

RESOLUTION NO. 15-20

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, PROVIDING FOR THE AMENDMENT AND REVISION OF THE TITLES AND QUESTIONS TO BE PRESENTED TO THE VOTING PUBLIC IN ACCORDANCE WITH THE PROVISIONS OF ORDINANCE 15-02, SECTION 2; AND, PROVIDING FOR DELETION OF CHARTER TEXT RELATED TO TOWN TRANSITION ISSUES.

WHEREAS, the Town Council adopted Ordinance 15-02 on September 21, 2015, upon the recommendation of the Charter Review Commission, for the purpose of submitting amendments and revisions to the Town of Fort Myers Beach Charter to a referendum vote; and

WHEREAS, Section 2 of Ordinance 15-02 provides that the Town Council the right to adopt a resolution amending the ballot titles and questions to clarify the intent of the provisions for the voting public; and

WHEREAS, the Town Council has determined it is appropriate to revise the order of the referendum questions and amend a number of the titles and questions to provide greater clarity and understanding for the voting public as set forth in attached Exhibit A; and

WHEREAS, Ordinance 15-02 also proposes the elimination of Charter text related solely to Town transition issues, as identified in attached Exhibit B.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:

1. The above recitals are true and correct and incorporated herein as though fully set forth below.

2. Exhibit A is hereby adopted, consistent with Ordinance 15-02, Section 2, to provide a revised order for the presentation of the referendum questions and to clarify the questions and titles to be submitted to the voting public.

3. Exhibit B, which identifies non-referendum amendments to the Charter related to Town transition issues, is hereby adopted. Charter Section 15.12 allows the elimination of transition elements from the Charter without the requirement for referendum approval.

The foregoing Resolution was adopted by the Town Council on the motion of Council Member Hosafros, seconded by Council Member Stockton, and upon being put to a vote, the results were as follows:

Anita Cereceda, Mayor	Aye
Dan Andre, Vice-Mayor	Aye
Rexann Hosafros	Aye
Alana Mandel	Aye
Summer Stockton	Aye

DULY PASSED AND ADOPTED this 16th day of November, 2015.

By: 

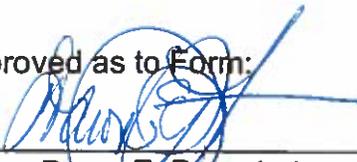
Anita Cereceda, Mayor

ATTEST:

By: 

Amy Baker
Deputy Town Clerk

Approved as to Form:

By: 

Dawn E. Perry-Lehnert
Town Attorney

**EXHIBIT A
(21 Ballot Referendum Questions)**

**REFERENDUM # 1
Sec. 11.03**

TITLE: REMOVING LIMITATIONS ON THE TOWN'S ABILITY TO ENGAGE IN LONG TERM FINANCING

SUMMARY: This amendment will allow the Town to borrow the funds necessary to meet long term capital improvement funding needs in accordance with the Town's Debt Management Policy.

QUESTION: Shall the above-described amendment be adopted?

OPTIONS: Yes for approval
 No against approval

TEXT: Sec. 11.03. Council action on the budget.

~~(a) Unless authorized by the electors of the town at a duly held referendum election, the council shall not authorize or allow to be authorized the issuance of revenue bonds or enter into lease purchase contracts or any other unfunded multi-year contracts all for the purchase of real property or the construction of any capital improvement, the repayment of which extends in excess of 36 months, unless mandated by state or federal governing agencies.~~

REFERENDUM # 2
Sec. 12.01

TITLE: LOWERING THE REQUIREMENTS FOR RESIDENT INITIATIVES

SUMMARY: This amendment will lower the threshold percentage for resident initiatives to be presented to the Town Council regarding adoption of an ordinances affecting the Town from 25% to 15%.

QUESTION: Shall the above-described amendment be adopted?

OPTIONS: Yes for approval
 No against approval

TEXT: Sec. 12.01. Initiative and referendum.

At least ~~25~~ 15 percent of the qualified electorate of the town shall have the power to petition the council to propose an ordinance or to require reconsideration of an adopted ordinance, and if the council fails to adopt such ordinance so proposed, or to repeal such adopted ordinance, without any change in substance, then the council shall place the proposed ordinance, or the repeal of the adopted ordinance, on the ballot at the next municipal election.

REFERENDUM # 3
Sec. 4.13

TITLE: REQUIRING THREE AFFIRAMTIVE COUNCIL MEMBER VOTES TO TAKE OFFICAL ACTION

SUMMARY: The Charter currently allows an official action to be adopted upon the affirmative vote of only two members in the event of a voting conflict or absentee member. This amendment will require that all official actions, except in the case of emergencies, will require an affirmative vote of at least three members.

QUESTION: Shall the above-described amendment be adopted?

OPTIONS: Yes for approval
 No against approval

TEXT: **Sec. 4.13. Voting; quorum.**

Roll call voting shall be required for ordinances or upon the specific request of a council member and shall be recorded in the minutes; otherwise, voting shall be by ayes and nays. Three members of the council shall constitute a quorum. No action of the council shall be valid or binding unless adopted by the affirmative vote of ~~a majority of the~~ at least 3 members of council, except in an emergency situation. All council members in attendance shall vote on all council actions, except when, with respect to any such member, there is, or appears to be, a possible conflict of interest as defined under general law.

REFERENDUM # 4
Sec. 5.03

TITLE: EXTENDING COUNCIL MEMBER TERMS OF OFFICE FROM THREE TO FOUR YEARS

SUMMARY: This amendment will change the council member terms of service from three years to four years, with elections being held in odd number years. Seats #1, and #2 will initially be for a term from March 2016 to March 2019.

QUESTION: Shall the above-described amendment be adopted?

OPTIONS: Yes for approval
 No against approval

TEXT: **Sec. 5.03. Terms of Office.**

The terms for all council seats, #1, #2, #3, #4, and #5, shall be for ~~3~~ 4 years with elections held every other year ending in an odd number. Seats #1 and #2 shall initially be for a term from March 2016 to March 2019. ~~except during the transition period, seats #1 and #2 shall initially be for a term from November, 2000 to March, 2005.~~

REFERENDUM # 5
Sec. 5.03

TITLE: ELIMINATING TERM LIMITS

SUMMARY: This amendment will allow elected council members to serve more than two full consecutive terms; and, eliminates term limits.

QUESTION: Shall the above-described amendment be adopted?

OPTIONS: Yes for approval
 No against approval

TEXT: **Sec. 5.03. Terms of office.**

~~No member of the council shall serve for more than two consecutive full terms. After one year out of office, a candidate may re-qualify for any vacant seat.~~

REFERENDUM # 6
Sec. 5.09

TITLE: ESTABLISHING A TOWN CANVASSING BOARD

SUMMARY: This amendment will create a Town Canvassing Board. At the close of any Town election, the Town Canvassing Board will review the votes on file with the Supervisor of Elections and certify the total number of votes taken.

QUESTION: Shall the above-described amendment be adopted?

OPTIONS: Yes for approval
 No against approval

TEXT: Sec. 5.09. Town canvassing board.

The town canvassing board shall be composed of a Town Council Member, selected by Town Council, who is not a candidate for reelection, the Town Manager and the Town Clerk, who shall act as chairperson. At the close of polls of any town election, or as soon thereafter as practicable, the canvassing board shall meet at a time and place designated by the chairperson and shall proceed to publicly canvass the vote as shown by the returns then on file in the Office of the Supervisor of Elections. The Board shall prepare and sign a certificate containing the total number of votes cast for each person or other measure voted on. The certificate shall be placed on file with the Town Clerk.

REFERENDUM # 7
Sec. 4.05

TITLE: SETTING COUNCIL MEMBER SALARIES AND METHOD FOR ADJUSTMENT

SUMMARY: This amendment establishes a specific annual salary for the mayor and council members, effective April 1, 2016, and provides a method for annual adjustment.

QUESTION: Shall the above-described amendment be adopted?

OPTIONS: Yes for approval
 No against approval

TEXT: **Sec. 4.05. Compensation.**

- (a) ~~An ordinance establishing, increasing, or decreasing compensation of the council may be adopted at any time; however, in no event shall any establishment of compensation or any increase in compensation become effective prior to the first day of the first month following the first regular election of the town subsequent to the adoption of such ordinance. Effective April 1, 2016, base pay for the Mayor will be \$19,200 annually and Council Members will be \$16,800 annually as compensation for their services. Compensation shall be revised annually based on across-the-board adjustments budgeted for staff and administered at the same time as Town employees.~~

REFERENDUM # 8

TITLE: CLARIFYING THE DATE MAYOR AND VICE MAYOR ARE SELECTED

SUMMARY: This amendment clarifies that the selection of the council members to serve as mayor and vice mayor will occur at the first meeting following the second Tuesday in March.

QUESTION: Shall the above-described amendment be adopted?

OPTIONS: Yes for approval
 No against approval

TEXT: **Sec. 4.02. Mayor.**

~~At the first regularly scheduled meeting following the town's regular election meeting after the second Tuesday in March,~~ the council, by majority vote, shall elect from its membership a mayor. The mayor shall serve as chairperson during meetings of the council and shall serve as the head of municipal government for the purpose of execution of legal documents as required by ordinance. The mayor shall also serve as the ceremonial head of the town.

Sec. 4.03. Vice mayor.

~~At the first regularly scheduled meeting following the town's regular election meeting after the second Tuesday in March,~~ the council, by a majority vote, shall elect from among its membership a vice mayor who shall serve as mayor during the absence or disability of the mayor and, if a vacancy occurs, shall become interim mayor pursuant to section 4.08 of this charter.

REFERENDUM # 9
Sec. 4.07

TITLE: CLARIFYING THE TERMS OF FORFEITURE OF OFFICE

SUMMARY: This amendment clarifies that a council member may forfeit elected office for failure to attend three consecutive regularly scheduled council meetings without an excused absence, or failure to maintain a permanent residence in the Town of Fort Myers Beach.

QUESTION: Shall the above-described amendment be adopted?

OPTIONS: Yes for approval
 No against approval

TEXT: **Sec. 4.07. Forfeiture of office.**

A member of the council may forfeit the office, if the member:

- (d) Misses three consecutive regularly scheduled council meetings without an excused absence.
- (e) Does not maintain a permanent residence in the Town of Fort Myers Beach.

REFERENDUM # 10
Sec. 10.02

TITLE: AMENDING AND CLARIFYING THE PROCESS FOR THE ADOPTION OF EMERGENCY TOWN ORDINANCES

SUMMARY: This amendment eliminates unnecessary restraints on the Town Council to enact ordinances under emergency conditions. Emergency ordinances adopted by Council will automatically be repealed 61 days after adoption.

QUESTION: Shall the above-described amendment be adopted?

OPTIONS: Yes for approval
 No against approval

TEXT: Sec. 10.02. Adoption of ordinances.

(b) ~~To meet a public emergency affecting life, health, property, or the public peace, the~~ The council, as provided ~~by a two-thirds vote of those present as required by general law,~~ may adopt an emergency ordinance without complying with the requirements of notice expressed in the foregoing paragraph. ~~An emergency ordinance may not levy taxes; grant, renew, or extend a franchise; set service or user charges for any municipal services; or authorize the borrowing of money.~~ An emergency ordinance shall become effective upon adoption and automatically stand repealed as of the 61st day following the date on which it was adopted. This shall not prevent reenactment of such an ordinance under regular procedures.

REFERENDUM # 11
Sec. 13.03

TITLE: CLARIFY THE PROCESS OF COUNCIL ACTION IN RESPONSE TO RECOMMENDATION OF THE CHARTER REVIEW COMMISSION

SUMMARY: This amendment removes obsolete language regarding the timing of charter review, which will be conducted every 10 years. It clarifies that Council action with respect to Charter Review Commission recommendations includes the authority to accept, reject or modify the proposed changes after two public hearings.

QUESTION: Shall the above-described amendment be adopted?

OPTIONS: Yes for approval
 No against approval

TEXT: Sec. 13.03. Charter review.

The charter will be reviewed ~~no later than 3 years after approval, then no later than 5 years after the initial charter review, and thereafter~~ at least every 10 years. A five-member charter review commission shall be appointed and funded by the council. The charter review commission shall be appointed at least 6 months before the next scheduled election and complete its work and present any recommendations to the Council for change no later than 60 days before the election. The council shall hold a minimum of two public hearings ~~on~~ to approve, reject or modify the proposed changes to the charter prior to placing the proposed changes on the scheduled election ballot.

REFERENDUM # 12
Sec. 4.04

TITLE: ESTABLISHING THAT VIOLATIONS OF THE CHARTER'S NON-INTERFERENCE PROVISIONS CONSTITUTE GROUNDS FOR RECALL.

SUMMARY: The Charter provides that council members will direct improvements to operations of Town government through the Town Manager. This amendment establishes that a violation of this requirement for non-interference with Town staff will constitute grounds for a council member's recall.

QUESTION: Shall the above-described amendment be adopted?

OPTIONS: Yes for approval
 No against approval

TEXT: **Sec. 4.04. Prohibitions.**

(a) Neither the council, nor any individual member of the council, shall in any manner dictate the employment or removal of any employee other than the town manager and town attorney. No individual member of the council shall give orders to any officer or employee of the town. Recommendations for the improvements in the town government operations shall come through the town manager, but each member of the council shall be free to discuss or recommend improvements to the town manager, and the council is free to direct the town manager to implement specific recommendations for improvement in town government operations. Violations of this Section of the Charter shall constitute malfeasance within the meaning of Section 100.361, Florida Statutes, as may be amended.

REFERENDUM # 13
SEC. 2.01

TITLE: CLARIFYING THE TERRITORIAL BOUNDARIES OF THE TOWN OF FORT MYERS BEACH.

SUMMARY: The Town Charter currently describes its territorial waters as a corporate limit 1,000 feet offshore. This amendment will clarify that the Town boundaries include the waters within 1,000 feet of Estero Island into the Gulf of Mexico.

QUESTION: Shall the above-described amendment be adopted?

OPTIONS: Yes for approval
 No against approval

TEXT: **Sec. 2.01. Boundaries of the Town of Fort Myers Beach.**

The territorial boundaries of the Town of Fort Myers Beach upon the date of incorporation shall include the following areas situated in the County of Lee, State of Florida:

A corporate limit lying offshore from Estero Island, which line is described as follows: all that part of Lee County ~~that is located and~~ situated within Estero Island, ~~including a corporate limit line offshore~~ and the area within 1,000 feet in the Gulf of Mexico and 1,000 feet in the inland bays, and parallel with the shore line of said Estero Island, excluding all of San Carlos Island, Black Island and, structures exclusively attached thereto.

REFERENDUM # 14
Sec. 4.12

TITLE: UPDATING REQUIREMENTS FOR KEEPING RECORDS AND MINUTES OF COUNCIL MEETINGS

SUMMARY: The requirement to keep a journal in addition to minutes of Council meetings is outdated and will be eliminated by this amendment. Minutes of Council meetings will be maintained in accordance with the Town Council Policies and Procedures Manual.

QUESTION: Shall the above-described amendment be adopted?

OPTIONS: Yes for approval
 No against approval

TEXT: **Sec. 4.12. Rules and journal.**

The council shall determine its own rules and order of business and shall provide for keeping a journal and minutes of its proceedings. The journal and minutes shall be public records. The Town Council shall maintain a Policies and Procedures Manual that provides guidelines for how it will operate.

REFERENDUM # 15
Sec. 4.08

TITLE: CLARIFYING THE LANGUAGE REGARDING THE FILLING OF COUNCIL MEMBER VACANCIES

SUMMARY: This amendment deletes unnecessary language relating to the filling of council vacancies and establishes a gender neutral statement.

QUESTION: Shall the above-described amendment be adopted?

OPTIONS: Yes for approval
 No against approval

TEXT: Section 4.08 Filling of vacancies.--A vacancy on the council, except for the position of mayor, shall be filled by appointment by majority vote of the council members remaining, and said appointment shall be effective until a successor is chosen at the next regular election. In the event that a majority of the members of the council are removed by death, disability, law, or forfeiture of office, the governor shall appoint an interim council that shall call a special election to be held within 45 days following the occurrence of the vacancies to elect a new council. In the event that the mayor becomes unable to fulfill the duties of his office, ceases to be qualified, or is removed from office as provided by law or this charter, the vice mayor of the council shall assume the full powers and duties of the mayor. The vice mayor of the council shall temporarily relinquish his office as council member and shall assume the office of mayor for the remainder of the unexpired term. The council vacancy thus created shall be filled by an interim appointment under the provisions of this charter, to be effective only until such time as the mayor resumes his office or until the expiration of the term of the office, whichever occurs first.

REFERENDUM # 16
Sec. 4.11

TITLE: CLARIFYING THAT REASONABLE NOTICE WILL BE PROVIDED FOR ALL MEETINGS

SUMMARY: The Town Charter currently requires at least 24 hours notice for all Council meetings. This amendment will delete the 24-hour timeframe and require reasonable notice for all meetings.

QUESTION: Shall the above-described amendment be adopted?

OPTIONS: Yes for approval
 No against approval

TEXT: Section 4.11 Meetings.--The council shall meet regularly at least eight times per year and shall meet no less often than bimonthly at such times and locations within the boundaries of the town as the council may prescribe. Special meetings may be held on the call of the mayor or the town manager and, ~~whenever practical, upon no less than a 24-hour notice~~ with reasonable notice to each member and the public. Action taken at a special meeting shall be limited to the purpose for which the special meeting is called. A special meeting may be held outside the town with ~~proper notice~~ with reasonable notice. All meetings shall be public and shall be scheduled to commence no earlier than 7 a.m. nor later than 10 p.m.

REFERENDUM # 17

Sec. 6.02

TITLE: CLARIFYING COUNCIL VOTE TO REMOVE TOWN MANAGER

SUMMARY: This amendment clarifies that removal of the Town Manager requires an affirmative vote of at least three Council members.

QUESTION: Shall the above-described amendment be adopted?

OPTIONS: Yes for approval
 No against approval

TEXT: Sec. 6.02. Removal.

The council may remove the town manager for any reason by affirmative vote of at least 3 members of the council. If the vote is less than unanimous by all council members, the town manager may, within 7 days of the dismissal motion by council, submit to the mayor a written request for reconsideration. Any action taken by the council at the reconsideration hearing shall be final.

REFERENDUM # 18
Sec. 6.01

TITLE: CLARIFYING THE TERMS OF THE TOWN MANAGER'S APPOINTMENT

SUMMARY: This amendment removes the requirement that Town Council appoint a Town Manager for an indefinite term.

QUESTION: Shall the above-described amendment be adopted?

OPTIONS: Yes for approval
 No against approval

TEXT: **Sec. 6.01. Appointment and qualifications.**

The council shall appoint a town manager ~~for an indefinite term and fix compensation.~~ The town manager shall be appointed primarily on the basis of executive and administrative qualifications.

REFERENDUM # 19
Sec. 12.02

TITLE: REMMOVING THE REFRENDUM REQUIREMENT FOR ROAD AND BRIDGE TOLLS

SUMMARY: This amendment deletes the requirement for a referendum vote before the Council can impose bridge or road tolls. Amendment will reflect the reality that the Town does not own any toll-able bridges or roads.

QUESTION: Shall the above-described amendment be adopted?

OPTIONS: Yes for approval
 No against approval

TEXT: ~~Sec. 12.02. Tolls Referendum.~~

~~The council may impose road or bridge tolls only after approval by the electors, as provided by general law.~~

REFERENDUM # 20
Sec. 16.01

TITLE: REMOVING OBSOLETE LANGUAGE REGARDING INDEPENDENT SPECIAL DISTRICTS

SUMMARY: This amendment is necessary to clean up the charter. It will eliminate provisions applicable to local independent special districts within the boundaries of the Town. No independent special districts exist wholly within the boundaries of the Town.

QUESTION: Shall the above-described amendment be adopted?

OPTIONS: Yes for approval
 No against approval

TEXT: ~~Article XVI. Independent Special Districts.~~

~~Sec. 16.01. [Dissolution procedure; interlocal agreements between town and districts.]~~

~~It is recognized that certain services within the municipal boundaries are provided by independent special districts created by special acts of the Florida Legislature. The municipality is empowered to merge the functions of said districts with those of the municipality only upon dissolution of the special district, or upon affirmative vote of a majority of the town council and an affirmative vote of the majority of the council or board governing the district after meeting all requirements for merger or dissolution in the district's enabling legislation and chapter 189, Florida Statutes. It is recognized that certain planning and interlocal agreements may be necessary between the town and such districts and the town council shall endeavor to maximize the benefits of the districts to the fullest extent possible. In the event the town council desires to supplement or duplicate services determined to be inadequate, the council is fully empowered to do so.~~

REFERENDUM # 21
Sec. 17.01

TITLE: REMOVING UNNECESSARY LANGAUGE REGARDING REVENUE SHARING

SUMMARY: This amendment is necessary to clean up the Charter. The Town Charter currently contains language regarding eligibility for state revenue sharing based on the calculations including local special districts. This authority is already provided for by both a special act of the legislature and by general law.

QUESTION: Shall the above-described amendment be adopted?

OPTIONS: Yes for approval
 No against approval

TEXT: ~~Article XVII.—Revenue Sharing.~~

~~Sec. 17.01. [Town eligibility; procedure.]~~

~~It is recognized that the services provided by independent districts within the municipal boundaries provide essential services which would customarily be provided by municipal government. It is therefore declared that the Town of Fort Myers Beach shall be eligible to participate in revenue sharing beyond the minimum entitlement in any fiscal year, provided that the town and all independent special districts created under special law, combined, levy ad valorem taxes in amounts as required by section 218.23, Florida Statutes.~~

EXHIBIT B
(Non-referendum Charter Amendments to Remove Transitional Provisions)

Sec. 4.01. Council members; elections.

(a) There shall be a town council, hereinafter referred to as the council, with all legislative powers of the town vested therein, consisting of five council members, all of whom shall be elected from the town at-large, ~~for the initial election. The council shall place the matter of a change in the charter regarding at-large or district elections for council members to a vote of the electorate no later than 2 years after formation of the municipality with public hearings as to said matter as required under section 13.03 hereof.~~

(b) Council seats shall be designated as seats #1, #2, #3, #4, and #5. ~~Candidates shall not seek election to a specific seat on council.~~ All qualified candidates shall be deemed to be seeking election to all open council seats. Assignment of open seat numbers shall be alphabetically by incoming Council members' last names.

Article VX: TRANSITION

~~Sec. 15.03. Creation and establishment of the Town of Fort Myers Beach. For the purpose of compliance with section 200.066, Florida Statutes, relating to assessment and collection of ad valorem taxes, the Town of Fort Myers Beach is hereby created and established effective December 31, 1995.~~

~~Sec. 15.11. Contractual services and facilities. Services for fire, police, public works, parks and recreation, planning and zoning, building inspection, development reviews, animal control, and solid waste collection may be supplied by contract between the town and county, special districts, municipalities, or private enterprise until such time as the town council establishes such independent services. Facilities for housing the newly formed municipal operation may be rented or leased until the town is in the position to obtain its own facilities.~~

~~Sec. 15.12. Elimination of transition elements from the charter. Upon completion of the transition phase as contained herein, these sections of the charter relating to transition shall be eliminated from the charter.~~