

**RESOLUTION OF THE LOCAL PLANNING AGENCY OF THE
TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 2009 -21**

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 for making recommendations to the Town Council with regard thereto; and

WHEREAS, pursuant to the authority set forth in LDC Section 34-118, on February 27, 2007, the LPA adopted Town of Fort Myers Beach Local Planning Agency Policies and Procedures Manual (PnP Manual) in Resolution 2007-03; and

WHEREAS, at the time of such adoption the LPA stated as a policy matter that regular review and updating of the PnP Manual was in the best interests of the Town of Fort Myers Beach and subsequently amended it on May 15, 2007, February 19, 2008, and September 17, 2009;

WHEREAS, the LPA has determined that various updates to the PnP Manual are required at this time and has reviewed such updates at its meeting of September 29, 2009.

NOW THEREFORE BE IT RESOLVED, AS FOLLOWS:

1. The LPA hereby adopts the LPA Policies and Procedures Manual as amended on September 29, 2009, as its official rules for transaction of LPA business, and a copy thereof is attached to this Resolution and hereby incorporated by reference. The terms and provisions of such Manual shall continue in full force and effect unless further amended by the LPA.

2. The LPA directs the Town Clerk to publish such Manual on the Town website, and to provide an electronic and paper copy of such Manual to all LPA Members, the LPA attorney, and Town staff.

The foregoing Resolution was adopted upon a motion by LPA Member Ryffel and seconded by LPA Member Mandel. Upon being put to a vote, the result was as follows:

Rochelle Kay aye
Carleton Ryffel aye
Bill Van Duzer aye

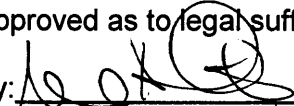
Alan Mandel aye
Joanne Shamp aye
Dennis Weimer aye

DULY PASSED AND ADOPTED THIS 29th day of September, 2009.

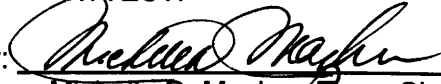
LOCAL PLANNING AGENCY OF THE TOWN OF FORT MYERS BEACH

By: 
Dennis Weimer, LPA Chair

Approved as to legal sufficiency:

By: 
Anne Dalton, Esquire
LPA Attorney

ATTEST:

By: 
Michelle D. Mayher, Town Clerk

**Town of Fort Myers Beach Local Planning Agency
Policies and Procedures Manual**

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1. Introduction

This Local Planning Agency (LPA) Policies and Procedures Manual is for the purpose of helping the LPA Members in the discharge of their duties. Experience may show that some of these policies and procedures need to be modified or eliminated and new ones adopted.

By adopting this manual, members of the LPA will find in one handy reference, answers to policy and procedure questions that come up from time to time. By having an agreed-upon guide, members of the LPA also may develop common expectations on proper conduct of LPA meetings, dealings with the public, and the way it interacts with Town staff.

This manual should be used in conjunction with the Town Charter, Comprehensive Plan, Land Development Code (LDC) and other applicable laws, as necessary.

2. Local Planning Agency Mission and Job Description

Mission: To further the welfare of the citizens of the Town by helping to promote a better, more helpful, convenient, efficient, healthy, safe community and attractive environment. To insure by strategic planning that the unique and natural characteristics of the island are preserved.

Functions, Powers and Duties:

- Review and interpret the Comprehensive Plan and conduct public hearings as may be needed to fulfill its duties under Town ordinance and Comprehensive Plan.
- Review and interpret the Land Development Code and conduct public hearings as may be needed to fulfill its duties under LDC, Town ordinance and Comprehensive Plan.
- In an advisory capacity to the Town Council, either at Town Manager's, Town Council's, or its own initiation, conduct hearings to fulfill its duties regarding zoning matters.
- Review the Capital Improvement Budget for consistency with the Comprehensive Plan and make recommendations to the Town Council.
- Serve as the Historic Preservation Board for the Town.
- Establish sub-committees as needed.
- Elect a chair and vice chair for the LPA.
- Elect a chair and vice chair for the Historic Preservation Board
- Perform any other duties that lawfully may be assigned to it by the Town Council and/or Town Manager.

LPA Member Requirements:

- Be a resident or property owner in the Town of Fort Myers Beach
- File a Statement of Financial Interests (Form 1) with the Lee County Supervisor of Elections every year.
- Complete and file Form 1F – Final Statement of Financial Interest, within 60 days of leaving office.

Desired LPA Member Qualities:

- Analytical – ability to research and analyze information and data
- Decisive
- Knowledgeable – Such as, the Town Charter, Comprehensive Plan, Land Development Code, Sunshine Laws, Ethics Laws, Parliamentary Procedure
- Communication – Listening, Speaking, Writing
- Proactive – identify and seek solutions
- Ethical - open, sincere and truthful

- Ability to work in a team environment
- Ability to work with and listen to people having diverse interests
- Fair with no strong allegiance to any individual or group
- Common sense
- Time to do the job effectively

3. Training Materials and First Meeting

Training Materials

Each new member of the Local Planning Agency will be provided copies of:

- Town Charter
- Comprehensive Plan
- Land Development Code
- Florida Code of Ethics
- Florida Sunshine Laws
- Policy and Procedures Manual
- Other materials as determined by the LPA Attorney, Community Development Director and LPA members

Election of Officers

Annually, at the first meeting of the Local Planning Agency, after expired member positions have been filled by the Town Council, a chair and vice chair will be chosen. Each LPA member may nominate a person for each of these positions. A second is not required. A vote is taken in the order that a candidate was nominated. The positions are filled by a majority vote. If a majority is not received on the first ballot, a second ballot is taken for the two candidates receiving the most votes from the first ballot.

Sunshine Issues

Members of Town advisory committees, boards, and agencies are subject to the Sunshine Law (F.S. 286.011). The same Sunshine rules that apply to Town Council apply to the members of the LPA and other Town advisory committees, boards and agencies.

This means that any gathering of two or more members of the same advisory committee, board or agency must comply with all the Sunshine Law requirements if they participate in any discussion, directly or indirectly, regarding any matter where there is known or could be foreseeable action to be taken by the committee. Examples of indirect discussions are the use of email to a committee member or communication through a spouse or other go-between.

Advisory committee members cannot engage in discussions with each other (directly or indirectly) at outside meetings such as the Chamber of Commerce or Civic Association regarding any matter on which it is known or foreseeable that action may be taken, unless the Sunshine requirements are met.

These rules apply equally to any gathering, formal or casual, such as a Rotary Club (or other business or fraternal club gathering), fund-raiser, etc. They also apply to social events and functions unconnected to the advisory committee, such as a neighbor's backyard barbeque. They also apply to casual discussions between or among members coming in the door for the committee meeting, at breaks during the meeting, and going out the door after the meeting. Every component of the decision-making process must occur in the Sunshine.

The penalties for violating the Sunshine law are severe and can include criminal and civil sanctions. The process of investigation of Sunshine violations is always unpleasant, embarrassing, and expensive, even if the person is ultimately cleared.

4. Historic Preservation Board

The LPA also functions as the Historic Preservation Board (HPB) for the Town of Fort Myers Beach. The Historic Preservation Board has the power, authority, and jurisdiction to designate, regulate, and administer historical, cultural, archaeological, and architectural resources in the Town as set forth in LDC section 22-74. For any quasi-judicial or legislative hearings that come before the HPB, the hearing process shall conform to those outlined in Section 7 of this manual.

Annually, at the first meeting of the Local Planning Agency, after expired member positions have been filled by the Town Council, a meeting of the HPB will be convened and a chair and vice chair will be chosen using the same methodology as LPA chair and vice chair election.

Also at that meeting, a sub-committee, the Historic Advisory Committee (HAC), comprised of an approximately equal number of LPA members and Estero Island Historic Society members is established. Members of the Estero Island Historic Society interested in being on the Historic Advisory Committee must submit a statement of interest to the Town Clerk prior to the first annual meeting of the LPA. This sub-committee comprised of a total of six or seven members shall be selected by the HPB.

The HAC sub-committee will meet as needed to discuss and make recommendations to be brought before the Historic Preservation Board for consideration. Recommendations will be consistent with the requirements of the Comprehensive Plan and Land Development Code. At its first meeting after re-formation, the HAC shall select a chair, vice chair and secretary.

5. Ad Hoc Sub-Committees and Interaction with Other Advisory Committees

The LPA has the authority to form other ad hoc sub-committees requesting participation by volunteers. The objectives of a sub-committee, expected products, membership and timelines should be clearly stated and agreed to by the LPA. One LPA member will be asked to chair the ad hoc sub-committee. The intent would be to minimize participation and action items directed at Staff.

A standing ad hoc sub-committee named the Historic Advisory Committee was established by Resolution 2006-03 (Appendix B).

During discussions arising from land use cases, long-range planning and capital improvement discussions, the LPA will proactively communicate to other appropriate advisory committees while keeping Town Council informed. These interactions could result in the development of joint resolutions.

6. Meeting Preparation and Planning

Meeting Schedule

Section 34-118 of the Land Development Code (LDC) states: “The local planning agency shall meet at least 8 times per year and shall meet no less often than bimonthly...” This statement was included in the LDC to emphasize that the LPA should meet regularly to conduct required Town business. Thus, as a minimum, the LPA must meet at least 8 times per year.

Regularly planned meetings of the Local Planning Agency (LPA) are scheduled by mutual agreement between the LPA, LPA Attorney and Community Development Director. Special, continued or rescheduled meetings will be determined by consensus of the LPA members, the Director of the Department of Community Development and the LPA attorney.

Length of Agenda Items

In order to set reasonable LPA agendas, the Community Development Director will use best efforts to establish the time needed for presentations, public comment and subsequent discussions of agenda items by the LPA. Any person submitting Administrative topics to the Community Development Director will provide an estimate of the time needed. If the time needed for a hearing, legislative matter or administrative topic exceeds the allotted time by more than 15 minutes, the Chair may table the item until later in the meeting or continue the item until a subsequent meeting.

Public Notice of LPA Quasi-Judicial Hearings

Except as specifically addressed in the Town Land Development Code, Town Clerk shall advertise all LPA quasi-judicial hearings so that a legal notice will appear at least seven (7) calendar days prior to the LPA hearing date, to enable all interested parties to have notice and the ability to attend. The Community Development Director or designee will enter the *News-Press* Affidavit of Publication into the record at the beginning of the hearing. In the absence of the Affidavit of Publication, the Community Development Director or designee will enter a copy of the actual advertisement as run by the *News-Press* into the record at the beginning of the hearing after being sworn in. The affidavit, or actual advertisement, as the case may be, will be attached to the LPA Resolution following the hearing.

Continued Hearings and Legislative Issues

It is the goal of the LPA to complete a hearing during the scheduled meeting. If additional time is required and the hearing must be continued to a later date, any LPA member who missed the initial hearing should review the audio and/or videotapes prior to participating in the continued hearing or legislative discussion and resolution.

If the applicant submits new information or modification(s) to previously submitted information at the hearing, or immediately prior to the hearing, the LPA shall consult with the Director of the Department of Community Development and the LPA Attorney to determine if a continuance of the hearing is appropriate and proceed accordingly. Nothing contained in this section shall be construed to limit the Director's discretion to defer or continue the public hearing as set forth in LDC Section 34-213(3).

Meeting Preparation

Any LPA member, the Community Development Director, the LPA attorney, Town Council and Town Manager can submit meeting agenda topics for the LPA to the Community Development Director. Topics should be submitted at least fourteen (14) days prior to a planned meeting. The Director of the Department of Community Development and LPA attorney are responsible for scheduling hearings. Potential dates for hearings should be communicated to all participating parties as far in advance of the planned meeting as possible. All staff reports should be complete before a hearing is scheduled. Except in the case of an emergency, cancellation of a planned meeting should be at least 14 days in advance. Only under serious, extenuating circumstances should a hearing be cancelled after it has been publicly noticed.

The goal is to have finalized agenda and supporting material seven (7) days prior to a planned and

noticed meeting. However, meeting materials will be placed in the LPA members' mailboxes no later than noon of the Friday prior to the scheduled Tuesday meeting. The Community Development Director or assistant will send an email to the LPA members when the packets are available.

The LPA members' packets should include complete documentation for agenda items (actions required, implications, backup information, memos, ordinances, resolutions, etc.) A sincere effort is made to see that LPA packets are complete. As a general rule, items requiring documentation (recommendations, memos, ordinances, resolutions, etc.) will not be included on an agenda until the documentation is complete.

The agenda is posted at Town Hall. Copies of the agenda are available to the public.

Occasionally an item comes up late and may be placed on an amended agenda, or as an "add on" (added too late to be included on the published agenda). Such additions are kept to an absolute minimum so as not to burden the LPA or the public with items not receiving sufficient advance notice. Important, potentially controversial items are not made as "add on items" except in extreme emergencies.

Attendance Policy

Section 34-115(3) of the Land Development Code (LDC) states: "A Local Planning Agency member shall forfeit office if the member is absent from three (3) regular local planning agency meetings per year without being excused by the local planning agency." This statement was included in the LDC to recognize that because of the significant pre-hearing preparation required by staff, applicants and other supporting personnel it is imperative that a quorum of the Local Planning Agency (LPA) members be present for all noticed meetings.

The LPA should be notified of a planned absence as soon as known. It is important that the LPA know that it will have a quorum of its members as soon as possible prior to an LPA meeting. The LDC implies that the LPA has the discretion to define what will be an "excused" absence. The policy of the LPA is that if an absence is reported at least fourteen (14) days prior to a planned meeting the absence will automatically be considered an excused absence. This will allow sufficient time for a planned meeting to be rescheduled if it appears that a quorum will be questionable.

Absence notification less than 14 days prior to a planned meeting is considered an "emergency." If an excused absence is desired in less than 14 days, a request must be forwarded to the Community Development Director with an explanation of the nature of the emergency. The Local Planning Agency will decide whether the request will be considered an excused absence. If the LPA or Community Development Director receives no request for an excused absence, the absence is counted as an unexcused absence.

Three unexcused absences for regularly scheduled LPA meetings will result in automatic forfeiture of office.

"Chronic" absence is defined as missing three consecutive regularly scheduled meetings or four of the last six meetings of the LPA, regardless of whether the absence is excused or unexcused. If a chronic absence occurs, the Community Development Director will be asked to send a letter to the LPA member requesting an explanation of the reasons for the chronic absence. A copy of the letter will be sent to the Town Manager and Town Council. The LPA member will be asked to forward to the Community Development Director a statement of whether the LPA member wishes to remain on the LPA. Failure to reply will automatically make all absences unexcused and grounds for forfeiture of office.

In order to provide a diverse representation, it is important that the LPA strive to have as full representation as possible when conducting the Town's business.

Meetings and Communication between LPA and Town Council

As agreed at a workshop between LPA and Town Council members in September of 2009, efforts should be made to improve communications between the Local Planning Agency and Town Council. Previous means and those adopted at the above meeting shall be:

- The LPA shall appoint and send a representative to Town council public hearings on land use and proposed ordinances which have been acted upon by the LPA. This representative shall submit brief testimony (Council should have LPA resolution and meeting minutes, unless minutes approval waived by LPA) regarding the LPA hearings on the matter.
- The LPA "Action List" as updated subsequent to LPA meetings shall be submitted to the Director of Community Development, who shall in turn transmit to each Town Council member and the Town Manager and include this list in the next LPA meeting packet.
- A quarterly meeting to be attended by the Town Manager, Town Mayor and Local Planning Agency Chairperson shall take place at 1:00 PM on the third Wednesday of each of the following months; October, January, April and July. The purpose of this meeting will be to discuss current activities of the LPA and assure these are in accordance with direction from Town Staff and Town Council, as well as convey information to Staff and Council regarding the complexities or related issues of those activities.
- Routine workshops (informational meetings) to discuss current LPA activities and Town Council understanding of those activities shall be held between all LPA members, Town Council members, Town Manager, Community Development Director and Town and LPA Attorney starting at 9:00 AM and lasting no later than noon on the first regularly scheduled LPA meeting day of April and September.

7. Meeting Procedures

LPA Code of Conduct

Recognizing that persons holding a position of public trust are under constant observation, and recognizing that maintaining the integrity and dignity of the public office is essential for maintaining high levels of public confidence in our institutions of government, every member of the Local Planning Agency pledges to adhere to the following CODE OF CONDUCT.

1. Regularly attend all scheduled meetings of the LPA as well as special or called meetings relevant to the office.
2. Prepare for each meeting.
3. Create a positive environment in meetings of the LPA.
4. Maintain an attitude of courtesy and consideration toward colleagues, citizens and staff during all discussions and deliberations.
5. Allow citizens, colleagues and staff sufficient opportunity to present their views, within the prescribed rules for conduct of meeting of the LPA.
6. Avoid the use of abusive, threatening or intimidating language or gestures directed at colleagues, citizens of staff.

7. Avoid comments, body language or distracting activity that conveys a message of disrespect and lack of interest.
8. Respect all local, state and federal laws, rules and other regulations.
9. Submit completed financial disclosure forms to the Lee County Supervisor of Elections by the specified deadline.
10. Publicly acknowledge the adopted position when asked about a decision of the LPA.

LPA Code of Ethics

Members shall ethically serve the public interest by making decisions and taking actions that will enhance the public health, safety and welfare of the region and the citizens served by the Local Planning Agency and by promoting public confidence in the integrity, independence, ability and impartiality of the LPA.

1. Members shall uphold the prestige of their office and avoid impropriety and the appearance of impropriety.
2. Members shall not convey the impression that they are in a position to influence the outcome of a decision of the LPA and shall not attempt to use their office to influence or sway the professional staff recommendation.
3. Members shall discharge their duties and responsibilities without favor or prejudice toward any person or group. Members shall not allow personal or business relationships to impact upon their conduct or decisions in connection with LPA business and shall not lend their influence towards the advancement of personal interests or towards the advancement of the interests of friends or business associates.
4. Members shall avoid creating the appearance of impropriety by following the requirements of the Land Development Code with regard to ex parte about specific upcoming LPA quasi-judicial hearings. If a Member receives a private written or electronic communication about an upcoming LPA quasi-judicial hearing, the Member will promptly forward the information to the Town Clerk, with a copy to the Director of the Community Development Department and the LPA Attorney so that it may be shared with all other Members as part of the agenda packet for that hearing. Members shall refrain from any private discussion of LPA business with other Members if required by Florida's Government-in-the-Sunshine Law, Chapter 286, Florida Statutes.
5. Members shall not accept or solicit a gift, loan, payment, favor, service, promise of employment or business contract, meal, transportation or anything else of value, if such thing is given with the understanding or possibility that it will influence the official action of the Members during LPA proceedings. The same standard shall apply to a gift, loan, favor, etc. for the spouse, child, relative or business partner of the Member.
6. Members should refrain from participation in any proceeding in which their impartiality may reasonably be questioned. A Member whose personal, employment or business relationship with a person or entity that is subject to a recommendation of the LPA shall seek the advice and counsel of the LPA Attorney, if such relationship could conceivably influence the Member's impartiality during the LPA's discussion of the subject. The provisions of Chapter 112, Florida Statutes, and the Code of Ethics for Public Officers and Employees, shall govern conflict of interest determination.
7. Members shall remain vigilant against deviations from LPA policies and mission statement.

As a legislative and quasi-judicial body, the LPA must be ever cognizant of the important legal requirements of due process and equal protection. These principles are derived from the United States Constitution, the Constitution of the State of Florida, and Florida Statutes, and apply to legislative and quasi-judicial actions.

The legal requirement for due process is separated into two prongs: substantive due process and procedural due process. The principle of substantive due process requires the benefits of a given

regulation be within the scope of governmental authority, i.e., health, safety, morals, or general welfare, and that the regulations be accomplished in a rational manner, i.e., not be arbitrary or capricious. This is a principle of fundamental fairness in the substance of a given regulatory scheme or provision.

The other due process prong, procedural due process, requires a fair method of adjudicating the rights of property owners, requiring notice and an opportunity to be heard by an impartial decision maker. In legislative matters, this requirement is derived from Florida Statutes, which provide the type and period of notice depending on the nature of the property interest subject to regulation at a public hearing. Quasi-judicial decisions have an underlying Constitutional requirement for procedural due process.

Equal protection limits governmental regulation from establishing irrational classifications, protects the rights of suspect and quasi-suspect classes, and assures against the exercise of fundamental or important rights of persons in ways different from others.

Key overarching principles to keep in mind is that every person must be treated equally and reasonably by the quasi-judicial or legislative substance and process and that decisions and recommendations be deliberated in an open process with adequate notice and allowance for participation of affected parties. Reasonable, consistent, and timely notifications in quasi-judicial matters to be heard by the LPA provide an applicant and other parties potentially affected by a requested decision these fundamental protections.

Order of Agenda Items

The general order of the agenda will proceed as follows. However, the procedures will differ depending on what type of hearings is being held.

1. Call To Order – Identify for the record the committee that is meeting, the date of the meeting and who is present.
2. Pledge of Allegiance
3. Invocation
4. Approval of Minutes – Requires a motion and vote.
5. Public Hearings – Public Comment will be included as part of the hearing
6. Administrative Agenda – Topics submitted by LPA members, staff, LPA Attorney or items from previous agendas
7. Adjourn as LPA; Reconvene as Historic Preservation Board (HPB)
8. Adjourn as HPB; Reconvene as LPA
9. LPA Members Items and Reports
10. LPA Attorney Items
11. Community Development Director Items
12. Action List Review
13. Public Comment
14. Adjournment – Requires a motion and vote. A privileged motion allowing no discussion before vote.

Invocation

The Chair of the LPA has the discretion of deciding how the Invocation at the beginning of an LPA meeting is handled. However, there is a tradition that has been followed by many LPA's. At the first LPA meeting on April 9, 1996, Chair John Mulholland read an invocation that he had written while Commander of the Power Squadron. Betty Simpson, who was Vice Chair at that time, has carried John's invocation to each subsequent LPA. The Chair has either read the invocation or different LPA members have been asked or volunteered to read the invocation. The invocation reads as follows:

Heavenly Father, we ask that you bless us with your presence here today.

Grant to us the wisdom to see all things in true perspective.

Grant to us the patience to hear one another with open minds and hearts.
Grant us the strength to meet all present challenges.
May all that we do this day, bring honor to you and credit to ourselves. Amen.

Conduct of LPA Meetings

The Chair will conduct the LPA meetings, and in the Chair's absence by the Vice Chair.

Robert's Rules of Order shall be the reference for parliamentary procedure governing the conduct of the LPA meetings when not in conflict with the Town Charter or Florida Statutes. It is not intended that LPA meetings be unnecessarily formalistic, but rather that parliamentary procedure be invoked only when necessary for orderly conduct of the meeting.

The approval of the minutes is intended for LPA members to accurately document the proceedings of the Agency. Before moving approval the minutes should be amended, if necessary, to more accurately portray what occurred at the LPA meeting. This time is not intended for comment or discussion on what should have or should not have been done, but rather to document what actually was done. Audiotapes of the proceedings become the official record of what transpired during a meeting.

When the Chair recognizes a speaker during public comment, they will advance to the podium and state their name for the public record. Public comments will generally be limited to three minutes per speaker. The Chair may modify the three-minute limit with approval by majority vote of the LPA. If a special interest group would prefer to have one person speak for a group of individuals in attendance their allotted times can be combined up to a maximum of 15 minutes. This process could save meeting time if the content of what each person of a special interest group intends to say is similar. It could also allow more time for a presentation containing detailed facts and data. If a special interest group chooses to have a spokesperson represent them, request cards having the names and addresses of all individuals present must be provided prior to the meeting. The public comment times are intended as opportunities for interested parties to present their viewpoints to the LPA members; they are not intended as question-and-answer sessions or as dialog with the LPA.

After a proper motion, discussion by the LPA members shall be limited to agenda items. No member will speak twice on the item until all others who want to speak have spoken.

The time period for LPA members' comments is intended as an opportunity for LPA members to share their viewpoints with each other. Since this opportunity does not exist outside of LPA meetings under the Florida Sunshine Law, this is the primary purpose of this time and it generally should not be used to obtain information from the Community Development Director or Town Attorney which could be obtained outside of the LPA meeting. While there is no time limit or censorship on comments, LPA members should take into consideration the total time available in the meeting for the published agenda.

Legislative Hearing Procedures

1. The Chair opens the hearing on.....
2. Staff presents Affidavit of Publication or copy of the legal advertisement from the Newspaper of Record which shall become an exhibit to the Hearing's resulting Resolution.
3. The Chair or the LPA Attorney reads the ordinance caption.
4. Staff and/or the LPA attorney present(s) a brief overview of the ordinance.
5. Public input is taken.
6. Public input is closed.
7. LPA members ask questions, if any, of staff/LPA attorney.
8. LPA members discuss ordinance, including changes, deletions, etc.

9. A Motion is made and seconded to either move the Ordinance forward to Town Council as-is or with modifications, or to take some other action. The LPA's recommendation is set forth in an LPA Resolution which is provided to Town Council at the time of Council's consideration of the Ordinance.
10. The Motion is discussed and voted upon. If successful, the Chair declares the hearing on the ordinance to be concluded. If not successful, further motions(s) are made until one passes.

Notes:

- There is no ex parte disclosure requirement for legislative hearings.
- Members of the public are not sworn in.
- Generally there is no discussion between the LPA and public.

Procedure for Quasi-Judicial Land Use Hearing

1. The Chair opens the hearing on
2. The LPA Attorney swears in all witnesses.
3. Staff presents Affidavit of Publication or copy of the legal advertisement from the Newspaper of Record which shall become an exhibit to the Hearing's resulting Resolution.
4. The Chair asks if any LPA member has had an ex parte communication regarding this matter. This includes any site visit, receipt of expert opinion, conducting of investigations, discussions with any person, or any direct or indirect communication in any form with any person outside a public hearing and not on the record.
5. The applicant presents its case and LPA asks questions.
6. Staff presents its case and LPA asks questions.
7. Public comment/testimony is opened.
 - After public testimony/comment is concluded, the Chair closes public comment/testimony.
8. Applicant presents rebuttal, if any.
9. Staff presents rebuttal, if any.
10. The testimony portion of the hearing is closed.
11. LPA discussion.
12. Request for a motion on the resolution.
13. LPA votes on a resolution regarding the application.

Voting Conflicts

Florida Statute has very specific rules regarding voting conflicts and municipal advisory committees, boards and agencies. These rules are different from the rules that apply to the Council.

If an LPA member has a voting conflict, he/she must disclose that conflict in writing to Town staff prior to the meeting in question and this disclosure must be publicly read. A form is available from the Town Clerk. The rules also contain an exception for disclosure at the meeting itself. The committee member is permitted to participate in the discussion and vote on the subject. The specific rules are set out in F.S. 112.3145(4), quoted below:

(4) No **appointed** public officer shall participate in any matter which would inure to the officer's special private gain or loss; which the officer knows would inure to the special private gain or loss of any principal by who he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained; or which he or she knows would inure to the

special private gain or loss of a relative or business associate of the public officer, **without first disclosing the nature of his or her interest in the matter.**

(a) Such disclosure, indication the nature of the conflict, shall be made in a written memorandum filed with the person responsible for recording the minutes of the meeting, **prior to** the meeting in which consideration of the matter will take place, and shall be incorporated into the minutes. Any such memorandum shall become a public record upon filing, shall immediately be provided to the other members of the agency, and shall be read publicly at the next meeting held subsequent to the filing of this written memorandum.

(b) In the event that disclosure has not been made prior to the meeting or that any conflict is unknown prior to the meeting, the disclosure shall be made orally **at the meeting** when it becomes known that a conflict exists. A written memorandum disclosing the nature of the conflict shall then be filed within 15 days after the oral disclosure with the person responsible for recording the minutes of the meeting and shall be incorporated into the minutes of the meeting at which the oral disclosure was made. Any such memorandum shall become public record upon filing, shall immediately be provided to the other members of the agency, and shall be read publicly at the next meeting held subsequent to the filing of this written memorandum.

(c) For purposes of this subsection, the term “participate” means any attempt to influence the decision by oral or written communication, whether made by the officer or at the officer’s direction.

Perceived conflicts of interest can be as detrimental to public trust as real conflicts. In an attempt to aid LPA members’ manage such perceptions, the LPA Attorney has prepared advice regarding frequent situations in which LPA members find themselves. These are found in Appendix G.

NOTE: F.S. 112.3143(b) defines “relative” as follows: “any father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law.

8. LPA Meeting Output

The primary responsibility of the LPA is to provide recommendations to the Town Council regarding comprehensive planning policies, land development code regulations, zoning matters and make decisions regarding historic preservation opportunities.

LPA output to the Town Council will include the following at the discretion of the LPA:

A. Quasi-Judicial Hearing:

1. A signed resolution of findings of fact and conclusions from the LPA hearing.
2. LPA approved minutes providing a summary of:
 - a. Testimony by applicants, their attorneys, Town and/or County staff, the LPA attorney, witnesses and people who offer public comment, and
 - b. Issues raised by LPA members with subsequent discussion content including clarifications, conclusions and agreements, and Motions and votes by LPA.
3. One or more members of the LPA will attend the Town Council meeting in order to provide clarification on their recommendations and to answer inquiries.

B. Legislative Hearing:

1. A signed resolution of findings of fact and conclusions from the LPA hearing.
2. LPA approved minutes.

3. One or more members of the LPA will use best efforts to attend the Town Council meeting in order to provide clarification on their recommendations and to answer inquiries.

These LPA outputs must be available before the first Town Council hearing on an issue. However, at the discretion of the LPA exceptions may be made in emergency situations. Minutes from hearings will normally be approved at the subsequent LPA meeting. A “fast-tracked” hearing may have the minutes waived for the Town Council hearing at the discretion of the LPA.

It is noted that audio and /or video recordings of LPA meetings may be available for public, LPA, or Town Council review should clarification, additional understanding of discussions, or for finding errors or omissions.

On a regular basis, as often as monthly, the LPA will submit to the Town Council a synopsis of accomplishments and any issues that might be of interest. As needed, a request will be made to address Town Council.

9. LPA’s Role in Initiating Legislative Changes to the Land Development Code

In the course of performing its duties, the LPA is made aware of legislative issues that could be considered as amendments to the Land Development Code. Before initiating a request for support from Town Staff, the LPA attorney and/or our Planning Consultant to pursue potential LDC amendments, a resolution will be sent to Council requesting their approval to proceed. The format to be used is included in Appendix A and can be modified without re-approving the Policies and Procedure Manual.

The Town of Fort Myers Beach Local Planning Agency Policies and Procedures Manual was adopted on February 27, 2007. Revised May 15, 2007. Revised March 18, 2008. Revised September 9, 2008. Revised January 27, 2009. Revised June 23, 2009, Revised September 17, 2009, Revised September 29, 2009.

Appendix A – Sample Resolution Requesting to Proceed with an LDC Change

FORT MYERS BEACH, FLORIDA

RESOLUTION NUMBER 20__ - __

WHEREAS, the Local Planning Agency (LPA) is mandated by Florida Statutes Section 163.3174; and

WHEREAS, the LPA is statutorily responsible for the review of proposed land development regulations, land development codes, or amendments thereto, and for making recommendations to the Town Council as to the consistency of such proposals with the adopted Comprehensive Plan (Plan); and

WHEREAS, Section 34-120(4) of the Town Land Development Code (LDC) states that the LPA will review proposed LDC amendments and make recommendations to the Town Council regarding their consistency with the Plan, and

WHEREAS, Section 34-120 (12) of the LDC states that the LPA will aid Town officials charged with the direction of projects or improvements embraced within the Plan and generally promote the realization of the Plan; and

WHEREAS, Section 34-120 (14) of the LDC states that the LPA will perform any other duties which lawfully may be assigned to it by Town Council; and

WHEREAS, the Town Council determined at its meeting of October 9, 2006, that prior to the LPA’s initiation of any proposed LDC changes, the LPA must inquire of the Town Council whether the Town Council wished to have such legislative changes initiated by the LPA.

IT IS HEREBY RESOLVED BY THE LPA OF THE TOWN OF FORT MYERS BEACH, FLORIDA as follows:

1. At its regularly scheduled meeting(s) of _____, 20__, the LPA determined that it wishes to initiate legislation on the following subject(s): _____

2. The LPA hereby requests direction from the Town Council as to whether the Town Council wishes to have the LPA initiate legislative changes to the LDC on such subjects.

The foregoing Resolution was adopted by the LPA upon a motion by LPA Member _____ and seconded by LPA Member _____, and upon being put to a vote, the result was as follows:

Name	_____	Name	_____
Name	_____	Name	_____
Name	_____	Name	_____
Name	_____		

DULY PASSED AND ADOPTED THIS ___ day of _____, 20__.

LPA of the Town of Fort Myers Beach

By: _____
Name, LPA Chair

Approved as to legal sufficiency:

ATTEST:

By: _____
Name, Esquire, LPA Attorney

By: _____
Name, Town Clerk

Appendix B - Resolution HPB 2006-03 Establishing the Historic Advisory Committee

**RESOLUTION OF THE HISTORIC PRESERVATION BOARD OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER HPB 2006-03**

A RESOLUTION OF THE HISTORIC PRESERVATION BOARD OF FORT MYERS BEACH, FLORIDA:

WHEREAS, the Local Planning Agency of the Town of Fort Myers Beach, Florida, serves as the historic preservation board for the Town of Fort Myers Beach ("HPB") pursuant to Chapter 22, Article II, Division 2, Section 22-71 and Chapter 30, Section 30-56(b) of the Land Development Code ("LDC") of the Town of Fort Myers Beach; and

WHEREAS, the HPB is vested with the power, authority and jurisdiction to designate, regulate and administer historical, cultural, archaeological, and architectural resources in the Town, pursuant to LDC Section 22-71; and

WHEREAS, the HPB has the power and duty to designate eligible historic resources, evaluate the significance and eligibility of historic resources for designation pursuant to Chapter 22 of the LDC, increase awareness of historic preservation and its community benefits by promoting public education programs, and administer programs aimed at the proper recognition of designated historic resources pursuant to Section 22-74 of the LDC; and

WHEREAS, the HPB has the power to create an advisory committee to assist the HPB with historic preservation matters and to charge such committee with various and sundry duties; and

WHEREAS, this advisory committee will have no quasi-judicial or legislative powers but rather will function in an informal advisory capacity to the HPB; and

WHEREAS, the advisory committee will be subject to the Sunshine and Public Records Laws of the State of Florida.

NOW, THEREFORE BE IT RESOLVED BY THE HISTORIC PRESERVATION BOARD OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:

The Historic Preservation Board does hereby create the Fort Myers Beach Historical Advisory Committee (FMBHAC), with the following restrictions:

1. The FMBHAC shall be subject to the Sunshine and Public Records Laws of the State of Florida.
2. The FMBHAC will be comprised of seven (7) members appointed by the HPB, all of whom shall be residents, business owners, or property owners within the Town of Fort Myers Beach.
3. Three (3) members of FMBHAC shall be current members of the HPB and four (4) members shall be appointed by the HPB after due consideration of recommendations by the Estero Island Historic Society.

4. The FMBHAC shall meet on an as-needed basis, keep its own minutes, and hold all meetings at Town Hall.
5. The HPB shall appoint all initial members of FMBHAC no later than the first meeting of the HPB in October, 2006. Thereafter, commencing with June, 2007, the HPB shall appoint all members of FMBHAC on an annual basis at the first meeting of the HPB in June.

The foregoing Resolution was adopted by the Historic Preservation Board upon a vote following motion by Board member Tom Babcock and second by Board member Bob Raymond, the result of which was as follows:

Tom Babcock	aye
Randy Brown	aye
Rochelle Kay	absent
Larry Kiker	aye
Alan Mandel	aye
Bob Raymond	aye
Bob Simon	absent

DULY PASSED AND ADOPTED THIS 12th day of September, 2006.

HISTORIC PRESERVATION BOARD OF THE
TOWN OF FORT MYERS BEACH

By: _____
Larry Kiker, Chair

Approved as to legal sufficiency:

ATTEST:

By: _____
Anne Dalton, Esquire
HPB/LPA Attorney

By: _____
Michelle Mayer, Town Clerk

Appendix C – Recognition Resolutions

The following Resolution format has been used to recognize past members of the LPA.

**RESOLUTION OF THE LOCAL PLANNING AGENCY OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 2007-04**

WHEREAS, the Local Planning Agency (LPA) is mandated by Florida Statutes Section 163.3174; and

WHEREAS, the LPA was established in accordance with the requirements of the Town of Fort Myers Beach Land Development Code section 34-111 et seq.; and

WHEREAS, Section 34-113 sets forth the requirements for membership on the LPA; and

WHEREAS, Randy Brown has been a member of the LPA from April 2006 to April, 2007; and

WHEREAS, during his membership on the LPA, Randy Brown has provided exemplary service to the Town of Fort Myers Beach.

IT IS HEREBY RESOLVED BY THE LPA OF THE TOWN OF FORT MYERS BEACH, FLORIDA as follows:

RANDY BROWN IS RECOGNIZED FOR HIS HARD WORK AND DEDICATED SERVICE TO THE TOWN OF FORT MYERS BEACH. HE CREATED A POSITIVE ENVIRONMENT FOR THE LOCAL PLANNING AGENCY WHILE MAINTAINING AN ATTITUDE OF COURTESY TOWARD COLLEAGUES, CITIZENS AND STAFF DURING ALL DISCUSSIONS AND DELIBERATIONS. HE DISCHARGED HIS DUTIES WITHOUT FAVOR OR PREJUDICE WHILE RESPECTING ALL LAWS, RULES AND REGULATIONS. HIS CONTRIBUTIONS INSURE THAT THE UNIQUE AND NATURAL CHARACTERISTICS OF THE TOWN OF FORT MYERS BEACH WILL BE PRESERVED.

The foregoing Resolution was adopted upon a motion by LPA Member Simon and seconded by LPA Member Mandel. Upon being put to a vote, the result was as follows:

Tom Babcock <u>aye</u>	Alan Mandel <u>aye</u>	Dennis Weimer <u>aye</u>
Evie Barnes <u>aye</u>	Bob Raymond <u>aye</u>	
Rochelle Kay <u>aye</u>	Bob Simon <u>aye</u>	
Bob Simon <u>aye</u>		

DULY ADOPTED THIS 10TH day of APRIL 2007.
LPA of the Town of Fort Myers Beach

BY: _____
Tom Babcock, LPA Chair

Approved as to legal sufficiency:

ATTEST:

By: _____
Anne Dalton, Esquire
LPA Attorney

By: _____
Michelle D. Mayher, Town Clerk

Appendix D - Historic Sign Criteria and Integrity Evaluation

The following is the a form for use by the LPA to evaluate the criteria and integrity of historic sign applications. Staff has documents that were approved by the LPA to be made available to applicants for historic signs that will explain the intent of the Comprehensive Plan and clarify for documentation that would be useful when filing an application.

Historic Sign Criteria and Integrity Evaluation Town of Fort Myers Beach

Eligibility Criteria (select one): ___Building ___District ___Site ___Structure ___Object

INTEGRITY CONSIDERATIONS (Review all)	Quality of Significance Criteria (Select one)				
	Events	Persons	Distinctive Characterisitics	Historical Information	Overall District Significance
Location					
Design					
Setting					
Materials					
Workmanship					
Feeling					
Association					

Eligibility Criteria

Building. A building is a structure created to shelter any form of human activity, such as a house, barn, church, hotel, or similar structure. Building may refer to a historically related complex such as a courthouse and jail or a house and barn.

Structure. A structure is a work made up of interdependent and interrelated parts in a definite pattern of organization. Constructed by man, it is often an engineering project large in scale.

Object. An object is a material thing of functional, aesthetic, cultural, historical or scientific value that may be, by nature or design, movable yet related to a specific setting or environment.

District. A district is a geographically definable area, urban or rural, possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically but linked by association or history.

Site. A site is the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself maintains historical or archeological value regardless of the value of any existing structure.

Quality of Significance Criteria

Events. It was associated with events that significantly contributed to broad patterns of our history.

Persons. It was associated with the lives of persons significant in our past.

Distinctive Characteristics. It embodies the distinctive characteristics of a type period, or method of construction, or possesses high artistic values, or represents a significant distinguishable entity whose components may lack individual distinction.

Historical Information. It has yielded (or may yield) information important to prehistory or history.

Integrity Considerations

Location is the place where significant activities took place. This quality requires that to a large extent the boundaries remain intact.

Design is the composition of elements comprising the form, plan, and spatial organization. Design may have resulted from conscious planning decisions set forth in the historic plat, project specifications, building contracts or deed restrictions, or it may be the result of the personal tastes and individual efforts of homeowners to shape their domestic environment. Integrity of design can be affected by changes. Small-scale additions may not detract in a major way from the historic character. Large-scale additions, however, alter the spatial relationship and generally threaten integrity of design.

Setting is the physical environment within and surrounding the resource. Integrity of setting requires that a strong sense of historical setting be maintained within the boundaries. This relies to a large extent on the retention of built resources, street plantings, parks and open space. Elements of design greatly affect integrity of setting, and those consistent with the historic character or dating from the period of significance add to integrity. Small-scale elements such as plantings, gateposts, fences, swimming pools, playground equipment, and parking lots detract from the integrity of setting unless they date to the period of significance.

Materials include the construction materials of dwellings, garages, roadways, walkways, fences, curbing, and other structures, as well as vegetation planted as lawns, shrubs, trees, and gardens. The presence of particular building materials (e.g., stone, stucco, brick, or horizontal siding) may be important indicators of architectural style and methods of construction that give some neighborhoods a cohesive historic character. Integrity of materials requires that the resource retains the key exterior materials that marked its identity during the historic period. The retention of original materials in individual dwellings may be less important in assessing the integrity of a neighborhood significant for its plan or landscape design. Original plant materials may enhance the integrity, but their loss does not necessarily destroy it. Vegetation similar in historic species, scale, type and visual effect will generally convey integrity of setting although integrity of materials may be lost.

Workmanship is evident in the ways materials have been fashioned for functional and decorative purposes to create houses, other buildings and structures, and a landscaped setting. This includes the treatment of materials in design, the planting and maintenance of vegetation, as well as the construction methods of small-scale features such as curbs and walls. Integrity of workmanship requires that architectural features exhibit the artistry or craftsmanship of their builders and that the vegetation historically planted for decorative and aesthetic purposes be maintained in an appropriate fashion and replaced in kind when damaged or destroyed.

Feeling, although intangible, is evoked by the presence of physical characteristics that convey the sense of past time and place. Integrity of feeling results from the cumulative effect of setting, design, materials, and workmanship.

Association is the direct link between a historic resource and the important events that shaped it. Continued residential use and community traditions, as well as the renewal of design covenants and deed restrictions, help maintain a neighborhood's integrity of association. Additions and alterations that introduce new land uses and erase historic elements of design threaten integrity. Integrity of association requires that a historic resource convey the period when it achieved importance and that, despite changing patterns of ownership, it continues to reflect the design principles and historic associations that shaped it during the historic period.

Appendix E - Legislative Change Process

The LPA evaluated the process of making legislative changes to the Land Development Code (LDC). The results of the study have been depicted as a flow chart as well as a written description of each sub-process. The arrows in the flow chart represent the direction that work “flows” through the process. Circles are inputs, such as a change request, or outputs, such as a resolution to be sent to Town Council. Rectangle boxes are places where action or work is taking place. A diamond is a decision point that may send the workflow in different directions dependent on the decision made. A “bullet” symbol is where the workflow is on “hold” until the next action can be scheduled. Holds are not necessarily a bad thing, but they can be areas of opportunity for moving change requests through the system faster. Finding ways to reduce the number of steps in a process flow is another way to reduce the time required to make changes to our LDC.

The flow chart also indicates who is “accountable” for each process operation. “Accountability” does not mean that person is “responsible” for doing all the work. It is their job to see that the work gets done.

Future LPAs and Town Councils may want to consider ways that the legislative change process can be altered to improve process time. Until then, performance can start to be measured in order to establish a baseline. One action that has been initiated is to generate a Legislative Change Action List (LCAL). The LCAL will provide clarification of the change requests, the priority and current status. Legislative requests will be categorized into LDC change that:

1. Require policy recommendations from the LPA through workshops or ad hoc committee activities. These changes would be substantive and likely time consuming for staff, consultants and LPA, but not necessarily the highest priority.
2. Are state mandated changes and recommendations of the Evaluation and Analysis Report (EAR) that are time sensitive. These may or may not be complex, but are high priority.
3. May need to be clarified for legal reasons. Complexity and priority must be determined on an individual case.
4. Need staff time. Most of these changes are clerical in nature, but can be time consuming. Priority is often low, but need to be made visible.

The LPA will prioritize, schedule and determine a path forward for legislative change requests that fall into LCAL category 1. Accountability for categories 2 through 4 belongs to the Town Manager, with likely input from the Director of Community Development, the LPA Attorney and the Town’s Planning Consultant.

A regular approach to legislative changes allows interested parties a predictable methodology to participate in the legislative process. For example, the Florida Legislature meets on an annual basis—unless a special session is called—at the same time each year to consider changes to the laws of the State. The effective date of these laws may vary to allow for a phased approach to changes in the law that might best occur if affected parties are afforded a reasonable period of time for adjustment to the change. From time to time, the LPA may wish to establish and refine the timing aspects of its legislative process to improve manageability and predictability.

Town of Fort Myers Beach Legislative Change Process

Overarching Principles:

- Trust is placed in the hands of those accountable for each step in the process to do their job to their best of their ability.
- Open, honest and timely communication will be maintained at all times.
- All parties in this process will be treated with respect.

Sub-Processes

A. Request Initiation

Requests to change the Land Development Code (LDC) can be initiated by: the Town Manager, the Town Council, the Local Planning Agency, a group/committee or an individual.

Process:

- Requests from the Town Manager and Town Council proceed directly to the “assign action” sub-process.
- LPA change requests are forwarded to Town Council for approval to proceed.
- All individual or group initiated LDC change requests come to the LPA for review and action. Consistency with the Comprehensive Plan will be the criteria for approving or denying requests.
- The Town Clerk handles scheduling functions with direction from the Town Manager or designee (likely the Community Development Director).

B. Assign Action

Process:

- The Town Manager or designee is accountable for the Legislative Change Action List (LCAL) with input from Planning Consultant, Staff and LPA Attorney.
- Each legislative change request will be put into a category for the purpose of prioritizing and scheduling.
- The LCAL will be reviewed at every LPA meeting.

C. Assessment

Assessment of an LDC change request can follow several paths depending on the complexity of the request and the expertise required for making recommendations. The Town Manager or designee, the Planning Consultant and the LPA Attorney, choose the process path.

Process:

- Determine whether recommendations are needed from an ad hoc or standing committee.
- Determine whether a workshop is needed.

- Workshops will include: Planning Consultant, appropriate staff, LPA Attorney, LPA members, ad hoc or advisory committees (as needed) and the public.
- Recommendations from committees and/or workshops will be documented by resolution.
- Once all recommendations have been received, drafting of the LDC change can commence and an LPA hearing scheduled.

D. LPA Hearing

Process:

- The LPA must approve or reject LDC changes or possibly suggest multiple wording options for consideration by Town Council.
- Recommendations must be consistent with the Comprehensive Land Use Plan.
- Explanation of recommendations are forwarded to Town Council by resolution.

E. Town Council Hearings

Process:

- Introduction of Ordinance
- First Hearing
- Second Hearing. Approved or denied based on consistency with the Comprehensive Land Use Plan.
- At each hearing, Council may choose to deny the change request, return it to the LPA and/or committees and/or workshop participants for rework, or table it.

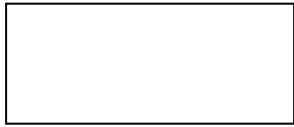
F. Documentation

Process:

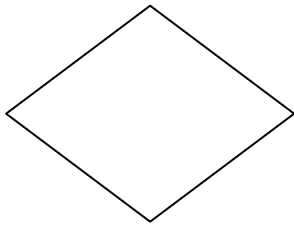
- If the ordinance is approved by Town Council, the Town Manager is accountable for seeing that appropriate steps are taken to codify and distribute changes in the Town of Fort Myers Beach Land Development Code.

Legislative Change Process for the Town of Fort Myers Beach

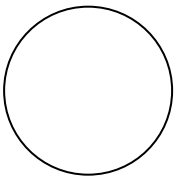
Flow Chart Symbols Used:



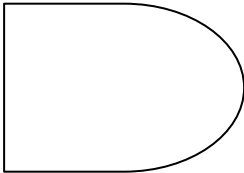
Process Operation



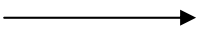
Decision (A Decision will have two or more directions of flow)



Input/Output



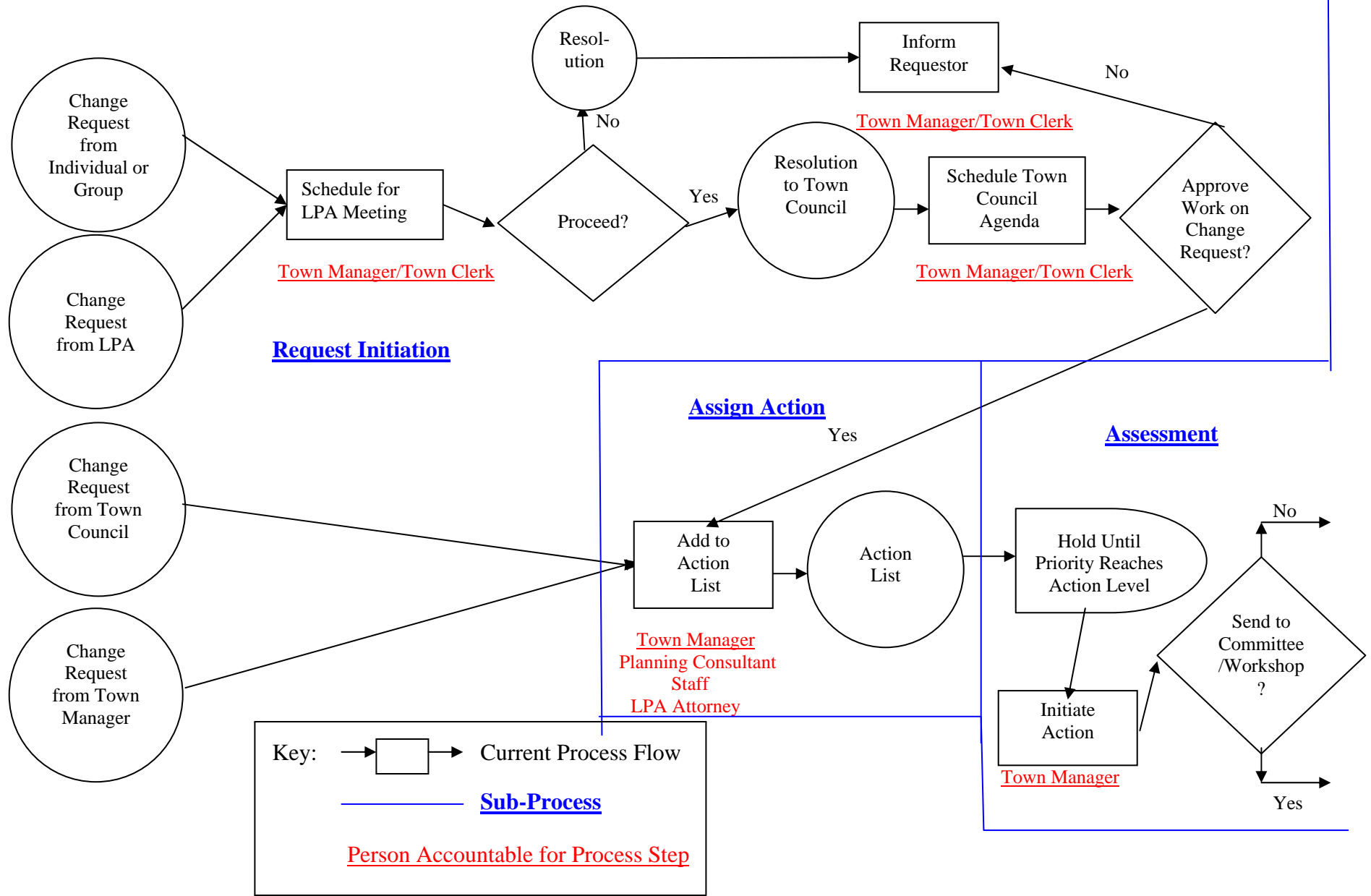
Delay/Wait/Hold



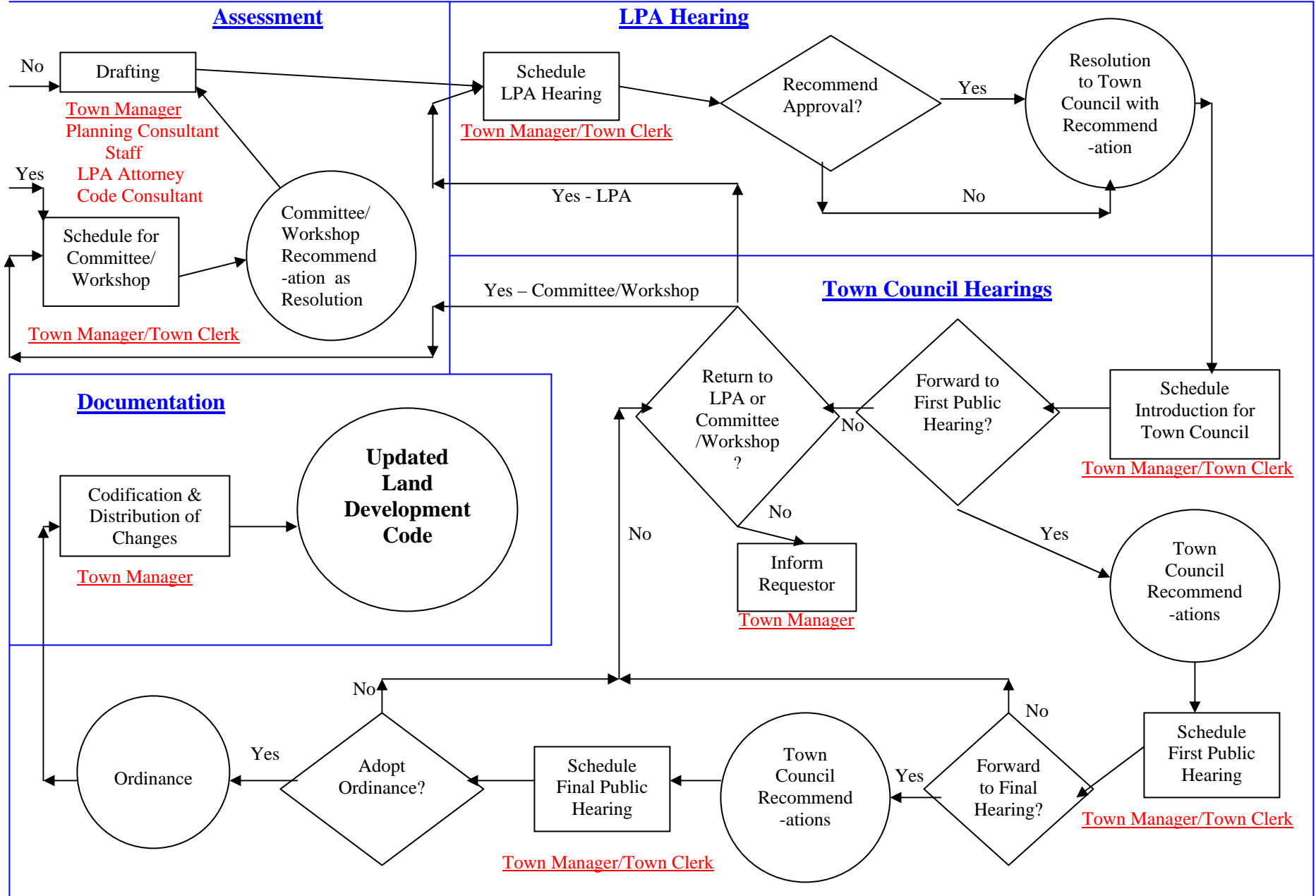
Direction of Flow

The flow chart is a graphic method for displaying a work process and sequence of activities. It graphically shows the process and potential opportunities for improvement within the process. It also identifies starting inputs and ending outputs that establish boundaries of ownership. This sequence of activities is represented by various flow chart symbols, which are connected by a direction of flow arrow.

Legislative Change Process for the Town of Fort Myers Beach



Legislative Change Process for the Town of Fort Myers Beach



F. Historic Plaque Resolution and Agreement

RESOLUTION OF THE HISTORIC PRESERVATION BOARD OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER HPB 2008-01

A RESOLUTION OF THE HISTORIC PRESERVATION BOARD OF FORT MYERS BEACH,
FLORIDA:

WHEREAS, the Local Planning Agency of the Town of Fort Myers Beach, Florida, serves as the historic preservation board for the Town of Fort Myers Beach ("HPB") pursuant to Chapter 22, Article II, Division 2, Section 22-71 and Chapter 30, Section 30-56(b) of the Land Development Code ("LDC") of the Town of Fort Myers Beach; and

WHEREAS, the HPB is vested with the power, authority and jurisdiction to designate, regulate and administer historical, cultural, archaeological, and architectural resources in the Town, pursuant to LDC Section 22-71; and

WHEREAS, the HPB has the power and duty to designate eligible historic resources, evaluate the significance and eligibility of historic resources for designation pursuant to Chapter 22 of the LDC, increase awareness of historic preservation and its community benefits by promoting public education programs, and administer programs aimed at the proper recognition of designated historic resources pursuant to LDC Section 22-74.

NOW THEREFORE, THE HISTORIC PRESERVATION BOARD RESOLVES AS FOLLOWS:

1. The HPB hereby approves the Town of Fort Myers Beach Historic Preservation Board Historic Plaque Agreement for use by the Town in the Historic Plaque Program. A copy of this Agreement is attached to this Resolution as Exhibit "A" and is hereby incorporated by reference.

The foregoing Resolution was adopted by the HPB upon a motion by _____ and second by _____. Upon being put to a vote, the result was as follows:

Thomas Babcock _____	Bob Raymond _____	Alan Mandel _____
Evie Barnes _____	Bob Simon _____	
Rochelle Kay _____	Dennis Weimer _____	
Alan Mandel _____		

DULY PASSED AND ADOPTED THIS 19th day of February, 2008, by the Historic Preservation Board of the Town of Fort Myers Beach

By: _____
Bob Raymond, HPB Chair

Approved as to Legal Sufficiency

ATTEST: _____
Michelle D. Mayher, Town Clerk

By: _____
Anne Dalton, LPA/HPB Attorney

Appendix G – Conflict of Interest Advice

Below are several points which may be of interest to the LPA Members:

1. I have an ongoing attorney-client relationship in which the attorney gives legal advice but isn't otherwise involved in my business enterprises. That firm may represent others coming before the LPA in quasi-judicial hearings which are not related to his/her representation of me.

(a) Can I participate in LPA discussions and decision-making processes where my attorney is representing a different client?

ANSWER: yes. Assuming that this is a traditional attorney-client relationship, there would be no "special private gain or loss" to the LPA member under F.S. 112.3143(4) for his/her attorney to represent someone else before the LPA. An attorney relationship, by itself, does not create a "business associate" relationship under F.S. 112.312(4). If there are other relationships between the firm and the LPA member (joint ventures, employment of a relative, etc.), that would be covered by the conflict statute.

If the attorney provided information which is covered by the ex parte disclosure sections of the Land Development Code, the LPA member would make the same ex parte disclosure as he/she would for anyone else.

Even if this were a conflict of interest, the statute requires written, advance disclosure. It does not prohibit discussion or voting at the advisory committee level.

(b) Should I disclose the existence of this attorney-client relationship at the time the hearing starts?

ANSWER: It's a good idea. It's not legally required to disclose it since it's not a conflict of interest. However, in ethical matters, it's a good idea to go the extra mile. My suggestion would be to say something like "this law firm has represented me on matters which are not related to this hearing. The LPA attorney has advised me that there's no conflict of interest here but I wanted to disclose this for the record."

2. I have an ongoing relationship with local architects, engineers and other professionals. None of these persons are involved in my business enterprises in any other capacity. Those professionals may represent other persons coming before the LPA in quasi-judicial hearings which are not related to their representation of me. Is there a conflict of interest here?

ANSWER: See #1 above.

Excerpted from LPA Attorney Anne Dalton memo dated April 28, 2008.