

ORDINANCE No. 07-05

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH AMENDING THE CHARTER, PROVIDING AUTHORITY; AMENDMENT PROVISION FOR ELECTION OF COUNCIL MEMBERS IN APRIL, 2008 IF TOWN REFERENDUM ON CHANGES TO ARTICLE IV OR ARTICLE V, OR BOTH, OF THE TOWN CHARTER IS HELD IN JANUARY, 2008; EFFECTIVE DATE; SEVERABILITY; REPEALING CLAUSE.

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Florida Statute 100.3605 (2) authorizes the Town of Fort Myers Beach to change, by ordinance, the dates for qualifying and for the election of members of the Town Council and provide for the orderly transition of office resulting from such date changes; and

WHEREAS, Florida Statute 166.021 (4) provides that a municipality has the right to select election dates and qualifying periods for candidates and changes in terms of office necessitated by such changes in election dates without approval by referendum of the Town elections; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, the Town Council is considering whether it may be in the best interest of the Town to hold a referendum or referendums to ascertain, inter alia, whether the Town electorate wishes to change the manner of election of Councilmembers from that set forth in Article IV and/or Article V of the Town Charter but no final decision has been made; and

WHEREAS, such referendum(s), if any, would be conducted on January 29, 2008, in conjunction with the Presidential Preference Primary, since the Supervisor of Elections has determined that it would be at no cost to the Town on the date and such cost-savings are in the best interest of the Town; and

WHEREAS, Article V of the Town Charter provides for the regular election of the members of council on the second Tuesday in March with a run-off election if necessary on the second Tuesday in April, if no candidate receives a majority of votes for that office; and

WHEREAS, if such referendum(s) are approved by the electorate in January, 2008, the methodology of election at the Town would be altered, and insufficient time exists

between the passage of any such referendum or referendums and a Town election in March, 2008, to implement the electorate's decision; and

WHEREAS, the Lee County Supervisor of Elections has advised the Town Council that she could conduct the Town's general election on April 8, 2008, which would allow for sufficient time for Town candidates to qualify under changes, if any, to the Town's election methodology caused by Town referendum(s), if any are held in January, 2008.

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

SECTION 1. INCORPORATION: The above "whereas" clauses are hereby incorporated into the body of this Resolution by reference.

SECTION 2. AMENDMENT – ELECTIONS. The "Town of Fort Myers Beach Charter" adopted as Chapter 95-494, Laws of Florida is amended as follows for the next general election:

“ Section 5.01. Elections. The regular election of the members of the council shall be held on ~~the second Tuesday in March~~ the 2nd Tuesday of April, effective in 2008. If necessary, a runoff election will be held on the ~~second~~ third Tuesday in ~~April.~~ May, effective in 2008. The time period that candidates must qualify shall be from noon of the 50th day prior to ~~the second Tuesday in March~~ the second Tuesday of April, effective in 2008 to noon of the 46th day, or as adjusted by a holiday or leap year.”

SECTION 3. EFFECTIVE DATE This Ordinance shall take effect only if a Town Ordinance is passed authorizing the conduct of a referendum in January, 2008, which would, inter alia, alter the electoral process under Article IV or V, or both, of the Town Charter. In the event such Ordinance authorizing the conduct of the said referendum is not passed, this Ordinance shall be null and void and of no effect. Furthermore, this Ordinance shall only be in effect, if at all, for any general election conducted in the year 2008.

SECTION 4. SEVERABILITY CLAUSE. 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 5. REPEALING CLAUSE. All ordinances or parts thereof in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

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

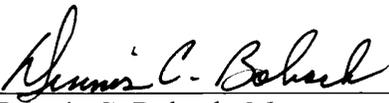
Dennis C. Boback, Mayor	aye
Larry Kiker, Vice Mayor	aye
Herb Acken	nay
Charles Meador, Jr.	aye
William Shenko, Jr.	aye

DULLY PASSED AND ENACTED this 20th day of August, 2007.

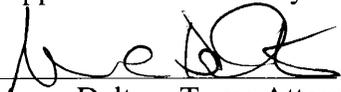
ATTEST:

TOWN OF FORT MYERS BEACH

By: 
Michelle D. Mayher, Town Clerk

By: 
Dennis C. Boback, Mayor

Approved as to form by:


Anne Dalton, Town Attorney