

Town of Fort Myers Beach
Agenda Item Summary

Blue Sheet Number: 2010-041

1. Requested Motion:

Adopt Ordinance 09-08, to amend the Land Development Code regarding LPA member service on multiple committees.

Meeting Date: April 5, 2010

Why the action is necessary:

This action would implement Town Council direction regarding amendment of LPA membership provisions

What the action accomplishes:

2. Agenda:

- Consent
 Administrative

3. Requirement/Purpose:

- Resolution
 Ordinance
 Other

4. Submitter of Information:

- Council
 Town Staff
 Town Attorney

5. Background:

Town Council has discussed amending the Town's LPA membership requirements to allow members of the LPA to also have membership in other Town advisory committees, in the Town Council's discretion. This Ordinance is a companion to other ordinances which permit members of Town advisory committees to serve on more than one committee at a time. At this second and final hearing the Town Council can decide to adopt the Ordinance, continue the hearing and direct changes to be made to the Ordinance, or take no action.

Attachments: Draft Ordinance 09-08; LPA minutes; LPA resolution recommending approval.

6. Alternative Action:

Take no action, or continue the hearing and direct changes to the Ordinance.

7. Management Recommendations:

Adopt Ordinance.

8. Recommended Approval:

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Cultural Resources Director	Town Clerk
						

9. Council Action:

- Approved Denied Deferred Other

ORDINANCE 09-08

AN ORDINANCE AMENDING CHAPTER 34 OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE; PROVIDING AUTHORITY, AMENDMENTS TO SECTIONS 34.113 AND 34.114, DIVISION 3 LOCAL PLANNING AGENCY, ARTICLE II ZONING PROCEDURES, WHICH ARE TITLED, RESPECTIVELY, "COMPOSITION, APPOINTMENT AND COMPENSATION OF MEMBERS", AND "MEMBERS TERMS AND VACANCIES", PROVIDING FOR CHANGE IN DATE OF APPLICATION FOR LPA MEMBERSHIP, CHANGE IN THE DATE OF APPOINTMENT TO THE LPA AND CHANGE IN THE TERMS OF LPA MEMBERS; SEVERABILITY; EFFECT OF ORDINANCE AND EFFECTIVE DATE.

IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

SECTION 1. Authority. This Ordinance is enacted pursuant to Chapter 95-494, Laws of Florida, Chapters 163 and 166, Florida Statutes, and other applicable provisions of law.

SECTION 2. Composition, Appointment and Compensation of Members of Local Planning Agency. Composition, Appointment and Compensation of Members of the Local Planning Agency as set forth in Section 34-113(a) is amended to read as set forth below. Language being repealed from the existing code is indicated with ~~strikethroughs~~ and entirely language being added is indicated with underlining, as follows:

SECTION 34-113(a). The local planning agency shall consist of up to seven members appointed by the town council. No members of the local planning agency shall be salaried officials of the town. Membership on the local planning agency shall not affect ~~render~~ a person's eligibility ~~ineligible~~ for membership on any other advisory committee for the Town of Fort Myers Beach during his/her term of office. One spouse per household will be eligible for membership on the local planning agency during any given term of office. No current member of Town Council shall be eligible to serve on the local planning agency. Except for inclusion of members required under Florida law, all members must be residents of, or owners of real property located within, the territorial limits of the Town of Fort Myers Beach at the time of application for membership on the local planning agency and during the period of service on the local planning agency. All applicants must apply on or before September 1 of the appointment year. Each application must be submitted on one 8½" by 11" paper, and must include a short biography and short explanation as to why the applicant wishes to serve on the local planning agency.

SECTION 3. Severability. If any one of the provisions of this ordinance should be held contrary to any express provision of law or contrary to the policy of express law, although not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such provision shall be null and void and shall be deemed separate from the remaining provisions of this ordinance, and in no way affect the validity of all other provisions of this ordinance.

SECTION 4. Effect of Ordinance. The provisions of this Ordinance shall be deemed cumulative and supplemental and shall have no legal effect upon the ordinances of the Town of Fort Myers Beach, except as expressly provided.

SECTION 5. Effective Date. This ordinance shall become effective immediately upon its adoption.

The foregoing ordinance was enacted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____ and, upon being put to a vote, the result was as follows:

Larry Kiker, Mayor
Jo List, Councilmember
Tom Babcock, Councilmember

Bob Raymond, Vice Mayor
Alan Mandel, Councilmember

DULY PASSED AND ENACTED this ____ day of _____, 200__

Attest: Town of Fort Myers Beach, Florida

BY: _____
Michelle Mayher, Town Clerk

BY: _____
Larry Kiker, Mayor

Approved as to Legal Form:

Anne Dalton, Esquire, Town Attorney

**RESOLUTION OF THE LOCAL PLANNING AGENCY OF THE
TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 2009-26**

WHEREAS, the existence of the Local Planning Agency (LPA) is mandated by Florida Statutes Section 163.3174 and the LPA is statutorily responsible under Chapter 163, Florida Statutes, and the Town of Fort Myers Land Development Code (LDC) Section 34-120 for the review of proposed land development regulations, land development codes, or amendments thereto, and is further charged with review of other and additional legislation as requested by the Town Council and for making recommendations to the Town Council with regard thereto; and

WHEREAS, the Town Council is considering an amendment to the LDC to modify LPA membership requirements and related matters, which are set forth in proposed Town Ordinance 09-08; and

WHEREAS, Ordinance 09-08 was introduced at the Town Council meeting of November 16, 2009 and has not yet been scheduled for hearing before Town Council; and

WHEREAS, a hearing on this Ordinance was duly noticed and held by the LPA on December 15, 2009, at which time the LPA considered the contents of the ordinance and the comments of all interested parties, and following due deliberation by its members, reached the recommendation set forth below.

NOW THEREFORE BE IT RESOLVED, that the LPA recommends as follows:

That the Town Council **APPROVE** draft Ordinance 09-08, attached hereto as Exhibit "A" and incorporated by reference.

The foregoing Resolution was adopted by the LPA upon a motion by LPA Member Van Duzer and second by LPA Member Mandel, and upon being put to a vote, the result was as follows:

Joanne Shamp, Chair aye
Carleton Ryffel, Member aye
Chuck Moorefield, Member aye

Bill Van Duzer, Vice Chair aye
Rochelle Kay, Member nay
Alan Mandel, Member aye

DULY PASSED AND ADOPTED THIS 15th day of December, 2009

LPA of the Town of Fort Myers Beach

By: Joanne K. Shamp
Joanne Shamp, LPA Chair

Approved as to legal sufficiency:

By: Anne Dalton
Anne Dalton, Esquire
LPA Attorney

ATTEST:

By: Michelle Mayher
Michelle Mayher, Town Clerk

ORDINANCE 09-08

AN ORDINANCE AMENDING CHAPTER 34 OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE; PROVIDING AUTHORITY, AMENDMENTS TO SECTIONS 34.113, DIVISION 3 LOCAL PLANNING AGENCY, ARTICLE II ZONING PROCEDURES, WHICH IS TITLED "COMPOSITION, APPOINTMENT AND COMPENSATION OF MEMBERS", PROVIDING FOR LPA MEMBERS ELIGIBILITY FOR MEMBERSHIP ON OTHER TOWN ADVISORY COMMITTEES; SEVERABILITY; EFFECT OF ORDINANCE AND EFFECTIVE DATE.

IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

SECTION 1. Authority. This Ordinance is enacted pursuant to Chapter 95-494, Laws of Florida, Chapters 163 and 166, Florida Statutes, and other applicable provisions of law.

SECTION 2. Composition, Appointment and Compensation of Members of Local Planning Agency. **Composition, Appointment and Compensation of Members of the Local Planning Agency as set forth in Section 34-113(a) is amended to read as set forth below. Language being repealed from the existing code is indicated with strikethroughs and entirely language being added is indicated with underlining, as follows:**

SECTION 34-113(a). The local planning agency shall consist of up to seven members appointed by the town council. No members of the local planning agency shall be salaried officials of the town. Membership on the local planning agency shall not affect ~~render~~ a person's eligibility ~~ineligible~~ for membership on any other advisory committee for the Town of Fort Myers Beach during his/her term of office. One spouse per household will be eligible for membership on the local planning agency during any given term of office. No current member of Town Council shall be eligible to serve on the local planning agency. Except for inclusion of members required under Florida law, all members must be residents of, or owners of real property located within, the territorial limits of the Town of Fort Myers Beach at the time of application for membership on the local planning agency and during the period of service on the local planning agency. All applicants must apply on or before September 1 of the appointment year. Each application must be submitted on one 8½" by 11" paper, and must include a short biography and short explanation as to why the applicant wishes to serve on the local planning agency.

SECTION 3. Severability. If any one of the provisions of this ordinance should be held contrary to any express provision of law or contrary to the policy of express law, although not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such provision shall be null and void and shall be deemed separate from the remaining provisions of this ordinance, and in no way affect the validity of all other provisions of this ordinance.

SECTION 4. Effect of Ordinance. The provisions of this Ordinance shall be deemed cumulative and supplemental and shall have no legal effect upon the ordinances of the Town of Fort Myers Beach, except as expressly provided.

SECTION 5. Effective Date. This ordinance shall become effective immediately upon its adoption.

The foregoing ordinance was enacted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____ and, upon being put to a vote, the result was as follows:

Larry Kiker, Mayor
Jo List, Councilmember
Tom Babcock, Councilmember

Herb Acken, Vice Mayor
Bob Raymond, Councilmember

DULY PASSED AND ENACTED this ____ day of _____, 2010.

Attest:

Town of Fort Myers Beach, Florida

BY: _____
Michelle Mayher, Town Clerk

BY: _____
Larry Kiker, Mayor

Approved as to Legal Form:

Anne Dalton, Esquire, Town Attorney

Hearing closed.

C. Ordinance 09-08 Amending LDC Sec. 34-113 (LPA Membership) Resolution #2009-26

Dr. Shockey confirmed that the public notice was published in the News-Press as in the previous hearings. Ms. Dalton read the ordinance into the record: *Ord. #09-08, an ordinance amending Chapter 34 of the FMB LDC, providing authority; amendments to section 34-113 and 34-114, Division 3, LPA, Article 2, Zoning Procedures, which are titled respectively "Composition Appointment and Compensation of Members" and "Members, Terms and Vacancies," providing for change in the terms of LPA members, severability, effect of ordinance and effective date.*

Ms. Dalton gave a brief overview of the ordinance. The new policy direction of the Town Council is basically that a member can belong to multiple committees, if desired, and this would implement that policy decision, if passed. The other advisory committee ordinances have already been changed to reflect this but, as Dr. Shockey pointed out, to change the LPA provisions it takes longer because it must go through LDC change process, which requires a hearing before the LPA.

Public comment was opened. There was no comment. Public comment was closed.

Ms. Kay asked if this would mean that LPA members would now be allowed to serve on other committees. Ms. Dalton agreed that it would and reiterated that the only conflict would be any personal or financial conflict having a personal gain for the member in any way.

Motion: Mr. Van Duzer moved to adopt Resolution 2009-26 and send to Town Council.

Seconded by Mr. Mandel;

Vote: Motion passes 5-1, with Ms. Kay opposed.

Hearing closed.

D. Ordinance 09-09 Amending LDC Sec. 6-11 34-1744 and 34-1745 Refuse Containers Resolution #2009-28

Dr. Shockey confirmed that the public notice was published in the News-Press as in the previous hearings. Ms. Dalton read the ordinance into the record: *Ordinance #09-09, an ordinance amending regulations in Chapter 6 and 34 of the FMB LDC, providing authority, adopting amendments to Article 1 Property Maintenance Code of Chapter 6 entitled "Maintenance Codes, Building Codes and Coastal Regulations;" adopting amendments to Division 17 entitled "Fences, Walls and Entrance Gates" of Article 4, entitled "Supplemental Regulations of Chapter 34-Zoning Districts, Design Standards and Non-Conformities; providing for severability and providing for an effective date.*

Brief overview of the ordinance was given by Dr. Shockey. An ad hoc committee had looked into the general handling/placement of refuse containers and found problems remain with the specific types of container (needing lids) and the fencing to enclose the trash areas so that they are not visible from the street or neighboring properties. The LDC changes would address the requirement for lids and changing the height

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Jo List, Councilmember
Tom Babcock, Councilmember

Herb Acken, Vice Mayor
Bob Raymond, Councilmember

DULY PASSED AND ENACTED this ____ day of _____, 200__

Attest: Town of Fort Myers Beach, Florida

BY: _____
Michelle Mayher, Town Clerk

BY: _____
Larry Kiker, Mayor

Approved as to Legal Form:

Anne Dalton, Esquire, Town Attorney