

1. Requested Motion:

Provide direction to Town Staff and the Town Attorney regarding appointment of "ex officio" or "liaison" Councilmember to Town advisory committees.

Meeting Date:

October 5, 2009

Why the action is necessary:

Council has directed that the matter of appointment of Councilmembers as ex officio members or liaisons to Town advisory committees be reviewed and brought before Council.

What the action accomplishes:

This follows Council direction.

2. Agenda: 3. Requirement/Purpose: 4. Submitter of Information:

- | | | |
|--|--|---|
| <input type="checkbox"/> Consent | <input type="checkbox"/> Resolution | <input type="checkbox"/> Council |
| <input checked="" type="checkbox"/> Administrative | <input type="checkbox"/> Ordinance | <input type="checkbox"/> Department: |
| <input type="checkbox"/> Appeal | <input checked="" type="checkbox"/> Other: Council direction | <input checked="" type="checkbox"/> Town Attorney |

5. Background:

Council determined it wished to review the possibility of appointment of a Councilmember as an ex officio member or liaison to the Town advisory committees for efficiency of communication. Attached is a memo regarding the Constitutional aspects of such appointment and reviewing the Town's ordinances in this regard.

Attachment: Town Attorney Memo of September 25, 2009

6. Alternative Action:

Take no action,.

7. Management Recommendations:

8. Recommended Approval:

Finance Director	Public Works Director	Comm. Development Director	Town Clerk	Town Attorney	Town Manager
				AD	

9. Council Action:

- Approved Denied Deferred Other

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Memorandum

To: Mayor, Vice Mayor, Councilmembers, Town of Fort Myers Beach
CC: Town Manager, Town Clerk
Date: September 25, 2009
Subject: Town Councilmembers/Advisory Committees & Ex Officio Roles

Pursuant to prior Town Council direction, I have reviewed legal concerns, if any, regarding Council's appointment of a Town Councilmember as a liaison and/or ex officio member of Town advisory committees.

"Ex officio" is a Latin derivative which means "by virtue of the office." For purposes of this memo, it means a person who is a member of an advisory board solely by virtue of his/her status as a Councilmember. According to Robert's Rules of Order, ex officio members of committees have the same rights and privileges of other committee members, including the right to vote.

Florida Constitutional Requirements. Section 5 (a) of Article II of the Florida Constitution prohibits dual office holding at the state, county, and/or municipal level and therefore is relevant to this discussion. In reviewing the application of this constitutional prohibition to committees and board, the Florida Attorney General has drawn a distinction between committees which are advisory in nature only versus committees which have been delegated powers to make factual determinations and/or exercise any aspect of the municipality's sovereign power (AGO 2005-59 and AGO 2006-13).

In essence, when a municipal committee has purely advisory powers (such as Marine Resources Task Force or CRAB), a Councilmember could be appointed on an ex officio basis without violating the dual officeholding prohibition in the Florida Constitution.

However, when a municipal committee or board has been delegated the municipality's sovereign powers, a Councilmember could not be appointed as an ex officio member without violating the Florida Constitution. Two examples of this delegation involve the Town's Historic Preservation Board and Local Planning Agency. The Town Council has delegated its authority to the LPA to make minimum use determinations (MUDs) and decisions regarding historic and landmark signs. The Town Council has delegated its authority to the HPB with regard to various aspects of historic properties within the Town. The Town Council serves as an appellate body in these situations. Therefore, a Councilmember's appointment as an ex officio member of the LPA/HPB would violate the Florida Constitution.

Town Ordinances. The Town's advisory committee ordinances were modified in 2006 to provide that no current member of Town Council is eligible to serve on a Town advisory committee. While the Florida Constitution would not prohibit a Councilmember's ex officio role on a Town advisory committee, these Ordinances would need to be modified again if an ex officio capacity is desired. While the LDC has that same language, the more sweeping prohibition in the Florida Constitution would apply to the LPA and HPB and rescission of the relevant language in the LDC would not ameliorate the situation.

Liaison. The Town Council would not have all of the same issues in appointing a Councilmember as a liaison to an advisory committee. That person would communicate information between the advisory committee and the Town Council but would not be an official member of the committee, i.e., would not be able to vote, would not be subject to the Committee attendance requirements, would not be counted for quorum purposes, etc.

However, were the Town Council to consider a Council liaison to the LPA/HPB, it is respectfully suggested that the scope of that person's duties be carefully outlined to avoid a broad spectrum of issues related to quasi-judicial hearings, irrespective of whether the Council functions as the final decision-maker or as the appellate body.

Please advise if you wish to have a copy of the referenced section of the Florida Constitution and/or the two Attorney General Opinions.

Thank you.