot of situations, about the same footprint as a bike, 2002 accepted in 31 states, skateboards unsafe, the need to represent the rights of citizens, greatest asset was the Shared Use Path and the operation and number of people that use the path and critical for people that use the path, segways a motorized vehicle on the Shared Use Paths, question of putting a motorized vehicle on a path that was not designed to go on said path, must decide how and when segways were safe and responsible for all users of the paths, must look out for small children, safety issue a complex issue, in question was using segways safety on the paths, caution the prohibition throughout Sanibel, could be used on private roads and allow usage on areas with minimal impact, Mr. Cuyler spoke to the ordinance not banning from private property or the refuge, segways could be used on private roads, Mr. Cuyler stated they could be used on private roads, use of segways on private property, private roads and the refuge should be an exception, ordinance only bans segways on public property, whose responsibility if agreement of ownership and usage, Mr. Cuyler spoke to placing additional restrictions on the use, he stated the statute permits segways in certain areas of the state, and stature allows and placed minor conditions and city could place restrictions, and was untested in the state, he stated there were reasonable grounds that certain conditions were required and not uncommon for the courts to review an ordinance and find the implementation of the statute.

Councilman Rothman made a motion, seconded by Councilman Brown, to adopt Ordinance 07-001.

Discussion continued who could decide to allow segways, could homeowners decide and where does the insurance come in to play, Mr. Cuyler stated that the homeowners would have the same issues as the City and could amend deed restrictions if it was desired to allow or prohibit segways.

Mr. Cuyler explained Ordinance 07-001:

- First 2 whereas clauses deal with safety
- This was an amending ordinance because of an existing ordinance prohibiting them generally and allows the segway tours
- Section 1 recites the wording of the original ordinance
- Limited use would be prohibited
- Ability to regulate in parking areas

Vice Mayor Denham asked if Councilman Rothman and/or Councilman Brown would agree to an amendment granting segway use in limited congestive areas, as well as directing staff to work with Mr. Kirkland to explore the ability to use segways where there was limited congestion, and Mr. Cuyler spoke to considering not only private/federal area, which were outside the scope of this ordinance, but other private areas.

No amendments were made to the motion at this time.

Public Comment:

Rob Jess, Executive Director of J. N. "Ding" Darling Wildlife Refuge spoke to not allowing on federal lands because the ADA did not recognize them as a mobility device. He also spoke to no decision made by the federal government regarding usage; could see benefits to the use and safety an issue, most accidents of

any refuge due to the highest number of people in the U. S. visiting a refuge, segway usage would be determined nationally when ADA recognizes them as a mobility device.

Billy Kirkland spoke to requesting discussion of City Council and told to go to the Planning Commission. He further spoke to no discussion of safety at the Planning Commission. He spoke to no accidents in the last year. He further spoke to training and safety equipment for employees and regulated more than any other business. He spoke to submitting reports across the globe on segway safety to Council, problems on the shared use paths, not prohibiting more bikes of the paths.

Discussion ensued regarding no segway accidents within a year, Mr. Kirkland stated he requested the regulations implemented, and the City making segways tours more complicated, conditional use permit granted and regulations that needed to be followed, and Council was not aware of the previous accidents and the Planning Commission did not speak to safety only the conditional use permit, issue should have come back to Council, Shared Use Paths to narrow for the uses, exposing the City to liability issues, and a detailed accident report was never sent to the City Manager as was required by the conditional use permit.

Mr. Cuyler reviewed the civility procedures:

- The need for everyone to have the opportunity to speak
- No boos and hisses

Mr. Kirkland spoke to being guilty because he did not report accidents to the City Manager, but did report any accident to the Police Department, City drafted a new reporting procedure, and could give a report every week.

Jack Luft spoke in favor of using segways. He spoke to heading toward taking them off the paths, they were highly regulated, require training and supervision and another option was to hold a referendum.

Al Kaplan spoke against segways on the Shared Use Paths.

Paul Emilius spoke against segways and cited a News Week article of seways being recalled.

James Horry spoke in favor of segways.

Elaine Adler spoke her observation of segway tours being small, use safety equipment and could stop on a dime and she agreed with the usage.

Doug Dietrich spoke to the Sanibel Bicycle Club opposition of broad use, but agree to the conditional use permit.

A Naples resident spoke to his personal usage of segways.

Steve Greenstein spoke to the Planning Commissions' approval of the conditional use permit standards, if ordinance enacted would impair a small business, there was no imminent danger, and send back to Planning Commission.

Bart Smith spoke the issue before Council being safety.

Jim Kilcherman asked if the issue was safety of the Shared Use Path or segways.

Mr. Cuyler stated that the statute did allow a municipality to pass an ordinance on safety issues.

Mr. Kilcherman spoke to the working of segways, sound technology, safety and his agreement for the use of segways. He also spoke to Shared Use Paths being unsafe.

Barbara Cooley spoke to the Sanibel Garage owner speaking against segways.

Council asked if it was proper for a resident could bring forward another residents opinion.

Mr. Cuyler spoke that under the legislative process a resident could give another person's opinion.

Larry Garland, Ft. Myers resident spoke to owning a segway and Mr. Kirkland repairing a recall on the segway. He spoke in favor of segway use.

Charles Street spoke in favor of segways.

Bernie Lubetkin spoke in favor of segways.

John Bobeer, vacationer spoke in favor of segways.

Holly Smith spoke in favor of segways.

David Berger spoke to being conscience of risk management, and carrying capacity of the Shared Use Paths.

Steve Gunlick spoke in favor of segways.

Joe Brandenburg, tourist spoke in favor of segways.

Marty Harrity spoke in favor of segways.

Pamela King spoke in favor of segways.

Ellen Lai spoke in favor of segways.

Molly Hoyer spoke in favor of segways.

Larry Thompson spoke in favor of segways.

Larry Schoop spoke against segways.

Richard Johnson spoke in favor of segways.

Bo Gibson, Cape Coral spoke to operating segway tours on Ft. Myers Beach.

Sandy Zahorchak spoke in favor of segways.

Robert Mount spoke in favor of segways.

Karen Leano spoke in favor of segways.

John Veenschoten spoke to there being a tie vote on the first consideration of segways and the conditional use permit being violated.

Wayne Ponader spoke against segways.

Judy Minchie asked who determines what the word safety means.

Mr. Cuyler answered that City Council determines the definition. He further spoke to the previous segway discussion, the reason safety issues were being reviewed was because the statute provides the governing body the ability to decide safety. He also stated segways were allowed by statute and not transferable to other transportation operations.

Ms. Minchie spoke in favor of segways.

Dan Neilson spoke in favor of segways.

Peter Pappas spoke against segways.

Discussion ensued regarding allowing someone to speak a second time, and Mr. Cuyler answered that it was Council's discretion.

Council decided not to take further public comment from the audience that had previously spoken.

Discussion ensued regarding the safety question was not against Mr. Kirkland, Council could not permit a conditional use because that was a Planning Commission function, but could hear safety issues, and segways were not compatible with the Shared Use Paths.

Councilman Jennings made a motion to table Ordinance 07-001 for 12 months.

Mr. Cuyler stated the item was an emergency ordinance that would enact regulations with a 4/5's vote of Council. He further stated that if adopted the ordinance would prohibit segway use on public areas. He explained that within 60 days there had to be a first and second reading of an ordinance for adoption, and that the vote to table would need a second and would be tabled until Council brought the ordinance back for discussion. He stated that it was assumed that if an emergency ordinance was adopted there would be a follow-up ordinance for adoption under normal procedures.

- Approve
- Table
- Amend
- Reject
- Could send to Planning Commission

Mr. Cuyler stated that the ordinance was not a land development code, but could go to the Planning Commission for discussion.

Discussion ensued regarding Council deciding on safety and Planning Commission on conditional use permit, Mr. Cuyler stated that Council could send back to the Planning Commission a discussion regarding the general operation of segways on Sanibel, continue discussion, table discussion or take no action.

The motion died for the lack of a second.

Discussion ensued regarding a slight amendment.

Vice Mayor Denham made a motion, to not prohibit segway tours, but allow an evaluation of alternative public sites of areas that would be less congested.

Mr. Cuyler stated the motion would require study and coordination with staff and Mr. Kirkland.

Councilman Brown withdrew his motion from the original motion to adopt Ordinance 07-001.

The original motion failed due to the withdrawal of a second.

Discussion ensued regarding work with Mr. Kirkland for times, alternative places for the tours, standards for the users, no violation of customary safe operation, Shared Use Master Plan consultants review the use of alternative uses, the need for weekly reporting, could ask the staff to bring a report back to Council of options, Mr. Cuyler answered Council could direct staff, the need for alternatives, and need to advertise, and put on an agenda for discussion.

Vice Mayor Denham's motion died for the lack of a second.

Councilman Brown made a motion, seconded by Councilman Jennings, to direct staff to bring back recommendations to Council in regards to alternative times for segway tours, areas for segway tours, standards for users of segways, include in the Shared Use Master Plan review, if there was a serious accident Council would be informed and continue the conditional use permit for 12 months with weekly reporting to the City Manager.

Billy Kirkland spoke to his agreement with the motion and he asked for a continuation of discussion until February 20, 2007 Council meeting.

The motion carried unanimously.

Council recessed at 12:30 p.m.

Council reconvened at 1:30 p. m.

Discussion regarding beach clean-up

Current Beach Conditions

Staff report and results of 3-week bacteria study

Staff report on clean-up Pilot Program

Ms. Zimomra spoke to the following:

- Background included in the agenda packet
- Staff prepared to speak to current beach conditions
- Heavy accumulation on the west bend in the last 4 days
- Results of the 3-week bacteria study
- Staff used outside lab for water samples for water quality
- Lee County Health Department through the state control beach water quality testing
- Re-issued the summary of the clean-up pilot program
- TDC funded the pilot program clean-up
- Staff recommendations and draft permit for hand gathering of algae included in the packet
- Ceases on February 15 due to snowy plover nesting period
- Lee County would allow algae if dried out first and could not be mixed or co-mingled
- TDC would fund the transportation of the waste to Lee County
- Biological health impacts – no health impacts, but would recommend that hand washing was strongly recommended with protective gloves and clothing
- Air quality – Spoke to DEP had no reason to believe that would be a problem

Discussion ensued regarding residents not understanding the City had done a lot toward water quality, problem based on excessive nutrients coming down the Caloosahatchee River from water releases from Lake Okeechobee in 2004 and 2005, lost 80% of seagrasses, seeing some progress in the efforts there was no repeat of the process, (TMDL) Total Management of Daily Load, how to clean-up the red drift algae, process to continue the beach clean-up, the need to clean the beaches 1 time and put a plan in place that would allow residents/businesses to clean-up the beach pm a continual basis.

Options

Dr. Loflin spoke to the following:

- Mechanical method would require mechanical rake with front end loaders and trucks on the beach that would take the algae off island
- Mechanical method would tear up the beach and severely affect micro-organisms
- Utilize raking the algae by hand, let dry and remove from the island
- Raking would have a temporary impact

Discussion ensued regarding anything between mechanical and hand raking, Mr. Castle, Public Works Director spoke to the following:

- Staff spoke to contractors working all over the U. S. particularly in N. C.
- Mechanical rake pulled behind a tractor – did not work due to running over seagrasses
- Root rake on front end loader to rake algae and did work
- DEP requires a beach permit for heavy equipment – low ground pressure machine, which restricts the size of the equipment

Discussion ensued regarding not waiting until the algae was a foot thick, could algae had been removed easier, Mr. Castle spoke to thick algae and a blanket of algae, but worked better with a smaller volume of algae, decision would be the number of times to have equipment on the beach, Ms. Zimomra called Council's attention to the few access points that trucks could get on the beach, how many trucks would it take to clean-up the beaches, Mr. Castle answered it could possibility take 1,000-foot section of beach 1 foot deep and 30 foot wide would take 56 truck loads, weight restrictions, 30-yard trailers pulled by a dump truck, was there a health and safety issue, Dr. Loflin stated that the 3-week study did show 3 intermediate counts, 12 moderate counts of enter coli counts, nothing under the Health Department scale that would close the beach, Dr. Loflin stated that a N. C. Professor working on samples from 2-weeks ago, water quality getting worse, would raking the beach help water quality, dangerous spikes of poor water quality, seepage from red drift algae, large amount of algae in the water, Dr. Loflin stated that the sampling by the Health Department show very few instances of poor and only happened 3 times, Florida Healthy Beaches Program at Florida.com, if algae sits on the beach 10 days would that increase the bacteria, Dr. Loflin answered yes, and the concern would be if there were any human pathogens, Dr. Loflin stated the longer it sits on the beach it would not have the same value, should clean the beach one time and allow residents to clean the beach, should close the beach if there was that big a problem, state pre-empted a municipality from closing the beach.

Dr. Loflin spoke to the following of individual hand-raking fro the property owner:

- Using hand rakes to pull the material on a higher part of the beach
- Allow to dry, would loss approximately 80% of weight
- Algae would be bagged and disposed of at Lee County
- Limited to hand tools and only remove algae
- Can not use motorized vehicles
- Disposed ahead of the 1974 CCCL
- Must be air dried and bagged
- Drying would occur on the upper beach
- Arranged pick-up through City's waste haulers

Mr. Castle spoke to the following:

- Residents and businesses would not hire sub-contractor for the clean-up
- Use City waste haulers

Ms. Zimomra stated that if authorized the permit would come through the City Manager's office, a copy would be kept on file and could be withdrawn for non-compliance.

Discussion ensued regarding any need for further restrictions, Dr. Loflin stated the restrictions noted would help residents/businesses to comply with the recommendations, Mr. Cuyler stated that he did speak with DEP and they would not place an objection under the recommendations, Council would not authorized the continuous mechanical clean-up of the beaches, and nothing natural about the red drift algae on the beaches.

Councilman Brown made a motion, seconded by Councilman Rothman, to allow individuals/businesses to hand rake the beaches in front of their property and apply for the permit necessary through the City Manager's office to perform the algae removal.

Public Comment:

Bernie Lubetkin spoke to contracting with landscaping firms for raking. He asked if staff weighed the rake.

Mr. Castle answered if the rakes were weighed it would dig into the sand.

Bert Jenks spoke to using side delivery rakes on the farm. He suggested using the side rakes to gather the algae and possibility of burning the algae on island. He also stated a drop in guests.

Ms. Zimomra stated that the ultimate location was Lee County's Waste Incinerator. She further stated that open burning would not be allowed due to the need for a permit, and an emergency permit was allowed after the 2004 and 2005 hurricanes.

Mr. Castle stated he was not familiar with farm equipment and the DEP put a tire pressure of less than 15 psi and would still need a front-end loader to gather and load algae into trucks.

A resident asked if red pepper would be burned on the island. He further spoke to much algae and not enough people and time to remove.

Louise Johnson spoke Council working very hard, the algae comes and goes, any use of algae for fertilizer, and other things to do on island besides using the beach.

Dr. Loflin stated if it was dried and mixed with other vegetation it could be used for mulch, but would be better to get off the island.

Carol Buttoff spoke to one large clean-up.

Herb Rubin spoke to removing the algae as it lands on the beach and use for mulch.

Louise Parker spoke to the need to adopt staff recommendation.

A resident asked if the one-time removal of the algae would work

Dr. Loflin stated that the algae was growing off-island at the reef and can attach to a worm casing and found 40-feet deep and accumulates in large patches off-shore alive and growing. He explained that when it washed up on the beach and dries, the algae breaks down and the algae coming in was new algae.

Dave Sheppard asked when this would start.

Ms. Zimomra stated it would be immediately.

Dr. Loflin stated that the Snowy Plover nesting and turtle nesting made a difference of clean-up. He asked if water harvesting could be done.

Dr. Loflin stated that there was no equipment available to harvest algae in the ocean.

A resident from Shalimar Resort spoke to if it would be mandatory or voluntary.

Ms. Zimomra stated it would be voluntary. She stated that past clean-ups were widely excepted.

Mr. Castle stated that it would take a week to get the equipment and 1 week per mile before February 15th.

Monnie Arnowitz spoke to the enjoyment of life greatly diminished. She asked how other communities dealt with the red drift algae.

Ms. Zimomra stated that staff had talked to Naples, Sarasota, Longboat Key and Fort Myers Beach and none of these municipalities had the variety of endangered species, the shells or impacted by the freshwater releases. She also spoke to some communities sterilizing their beaches, but not compatible to Sanibel.

Rick Base, Executive Director Sanibel Captiva Chamber of Commerce asked about the amount of funds TDC could be used.

Ms. Zimomra stated that TDC had \$50,000 in the emergency fund. Ms. Zimomra further stated the recommendation would be for the transportation. She explained the City would pay for the collection and the private sector would pick-up the algae.

Mr. Castle stated the contractor was not able to give an exact amount of funds it would take to pick-up the algae.

Marsha Kimball spoke to worried that tourists were not on the island. She further spoke to jamming the legislature with e-mails. She recommended speaking with landscapers to see if they would donate their time.

Ms. Zimomra stated that the vast majority already had landscapers on contract.

Jim Hanlon spoke to the first appearance of red drift algae was spring, 2006 and disappointed at the recommended solution.

Billy Kirkland spoke to offering his tractor and would pay his employees to help.

Bob Griger spoke to doing a trial and maintain the beach with regular raking to see the results.

Karen Storijschmann spoke to no enforcement of the environmental protection laws.

Sonia Smith, CASI spoke to her research of a clean-up being conducted on Ft. Myers Beach. She further stated that raking was allowed, 10-feet landward of the rake line, 10- feet seaward of any dunes. She spoke to a conversation with Mr. Bill Perry and had taken care of red drift algae with a small tractor and rake.

Brad Lear spoke to get all information, and review options.

Susan Dunn spoke to real estate and the need for a solution.

Judy Minchie spoke to the need for a solution.

Marsha McDonald spoke to the continued problem with red drift algae. She further spoke to the need for a code change to allow a policy be implemented in an emergency situation.

Tom Duggan asked if the February 15th deadline was cast in stone and City Council needed to make a decision.

Dr. Loflin stated that the Snowy Plovers arrive normally in mid-February and their nesting was incompatible with beach cleaning.

Bob Merriman asked if the algae could be piled up when drying and how long would it take to dry.

Dr. Loflin stated a thinner pile was better and the algae was heavy in water weight and would dry out quickly.

Council asked if more equipment was requested could that request be accommodated.

Mr. Castle stated it would depend on the available equipment.

Jim Lewis spoke to red drift algae clumped together like baled hay and no one could possibly lift and/or clean-up.

Dr. Loflin stated that there was no question there were piles of algae in excess of 1-foot would be hard, but could be done.

Steve Brunner spoke to 2 years ago the City allowing a rake to be used on the beach for clean-up.

Sally Hunsier asked to leave the red drift algae on the beach would produce nitrogen and was that allowing more nitrogen to be placed in the water.

Dr. Loflin stated it would allow more nitrogen, but much less than the amount in the Lake Okeechobee water releases.

Marilyn Calensendie spoke to red drift algae on the beach was on Periwinkle Way and the need to remove.

Discussion ensued regarding past Council discussions, meeting was to address the problem, audience had made good suggestions and spend time between now and October with recommendations,

The motion was carried.

Councilman Rothman made a motion, seconded by Vice Mayor Denham, to adjourn.

There being no further business the meeting was adjourned at 4:00 p. m.

Respectfully submitted by,

Pamela Smith, CMC
City Clerk