



Fort Myers Beach Town Council

**Council Chambers
2525 Estero Blvd.
Fort Myers Beach, FL 33931**

Agenda

Monday, December 7, 2020

9:00 AM

ORDER OF BUSINESS

- I. CALL TO ORDER**
- II. INVOCATION**
- III. PLEDGE OF ALLEGIANCE**
- IV. APPROVAL OF FINAL AGENDA**
- V. PUBLIC COMMENT**
- VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS**
- VII. ADVISORY COMMITTEES ITEMS AND REPORTS**
 - A. Anchorage Advisory Committee
- VIII. REORGANIZATION OF COUNCIL**
 - A. Selection of Mayor and Vice Mayor
Selection of Mayor and Vice Mayor in accordance with the Town Charter.
- IX. APPROVAL OF MINUTES**
 - A. Draft Minutes November 16, 2020
- X. PRESENTATION**
 - Fort Myers Beach Renourishment
- XI. CONSENT AGENDA**
 - A. LCSO Extra Duty Traffic Detail(s)
Approve Extra Duty Traffic Detail contract(s) with Lee County Sheriff's Office for Fiscal Year 2020-2021; Authorize the Town Manager to execute contract documents as approved in FY2021 budget.
 - B. LSCO Marine Patrol Detail
Approve Boat Patrol contract(s) with Lee County Sheriff's Office for

Fiscal Year 2020-2021; Authorize the Town Manager to execute contract documents as approved in FY2021 budget.

- C. Approve TDC Projects for Fiscal Year 2021 2022
Approve TDC Projects for Fiscal Year 2021 2022
- D. Council Policies and Procedures Manual
Update Town Council Council Policies and Procedures Manual to reflect March 2020 Referenda changes

XII. PUBLIC HEARINGS

- A. Ordinance 20-17; Special Events
AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 6, 14, AND 34 OF THE FORT MYERS BEACH LAND DEVELOPMENT CODE, REVISING CHAPTER 22 OF THE FORT MYERS BEACH CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND PROVIDING FOR AN EFFECTIVE DATE. Open the first public hearing and schedule for second reading and final adoption on January 11, 2021 at 9:00 AM
- B. Ordinance 20-18; Water Supply Facilities Work Plan
AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA ADOPTING AMENDMENTS TO THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN UTILITIES ELEMENT TO UPDATE DATA AND ANALYSIS AND THE GOALS, OBJECTIVES, AND POLICIES RELATED TO WATER SUPPLY PLANNING REQUIREMENTS OF CHAPTER 163, FLORIDA STATUTES; PROVIDING FOR SEVERABILITY; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND PROVIDING FOR AN EFFECTIVE DATE. Open the first public hearing and schedule for second reading and final adoption on March 1, 2021 at 9:00 AM
- C. Ordinance 20-19; Height and Setback Requirements
AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING THE DEFINITIONS IN THE FORT MYERS BEACH LAND DEVELOPMENT CODE AND AMENDING DIVISION 3 OF ARTICLE III OF CHAPTER 34, OF THE FORT MYERS BEACH LAND DEVELOPMENT CODE, ENTITLED "EXPLANATION OF PROPERTY DEVELOPMENT REGULATIONS FOR ALL ZONING DISTRICTS" REVISING HEIGHT AND SETBACK REQUIREMENTS; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND PROVIDING FOR AN EFFECTIVE DATE. Open the first public hearing and schedule for second reading and final adoption on January 11, 2021 at 9:00 AM

XIII. ADMINISTRATIVE AGENDA

- A. Replacement Vehicle
Approve the purchase of the replacement vehicle from Sam Galloway Ford in the amount of \$40,457.25 as budgeted in FY 20 budget,

piggybacking Lee County Contract ITB160545, and authorizing auction of old van to replace the 2011 Ford F350XL Passenger Van.

B. Wire Transfer Policy and Procedures

Approval of Wire Transfer Policy and Procedures as recommended by external Auditors.

C. Town Investment Policy

Rescind the Town Investment Policy to prevent misunderstanding on how the Town should invest and report on any excess funds available. Also to avoid continued Audit noncompliance.

D. Matanzas Inn CPD

Determine if Matanzas Inn Commercial Planned Development project has met the conditions of approval for phased development.

XIV. FINAL PUBLIC COMMENT

XV. TOWN MANAGER'S ITEMS

XVI. TOWN ATTORNEY'S ITEMS

XVII. COUNCILMEMBERS ITEMS AND REPORTS

XVIII. ADJOURNMENT

NOTE: THIS MEETING IS TELEVISED LIVE ON COMCAST CHANNEL 98.

IF A PERSON DECIDES TO APPEAL A DECISION MADE BY THE COUNCIL IN ANY MATTER CONSIDERED AT THIS MEETING/HEARING, SUCH PERSONS MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDING IS MADE, TO INCLUDE THE TESTIMONY AND EVIDENCE UPON WHICH ANY SUCH APPEAL IS TO BE BASED.



For special accommodations, please notify the Town Clerk's Office at least 72 hours in advance. (239) 765-0202



Help for the hearing impaired is available through the Assistive Listening System. Receivers can be obtained from the Town Clerk's Office.

In accordance with the Americans with Disabilities Act (ADA), persons needing a special accommodation to participate in the Board's proceedings should contact the Town Clerk's Office not later than three days prior to the proceedings.

1. **Requested Motion:**

Anchorage Advisory Committee Periodic Report

Meeting Date: December 7, 2020

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

ADVISORY COMMITTEES ITEMS
AND REPORTS

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

Attachments:

1. AAC report to Council 11-2020

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Amy Baker, Deputy Town Clerk

Created/Initiated - 11/24/2020

Anchorage Advisory Committee
Letter to Town Council
November 2020

Upland Service Provider – The AAC at its November meeting passed a motion to recommend that Town Council accept the Harbor House proposal pending review of the condominium documents and have the Town purchase the two-unit option at Harbor House for the Town to take the mooring field upland service provider in-house. The AAC has been working on the provider issue for two years and believe we have only two viable options: leaving the provider at Matanzas Inn or purchasing the Harbor House units.

We need to expand our upland facilities for the mooring field we have now and feel that we won't be able to do that at Matanzas. Staff and AAC members have looked for waterfront property on our island and San Carlos Island and there is nothing else affordable or acceptable. Harbor House is in the perfect spot – close to our existing dinghy dock and close to restaurants, shops and transportation for our mooring field customers. We feel it is a good investment that can only grow with time and could be sold at a later date if needed. Also, the staff has put together a reasonable first draft of a potential layout and budget.

I plan to attend the December 7th council meeting to discuss and answer questions about the upland service provider recommendation.

Respectfully submitted,
Katherine Light, chair
Anchorage Advisory Committee

1. **Requested Motion:**

Meeting Date: December 7, 2020

Selection of Mayor and Vice Mayor in accordance with the Town Charter.

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

REORGANIZATION OF COUNCIL

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

Sec. 4.02. Mayor.

At the first meeting after the second Tuesday in November, 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 meeting after the second Tuesday in November, 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.

Attachments:

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Amy Baker, Deputy Town Clerk
John R Herin Jr, Town Attorney
Roger Hernstadt, Town Manager

Created/Initiated - 11/24/2020
Approved - 11/24/2020
Final Approval - 12/2/2020



Fort Myers Beach Town Council

**Council Chambers
2525 Estero Blvd.
Fort Myers Beach, FL 33931**

Minutes

Monday, November 16, 2020

9:00 AM

ORDER OF BUSINESS

DRAFT

I. CALL TO ORDER

Present: Vice Mayor Hosafros, Council Member Allers (via phone due to illness), Council Member Atterholt and Council Member Veach.
Excused: Mayor Murphy.

II. INVOCATION

Deputy Town Clerk Baker.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

Council Member Veach moved to approve the final agenda; second by Council Member Atterholt.
Motion carried 4-0; Mayor Murphy excused

V. PUBLIC COMMENT

Phil Winter expressed concerns about communication with some Town employees.

Chris Schaab commented on public hearing documents and an application submitted on September 30, which had four deficiencies. He mentioned selectively enforcing the ordinance since the vendor received a permit on November 4. He noted that Lee County and the State issued fines for missing deadlines. He discussed government ethics and felt some vendors received preferential treatment.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member Atterholt recognized local newspapers coverage of Veteran's Day. He thanked veterans for their service.

Vice Mayor Hosafros recognized Michelle Mayher's service as Town Clerk to the

Town of Fort Myers Beach. She wished her well in her retirement.

VII. ADVISORY COMMITTEES ITEMS AND REPORTS

No reports.

VIII. APPROVAL OF MINUTES

A. November 2, 2020 Town Council

Amendment: XI. A. The motion by Vice Mayor Hosafros and seconded by Council Member Atterholt carried unanimously.

Council Member Veach moved to approve the minutes with the change that the vote for XI.A. be recorded as unanimous; second by Council Member Atterholt.

Motion carried 4-0; Mayor Murphy excused.

IX. ADMINISTRATIVE AGENDA

A. FY2019-2020 Re-Appropriation

Approve Re-Appropriation FY2019-2020 - 2nd reading

Town Manager Hernstadt explained that the loan for the stormwater utility was not needed and was not implemented. The building services department ran a deficit due to the TPI project, but most of the deficit would be removed after the permits were paid.

Town Manager Hernstadt introduced the new Finance Director Walter Pierce. He stated that Robert Lange would assist with the transition until December 31, 2020. Mr. Pierce reviewed his experience. He agreed with the re-appropriation and stated it was a normal procedure.

Vice Mayor Hosafros read the title of the resolution.

Council Member Veach moved to approve the second reading for the re-appropriation of the FY2019-2020 and the adoption of Resolution 20-52; second by Vice Mayor Hosafros.

Motion carried 4-0; Mayor Murphy excused.

B. Res 20-51: Town Wide Capital Improvements Projects

Resolution No. 20-51; A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING A LOAN FROM FIRST FLORIDA INTEGRITY BANK, IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$10,000,000 FOR THE PURPOSE OF FINANCING THE REDEVELOPMENT OF CERTAIN TOWN-WIDE CAPITAL IMPROVEMENT PROJECTS, AS DESCRIBED HEREIN; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF A TOWN OF FORT MYERS BEACH, FLORIDA CAPITAL IMPROVEMENT REVENUE NOTE, SERIES 2020 TO EVIDENCE THE TOWN'S OBLIGATIONS UNDER THE LOAN AGREEMENT, SUCH NOTE TO BE A LIMITED OBLIGATION OF THE TOWN, PAYABLE FROM

AND SECURED BY A PLEDGE OF AND LIEN ON THE TOWN'S PUBLIC SERVICE TAX REVENUES AND IF EVER INSUFFICIENT TO PAY DEBT SERVICE ON THE NOTE, A PLEDGE OF AND LIEN ON THE TOWN'S COMMUNICATION SERVICE TAX REVENUES; PROVIDING FOR THE RIGHTS AND SECURITIES OF THE OWNER OF THE NOTE; MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Town Manager Hernstadt stated this was the final step to implement the loan for the capital improvement projects, including Bay Oaks, Times Square and Bayside Park. He described three options set forth by the bank. Council Member Atterholt questioned which option was recommended. Town Manager Hernstadt replied that bifurcating the loan was the easiest option and he was confident that they could pay for Times Square improvements outside of the loan. He estimated that Times Square improvements would be \$1.5 million. Council Member Atterholt questioned borrowing \$9 million instead of \$10 million. Town Manager Hernstadt responded that they did not have to spend the entire \$10 million. Town Attorney Herin added that the loan was similar to a line of credit. Council Member Atterholt questioned whether funds would be drawn from the Town's reserves. Town Manager Hernstadt replied that funds from Irma's damage were anticipated and they had been setting money aside for the project.

Town Manager Hernstadt replied to Council Member Allers and clarified that Times Square lease revenue went into the general revenue fund. He indicated that how the money was used was up to the discretion of Council. Council Member Veach discussed project creep. Vice Mayor Hosafros agreed with paying for improvements outside of the loan. She questioned whether they would have to amend the resolution regardless of which option they chose. Town Attorney Herin explained why they would not have to amend the resolution. Town Manager Hernstadt addressed project creep and noted that Council had to approve all expenditures.

Town Attorney Herin pointed out that the loan documents generically included Times Square. If the loan were bifurcated (one for taxable and one for non-taxable), the loan documents would not have to be changed. Council would have to vote on their preferred option and whether to enter into the loan agreement.

Attorney Rhonda Bond-Collins represented First Florida Integrity Bank and agreed with the Town Manager and Town Attorney's explanation. She noted that because it was a private use issue, the Times Square piece could not be financed with tax-exempt bond proceeds. Council Member Atterholt discussed the broader public good involved with the Times Square renovation. Attorney Bond-Collins stated that the draw-down loan was for a three-year period and the maximum amount was \$10 million.

Vice Mayor Hosafros moved to instruct staff that no proceeds from the loan would be used for the private use section parts of the Times Square improvement project and that they would be spending funds out of other parts

of the budget to pay for the private use sections of the Times Square project; second by Council Member Veach.

Town Attorney Herin stated that public funds were not used for private use because they charged rent.

Vice Mayor Hosafros read the title of the resolution.

Council Member Veach moved to approve Resolution 20-51; second by Vice Mayor Hosafros.

Motion carried 4-0; Mayor Murphy excused.

C. Proposed 2021 Town Council Meeting Schedule

Approve the monthly schedule for Town Council meetings through June 2021

Consensus was reached to move two Management & Planning meetings to Wednesday, April 7, 2021, and Wednesday, June 9, 2021, due to a conflict with TDC (Tourism Development Council) meetings. The item will appear as a resolution on the next agenda.

X. FINAL PUBLIC COMMENT

No public comment.

XI. TOWN MANAGER'S ITEMS

Town Manager Hernstadt brought up scheduling a joint meeting with Advisory Committee Chairs. Vice Mayor Hosafros suggested discussing a date at their M&P meeting on January 21, 2021. Town Manager Hernstadt reviewed the deadline policy for beach vendor permit applications.

XII. TOWN ATTORNEY'S ITEMS

Town Attorney Herin stated that they could continue the reorganization vote to the next meeting because they did not have a full Council present.

Council Member Allers moved to continue reorganization to the December 7, 2020 meeting; second by Council Member Veach.

Motion carried 4-0; Mayor Murphy excused.

Rules and Procedures will be changed and included in the next agenda as a Consent Item. Vice Mayor Hosafros suggested that Town Attorney Herin review the Rules and Procedures and update any outdated items. She received consensus from Council Members.

Town Attorney Herin will follow up with individual Council Members regarding the Jamison litigation status and the Bert Harris Claim case.

XIII. COUNCILMEMBERS ITEMS AND REPORTS

Council Member Allers questioned the status of the interlocal agreement with Lee County concerning the pedestrian/bicycle markings on the sidewalks and whether the Public Safety Committee would be permitted to provide input regarding crosswalks at the base of the bridge. Town Manager Hernstadt will follow up. Council Member Atterholt questioned adding the Times Square clock and the

arches to a future M&P agenda. Council Members agreed to add both items. Council Member Veach noted that the coronavirus had surged in the area and encouraged everyone not to let their guard down. He was disappointed that trees were removed in the Bayside Park design and he thought the monument was uninspiring. He suggested that the monument be moved to keep the landscape intact and redesign the monument to create more impact. Town Manager Hernstadt commented that he would direct the design team to do whatever they decided. Council Member Veach suggested adding shade trees with the monument underneath. Town Manager Hernstadt expressed concern regarding the sight line with the current monument placement. He stated that he would direct the design team to replace palms with shade trees and to redesign the monument. He encouraged Council Members to submit ideas. Council Member Atterholt encouraged island veterans to submit ideas. Council Member Veach requested an update regarding the street light RFQ. Town Manager Hernstadt replied that they did not receive any response because the vendors did not see the project as viable. After sending the RFQ out again, he anticipated receiving a proposal. Council Member Atterholt offered to be the contact person with FP&L and suggested that an FP&L senior representative be invited to a Town Council meeting. Town Manager Hernstadt commented that FP&L was focused on moving lighting underground for hurricane protection. He reminded Members that Estero Boulevard was county-owned. Town Manager Hernstadt will contact FP&L and Council Members agreed to appoint Council Member Atterholt as the contact person with FP&L. Council Member Atterholt discussed the status of 5G implementation. Council Member Veach described the Community Resource Advisory Board (CRAB) and encouraged the community to submit applications.

Vice Mayor Hosafros questioned whether applications were received for the Nuisance Abatement Board. Deputy Town Clerk Baker replied that she received six applications. Town Manager Hernstadt stated that vacancies would be posted on the website. Vice Mayor Hosafros questioned whether Members agreed with moving forward with the side setback and height ordinance. All Members agreed. Town Manager Hernstadt stated that the ordinance would be brought back for Council's final review and approval. Vice Mayor Hosafros questioned whether Members supported directing lobbyist Mr. Book to represent them at the Federal level at no additional cost. All Members agreed. Vice Mayor Hosafros supported Council Member Atterholt's letter-writing campaign and correspondence with Mr. Book. All Members agreed. Vice Mayor Hosafros wished everyone a Happy Thanksgiving.

XIV. ADJOURNMENT

Council Member Atterholt moved to adjourn the meeting; second by Council Member Veach.

Motion carried unanimously.

Vice Mayor Hosafros adjourned the meeting at 11:13 a.m.

1. Requested Motion:

Meeting Date: December 7, 2020

Approve Extra Duty Traffic Detail contract(s) with Lee County Sheriff's Office for Fiscal Year 2020-2021; Authorize the Town Manager to execute contract documents as approved in FY2021 budget.

Why the action is necessary:

The Town's procurement regulations requires Council approval for any contracts exceeding \$25,000.

What the action accomplishes:

Provided the Lee County Sheriff's Office seasonal extra duty traffic detail for the light at the base of the bridge during season and at Old San Carlos Boulevard and Estero on Friday's and Saturday's during season.

2. Agenda:

CONSENT AGENDA

3. Requirement/Purpose:

Other

4. Submitter of Information:

Chelsea O'Riley, Public Works
Director

5. Background:

The Lee County Sherriff's Office has adjusted their rates. Based on the revised rate schedule, the revised costs are projected to be as follow for the following illustrative events:

Foot of the Bridge Signal: Monday through Friday at \$464/day, and Saturday and Sunday at \$348/day. The rate increases to \$544/holiday. Total \$42,384

Old San Carlos Boulevard, Estero and Season Friday/Saturday. Light Duty: \$9,744

Grand Total: \$52,128

The signalization project at Old San Carlos Boulevard and Estero is expected to commence in August/September 2021. This will be the last year to fund the extra duty detail at Old San Carlos as the signal will be in operation early 2022.

Attachments:

1. Agreement for Extra Duty Detail Services- OSC
2. Agreement for Extra Duty Detail Services- Seasonal Traffic Light
3. Exhibit A -OSC
4. Exhibit A- Seasonal Traffic Light
5. Seasonal OSC Calendar-Cost
6. Seasonal Traffic Light Calendar-Cost

Financial Impact:

6. Alternative Action

Do not approve.

7. Management Recommendations:

Approve the contract(s) with Lee County Sheriff's Office for extra duty traffic detail for the 2020-2021 Fiscal Year and authorize the Town Manager to execute contract documents.

8. Recommended Approval:

Randy Paniaqua, Administrative Officer
Chelsea O'Riley, Public Works Director
John R Herin Jr, Town Attorney
Amy Baker, Deputy Town Clerk
Roger Hernstadt, Town Manager

Created/Initiated - 11/23/2020
Approved - 11/23/2020
Approved - 11/23/2020
Approved - 11/24/2020
Final Approval - 12/2/2020

AGREEMENT FOR EXTRA-DUTY DETAIL SERVICES

This Agreement for **Extra-Duty Detail Services** ("The Agreement" or "Agreement"), effective upon the date of LCSO's signature, is made by and between Sheriff Carmine Marceno, in his official capacity as Sheriff in and for Lee County, Florida and the Lee County Sheriff's Office (hereinafter "LCSO"), and Town of Ft Myers Beach (Pedestrian Crossing/Patrols), (hereinafter "Entity"), and collectively as "the parties", hereby agree as follows:

WITNESSETH:

WHEREAS, Entity plans to engage in an event as set forth, and at a location set forth, in Exhibit A and desires, as a security measure, a law enforcement presence at said event; and

WHEREAS, the LCSO is willing to provide law enforcement personnel, acting in an extra-duty detail capacity, to provide services described herein and set forth in Exhibit A while wearing LCSO uniforms, utilizing LCSO vehicles, and other LCSO property; and

WHEREAS, Exhibit A attached hereto is a material part of the Agreement and is incorporated and merged as if fully set forth herein.

NOW THEREFORE, in consideration of the mutual covenants and obligations undertaken by the parties as contained herein, and for other good and valuable consideration, the parties hereto agree as follows:

1. **Authority.**

The Entity expressly represents it or they are legally authorized to bind the Entity. The Entity fully comprehends and acknowledges the LCSO is acting in reliance on this, as well as other representations the Entity has made to members of the LCSO. The Entity further expressly represents that it or they has/have acquired all necessary applicable permits to engage in the event for which they are requesting LCSO law enforcement personnel as set forth in **Exhibit A**.

2. **Description and Schedule of Event.**

The description of the event, including the time, place, and duration, are set forth in Exhibit A, which is attached hereto and incorporated as if full set forth herein.

3. **Term of Agreement.**

The term of this Agreement shall begin on the first day of the event and terminate on the last day of the event as set forth in Exhibit A.

4. **Assessment of Security Needs and Authority Retained by LCSO.**

The Entity understands and consents to the LCSO conducting an assessment of the security needs of the Entity for the event location set forth in Exhibit A. The Entity understands the assessment of the referenced security needs by the LCSO is conducted by the LCSO, at their sole and absolute discretion, to allow LCSO to determine the minimum number of extra-duty detail law enforcement personnel adequate for the event. The Entity acknowledges the assessment of security needs by LCSO as set out herein does not constitute a representation, promise, guarantee or warranty by LCSO that LCSO will be able to supply the minimum number of off-duty or extra-duty detail law enforcement personnel which LCSO determines are required.

The Entity understands the extra duty detail services provided to the Entity are intended to offer an immediate presence of uniformed, sworn law enforcement personnel and to, by their presence alone, serve to potentially deter unruly or unlawful behavior. The Entity fully understands and accepts that by LCSO providing extra duty detail services pursuant to this Agreement LCSO is not assuming any duties of protection or care to any persons who may or may not be present at the location of the event as set forth in Exhibit A. The Entity acknowledges the extra-duty detail services provided by LCSO are merely to serve as a supplement to other measures and/or care provided or taken by the Entity and the Entity specifically DOES NOT expect or rely on LCSO to exclusively assume any duties of care.

5. **Scheduling and Command.**

The primary duties and essential functions of law enforcement personnel providing extra-duty detail services shall be as assigned by LCSO command.

The selection and scheduling of the law enforcement personnel providing extra-duty detail services shall be in accordance with the practices and policies of LCSO.

6. **Termination of Agreement.**

As set forth in Exhibit A.

7. **Compensation.**

As set forth in Exhibit A.

8. **Independent Relationships.**

The parties to this Agreement are solely independent of each other and are contracting with each other for the sole purpose of the obligations set forth in the Agreement. Nothing in this Agreement shall create a partnership, joint venture, agency, or employer/employee relationship. Neither party may make, or undertake, any commitments or obligations on behalf of the other.

9. **Waiver of Terms and Conditions.**

The failure of LCSO to insist on any one or more instances of performance of any of the terms and conditions of this Agreement or to exercise any right or privilege contained in this Agreement, or the waiver of any breach of the terms and conditions of this Agreement, shall not be considered as having waived any such terms, conditions, rights or privileges of the Agreement, and the same shall continue and remain in force and effect.

10. **Severability.**

It is the intention of the parties that this Agreement is in compliance with all relevant state and federal statutes, regulations, and governmental agency guidelines governing the relationship between the parties at the time of execution. If any provision of this Agreement is subsequently rendered invalid or unenforceable by any local, state or federal statute or regulation, or declared null and void by any court of competent jurisdiction, the remaining provisions of this Agreement will remain in full force and effect.

11. **Third Party Beneficiaries.**

This Agreement is intended solely for the benefit of the parties hereto and shall not, directly or by implication, create any rights, claims, obligations, or duties to any third party not a signatory to this Agreement.

12. **Assignment.**

This Agreement shall not be assigned in whole or in part by either party without the express prior written consent of the other party.

13. **Binding Effect.**

This Agreement shall be binding upon the parties hereto and shall inure to the benefit of the Entity or the LCSO, as applicable.

14. **Governing Law.**

This Agreement shall be controlled, interpreted, construed, and enforced in accordance with the laws of the State of Florida without regard to conflict of laws. The exclusive venue for any dispute arising out of this Agreement shall be in a court of competent jurisdiction in Lee County, Florida.

15. **Titles or Captions.**

The paragraph titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend, modify, amplify, or describe the scope of this Agreement or the intent of any provision hereof.

16. **Draftsmanship.**

Any conflict in the terms of this Agreement shall be construed in favor of LCSO.

17. **Amendments.**

This Agreement may only be modified or amended by the mutual written agreement of the parties. Any such modification or amendment shall be signed by each party and shall be attached to and become a part of this Agreement.

18. **Indemnification.**

The Entity agrees to indemnify and hold harmless LCSO, and its employees, volunteers, and agents for and from any and all claims (direct or derivative), damages, costs, expenses, demands of whatsoever kind or nature, and causes of action, arising from or related to the Entity's performance, nonperformance, action(s), omission(s), or failure to act related to any duty or obligation imposed upon LCSO pursuant to the Agreement. This indemnification obligation shall not be subject to any limitation as to the amount or type of recovery sought, or, on the amount or type of insurance coverage secured by the Entity. Further, the Entity shall require all their insurance carriers, with respect to all insurance policies to which they are a party, to waive all rights of subrogation against LCSO incidental to the extra-duty detail service described herein.

19. **Sovereign Immunity.**

Nothing herein contained in this Agreement is intended, nor shall be construed, to waive any of the limitations of liability and other defenses provided by sovereign immunity and the strict financial limitations set forth in Florida Statute 768.28.

20. **Extra-Duty Detail Indemnification.**

Nothing contained in this Agreement shall in any way limit or impeded application of the indemnification language in Florida Statute 30.2905.

21. **Recitals/Entire Agreement.**

The recitals above are incorporated herein as if fully restated. This Agreement constitutes the entire agreement between the parties hereto and supersedes all prior oral or written agreements, representations, statements, negotiations, understandings, proposals, and undertakings with respect to the subject matter hereof.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first written above.

ENTITY

CARMINE MARCENO, SHERIFF O/BO/
THE LEE COUNTY SHERIFF'S
OFFICE

Town of Ft Myers Beach (Pedestrian Crossing/Patrols)

2525 Estero Blvd, Ft Myers Beach FL 33931

By: _____

By: _____
Sheriff/Designee

Print Name: _____

Print Name: _____

Date: _____

Date: _____

AGREEMENT FOR EXTRA-DUTY DETAIL SERVICES

This Agreement for **Extra-Duty Detail Services** ("The Agreement" or "Agreement"), effective upon the date of LCSO's signature, is made by and between Sheriff Carmine Marceno, in his official capacity as Sheriff in and for Lee County, Florida and the Lee County Sheriff's Office (hereinafter "LCSO"), and Town of Ft Myers Beach (Beach Traffic Light), (hereinafter "Entity"), and collectively as "the parties", hereby agree as follows:

WITNESSETH:

WHEREAS, Entity plans to engage in an event as set forth, and at a location set forth, in Exhibit A and desires, as a security measure, a law enforcement presence at said event; and

WHEREAS, the LCSO is willing to provide law enforcement personnel, acting in an extra-duty detail capacity, to provide services described herein and set forth in Exhibit A while wearing LCSO uniforms, utilizing LCSO vehicles, and other LCSO property; and

WHEREAS, Exhibit A attached hereto is a material part of the Agreement and is incorporated and merged as if fully set forth herein.

NOW THEREFORE, in consideration of the mutual covenants and obligations undertaken by the parties as contained herein, and for other good and valuable consideration, the parties hereto agree as follows:

1. Authority.

The Entity expressly represents it or they are legally authorized to bind the Entity. The Entity fully comprehends and acknowledges the LCSO is acting in reliance on this, as well as other representations the Entity has made to members of the LCSO. The Entity further expressly represents that it or they has/have acquired all necessary applicable permits to engage in the event for which they are requesting LCSO law enforcement personnel as set forth in **Exhibit A**.

2. Description and Schedule of Event.

The description of the event, including the time, place, and duration, are set forth in Exhibit A, which is attached hereto and incorporated as if full set forth herein.

3. Term of Agreement.

The term of this Agreement shall begin on the first day of the event and terminate on the last day of the event as set forth in Exhibit A.

4. **Assessment of Security Needs and Authority Retained by LCSO.**

The Entity understands and consents to the LCSO conducting an assessment of the security needs of the Entity for the event location set forth in Exhibit A. The Entity understands the assessment of the referenced security needs by the LCSO is conducted by the LCSO, at their sole and absolute discretion, to allow LCSO to determine the minimum number of extra-duty detail law enforcement personnel adequate for the event. The Entity acknowledges the assessment of security needs by LCSO as set out herein does not constitute a representation, promise, guarantee or warranty by LCSO that LCSO will be able to supply the minimum number of off-duty or extra-duty detail law enforcement personnel which LCSO determines are required.

The Entity understands the extra duty detail services provided to the Entity are intended to offer an immediate presence of uniformed, sworn law enforcement personnel and to, by their presence alone, serve to potentially deter unruly or unlawful behavior. The Entity fully understands and accepts that by LCSO providing extra duty detail services pursuant to this Agreement LCSO is not assuming any duties of protection or care to any persons who may or may not be present at the location of the event as set forth in Exhibit A. The Entity acknowledges the extra-duty detail services provided by LCSO are merely to serve as a supplement to other measures and/or care provided or taken by the Entity and the Entity specifically DOES NOT expect or rely on LCSO to exclusively assume any duties of care.

5. **Scheduling and Command.**

The primary duties and essential functions of law enforcement personnel providing extra-duty detail services shall be as assigned by LCSO command.

The selection and scheduling of the law enforcement personnel providing extra-duty detail services shall be in accordance with the practices and policies of LCSO.

6. **Termination of Agreement.**

As set forth in Exhibit A.

7. **Compensation.**

As set forth in Exhibit A.

8. **Independent Relationships.**

The parties to this Agreement are solely independent of each other and are contracting with each other for the sole purpose of the obligations set forth in the Agreement. Nothing in this Agreement shall create a partnership, joint venture, agency, or employer/employee relationship. Neither party may make, or undertake, any commitments or obligations on behalf of the other.

9. **Waiver of Terms and Conditions.**

The failure of LCSO to insist on any one or more instances of performance of any of the terms and conditions of this Agreement or to exercise any right or privilege contained in this Agreement, or the waiver of any breach of the terms and conditions of this Agreement, shall not be considered as having waived any such terms, conditions, rights or privileges of the Agreement, and the same shall continue and remain in force and effect.

10. **Severability.**

It is the intention of the parties that this Agreement is in compliance with all relevant state and federal statutes, regulations, and governmental agency guidelines governing the relationship between the parties at the time of execution. If any provision of this Agreement is subsequently rendered invalid or unenforceable by any local, state or federal statute or regulation, or declared null and void by any court of competent jurisdiction, the remaining provisions of this Agreement will remain in full force and effect.

11. **Third Party Beneficiaries.**

This Agreement is intended solely for the benefit of the parties hereto and shall not, directly or by implication, create any rights, claims, obligations, or duties to any third party not a signatory to this Agreement.

12. **Assignment.**

This Agreement shall not be assigned in whole or in part by either party without the express prior written consent of the other party.

13. **Binding Effect.**

This Agreement shall be binding upon the parties hereto and shall inure to the benefit of the Entity or the LCSO, as applicable.

14. **Governing Law.**

This Agreement shall be controlled, interpreted, construed, and enforced in accordance with the laws of the State of Florida without regard to conflict of laws. The exclusive venue for any dispute arising out of this Agreement shall be in a court of competent jurisdiction in Lee County, Florida.

15. **Titles or Captions.**

The paragraph titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend, modify, amplify, or describe the scope of this Agreement or the intent of any provision hereof.

16. **Draftsmanship.**

Any conflict in the terms of this Agreement shall be construed in favor of LCSO.

17. **Amendments.**

This Agreement may only be modified or amended by the mutual written agreement of the parties. Any such modification or amendment shall be signed by each party and shall be attached to and become a part of this Agreement.

18. **Indemnification.**

The Entity agrees to indemnify and hold harmless LCSO, and its employees, volunteers, and agents for and from any and all claims (direct or derivative), damages, costs, expenses, demands of whatsoever kind or nature, and causes of action, arising from or related to the Entity's performance, nonperformance, action(s), omission(s), or failure to act related to any duty or obligation imposed upon LCSO pursuant to the Agreement. This indemnification obligation shall not be subject to any limitation as to the amount or type of recovery sought, or, on the amount or type of insurance coverage secured by the Entity. Further, the Entity shall require all their insurance carriers, with respect to all insurance policies to which they are a party, to waive all rights of subrogation against LCSO incidental to the extra-duty detail service described herein.

19. **Sovereign Immunity.**

Nothing herein contained in this Agreement is intended, nor shall be construed, to waive any of the limitations of liability and other defenses provided by sovereign immunity and the strict financial limitations set forth in Florida Statute 768.28.

20. **Extra-Duty Detail Indemnification.**

Nothing contained in this Agreement shall in any way limit or impeded application of the indemnification language in Florida Statute 30.2905.

21. **Recitals/Entire Agreement.**

The recitals above are incorporated herein as if fully restated. This Agreement constitutes the entire agreement between the parties hereto and supersedes all prior oral or written agreements, representations, statements, negotiations, understandings, proposals, and undertakings with respect to the subject matter hereof.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first written above.

ENTITY

CARMINE MARCENO, SHERIFF O/BO/
THE LEE COUNTY SHERIFF'S
OFFICE

Town of Ft Myers Beach (Beach Traffic Light)
2525 Estero Blvd, Ft Myers Beach FL 33931

By: _____

By: _____
Sheriff/Designee

Print Name: _____

Print Name: _____

Date: _____

Date: _____

Carmine Marceno
Sheriff



State of Florida
County of Lee

"Proud to Serve"

Exhibit A
Detail Request Form

Please fill out the Extra Duty Request form attached to this document completely. All details are a minimum of four (4) hours with the exception of boat details which are a minimum of six (6) hours and a half hour drive time to and from the detail location. When five (5) or more deputies are assigned to an event, a supervisor with the rank of Sergeant or above will be assigned at an upgraded hourly charge. Depending on the type of event or crowd size, it will be at the discretion of the Sheriff's Office to determine the number of deputies needed.

The current detail rates are:

Security	\$48/hr	Traffic	\$58/hr
Funeral Escort	\$48/hr	Security Supervisor	\$58/hr
Escort	\$48/hr	Traffic Supervisor	\$68/hr
Boat	\$48/hr	Civil Stand-by	\$68/hr
Holiday/Last Minute	\$68/hr	Prisoner Transport	\$68/hr

Details are charged a \$15 per deputy vehicle rate (when applicable).
All boat details are charged a \$20 per hour boat rate (when applicable).

Extra Duty Details will not be provided to any person, firm or organization whose members, business or operations are of questionable nature; or for any event that will discredit the assigned Deputy, Sheriff's Office or County. The Sheriff's Office reserves the right to cancel the detail without notice and to recall the deputy(s) when necessary for community safety without penalty.

The Lee County Sheriff's Office will be the only armed personnel at any event where the detail is taking place. Any private security company that is hired to work alongside the Sheriff's Office will be a reputable, licensed and insured company whose employees are State D licensed unarmed security guards. Proof of the signed contract with private security company will be required.

In order to cancel a detail, notice must be given to the Detail Coordinator twenty-four (24) hours prior to the start of the detail either by phone or email. If the cancellation is less than twenty-four (24) hours, a four (4) hour charge per deputy will be billed. In the case of weather, notice of cancellation must be received within two (2) hours of the starting time otherwise a two (2) hour charge per deputy will be billed. In the event of a cancellation after business hours, please call 239-477-1000 and ask to have the on-call Detail Coordinator call you.

Unless otherwise specified, full payment of all details must be received one (1) week prior to the start of the event in the form of a cashier's check, money order, business check or cash. The Lee County Sheriff's Office does not accept credit cards or personal checks. **Payments can be sent to: The Lee County Sheriff's Office 14750 Six Mile Cypress Pkwy., Fort Myers, FL 33912 ATTN: Details Unit.**

LEE COUNTY SHERIFF'S OFFICE USE ONLY

Total Deputy(ies) <u>1</u>	Total Hours _____	Rate per Hour <u>\$58/\$68</u>	Vehicle Rate <u>waived</u>
Supervisory Deputy(ies) _____	Total Hours _____	Rate per Hour _____	Vehicle Rate _____
Entity _____			



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14750 Six Mile Cypress Parkway • Fort Myers, Florida 33912-4406 • (239) 477-1000

Detail Request Form - continued

LCSO Details Main Phone Number: 239-477-1199	
Vendor Information	
Business Name: <u>Town of Ft Myers Beach (Pedestrian Crossing)</u>	
Street: <u>2525 Estero Blvd Attn: EN-3908</u>	
City: <u>Ft Myers Beach</u>	State: <u>FL</u> Zip Code: <u>33931</u>
Business Contact: <u>Roger Hernstadt</u> Phone: <u>239-765-0202 x1100</u>	
Email Address: <u>roger@fmbgov.com</u>	
Event Information	
Detail Location: <u>Old San Carlos Blvd at Estero Blvd</u>	
Street: <u>Area of 150 Estero Blvd (Stop Sign - Ped Crossing)</u>	
City: <u>Ft Myers Beach</u>	State: <u>FL</u> Zip Code: <u>33931</u>
Contact During Event: <u>West District Supervisor on Duty</u> Phone: _____	
Event Date: <u>12/27/20 thru 4/3/21 Sat & Sun</u> Event Time: <u>Sat & Sun 11a-5p</u>	
Anticipated Crowd Size : _____ Type of Event: <u>Ped Crossing/Traffic Control</u>	
Additional Security Working Detail: ☐ Yes ☒ No If Yes, how many? _____	
Permits Attached: ☐ Yes ☒ No Alcohol Served: ☐ Yes ☒ No	
Detail Information	
Security ☐	Traffic ☒
Escort ☐	Holiday ☒
Last Minute ☐	Stand-by ☐
Marked Vehicle ☒ Yes ☐ No	Unmarked Vehicle ☒ Yes ☐ No
Uniformed Deputy ☒ Yes ☐ No	Plain Clothes Deputy ☐ Yes ☒ No
Prisoner Transport ☐ Funeral Escort ☐	
Detail Description: Primary function for this post is to limit pedestrian crossing & pushing vehicles through intersection to keep traffic from backing up. Job description in the Details program for deputies to view will be more expansive. Deputies will be paid drive time to/from details. The additional detail deputy will be at the intersection from 12p-4p on Sat & Sun. Estimated cost per day for this shift is \$348 or \$408 on a holiday. Estimated cost for Saturday & Sundays only \$9744	



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Carmine Marceno
Sheriff



State of Florida
County of Lee

"Proud to Serve"

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Funeral Escort	\$48/hr	Security Supervisor	\$58/hr
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LEE COUNTY SHERIFF'S OFFICE USE ONLY			
Total Deputy(ies) <u>1/ea day</u>	Total Hours <u>8/6</u>	Rate per Hour <u>\$58/\$68</u>	Vehicle Rate <u>waived</u>
Supervisory Deputy(ies) _____	Total Hours _____	Rate per Hour _____	Vehicle Rate _____
Entity _____			



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Detail Request Form - continued

LCSO Details Main Phone Number: 239-477-1199		
Vendor Information		
Business Name: <u>Town of Ft Myers Beach (Beach Traffic Light) #2962</u>		
Street: <u>2525 Estero Blvd</u>		
City: <u>Ft Myers Beach</u>	State: <u>FL</u>	Zip Code: <u>33931</u>
Business Contact: <u>Roger Hernstadt</u>		Phone: <u>239-765-0202 x1100</u>
Email Address: <u>roger@fmbgov.com</u>		
Event Information		
Detail Location: <u>Traffic light in the area of Crescent Beach Family Park at Estero Blvd</u>		
Street: <u>1100 Estero Blvd</u>		
City: <u>Ft Myers Beach</u>	State: <u>FL</u>	Zip Code: <u>33931</u>
Contact During Event: <u>West District Supervisor on Duty</u>		Phone: _____
Event Date: <u>12/27/20 through 4/3/21</u>	Event Time: <u>1p-9p(Mon-Fri) 11a-5p(Sat & Sun)</u>	
Anticipated Crowd Size : _____	Type of Event: <u>Beach Traffic Light Control</u>	
Additional Security Working Detail: ☐ Yes ☒ No If Yes, how many? _____		
Permits Attached: ☐ Yes ☒ No Alcohol Served: ☐ Yes ☒ No		
Detail Information		
Security ☐	Traffic ☒	Prisoner Transport ☐
Escort ☐	Holiday ☐	Funeral Escort ☐
Last Minute ☐	Stand-by ☐	
Marked Vehicle ☒ Yes ☐ No	Unmarked Vehicle ☒ Yes ☐ No	
Uniformed Deputy ☒ Yes ☐ No	Plain Clothes Deputy ☐ Yes ☒ No	
Detail Description:		
Primary function for this post is to limit pedestrian crossing & pushing vehicles through intersection to keep traffic from backing up. Deputy will run the traffic light & hold up pedestrians until there is a natural break in traffic to stop vehicles. Job description in the Details program for deputies to view will be more expansive. Deputies will be paid drive time to/from details. Deputies will be at the post from 2p-8p (Mon-Fri) and 12p-4p (Sat & Sun) to relieve Voice members. Holidays billed at \$68/hr Coverage for beach traffic light only will cost approx \$42,384 for the season.		



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January 2021

Sun	Mon	Tue	Wed	Thu	Fri	Sat
27 \$348						1 \$348
	3	4	5	6	7	8
	10	11	12	13	14	15
	17	18	19	20	21	22
	24	25	26	27	28	29
	31					

print-a-calendar.com

11 days x \$348 = \$3828

9744

February 2021

Sun	Mon	Tue	Wed	Thu	Fri	Sat	
		1	2	3	4	5	6
						\$348	
\$348	7	8	9	10	11	12	13
	14	15	16	17	18	19	20
	21	22	23	24	25	26	27
	28						

print-a-calendar.com

8 days x \$348 \$2784

March 2021

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2	3	4	5 \$348 6
\$348 7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

print-a-calendar.com

8 days x \$348 2784

April 2021

Sun	Mon	Tue	Wed	Thu	Fri	Sat
					1	2 \$348
	4	5	6	7	8	9
	11	12	13	14	15	16
	18	19	20	21	22	23
	25	26	27	28	29	30

print-a-calendar.com

\$348

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
					Christmas Day	
6 hours ²⁷	8 hours ²⁸	29	30	8 hours ³¹ holiday		
\$348	\$464	\$464	\$464	\$544		

November 2020

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

December 2020

January 2021

S	M	T	W	T	F	S
						1
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

\$2284 for December

\$42,384 - Season
Beach Light only

Based on an 8 hour detail for NYE.
If time is changed, price may change

Beach Traffic Light Only

January 2021

Sun	Mon	Tue	Wed	Thu	Fri	Sat
					8 hours holiday \$544	1 6 hours 2 \$348
6 hours ³ \$348	8 hours ⁴ \$464	5 \$464	6 \$464	7 \$464	8 \$464	6 hours ⁹ \$348
6 hours ¹⁰ \$348	8 hours ¹¹ \$464	12 \$464	13 \$464	14 \$464	15 \$464	6 hours ¹⁶ \$348
6 hours ¹⁷ \$348	8 hours ¹⁸ \$464	19 \$464	20 \$464	21 \$464	22 \$464	6 hours ²³ \$348
6 hours ²⁴ \$348	8 hours ²⁵ \$464	26 \$464	27 \$464	28 \$464	29 \$464	6 hours ³⁰ \$348
6 hours ³¹ \$348						

print-a-calendar.com

\$13,304 for January

Beach Traffic Light ONLY

February 2021

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	8 hours 1	2	3	4	5	6 hours 6
	\$464	\$464	\$464	\$464	\$464	\$348
6 hours 7	8 hours 8	9	10	11	12	6 hours 13
\$348	\$464	\$464	\$464	\$464	\$464	\$348
6 hours 14	8 hours 15	16	17	18	19	6 hours 20
\$348	\$464	\$464	\$464	\$464	\$464	\$348
6 hour 21	8 hour 22	23	24	25	26	6 hour 27
\$348	\$464	\$464	\$464	\$464	\$464	\$348
6 hour 28						
\$348						

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\$ 12064
February

Beach Traffic Light ONLY

March 2021

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	8 hours 1	2	3	4	5	6 hours 6
	\$464	\$464	\$464	\$464	\$464	\$348
6 hours 7	8 hours 8	9	10	11	12	6 hours 13
\$348	\$464	\$464	\$464	\$464	\$464	\$348
6 hours 14	8 hours 15	16	17	18	19	6 hours 20
\$348	\$464	\$464	\$464	\$464	\$464	\$348
6 hours 21	8 hours 22	23	24	25	26	6 hours 27
\$348	\$464	\$464	\$464	\$464	\$464	\$348
6 hours 28	8 hours 29	30	31			
\$348	\$464	\$464	\$464			

print-a-calendar.com

\$ 13456 - March

Beach Traffic Light only

April 2021

Sun	Mon	Tue	Wed	Thu	Fri	Sat
				8 hours ¹	8 hours ²	6 hours ³
				\$464	\$464	\$348
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

print-a-calendar.com

\$ 1276 - April

Beach traffic light only

1. Requested Motion:

Meeting Date: December 7, 2020

Approve Boat Patrol contract(s) with Lee County Sheriff's Office for Fiscal Year 2020-2021;
Authorize the Town Manager to execute contract documents as approved in FY2021 budget.

Why the action is necessary:

The Town's procurement regulations requires Council approval for any contracts exceeding \$25,000.

What the action accomplishes:

Ensures the Lee County Sheriff's Office performs additional year-long boat patrols for the Town.

2. Agenda:

CONSENT AGENDA

3. Requirement/Purpose:

4. Submitter of Information:

Chelsea O'Riley, Public Works
Director

5. Background:

LCSD has adjusted its rates. Based on the revised rate schedule, the revised costs are projected to be as follow for the following illustrative events:

Not to exceed: \$50,000

This contract will provide for additional boat patrols throughout the island. This contract will be funded utilizing WCIND Grant funds and Town match as approved in this fiscal years budget. The WCIND Grant is \$35,000 while the Town's match is \$15,000 for a total NTE price of \$50,000.

Attachments:

1. Agreement for Extra Duty Detail Services- BP
2. Exhibit A- Boat Patrols

Financial Impact:

\$50,000 as approved in the budget

6. Alternative Action

Do not approve.

7. Management Recommendations:

8. Recommended Approval:

Randy Paniaqua, Administrative Officer
Chelsea O'Riley, Public Works Director
John R Herin Jr, Town Attorney
Amy Baker, Deputy Town Clerk
Roger Hernstadt, Town Manager

Created/Initiated - 11/23/2020
Approved - 11/23/2020
Approved - 11/23/2020
Approved - 11/24/2020
Final Approval - 12/2/2020

AGREEMENT FOR EXTRA-DUTY DETAIL SERVICES

This Agreement for **Extra-Duty Detail Services** ("The Agreement" or "Agreement"), effective upon the date of LCSO's signature, is made by and between Sheriff Carmine Marceno, in his official capacity as Sheriff in and for Lee County, Florida and the Lee County Sheriff's Office (hereinafter "LCSO"), and Town of Ft Myers Beach - Boat Patrols (987), (hereinafter "Entity"), and collectively as "the parties", hereby agree as follows:

WITNESSETH:

WHEREAS, Entity plans to engage in an event as set forth, and at a location set forth, in Exhibit A and desires, as a security measure, a law enforcement presence at said event; and

WHEREAS, the LCSO is willing to provide law enforcement personnel, acting in an extra-duty detail capacity, to provide services described herein and set forth in Exhibit A while wearing LCSO uniforms, utilizing LCSO vehicles, and other LCSO property; and

WHEREAS, Exhibit A attached hereto is a material part of the Agreement and is incorporated and merged as if fully set forth herein.

NOW THEREFORE, in consideration of the mutual covenants and obligations undertaken by the parties as contained herein, and for other good and valuable consideration, the parties hereto agree as follows:

1. **Authority.**

The Entity expressly represents it or they are legally authorized to bind the Entity. The Entity fully comprehends and acknowledges the LCSO is acting in reliance on this, as well as other representations the Entity has made to members of the LCSO. The Entity further expressly represents that it or they has/have acquired all necessary applicable permits to engage in the event for which they are requesting LCSO law enforcement personnel as set forth in **Exhibit A**.

2. **Description and Schedule of Event.**

The description of the event, including the time, place, and duration, are set forth in Exhibit A, which is attached hereto and incorporated as if full set forth herein.

3. **Term of Agreement.**

The term of this Agreement shall begin on the first day of the event and terminate on the last day of the event as set forth in Exhibit A.

4. **Assessment of Security Needs and Authority Retained by LCSO.**

The Entity understands and consents to the LCSO conducting an assessment of the security needs of the Entity for the event location set forth in Exhibit A. The Entity understands the assessment of the referenced security needs by the LCSO is conducted by the LCSO, at their sole and absolute discretion, to allow LCSO to determine the minimum number of extra-duty detail law enforcement personnel adequate for the event. The Entity acknowledges the assessment of security needs by LCSO as set out herein does not constitute a representation, promise, guarantee or warranty by LCSO that LCSO will be able to supply the minimum number of off-duty or extra-duty detail law enforcement personnel which LCSO determines are required.

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This Agreement may only be modified or amended by the mutual written agreement of the parties. Any such modification or amendment shall be signed by each party and shall be attached to and become a part of this Agreement.

18. **Indemnification.**

The Entity agrees to indemnify and hold harmless LCSO, and its employees, volunteers, and agents for and from any and all claims (direct or derivative), damages, costs, expenses, demands of whatsoever kind or nature, and causes of action, arising from or related to the Entity's performance, nonperformance, action(s), omission(s), or failure to act related to any duty or obligation imposed upon LCSO pursuant to the Agreement. This indemnification obligation shall not be subject to any limitation as to the amount or type of recovery sought, or, on the amount or type of insurance coverage secured by the Entity. Further, the Entity shall require all their insurance carriers, with respect to all insurance policies to which they are a party, to waive all rights of subrogation against LCSO incidental to the extra-duty detail service described herein.

19. **Sovereign Immunity.**

Nothing herein contained in this Agreement is intended, nor shall be construed, to waive any of the limitations of liability and other defenses provided by sovereign immunity and the strict financial limitations set forth in Florida Statute 768.28.

20. **Extra-Duty Detail Indemnification.**

Nothing contained in this Agreement shall in any way limit or impeded application of the indemnification language in Florida Statute 30.2905.

21. **Recitals/Entire Agreement.**

The recitals above are incorporated herein as if fully restated. This Agreement constitutes the entire agreement between the parties hereto and supersedes all prior oral or written agreements, representations, statements, negotiations, understandings, proposals, and undertakings with respect to the subject matter hereof.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first written above.

ENTITY

CARMINE MARCENO, SHERIFF O/BO/
THE LEE COUNTY SHERIFF'S
OFFICE

Town of Ft Myers Beach - Boat Patrols (987)
2525 Estero Blvd, Ft Myers Beach FL 33931

By: _____

By: _____
Sheriff/Designee

Print Name: _____

Print Name: _____

Date: _____

Date: _____

Carmine Marceno
Sheriff



State of Florida
County of Lee

"Proud to Serve"

Exhibit A
Detail Request Form

Please fill out the Extra Duty Request form attached to this document completely. All details are a minimum of four (4) hours with the exception of boat details which are a minimum of six (6) hours and a half hour drive time to and from the detail location. When five (5) or more deputies are assigned to an event, a supervisor with the rank of Sergeant or above will be assigned at an upgraded hourly charge. Depending on the type of event or crowd size, it will be at the discretion of the Sheriff's Office to determine the number of deputies needed.

The current detail rates are:

Security	\$48/hr	Traffic	\$58/hr
Funeral Escort	\$48/hr	Security Supervisor	\$58/hr
Escort	\$48/hr	Traffic Supervisor	\$68/hr
Boat	\$48/hr	Civil Stand-by	\$68/hr
Holiday/Last Minute	\$68/hr	Prisoner Transport	\$68/hr

Details are charged a \$15 per deputy vehicle rate (when applicable).
All boat details are charged a \$20 per hour boat rate (when applicable).

Extra Duty Details will not be provided to any person, firm or organization whose members, business or operations are of questionable nature; or for any event that will discredit the assigned Deputy, Sheriff's Office or County. The Sheriff's Office reserves the right to cancel the detail without notice and to recall the deputy(s) when necessary for community safety without penalty.

The Lee County Sheriff's Office will be the only armed personnel at any event where the detail is taking place. Any private security company that is hired to work alongside the Sheriff's Office will be a reputable, licensed and insured company whose employees are State D licensed unarmed security guards. Proof of the signed contract with private security company will be required.

In order to cancel a detail, notice must be given to the Detail Coordinator twenty-four (24) hours prior to the start of the detail either by phone or email. If the cancellation is less than twenty-four (24) hours, a four (4) hour charge per deputy will be billed. In the case of weather, notice of cancellation must be received within two (2) hours of the starting time otherwise a two (2) hour charge per deputy will be billed. In the event of a cancellation after business hours, please call 239-477-1000 and ask to have the on-call Detail Coordinator call you.

Unless otherwise specified, full payment of all details must be received one (1) week prior to the start of the event in the form of a cashier's check, money order, business check or cash. The Lee County Sheriff's Office does not accept credit cards or personal checks. **Payments can be sent to: The Lee County Sheriff's Office 14750 Six Mile Cypress Pkwy., Fort Myers, FL 33912 ATTN: Details Unit.**

LEE COUNTY SHERIFF'S OFFICE USE ONLY			
Total Deputy(ies) <u>1</u>	Total Hours <u>8</u>	Rate per Hour <u>\$48/\$68</u>	Vehicle Rate <u>\$20/per hour</u>
Supervisory Deputy(ies) _____	Total Hours _____	Rate per Hour _____	Vehicle Rate _____
Entity _____			



"The Lee County Sheriff's Office is an Equal Opportunity Employer"
14750 Six Mile Cypress Parkway • Fort Myers, Florida 33912-4406 • (239) 477-1000

Detail Request Form - continued

LCSO Details Main Phone Number: 239-477-1199		
Vendor Information		
Business Name: <u>Town of Ft Myers Beach - Boat Patrols (987)</u>		
Street: <u>2525 Estero Blvd</u>		
City: <u>Ft Myers Beach</u>	State: <u>FL</u>	Zip Code: <u>33931</u>
Business Contact: _____		Phone: <u>239-765-0202</u>
Email Address: _____		
Event Information		
Detail Location: <u>Waterways around Ft Myers Beach</u>		
Street: <u>Including Gulf of Mexico, Matanzas Pass & Bay areas</u>		
City: <u>Ft Myers Beach</u>	State: <u>FL</u>	Zip Code: <u>33932</u>
Contact During Event: _____		Phone: _____
Event Date: <u>Varied dates through 9/30/21</u>	Event Time: <u>varies by day</u>	
Anticipated Crowd Size : _____	Type of Event: <u>Boat Patrols</u>	
Additional Security Working Detail: ☐ Yes ☒ No If Yes, how many? _____		
Permits Attached: ☐ Yes ☒ No Alcohol Served: ☐ Yes ☒ No		
Detail Information		
Security ☒	Traffic ☒	Prisoner Transport ☐
Escort ☐	Holiday ☐	Funeral Escort ☐
Last Minute ☐	Stand-by ☐	
Marked Vehicle ☒ Yes ☐ No	Unmarked Vehicle ☒ Yes ☐ No	
Uniformed Deputy ☒ Yes ☐ No	Plain Clothes Deputy ☐ Yes ☒ No	
Detail Description: Boat patrols throughout the waterways around Ft Myers Beach. An activity sheet will be sent for each detail worked with invoices. Budget for Marine Unit details is \$50,000. Boat details details are scheduled thru LCSO Marine Unit & are based on availability of deputies and vessels. An 8 hour boat detail on a non holiday costs \$508 per deputy/vessel & \$704 per deputy/vessel on holiday.		



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1. **Requested Motion:**

Meeting Date: December 7, 2020

Approve TDC Projects for Fiscal Year 2021 2022

Why the action is necessary:

TDC grant cycle opens January 2021.

What the action accomplishes:

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

Lee County Tourist and Development Council

In 1982, Lee County citizens voted by referendum to form a tourism organization that would promote Lee County's off-season vacation assets in the United States and abroad. A two-percent tax on short-term accommodations was approved to support the new Lee County Tourist Development Council (TDC) and its promotions. In 1988, an additional one percent tourist tax was levied to a total of three percent to support the Beach & Shoreline Capital Improvement Program.

The Tourist Development Council is a nine-member Council appointed as an advisory committee to the Lee County Board of County Commissioners (BOCC). TDC members oversee the entire tourist development tax fund, provide direction on programs and budget, and review the expenditures of the Lee County Visitor & Convention Bureau (VCB) quarterly.

The TDC appointed seats are comprised of three elected officials, three representatives from accommodations collecting the tourist tax, and three representatives from tourism-related industries, as directed by Florida Statute 125.0104.

Each year the TDC approves funding for the maintenance of Lee County beaches, for beach renourishment projects, and for beach and shoreline capital projects such as piers, boardwalks, parks and re-vegetation.

In 2005, the BOCC approved an additional two percent tourist tax to a total of five percent in order to compete in an ever-changing world and an increasingly competitive travel market. Our beaches and ecology are the main draw of visitors to Lee County, and the beach and shoreline program serves as a great enhancement to these assets with funding provided by the tourist development tax. Utilizing 26.4% of the five-cent bed tax, this program has provided more than \$100 million dollars to variety of county wide projects related to beach maintenance, beach nourishment, and park development. Each of these projects represents a cooperative effort with governmental agencies in Lee County from our local municipalities to the federal government. With the countywide nature of the program, new recreational opportunities are being provided in areas of Lee County that our visitors have not historically frequented, thus encouraging further exploration.

This program provides direct benefit to visitors and residents alike, all with the goal of promoting tourism while preserving and enhancing our beaches and shoreline. Many of these projects have proven to have a major impact on visitor activity.

For more information visit <https://www.leevcb.com/funding-programs/beach-and-shoreline>.

Attachments:

1. Town of Fort Myers Beach TDC Project Requests FY21 22

2. TDC non-eligible items

Financial Impact:

Tourism Development Council funds over 1 million dollars in Beach and Shoreline Maintenance annually for the Town of Fort Myers Beach. Other funded projects include beach renourishment and capital projects. See attached history of funding.

6. Alternative Action

Do not approve

7. Management Recommendations:

Approve TDC Projects for fiscal year 2021 2022

8. Recommended Approval:

Alison Giesen, Director of Cultural, Parks & Recreation
Alison Giesen, Director of Cultural, Parks & Recreation
John R Herin Jr, Town Attorney
Amy Baker, Deputy Town Clerk
Roger Hernstadt, Town Manager

Created/Initiated - 11/30/2020
Approved - 11/30/2020
Approved - 12/2/2020
Approved - 12/2/2020
Final Approval - 12/2/2020

Beach and Shoreline projects to submit to Lee County Tourist and Development Council (TDC) for funding

Fiscal Year 2021/2022

Maintenance Project Request:

Beach and Shoreline Maintenance – (Approximately \$950,455 request)

Funding by the Lee County Tourist and Development Council (TDC) provides the Town of Fort Myers Beach the ability to maintain beach and shoreline properties in a clean, attractive and accessible manner. TDC Funding also allows the Town to protect and enhance the natural environment of the beaches and elevate the overall visitor experience.

The Town is requesting funding for the equivalent of seven full-time positions (including overtime), and 34% of Beach Patrol's time to dedicate for beach and shoreline maintenance activities. These activities include litter, waste and recycling removal, landscape maintenance and maintenance to pedestrian pathways that provide visitor access. Funds requested also include maintenance and upkeep of 27 Beach Accesses including repairs to existing boardwalks, Mound House native landscape, 216 Connecticut Street native landscape, Newton Beach Park native landscape and janitorial requirements for the public restroom facilities at Newton Beach Park and Mound House. At various peak times throughout the year, the Town uses contracted labor to supplement staffing in order to maintain a quality beach experience. Out of the 7 full-time employees and 3 part-time employees, 2 full-time equivalent positions maintain the Mound House, 216 Connecticut Street and Newton Beach Park landscapes and public restroom facilities.

The Town of Fort Myers Beach is requesting funds for the repair and maintenance of equipment only used for beach and shoreline operations as well as the costs for trash and recycling removal. It is the Town's intention, in addition to the ongoing maintenance related work, to continue the enhancements to its beach accesses by adding native landscaping, maintaining the natural beauty of the beaches, signage and improving accessibility.

Mound House, Estero Bay (Approximately \$175,750 request)

Located directly off Estero Bay on Fort Myers Beach, Mound House serves thousands of visitors annually who come to fish, boat, kayak the Great Calusa Blueway Paddling Trail, and learn about the site's unique history and ecology as they stroll along the beautifully landscaped shoreline property. To maintain a high quality visitor experience and to help protect the natural surroundings, Mound House is requesting funds to maintain the native landscaping, existing outdoor interpretive signage, and public restroom facilities that are used by visitors on a daily basis. This request also includes maintaining the native landscape at 216 Connecticut Street. The pet-friendly grounds are open every day from sunrise to sunset.

Newton Beach Park, Gulf of Mexico (Approximately \$72,050 request)

Newton Beach Park is located at 4650 Estero Boulevard directly on the Gulf of Mexico and is one of the most popular beach accesses on Fort Myers Beach. This native landscaped property contains several shade structures, areas for recreational activities, public restrooms and a beach shower station. Interpretive signage is located throughout the property that educate visitors about the natural environment and the site's unique history. Free environmental programming is conducted weekly by Mound House interpretive staff to enhance the visitor experience. The Town of Fort Myers Beach is requesting funds to help maintain the native landscape, public restroom facilities, beach shower station and shade structures at this popular beachfront property. Funds awarded will continue to enable the Town to provide a clean, attractive public facility to meet the needs of visitors to Fort Myers Beach.

Capital Projects – Beach and Shoreline

Restroom at Palm Avenue Beach Access

Trailer (approximately \$100,000; \$60,000 for procurement of trailer, \$40,000 for permits, site work etc.)

Option 1 Trailer: Standard – 3 ADA restrooms total

Beach Nourishment

The project proposes to dredge sand from the ebb shoal borrow area and place the sand along the north and central segments of Estero Island to restore the beach to its post-constructed condition of 2011. Using annual monitoring data, the required beach fill volume was computed equal to 250,000 cubic yards. The borrow area has 1 million cubic yards available. The monitoring has documented that the initial restoration of Estero Island is performing well and there have been no documented adverse impacts. Further, the monitoring has documented that the beaches' updrift and downdrift of the beach fill have generally been accretional attributed to alongshore spreading of the beach fill and beneficial use of the Matanzas Pass dredging.

FY20/21 Design and Permitting: **\$300,000 (18-Months)**

FY21/22 Construction: **\$5,847,000 (6 Months)**

FY21/22 – FY24/25 **Long-Term Monitoring: \$283,000 (3-Years Post-Construction)**

Entity	Cost Share	Cost Allocation
FDEP	50.0%	\$2,923,500
Lee County	45.6%	\$2,666,232
Ft. Myers Beach	4.4%	\$257,268
Total	100%	\$5,847,000

The Project will restore storm damage reduction benefits, enhance recreational use of the beach, and provide nesting habitat for sea turtles and shorebirds. The beach will be widened as sand is imported from outside the system. The added beach width will afford greater recreational opportunities at popular beach parks, pier, and hotels that are heavily used by residents and tourists alike.

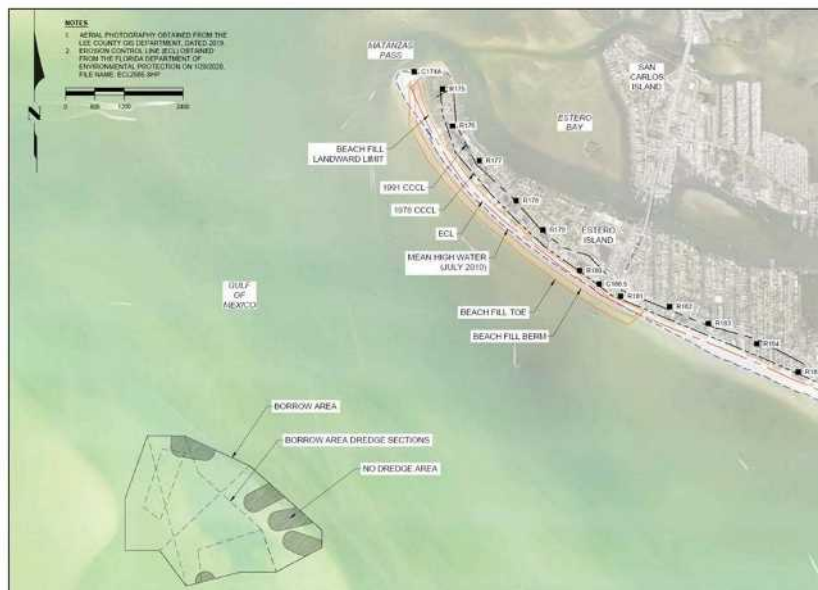


Figure 1. Estero Island Location Map.

Funding History

Previous Year TDC Approved Funding

Total Request for FY 21/22

\$7,728,255 (\$6,430,000 nourishment)

FY20/21

\$1,267,625

FY19/20

\$1,135,230

\$127,038 (Out of cycle request) Additional funds for Newton Beach Park Restroom Renovation

FY18/19

\$1,340,970

FY17/18

\$955,400

Items **ineligible** for funding by TDC Beach & Shoreline Program

Beach access security cameras¹

Bike paths¹

Concessionaires

Facilities not open to the public¹

Fencing / Gates

General law enforcement¹

Parking lots / Pavement¹

Picnic tables¹

Playground equipment

Privately owned facilities¹

Volleyball court

Travel related items (Tolls, etc)²

Communication devices (cell phones, radios)²

Indirect Costs²

Uniforms²

Insurance premiums²

Please note:

This list is intended to serve as a guideline only.
All requests are subject to a legal review by the
Lee County Attorney's Office.

Unless otherwise noted the items on this list are excluded from funding based on Lee County Attorney's Office interpretations of Attorney General Opinions.

¹ Items were expressly discussed in Attorney General Opinions

² Items listed were directed to be excluded based on TDC motion effective 2/13/09

1. Requested Motion:

Meeting Date: December 7, 2020

Update Town Council Council Policies and Procedures Manual to reflect March 2020 Referenda changes

Why the action is necessary:

Two referendum were passed at the March 17, 2020 election. Four year terms for Council Members and changing the Towns election date from March to November. This change reflects the referenda votes

What the action accomplishes:

2. Agenda:

CONSENT AGENDA

3. Requirement/Purpose:

4. Submitter of Information:

5. Background:

Attachments:

1. 20-54 Policies and Procedures ManualDRAFT (2)-C1

Financial Impact:

None

6. Alternative Action

7. Management Recommendations:

8. Recommended Approval:

Amy Baker, Deputy Town Clerk
John R Herin Jr, Town Attorney
Roger Hernstadt, Town Manager

Created/Initiated - 11/30/2020
Approved - 12/2/2020
Final Approval - 12/2/2020

RESOLUTION NUMBER 20-54

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN
OF FORT MYERS BEACH, FLORIDA, APPROVING
UPDATED TOWN COUNCIL POLICIES AND
PROCEDURES MANUAL; AND PROVIDING AN
EFFECTIVE DATE**

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

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

WHEREAS, the Town Council previously adopted a Policies and Procedures Manual for Town Council and has revised such Manual from time to time; and

WHEREAS, the Town Council has determined that it is in the best interest of the health, safety and welfare of the residents of Fort Myers Beach to update the existing Policies and Procedures Manual for Town Council to reflect recent changes to the Town Charter.

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

Section 1. The above recitals are true and correct, and incorporated herein by this reference and are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. The Policies and Procedures Manual of Town Council, as amended and attached hereto as Exhibit "A", is hereby adopted by the Town Council of the Town of Fort Myers Beach.

Section 3. This resolution shall take effect immediately upon its adoption by the Town Council.

The foregoing Resolution was adopted by the Town Council upon a motion by _____ and seconded by _____, and upon being put to a roll call vote, the result was as follows:

Raymond P. Murphy, Mayor	_____
Rexann Hosafros, Vice Mayor	_____
Dan Allers, Council Member	_____
Jim Atterholt, Council Member	_____
Bill Veach, Council Member	_____

ADOPTED this 7th day of December, 2020 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Raymond P. Murphy, Mayor

ATTEST:

Amy Baker, Deputy, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH SOLELY:**

John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of December 2020.

EXHIBIT “A”

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1. Introduction

This Town Council Policies and Procedures Manual is for the purpose of helping the Council Members in the discharge of their duties. They are intended to be guidelines, not “rules” on how to conduct business. Town Council may vary from these policies and procedures on a case by case basis by a majority vote.

As the Town Council continues to discover situations that are unique to Fort Myers Beach, it will want to update and amend this manual. 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 Council 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 Council also may develop common expectations on proper conduct of Council meetings, dealings with the public, and the roles of Town staff and committees.

This manual should be used in conjunction with the Town Charter, Comprehensive Land Use Plan (Comp Plan), Land Development Code (LDC), Code of Ordinances, and the annual budget as necessary. In the event of a conflict between this document and Florida statutes, Town Charter or other Town guiding documents, such other document shall prevail over the language in the Policies and Procedures manual.

2. Town Council Mission and Job Description

Mission:

To legislate and police the powers of the Town, including establishing boards, commissions and committees; to perform all duties and obligations imposed on the municipality by law; to insure by strategic planning and clear policies that the unique and natural characteristics of the island are preserved; to supervise the Town Manager and Town Attorney; to perform all actions for the welfare of the residents, owners, businesspersons, and guests of the Island in adherence to the Town Charter, State and Federal Law.

Functions, Powers and Duties:

- Review and interpret the Comprehensive Plan and conduct public hearings as may be needed in order to make changes
- Review and interpret the Land Development Code and conduct public hearings as may be needed in order to make changes
- Conduct hearings regarding zoning matters
- Introduce and approve Charter Amendments for adoption by referendum
- Appoint a Town Manager
- Appoint a Town Attorney
- Introduce and enact ordinances
- Introduce and adopt resolutions
- Review and adopt the Operations and Capital Improvement budgets
- Review and approve budget amendments
- Create Special Assessment Districts as may be needed
- Establish advisory committees as needed
- Review and approve inter-local agreements
- Review and approve contracts with the Town above the threshold limit allowed to Town Manager
- Elect a Mayor and Vice Mayor
- Perform any other duties that are lawfully defined by the Charter and Florida statutes Council Member Requirements:
- File a Statement of Financial Interests and Ethics Training (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

3. How Town Council Will Operate

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 Town Council pledges to adhere to the following CODE OF CONDUCT

1. Regularly attend all scheduled meetings of the Town Council as well as special or called meetings relevant to the office
2. Regularly attend all scheduled meetings of outside committees
3. Prepare for each meeting
4. Create a positive environment in meetings of Town Council
5. Maintain an attitude of courtesy and consideration toward colleagues, citizens and staff during all discussions and deliberations
6. Allow citizens, colleagues and staff sufficient opportunity to present their views within the prescribed rules for conduct of meetings of Town Council
7. Avoid the use of abusive, threatening or intimidating language or gestures directed at colleagues, citizens or staff
8. Avoid comments, body language or distracting activity that conveys a message of disrespect and lack of interest
9. Respect all local, state and federal laws, rules and other regulations
10. Submit completed financial disclosure forms to the Lee County Supervisor of Elections by the specified deadline
11. Publicly acknowledge the adopted position when asked about a decision of Town Council
12. Read the Town Comprehensive Plan and follow its directives in all decision-making processes for the Town
13. Follow the procedural and substantive requirements of the LDC

Code of Ethics

Members should 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 Town Council and by promoting public confidence in the integrity, independence, ability and impartiality of Town Council.

1. Members shall not convey the impression that they are in a position to influence the outcome of a decision of Town Council and shall not attempt to use their office to influence or sway the professional staff recommendation.
2. Members shall discharge their duties and responsibilities without favor or prejudice toward any person or group. Members should not allow personal or business relationships to impact upon their conduct or decisions in connection with Town Council 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.
3. Members shall avoid creating the appearance of impropriety by refraining from engaging in private discussions with the applicant – or their representatives about specific upcoming Town Council agenda items without declaring ex parte communication. If a member receives a private written, telephonic or electronic communication about an agenda item, the member will promptly forward the information to the Town Manager and the Town Clerk, or to the member's Town e-mail account

so that it may be shared with all other members and filed with the Town official records to comply with the Public Records Law requirement.

4. Members shall refrain from any private discussion of Town Council business with other members per the requirements of 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 Town Council proceedings. Florida law prohibits the spouse or minor child of that member from soliciting or accepting these as well, and the Member shall be vigilant in ensuring compliance from those family members.
6. Members shall 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 Town Council shall seek the advice and counsel of the Town Attorney, if such relationship could conceivably influence the members' impartiality during Town Council 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 Town Council policies and procedures.

As a legislative and quasi-judicial body, Town Council 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, the Town Charter, Town code and LDC, 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, the Town Code and LDC that 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 are 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 Town Council provide an applicant and other parties potentially affected by a requested decision these fundamental protections.

Assignment of a Town Council Representative

Town Council may choose to assign a member to lead a project or assess an issue. The Town Council Representative, or often called a "Point Person" may be assigned to do fact-finding and/or research,

recommend a course of action and report back to Town Council for direction. Final decisions are made by a majority of Town Council.

Sunshine Issues

Members of Town Council and all Town advisory committees, boards and agencies are subject to the Sunshine Law (F.S. 286.011).

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 taken by communication through a spouse or other go-between.

Town Council members cannot engage in discussions with each other (directly or indirectly) at outside meetings such as the Chamber of Commerce or civic groups 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.

Email Policy

Email is a convenient way to communicate with staff, Town Council, Islanders and others. However, it presents unique legal and ethical challenges. All email regarding Town business must be properly retained as a public record. Any email regarding an issue that will come before Council in a quasi-judicial hearing must be properly disclosed as an ex-parte communication as appropriate. Council members must be vigilant to not accidentally violate Sunshine Law requirements. Emailing anyone stating a position on an issue that will come before Town Council is particularly risky. Email actions to avoid include:

1. Sending an email to another Council member with anything that could be construed as a position.
2. Copying another Council member on a response to an email sent by an Islander, staff member or other person.
3. If another Town Council member's email is "accidentally" forwarded to you, respond to the sender recognizing its "accidental" nature, the fact that it is a Sunshine issue and retain a copy of your response.

Florida has a very broad public records law. Most written communications to or from Fort Myers Beach officials regarding Town business are public records available to the public and media upon request. Your email communications and email address may be subject to public disclosure. (This statement must be included in the closing of any email regarding Town business).

Public Records

It is the policy of the State of Florida that municipal records shall at all times be open for personal inspection by any person (s.119.01, F.S.). To that end, the Legislature has enacted the Public Records Law (ch. 119, F.S.), which contains requirements that public records, as defined in s. 119.011, F.S., be made available for public inspection, they be kept in usable condition, they be kept in safe places, they be kept in convenient places, and copying of records be provided at reasonable costs.

As Council members, our responsibility is to not only be assured that our own public records are properly handled, but also to see that the law is adhered to by all employees of the Town. The Town Clerk has been assigned the responsibility of being the custodian of public records.

Most important is to know what is a “public record” that must be retained even after leaving office. As defined by the Government-in-the-Sunshine Manual, prepared by the Office of the Attorney General, a public record is “any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.” Documents of particular note for Council members would be inter-office or intra-office memos and emails. These materials should be made available to the custodian of public records. Emails on the Town servers will be properly retained. Any use of personal email accounts for government business is allowed, but for a Council Person’s own protection, it is suggested that these be copied to their Town email account for proper retention. Materials prepared for Town Council meetings, hearings, minutes and workshop will already be managed by the custodian of public records and do not need to be retained by the Council member. If there are any questions on retention of particular documents, consult with the custodian of public records and/or the Town Attorney before destroying.

4. Training Materials and First Meeting

Training Materials

If requested, the Town Clerk will provide each new member of the Town Council with copies of:

- Town Charter
- Comprehensive Plan
- Land Development Code
- Florida Code of Ethics
- Florida Sunshine and Public Records Laws
- Emergency Operations Plan
- Town Council Policies and Procedures Manual
- Local Planning Agency Policies and Procedures Manual
- Town Personnel Manual
- Town Purchasing and Procurement Manual
- Other materials as determined by the Town Attorney, Town Manager and Town Council members

As part of a Council Person’s orientation, they will be provided a tour of the Town facilities with introductions with all staff members.

Training Recommendations

- Successful completion of all courses required by the National Incident Management System (NIMS)
- Florida League of Cities, Inc., Institute of Elected Municipal Officials (IEMO) Basic Course
- Making Good Planning Decisions
- Hands-on Emergency Operations Training
- Other courses as determined by the Town Attorney, Town Manager and Town Council members

Election of Officers

At the first meeting after the second Tuesday in ~~March~~ **November**, the Council’s Mayor and Vice Mayor will be chosen. Each Council member may nominate a person for each of these positions. A second is not required. The voting procedure will be agreed upon in advance.

Outside Committee Representation

Charlotte Harbor National Estuary Program – www.chnep.org

Meetings: The Policy Committee meets the third Monday every other month at 9:30 am*.

Mission: The CHNEP is a partnership that protects the estuaries and watersheds from Venice to Bonita Springs to Winter Haven. This partnership gives citizens, elected officials, resource managers, and commercial and recreational resource users in the 4,700-square mile study area a voice to address diverse resource management concerns including fish and wildlife habitat loss, water quality and water flow. The watershed in the study area includes all or parts of Lee, Charlotte, Sarasota, Manatee, Polk, Hardee and DeSoto counties.

Coastal Advisory Committee – www.lee-county.com

Meetings: Last Monday of each month at 9:30 am.*

Mission: The Council's charge is to advise the Board of County Commissioners, staff and the various related advisory boards when proceeding with a project affecting beach and shoreline preservation regarding the proper methods in helping to conserve the Beaches of Lee County.

Horizon Council – www.lee-county.com/business

Meetings: First Friday of each month*

Mission: The Horizon Council is the advisory board to the county commission on economic development issues. This unique public-private partnership is made up of 62 members from government, education, business and community organizations. Established in 1991, the mission of the Horizon Council is to:

- Work toward improving the business environment in Lee County;
- Retain and encourage the expansion of existing businesses; and
- Attract new and diversified employment to the area

Human Services Council – www.lee-county.com

Meetings: Third Tuesday of each month*

Mission: The Council will ensure the efficient delivery of community health and human services through:

- Communication
- Coordination
- Strategic Planning
- Innovation
- Integration and collaboration
- Measurable Outcomes

Metropolitan Planning Organization – www.mpo-swfl.org

Meetings: Third Friday of each month at 9 am*

Mission: The MPO is responsible for conducting a continuing, cooperative, and comprehensive transportation planning process for all of Lee County. It must plan for the movement of both people and goods within the county by all modes of travel – including highways, public transportation, bicycles, and foot. It also plans for the connections (such as airports, seaports, or bus, railroad, and pipeline terminals) linking these modes or tying us to the rest of the world.

The MPO sets priorities among surface transportation improvement projects within Lee County for state or federal funding. In order for them to be eligible for federal funds, federal law requires that the MPO endorse a transportation improvement program identifying the projects to be done over the next few years.

Southwest Florida Regional Planning Council – www.swfrpc.org

Meetings: Third Thursday of each month at 9 am*

Mission: The Southwest Florida Regional Planning Council is a locally formed regional planning agency serving six counties: Charlotte, Collier, Glades, Hendry, Lee, and Sarasota. Its mission is to protect and improve the region's physical, economic, and social environment. The agency is directed by a thirty-four member Council composed of local elected officials and gubernatorial appointees.

The activities of the Southwest Florida RPC can be classified into three major areas: long range planning, tactical planning and transportation planning.

Estero Bay Agency on Bay Management – www.swfrpc.org/abm.shtuil

Meetings: Second Monday of each month at 9:30 am*

Mission: Its directive is to make comments and recommendations regarding the management of Estero Bay and its watershed. The ABM collects and maintains data and it reviews and comments to regulatory agencies on issues affecting the watershed

*Meeting times are subject to change.

5. Town Advisory Committees, Boards and Agencies Standing Advisory Committees

Council Selection of Advisory Board, Agency and Committee Members:

Residency:

Except as required by Town Charter, Town Ordinance or Florida statute, residency on Fort Myers Beach will not be a requirement for nomination or election to a committee, commission, or board of the Town.

Advertising:

All advisory committees are listed on the Town website. Information included will be the committee mission, current projects, when the committee meets and current members on the committee and whether submission of an annual Form 1 (Financial Disclosure) is required by the Florida Commission on Ethics.

Openings for committees will be listed on the website with a date when applications must be submitted to the Town Clerk for consideration by Town Council. Whenever possible, committee selection will be scheduled 30 days after proper notification. Advertising in local newspapers can be considered if approved by the Town Manager. Committee candidates will be encouraged to appear for interviews during the selection process.

Preliminary matters:

- Council should decide how to go about voting prior to any voting taking place.
- Decide the number of members on committee ahead of time.

Voting:

1. Each Council member picks his selections, marking no more than the total number of seats available (or writes the names down), and initials his ballot.
2. Those receiving the most votes are selected to seats available.
3. If there is a tie for any number of seats still left open, there will be a runoff consisting only of the persons who are tied.

Examples of voting procedure:

First Ballot:

Seats available – 9

Candidates – 15

Votes on First Ballot: Results of First Ballot

- 3 get 5 votes apiece 3 are elected
- 3 get 4 votes apiece 3 are elected
- 4 get 3 votes apiece 4 go on a second ballot
- 3 get 2 votes apiece 3 are eliminated
- 2 get 0 votes apiece 2 are eliminated

There would be a second ballot containing only the names of the four candidates who got three votes. Council would vote for three candidates. This process would be repeated in case of a tie until all seats are filled.

A variation on this method of voting is that after the first ballot, if there is a tie which prevents all of the seats from being filled, the runoff would consist of all of the un-selected candidates, not just the ones involved in the tie.

4. The ballots are given to the Town Clerk, who conducts the tallying and announces the results.
5. Once all selections are made, Council adopts a motion containing the new members' names.

Effective Date of Appointment and Follow Up

Newly appointed advisory board, agency and committee members who are required to file a Financial Disclosure Statement, will be notified of the disclosure requirements no later than the date of appointment. The Town Manager or designee is responsible for such notification. These appointments should be made effective as of some future date, so that there is sufficient time to provide the required notification. For convenience, the notice could be accompanied by a copy of the required disclosure forms, which are available from the Supervisor of Elections or on-line from the Florida Commission on Ethics (<http://www.ethics.state.fl.us/>)

Ad Hoc Committees

Town Council has the authority to form ad hoc committees requesting participation by volunteers. Ad hoc Committees can be used at Town Council's discretion to address specialized and or short-term Town issues.

The mission, specific objectives, expected products, membership and timelines of an ad hoc committee should be clearly stated and agreed to by Town Council. One Town Council member will be an ex-officio member of each ad hoc committee. Where possible, an attempt will be made to have a balanced committee membership. Minutes or verbal reports will keep Town Council informed on a regular basis. A final report will document findings and recommendations, and will be presented at a Town Council meeting or workshop.

Ad hoc committees are subject to the public records laws, sunshine laws, quorum and statutory ethical requirements. It is the Town's responsibility to ensure that each committee member is educated on these issues.

Outline of Committee Orientation Material:

- Meeting Requirements
 - Notice
 - Location Requirements, such as ADA compliance
 - Agendas
 - Quorum
- Sunshine Requirements
- Public Records Requirements

– Statutory Ethical Requirements

6. Meeting Preparation and Planning

Meeting Schedule

Regular meetings of Town Council may be found on the website calendar. Management and Planning meetings (M&Ps) are work sessions and are scheduled to discuss financial issues for the Town. Workshops special, continued or rescheduled meetings will be determined by consensus of the Town Council members, the Town Manager and Town Attorney.

Source of Items

Items for Town Council agendas are generated by requests and/or legislation (ordinances or resolutions) from members of Town Council prepared by the Town Attorney, requests and actions from the Local Planning Agency, continuations from previous council meetings, in addition to anything Council members, the Town Manager or Town Attorney may wish to have included. Some of these inquiries are routine and can be handled by staff because Town Council policy and procedures have been previously approved which apply.

When an item arises that requires Town Council action either to make a decision or to direct staff or the Town Attorney how to proceed it will appear on the agenda identified as a Council member's request or as an item under the Town Manager's section of the agenda which is the "catch all" for miscellaneous items, or Town Attorney's section, as appropriate.

For an item to appear on an agenda, at least two Council members must be in agreement and shall direct the Town Manager to do so, provided time schedules allow. (Note the agenda preparation timetable below). Whenever possible, any material written and distributed by Council members as part of the agenda should be included in Council members' packets – allowing ample time for review. This preserves the integrity of the seated Council, conforms to the Florida Public Records laws and lessens the opportunity for misunderstandings and miscommunication. No significant Town staff or Town Attorney time will be spent on an agenda item requested by an individual Council member without approval by a majority of Council in advance.

Written requests to be placed on a council agenda from the general public should be submitted directly to the Town Manager. Agenda Management is reviewed at each Town Council meeting.

Timetable and Preparation Process

A draft agenda will be sent to Town Council for review and comment within 24 hours. The Town Council chair may modify the order of the agenda subject to the approval of the Town Council.

Absent an emergency or pressing need, by close of business on the Wednesday prior to the next regular Council meeting, a packet including the finalized agenda and supporting material will be placed in the Council members' mailboxes and placed on the Town website.

The Council members' packets include complete documentation for agenda items (actions required, implications, backup information, memos, ordinances, resolutions, etc.) A sincere effort is made to see that Council packets are complete; if something is not available, a written explanation will be provided. 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 and on the Town website. Meetings may be announced in local newspapers. Hearing notices will be advertised as required by law and may be provided as a service to local newspapers.

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 should be an exception.

Continued Hearings and Legislative Issues

It is the goal of the Town Council to complete a hearing during the scheduled meeting. If additional time is required and the hearing must be continued to a later date, any Town Council member who missed the

initial hearing should attempt to review the DVD 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 Town Council shall consult with the Town Manager and the Town 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).

Attendance Policy

The Charter states: "A member of Council may forfeit the office, if the member: (d) Misses three consecutive regularly scheduled council meetings without an excused absence." This statement recognizes that because of the significant meeting preparation required by staff, applicants and other supporting personnel, it is important that a quorum of the Town Council members be present for all noticed meetings. The Town Manager should be notified of a planned Council member's absence as soon as known. The Town Manager or designee will notify the Town Attorney and Mayor. It is important that the Town Council know that it will have a quorum of its members prior to notification of a meeting/hearing. Work session attendance is equally important because they are where information is shared and issues resolved before putting the item on an agenda of a regular meeting for a vote.

Participation by Videoconference

A Council member may participate in a Town Council meeting via videoconference if one of the following conditions is met:

1. There is a medical reason for unavailability, or
2. Permission is granted from the Council for an "extraordinary circumstance." A quorum of Town Council members must be met without the missing Council member in attendance.

7. Meeting Procedures

Order of Agenda Items

1. Generally the agenda will proceed in the following order:
2. Call to Order
3. Invocation
4. Pledge of Allegiance
5. Approval of Final Agenda
6. Proclamations, Recognitions and Awards
7. Public Comment (Any issue can be discussed, but if an agenda item is addressed, the speaker cannot comment at the time such agenda item comes up. For testimony to be considered for a public hearing, it must be made during the hearing).
8. Approval of Minutes
9. Consent Agenda
10. Advisory Committee Items and Reports
11. Public Hearings of proposed ordinances (At conclusion of hearing, requires motion and roll call vote)
12. Administrative Agenda
 - a. Introduction of proposed ordinances (Requires a motion and a majority vote for scheduling the hearing).
 - b. Resolutions (Requires a motion and vote for passage)

- c. Unfinished business (Items from previous agendas scheduled by Town Manager – should be listed separately on the agenda)

New business (Scheduled by the Town Manager, should be listed separately)

- 13. Final Public Comment (not limited to agenda items)
- 14. Town Manager's Items and Reports
- 15. Town Attorney's Items and Reports
- 16. Council Members Items and Reports
- 17. Agenda Management (generally addressed during Council work sessions)
 - a. Topics for upcoming regularly scheduled meetings
 - b. Planning and scheduling of Management and Planning, and other work sessions
- 18. Review New Actions from Meeting
- 19. Adjournment (Requires a motion and vote – no second is required. It is a privileged motion allowing no discussion before vote)

Conduct of Council Meetings

The Mayor will conduct Council meetings, and in the Mayor's absence the Vice Mayor will do so.

The Town Clerk shall deliver a nondenominational invocation.

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

All participants and audiences at Town Council meetings are expected to exhibit common courtesy and proper decorum. No personal attacks will be tolerated. The Chair may request that someone who is being disruptive be removed from chambers.

Individuals wishing to speak during the Public Comment times are requested to (1) fill out an index card (available in the meeting room) indicating their name and the topic they will address and (2) give that card to the Clerk prior to the start of the meeting. When recognized by the Chair, the speakers 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 vote of the Council. The Public Comment times are intended as opportunities for interested parties to present their viewpoints to the Council members. They are not intended as question-and-answer sessions or as dialog with the Council. Response to questions and/or clarifications requested during public comment may, with the approval of Town Council, be answered immediately if there is a straight-forward, short answer, directed to the appropriate person for response at a later time or placed on an agenda for a future Council meeting.

After a proper motion and second, discussion by the Council members shall be limited to agenda items with expression of ideas, facts and conclusions. No member will speak twice on the item until all others who want to speak have spoken.

The time period for Council members comments is intended as an opportunity for Council members to share their viewpoints with each other. Since this opportunity does not exist outside of Council 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 Town Manager or Town Attorney, which could be obtained outside of the Council meeting. It is intended primarily for presentation, not discussion. While there is no time limit or

censorship on comments, Council members should take into consideration the total time available in the meeting for the published agenda and the time allocated for the specific item in the agenda.

Any Council member may present resolutions. They are reviewed by the Town Attorney and require a motion and a vote.

Rules of Civility for Public Participation

The Town of Fort Myers Beach Town Council recognizes that public discourse is essential to the democratic system of government. It also embraces civility in public deliberations. Rules for public participation while conducting meetings and workshops are as follows:

1. Speakers are permitted to deliver his or her comments without interruption, absent inappropriate language, conduct or personal attacks.
2. Speakers and debates should focus on issues, not on persons or personalities.
3. Persons are encouraged to participate in the governmental process
4. To allow time to hear all points of view, speakers are allotted 3 minutes
5. Sidebar discussions while others are speaking are discouraged in Council Chambers. These discussions are to be removed from the chambers so as not to be disruptive to those conducting and following Council business.
6. Only the speaker recognized by the Chairperson has the floor. Speakers should identify themselves for the record. Speakers should utilize the microphone so that their comments can be recorded.
7. We seek to understand one another's points of view.
8. Anger, rudeness, ridicule, impatience and lack of respect for others are not acceptable behavior. Demonstrations in support or opposition to a speaker or idea such as clapping, cheering, booing or hissing or intimidating body language are not permitted in Council Chambers or workshop facilities.
9. We should all take initiative to make things better. Our goal is to foster an environment which encourages a fair discussion and exchange of ideas without fear of personal attacks.
10. No use of profanity will be tolerated.
11. Any email or other digital or internet platform used to communicate with the Town Council, individual members of the Town Council, Town Manager, Town Attorney, or Town staff that contain personal attacks, offensive language or slurs; that are belligerent, sarcastic, accusatory or unsigned shall be deemed non-compliant with these "Rules of Civility for Public Participation." Such communications place absolutely no obligation upon Town Council Members, the Town Manager, the Town Attorney or Town staff to respond.

Minutes

Notes will be taken of all meetings and work sessions. The notes are then transcribed into summary minutes that become the written record of subjects discussed, conclusions reached, actions taken and assignments given. The minutes include the names of all those participating in the meeting including Council members, staff, the Town Attorney, applicants, their attorneys and witnesses, and people who offer public comments. The minutes also serve as a record of motions and votes on all Council decisions.

Once completed, the minutes are provided to Council members for approval at their next meeting. The approval of the minutes is intended for Council members to accurately document the proceedings of the Town Council. Before moving approval the minutes should be amended, if necessary, to more accurately

portray what occurred at a Council 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. Once approved by Council, the original is filed in a secure file and a copy is placed on the Town's web page.

Video and/or audio recordings when made are available at the request of the public or anyone who wishes to listen to the meeting or a portion of the meeting. The original video and audio recordings are stored in a secured area for safekeeping. Any request for production of a verbatim transcript, in whole or in part, of any meeting, workshop or other function of the Town Council or any Town committee thereof by Town staff or paid for by the Town shall require prior consent of the Town Council, except for such requests as are initiated by a court of competent jurisdiction or quasi-judicial officer in the proper exercise of its powers. Video and audio recordings are only the legal record in the absence of approved minutes.

Council Members Items and Reports

Items and Reports time is set aside for Council Members to report on activities of interest to fellow members, staff and the public. Council Members are encouraged to send as much information as possible prior to the meeting. Unless an issue is time sensitive, the item will be placed on a future agenda if a vote is required.

Agenda Management

The Town Manager is responsible for compiling and distributing a schedule of future meetings and work sessions.

Action List

The Town Manager is responsible for compiling and distributing a list of action items that includes a short status and expected date of completion.

How Voting Order is Established for Roll Call Votes

The voting order for calling the roll on Town Council votes shall be conducted at the direction of the Town Clerk. Votes on ordinances require a roll call vote; any Council member may call for a roll call vote on any motion before the Council.

Voting Conflicts

Florida Statute has very specific rules regarding voting conflicts

If a Town Council member has a voting conflict, he/she must disclose that conflict in writing 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. A Town Council member is permitted to participate in the discussion, but cannot vote on the subject. The specific rules are set out in F.S. 112.3143(3)(a), s amended, quoted below:

(3)(a) No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312(2); 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. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

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.

Guidelines for Legislative Hearing Procedures

1. The Chair opens the hearing
2. Staff presents Affidavit of Publication or copy of the legal advertisement from the newspaper of record when available, which shall become an exhibit to the hearing's resulting resolution.
3. The Chair or Town Attorney reads the ordinance ~~caption~~ caption title.
4. Staff and/or the Town Attorney present(s) a brief overview of the ordinance
5. Public input is taken
6. Public input is closed
7. Town Council members ask questions, if any, of staff/Town Attorney
8. Town Council members discuss ordinance, including changes, deletions, etc.
9. A motion is made and seconded to either pass the ordinance as is, or with modifications, or to take some other action.
10. The motion is discussed and voted upon, with roll call voting as appropriate. Upon consideration and passage of all appropriate motions, the Chair declares the hearing on the ordinance to be concluded, continued, tabled, or other action in conformity with the motion.

Notes: There is no ex parte disclosure for legislative hearings.

Members of the public are not sworn in.

Generally there is no discussion between Town Council and public.

The above is intended as a guide and the Council may conduct the legislative hearing utilizing another procedure, so long as due process requirements are met.

Guidelines for Quasi-Judicial Land Use Hearing

1. The Chair opens the hearing.
2. Staff present Affidavit of Publication or copy of the legal advertisement from the newspaper of record when available, which shall become an exhibit to the hearing's resulting resolution.
3. The Chair asks if any Council 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. See section 34-52 of the Land Development Code.
4. All witnesses are sworn in. This includes Town staff, applicant and applicant's representatives, and anyone who wishes to make public sworn testimony on this case. All persons are requested to state their name for the record when they address the Council.
5. The applicant presents its case.
6. Town Council may ask clarification questions of applicant. *
7. Local Planning Agency representative, if available, presents LPA recommendation. Town Council may ask clarification questions of the LPA representative.
8. Public sworn testimony is opened. At its conclusion, the Chair closes the public sworn testimony portion of the hearing.
9. Applicant presents rebuttal, if any. Town Council may ask detailed informational questions of applicant. **
10. Staff presents rebuttal, if any. Town Council may ask detailed informational questions of staff. **
11. The testimony portion of the hearing is closed, and Council discussion starts.
12. Council votes on a resolution or takes other action.

13. The hearing is closed or continued, or other action is taken in conformity with the successful motion, and the time of closure is verbally noted for the record.

*Council has determined that these Council questions are to clarify the applicant's and staff's presentations of factual information and are intended to be short Qs and As.

**Council has determined that these Council questions are to discuss detailed, substantive matters involving the application.

NOTE: The above is intended as a guide and the Council may conduct the quasi-judicial hearing utilizing another procedure, so long as due process requirements are met.

If new evidence is submitted prior to or at a Town Council hearing for a quasi-judicial matter subsequent to the final LPA hearing, Town Council can choose to:

1. Send the matter back to the LPA for review and recommendation.
2. To continue the hearing to provide sufficient time for the staff and Town Attorney to make recommendations; or
3. To complete the hearing if agreeable to the staff and Town Attorney.

8. Reimbursement Procedures

Travel Expenses

It is the desire of the Town of Fort Myers Beach that Town Council members be reimbursed for certain expenses incurred while traveling on Town business. Appropriate allowances, forms and procedures are documented in the Town Personnel Manual.

Business Expenses

From time to time it may be necessary for members of Town Council to entertain various Federal, State and County officials while transacting official Town business. Such business expenses would normally include lunches and/or dinners. A Direct Expense Voucher may be submitted for reimbursement and must be signed by the person requesting reimbursement, and the Town Manager. Invoices must be attached as supporting documentary evidence.

Educational Reimbursement

The Educational Reimbursement Program is used to encourage Town Council members to improve their knowledge and skills needed for the Town's effectiveness. Reimbursement conditions, forms and procedures are documented in the Town Personnel Manual.

9. Council Communications Policy and Processing Procedures

Council Communications Policy

Any communication by individual council members to the media, other governmental agencies, or in public forums should, as clearly as possible, distinguish between personal opinions and actions or direction taken by Town Council. This policy in no way means to censor viewpoints or restrict individual rights, but is solely suggested to preserve the integrity of the Council, staff, and the Town.

Mail Processing Procedures

Mail for the Town should be addressed to the current address.

All mail is opened stamped and distributed. (It is all public record)

Council mail is given to the Administrative Assistant to log and process. Any Council mail that needs a prompt or detailed answer is pulled, copied, and a draft response is prepared for review, usually by the Mayor. The original is distributed, along with other mail; with a note stating a draft response is being prepared. When the response is finalized, it is copied and distributed to all Council members for reading at their leisure.

Communications With Potential Applicants for Zoning and Communications With Vendors or Service Providers

Section 34-52 of the Town's Land Development Code specifies regulations regarding communications with public officials in non-quasi judicial matters and ex parte communications with public officials in quasi-judicial matters.

10. Non-Discrimination and Harassment

Policies

These policies are documented in the Town Personnel Manual

11. Interview/Selection Process for Legal Services

The following applicant form and ranking sheet shall be used in the selection of Legal Services candidates.

INTERVIEW PROCESS FOR LEGAL SERVICES

Individual 30-minute blocks for private interviews by each Councilor with each applicant.

RFP#: _____ Interview date: _____

	9:00-9:30	9:30 – 10:00	10:00- 10:30	10:30- 11:00	11:00- 11:30	11:30- 12:00	12:00- 1:00
Councilor 1	Coffee/muffins	Applicant 1	Applicant 2	Applicant 3	Applicant 4	Applicant 5	Lunch
Councilor 2	Coffee/muffins	Applicant 2	Applicant 3	Applicant 4	Applicant 5	Applicant 1	Lunch
Councilor 3	Coffee/muffins	Applicant 3	Applicant 4	Applicant 5	Applicant 1	Applicant 2	Lunch
Councilor 4	Coffee/muffins	Applicant 4	Applicant 5	Applicant 1	Applicant 2	Applicant 3	Lunch
Councilor 5	Coffee/muffins	Applicant 5	Applicant 1	Applicant 2	Applicant 3	Applicant 4	Lunch

Applicant 1: _____

Applicant 2: _____

Applicant 3: _____

Applicant 4: _____

Applicant 5: _____

NOTE: Chart for town councilor and applicant names shall be in alphabetical order for impartiality.

AFTERNOON SCHEDULE: Each applicant has 15-minute question and answer session in town hall chambers with all five Town Councilors present (5-minute transition between applicants in schedule). Applicants will address Council in alphabetical order.

TIME	Applicant Name
1:00 – 1:15	Applicant 1

1:20 – 1:35	Applicant 2
1:40 – 1:55	Applicant 3
2:00 – 2:15	Applicant 4
2:20 – 2:35	Applicant 5
2:40 – 3:00	Break
3:00	Town Councilors have open discussion. Each Councilmember uses RANKING SHEET to list order of selection, with <u>1 being the top choice</u> . The Town Clerk will tally the votes and announce each applicant's combined ranking score with the lowest score being the candidate selected. In case of a tie, Town Council will have a head-to-head discussion of <u>only</u> the tied candidates and use another RANKING SHEET to list their order for only the tied candidates. Ranking scores are tallied and announced by Town Clerk. Contract negotiator from Town Council is selected. Transition period of legal services, if necessary, is discussed including assignment of representation for ongoing municipal litigation cases.
FIRST AVAILABLE COUNCIL MEETING AFTER INTERVIEW PROCESS	When contract negotiations are complete, contract is presented to Town Council for approval. Transition period, if necessary, is approved.
IF SELECTED APPLICANT DOES NOT COME TO AGREEMENT WITH TOWN ON CONTRACT	Town Council shall vote to: negotiate with second ranked candidate or resolicit for applications and repeat interview process if necessary. Town Council shall vote at the first Town Council meeting following opening of applications to rank the applicants using the RANKING SHEET.

TOWN COUNCIL RANKING SHEET FOR LEGAL SERVICES

RFP# _____

DATE: _____

Councilor Name:

Councilor Signature:

Ranking (#1 is top choice)

1. _____
2. _____
3. _____
4. _____
5. _____

12. Interview/Selection Process for Legal Services

The following applicant form and ranking sheet shall be used in the selection of Town Manager candidates.

INTERVIEW PROCESS FOR TOWN MANAGER

Councilors rank top 5 candidates from applications. Top 5 overall are invited and scheduled for individual 30-minute blocks for private interviews by each Councilor with each applicant.

RFP# _____ Interview date: _____

	9:00-9:30	9:30 – 10:00	10:00- 10:30	10:30- 11:00	11:00- 11:30	11:30- 12:00	12:00- 1:00
Councilor 1	Coffee/muffins	Applicant 1	Applicant 2	Applicant 3	Applicant 4	Applicant 5	Lunch
Councilor 2	Coffee/muffins	Applicant 2	Applicant 3	Applicant 4	Applicant 5	Applicant 1	Lunch
Councilor 3	Coffee/muffins	Applicant 3	Applicant 4	Applicant 5	Applicant 1	Applicant 2	Lunch
Councilor 4	Coffee/muffins	Applicant 4	Applicant 5	Applicant 1	Applicant 2	Applicant 3	Lunch
Councilor 5	Coffee/muffins	Applicant 5	Applicant 1	Applicant 2	Applicant 3	Applicant 4	Lunch

Applicant

1: _____

Applicant

2: _____

Applicant

3: _____

Applicant

4: _____

Applicant

5: _____

NOTE: Chart for town councilor and applicant names shall be in alphabetical order for impartiality.

AFTERNOON SCHEDULE: Each applicant has 15-minute question and answer session in town hall chambers with all five Town Councilors present (5-minute transition between applicants in schedule). Applicants will address Council in alphabetical order.

TIME	Applicant Name
1:00 – 1:15	Applicant 1
1:20 – 1:35	Applicant 2
1:40 – 1:55	Applicant 3
2:00 – 2:15	Applicant 4
2:20 – 2:35	Applicant 5
2:40 – 3:00	Break
3:00	Town Councilors have open discussion. Each Councilmember uses RANKING SHEET to list order of selection, with <u>1 being the top choice</u> . The Town Clerk will tally the votes and announce each applicant's combined ranking score with the lowest score being the candidate selected. In case of a tie, Town Council will

	have a head-to-head discussion of <u>only</u> the tied candidates and use another RANKING SHEET to list their order for only the tied candidates. Ranking scores are tallied and announced by Town Clerk. Contract negotiator from Town Council is selected. Transition period, if necessary, is discussed.
FIRST AVAILABLE COUNCIL MEETING AFTER INTERVIEW PROCESS	When contract negotiations are complete, contract is presented to Town Council for approval. Transition period, if necessary, is approved.
IF SELECTED APPLICANT DOES NOT COME TO AGREEMENT WITH TOWN ON CONTRACT	Town Council shall vote to: negotiate with second ranked candidate or resolicit for applications and repeat interview process if necessary. Town Council shall vote at the first Town Council meeting following opening of applications to rank the applicants using the RANKING SHEET.

TOWN COUNCIL RANKING SHEET FOR TOWN MANAGER

RFP# _____

DATE: _____

Councilor Name:

Councilor

Signature: _____

Ranking (#1 is top choice)

1. _____

2. _____

3. _____

4. _____

5. _____

1. Requested Motion:

Meeting Date: December 7, 2020

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 6, 14, AND 34 OF THE FORT MYERS BEACH LAND DEVELOPMENT CODE, REVISING CHAPTER 22 OF THE FORT MYERS BEACH CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND PROVIDING FOR AN EFFECTIVE DATE. Open the first public hearing and schedule for second reading and final adoption on January 11, 2021 at 9:00 AM

Why the action is necessary:

What the action accomplishes:

2. Agenda:

PUBLIC HEARINGS

3. Requirement/Purpose:

Ordinance

4. Submitter of Information:

5. Background:

The Town Council has reviewed proposed language related to Special Events. Suggested edits to the Land Development Code were presented to the Local Planning Agency (LPA) and are focused on removing conflicting language from the LDC in order to develop a more consistent Code of Ordinances Ch 22 Special Events.

On December 1st, 2020, the LPA recommended approval (4-2) of the proposed edits to the Land Development Code Ch 6, 14, and 34, with the exception of the addition of Sec 34-3041 (b)(4) and (b)(5); and removal of Sec 34-3046 and Sec 34-3047. The dissenting members stated support for the proposed edits with the exception of the removal of Sec 34-3041 subsections.

The LPA also requested the Town Council consider alternative language to allow for flexibility in construction operations (Sec 34-3041 (b)(6)).

Attachments:

1. 20-17, 116812702_1_Ordinance No. 20-17 re Special Events-C2
2. LDC and Code of Ord Special Event and Temp Use

Financial Impact:

6. Alternative Action

7. Management Recommendations:

Set second and final reading for adoption on January 11, 2021.

8. Recommended Approval:

Jason Green, Community Development Services

Created/Initiated - 12/1/2020

Jason Green, Community Development Services
John R Herin Jr, Town Attorney
Amy Baker, Deputy Town Clerk
Roger Hernstadt, Town Manager

Approved - 12/1/2020
Approved - 12/3/2020
Approved - 12/3/2020
Final Approval - 12/3/2020

ORDINANCE NO. 20-17

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 22 OF THE FORT MYERS BEACH CODE OF ORDINANCES ENTITLED “SPECIAL EVENTS”; AND AMENDING PROVISIONS OF CHAPTERS 6, 14, AND 34 OF THE FORT MYERS BEACH LAND DEVELOPMENT CODE, PERTAINING TO SPECIAL EVENTS; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER’S ERRORS; CONFLICTS OF LAW AND PROVIDING FOR AN EFFECTIVE DATE

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

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

WHEREAS, the Town Council desires to update the Chapters of the Town of Fort Myers Beach Code of Ordinances and Fort Myers Beach Land Development Code regulating special events to clarify, improve, simplify, and create consistency among sections of the Code of Ordinances and Land Development Code; and

WHEREAS, the Town also recognizes that both its economy and the quality of life of its residents are enriched by the proper regulation of special events and temporary uses; and

WHEREAS, on December 1, 2020 the Local Planning Agency, after giving consideration to the staff recommendation, public testimony, and consistency with the Comprehensive Plan, recommended approval of the proposed amendment ; and

WHEREAS, on December 7, 2020 the Town Council held a first reading of the proposed Ordinance; and.

WHEREAS, on January 11, 2020 the Town Council held a second reading of the proposed Ordinance; and.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:¹

Section 1. The above recitals are true and correct, and incorporated herein by this reference and are hereby adopted as the legislative and administrative findings of the Town Council.

^{1/} Additions to existing text are shown by underline, changes to existing text on second reading are shown by double underline, and deletions are shown as ~~striketrough~~.

Section 2. Chapter 22 of the Town of Fort Myers Beach Code of Ordinances entitled “Special Events” is hereby amended to read as follows:

Chapter 22 - Special Events

Sec. 22-1. - Definitions.

Political demonstration. A public gathering, procession or parade, the primary purpose of which is the exercise of the rights of assembly and free speech as guaranteed by the First Amendment to the Constitution of the United States.

Special event. ~~Any activity conducted on public or private property that will or has the potential to substantially affect the ordinary and customary use of beaches, public streets, rights-of-way, sidewalks, and other public forums, including any temporary activity conducted on private property that is not authorized by the certificate of use or certificate of occupancy issued for any business operating on the property where the activity is planned, or any temporary activity conducted on private property where the area of the activity coincides with parking spaces required for the operation of any business~~ An activity within the boundaries of the town of Fort Myers Beach which would inhibit the usual flow of pedestrian or vehicular travel or which occupies any public area or building so as to preempt use of said area by the general public or which deviates from the established use of said area of building, but such term does not include the following:

- (1) Any usual and customary noncommercial accessory use of a residential dwelling unit;
- (2) Any use or activity specifically approved by a development permit issued by the city; or
- (3) Private gatherings that will make no use of a public property other than for lawful parking;
- (4) Any garage sale conducted in compliance with the requirements of this chapter.

Sec. 22-2. - Permit required.

No person or entity ~~can initiate, sponsor, organize, promote,~~ may conduct ~~or advertise~~ a special event unless a permit has been obtained from the town.

Sec. 22-3. - Exemptions from permit requirement.

The following do not require a special event permit:

- (1) Private events that will make no use of a public property other than for lawful parking.
- (2) Events conducted solely for the purpose of exercising a group's first amendment right of free speech and/or assembly. If an event has any commercial aspect, or is a political demonstration as defined in section 22-1, or requires the closure of roadways, sidewalks or the use of Town or County staff, then this exemption will not apply.

Sec. 22-4. - Fees.

All fees that relate to special events and special events permits will be as stated in the current Town of Fort Myers Beach Fee Schedule.

Sec. 22-5. - Permit fee exemption for special events conducted by the town.

The town is exempt from all permit fees relating to special events conducted by the town.

Sec. 22-6. – Types of events requiring a special event permit.

The following types of events will require a special event permit. Events, other than these specifically listed, may also require a special event permit.

- (1) Carnivals, Fairs, Festivals and Circuses;
- (2) Farmer's Markets and Flea Markets;
- (3) Art Shows;
- (4) Running, Walking or Bicycling Events;
- (5) Concerts;
- (6) Fireworks;
- (7) Parades;

- (8) Similar events requiring off-site parking, street or sidewalk closures, sound amplification or use of public property or Town staff.

Sec. 22-67. - General criteria and limitations.

The following general criteria and limitations apply to special event permits:

- (1) The activity proposed must be compatible with the surrounding land uses.
- (2) An individual applicant may not receive a special event permit more than six times within a calendar year, provided, however, that the town council may grant businesses or entities approval for a recurring event permit that is not subject to this limitation (see section 22-7) and provided further that the town council has the authority to permit an individual applicant to exceed the six event annual limitation in its discretion.
- (3) ~~For any special event that will include a temporary use regulated by LDC chapter 34 (see LDC sections 34-3041 through 34-3051) a temporary use permit may also be required.~~ For any special event that will take place all or in part upon the beach will be subject to all requirements contained in ~~LDC section 14-11~~ this chapter and any requirements of state or federal agencies relating to activities that take place on the beach.
- (4) For any special event where alcoholic beverages will be sold, the applicant ~~must~~ may need to obtain a temporary one-day permit as ~~prescribed~~ described in LDC section 34-1264, as applicable. Applicants must obtain any required permits from the Florida Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco.
- (5) The following types of special events must be approved by the town council:
 - a. Special events with a duration of four days or more where alcohol will be served;
 - b. Special events with an anticipated attendance of more than 500 people;

c. Recurring special events (see section 22-~~7~~6);

d. Any special event that includes a waiver of the town's open container regulations (see Code chapter 4, article IV);

e. Special events held annually, once initially approved by town council, may be administratively approved by the town manager (i.e., without formal action by town council) for subsequent years, so long as they do not include a noise ordinance waiver request (~~see subsection (6)g~~) of this section, or a material change in the nature of the annual special event. Material changes include an anticipated increase in attendance of ten percent or more, an increase of the area of the special event of ten percent or more; changes or additions to the parking plan for the special event; or other changes as determined in the sole discretion of the town manager;

f. Special events for which a waiver of ~~parking or other town~~ fees is requested. If the waiver was previously approved by the town council in conjunction with approval of a recurring special event or annual event and special event is subject to administrative approval, then the related waiver may also be administratively approved; and

g. Special events for which a waiver of the ~~Fort Myers Beach Noise Ordinance~~ noise regulations is requested.

h. Special events, which require the closure of streets or sidewalks.

(6) Special events that occur on or near the beach or dune.

a. Due to the potential for adverse impacts, certain special event activities may not be compatible with sea turtle nesting areas. In some cases, this is due to the type of activity where permit conditions alone cannot provide adequate protection. In other cases, the density of sea turtle nesting prevents certain activities from being conducted safely.

b. Special events that occur on or near the beach or dune, or where lighting from the special events directly or indirectly illuminates sea turtle habitat, may contain special conditions for protection of the beach, dune and sea turtles. These conditions are in addition to the basic requirements of the town's special events permit provisions, which must still be met in full.

1. Along with the regular application for an event permit, a site plan must be submitted depicting the property corners and the dimensions of the area where the event is proposed to occur, the location of existing vegetation, structures, and any existing sea turtle nests, and a summary of the activities proposed. A lighting plan that includes the location, number, type, wattage, orientation, and shielding for all proposed artificial light sources that will be used must also be submitted. All lighting must be in compliance with §14-75 of the Fort Myers Beach Code of Ordinances.

2. Prior to the granting or denying of the application, an on-site inspection will be conducted to determine if the proposed event conforms to the requirements of this section and if any native vegetation or sea turtle nests exist to be protected.

3. Based upon the information contained in the application and the site inspection, the application shall be approved or denied.

4. Site-specific conditions may be attached to the permit relating to identifying, designating, and protecting any existing vegetation and sea turtle nests in accordance with this code. These conditions are in addition to the following standard permit conditions for all special events on the beach:

i. During the sea turtle season (May 1 through October 31), special

event activities including construction shall be confined to daylight hours and shall not begin before 8:00 a.m. or before completion of daily monitoring for turtle nesting activity by a FWC-authorized marine turtle permit holder, whichever occurs first. However, no activity shall take place until after a daily sea turtle nest survey is conducted as indicated below.

ii. During sea turtle nesting season (May 1 through October 31), the permittee is responsible for ensuring that a daily sea turtle nest survey, protection, and monitoring program is conducted throughout the permitted special events area. Such surveys and associated conservation measures shall be completed after sunrise and prior to the commencement of any activity. The sea turtle survey, protection, and monitoring program shall be conducted only by individuals possessing appropriate expertise in the protocol being followed and a valid F.A.C. Rule 68-E permit issued by the FWC. To identify those individuals available to conduct marine turtle nesting surveys within the permitted area, please contact the FWC, Bureau of Imperiled Species Management, at (850) 922-4330.

iii. All turtle nests will be marked with wooden stakes, flagging tape, and a FWC sea turtle nest sign. No activities (including the placement of equipment or the storage of materials) are allowed within 30 feet of the marked nest. The permittee shall ensure that all personnel are briefed on the types of marking utilized and be able to easily contact the

individual responsible for the nest survey to verify any questionable areas.

5. A violation of the special or standard conditions will automatically invalidate the permit. Periodic compliance inspections will be conducted to insure compliance with the permit conditions and this article.

6. The release of balloons is prohibited in accordance with F.S. § 372.995, except as permitted by that statute.

Sec. 22-78. - Recurring special events.

To qualify as a recurring event, the event must be the same type of event and must be held in the same location. Examples of a recurring event include, but are not limited to, farmers' markets, "sunset celebrations," and music or art themed events. Recurring special events are subject to the following requirements:

- (1) Each event must be held at the same location at the same time of day.
- (2) All dates for the recurring event must be listed on the original application.
- (3) Each individual event must be of the same genre with similar anticipated attendance.
- (4) A recurring special event may not occur more often than weekly over a period of one year based upon a single application.

Sec. 22-89. - Application requirements.

- (a) Any person or entity seeking issuance of a special event permit must file a written application with the town manager on forms provided by the town.
- (b) If any town council actions are required in connection with a planned special event, the application for the permit must be filed at least 60 days prior to the date of the planned event.

(c) Applications for special event permits that do not require town council action must be filed at least 15 days prior to date of the planned event.

(d) Incomplete applications will not be processed for approval.

(e) Applications received less than the specified days before the date of the planned event, may be accepted at the discretion of the town manager. If the late application is accepted, the town manager has the discretion to impose additional permit fees, as per the Town of Fort Myers Beach Fee Schedule, to facilitate timely review and approval.

(f) A complete permit application must include, but may not be limited to, the following:

(1) The name of the special event and its purpose in general terms.

(2) The name(s) of the person(s) or organization(s) sponsoring the special event, together with the addresses and telephone numbers of all such persons or organizations.

(3) The proposed date or dates of the special event.

(4) The expected number of persons who will attend the event.

a. Events with an anticipated attendance exceeding 500 people requires approval by the Town Council.

(5) The specific location(s) within the town where the special event is to be held. The applicant must submit a general site plan that identifies the area(s) of the property used for the event activities, any and all tents, canopies, recreational vehicles, or accessory structures that are to be utilized in connection with the special event activity. A parking plan must be included as part of the special event permit application. The location of any parking and accessory structures may not obstruct traffic or violate any applicable town, county or state laws.

(6) In instances where a proposed special event will be held within 500 feet of residential property and will include any amplified sound, the applicant shall provide notice to

such owners and advise them of the nature of the event and the dates and times when the event will be held. The 500 feet shall be measured from the perimeter of the site where the event will take place and for condominium properties, a single written notification to the condominium association will be sufficient. The notification shall advise the owner of their right to submit a letter of objection to the town manager, and shall include the date by which any such letter of objection must be submitted.

(7) Whether any street closings are requested and, if so, which streets and the times when they will be closed.

a. A request to close any streets requires approval by the Town Council.

(8) Whether any alcoholic beverages will be sold or served. If alcoholic beverages will be sold the applicant must obtain all necessary permits as described in section 22-67.

a. A request to waive the Town's open container regulations requires approval by the Town Council.

b. Any event four days or longer and where alcohol will be served requires approval by the Town Council.

(9) If any entertainment will be included, details as to the type of entertainment, times and location must be provided.

(10) Whether utility services such as electrical power or water will be required.

~~(11) Whether the applicant is requesting have a banner hung in association with the event, see section 22-15. A proof of the proposed banner is required~~ All proposed signage shall be in compliance with Chapter 30 Signs of the Land Development Code. The applicant shall provide application for signs or shall propose signs exempt from the ordinance per LDC Sec 30-6.

(12) Proof indicating approval of the event from all applicable outside state and local agencies.

(13) In instances when the sound emanating from a proposed special event is anticipated to exceed the limits

established in ~~Code~~ Section 14-23 of the Fort Myers Beach Code of Ordinances, the applicant must provide proof of application for a waiver for relief from the maximum allowable noise levels in accordance with section 14-25 of the Fort Myers Beach Code of Ordinances. As part of the waiver application process, the applicant is required to provide notice to all property owners within 500 feet of the location of the proposed special event, advising them of the nature of the event and the dates and times when the event will be held. The 500 feet is measured from the perimeter of the site where the special event will take place; and for condominium properties, a single written notification to the condominium association is sufficient.

a. A request to waive the noise regulations requires approval by the Town Council.

~~(14) Proof of application for approval of any temporary use permits required in conjunction with the special event, see sections 34-3041—34-3051 of the Fort Myers Beach Land Development Code.~~

~~(15) An affidavit, signed by the applicant, that all the information provided in the application is a complete and accurate description of the proposed event and that permission has been obtained from the owner of any land upon which the special event is to be held, unless the event is to be held exclusively on public property.~~

~~(16) An affidavit, signed by the applicant, that permission has been obtained from the owner of any land upon which the special event is to be held, unless the event is to be held exclusively on public property.~~

~~(17) The town manager has the authority to require any reasonable additional information from the applicant that the town manager deems necessary.~~

Sec. 22-~~9~~10. - Review of application.

Upon receipt of an application that contains all of the items listed in section 22-~~8~~9 and required application fees, the town manager will forward copies of the application to all affected town departments for their review.

(1) If the special event permit can be approved by the town manager administratively, the town manager will grant or deny an application for a special event permit within ten days of receipt of a complete application.

(2) Special event permits requiring town council action will be scheduled for consideration at the next regularly scheduled town council meeting.

(3) The town manager and town council have the right to place conditions on a special event permit to mitigate any anticipated adverse effects on nearby properties.

Sec. 22-1011. - Grounds for denial.

(a) The town manager or town council may deny an application for a special event permit if the applicant, or the person on whose behalf the application for a permit was made, has on a prior occasion made a material misrepresentation regarding the nature or scope of an event or activity previously permitted by a special event permit, or, who has previously violated the terms of a prior special event permit, issued to or on behalf of the applicant. An application for a special event permit may also be denied for any of the following reasons:

(1) The application for a special event permit (including any required attachments and submissions) is not fully completed and properly executed;

(2) The applicant has not tendered the required application fee, if any, with the application or has not tendered any other required fees, indemnification agreement, insurance certificate, or security deposit, if any, within the times prescribed by the town manager;

(3) The application contains a material falsehood or misrepresentation;

(4) The applicant or the person on whose behalf the application for the special event permit has been made has on prior occasions damaged town property and has not paid in full for such damage, or has other outstanding and unpaid debts to the town;

(5) A fully executed prior application for a special event permit for the same time and place has been received, and a

special event permit has or will be granted to the prior applicant, authorizing uses or activities which do not reasonably permit multiple occupancy of the area where the event is proposed to be held;

(6) The use or activity intended by the applicant will conflict with previously planned programs organized or conducted by a governmental agency and previously scheduled for the same time and place;

(7) The use or activity intended by the applicant would present an unreasonable danger to the health or safety of the public;

(8) The applicant has not complied or cannot comply with applicable licensure requirements, laws, ordinances or regulation of the state, the county or the town concerning the sale or offering for sale of any goods or services; or

(9) The use or activity intended by the applicant is prohibited by state or federal law or by ordinances or regulations of the county or the town.

(b) If the special event application is denied, the applicant is not be entitled to receive any reimbursement from the town for any costs incurred during the application process, including the application fee.

Sec. 22-~~11~~12. - Notification of denial and right of appeal.

(a) Any applicant who is denied a special event permit by the town manager will be notified in writing. Said notification will state the reasons for the denial and the right of appeal to the town council, and will be sent by registered mail to the applicant.

(b) The applicant will have ten days from receipt of the written notification of permit denial to request an appeal hearing before the town council. If the appeal cannot be heard by the town council prior to the date when the event is scheduled to be held, the filing of an appeal will not entitle the applicant to conduct the event on that date but, if the appeal is successful, the applicant may hold the event on a rescheduled date that is after the town council meeting at which the appeal was heard.

(c) An appeal of the decision of the town council may be made to the circuit court by filing a petition for writ of certiorari as

provided for under the Florida Rules of Appellate Procedure. A decision of the town council will be deemed to have been rendered on the date the town council votes to either grant or deny the appeal.

Sec. 22-~~12~~13. - Litter.

(a) Special event permit holders are responsible for ensuring that the area where the event is held is free of all litter and debris within 24 hours of the time the special event ends. Events that span more than a 24-hour period are responsible for removing all garbage and litter at the end of each day.

(b) In the event this section is not complied with, the town manager has the authority to contract with a cleaning service and the cost of the cleanup will be the responsibility of the permit holder and, if not promptly paid, may be deducted from any required security deposit (~~see section 22-14~~).

Sec. 22-~~13~~14. - Security for unpaid expenses.

The town manager may require the posting of a security deposit, or other form of security acceptable to the town, to ensure that any unpaid expenses or damages incurred as a result of the event are satisfied.

Sec. 22-~~14~~15. - Indemnification and liability insurance.

(a) Prior to the issuance of the special event permit, the applicant is required to execute an indemnification and hold harmless agreement in a form acceptable to the town attorney.

(b) Prior to the issuance of the special event permit, the applicant is required to obtain, at its sole expense, public liability insurance, with minimum limits as required by the town, that includes coverage for any town property utilized and naming the town as an additional insured.

Sec. 22-~~15~~. - Signage.

(a) ~~All signage relating to special events must comply with LDC chapter 30.~~

(b) ~~Banners across Town of Fort Myers Beach rights-of-way. Special event permit applicants may request to hang a banner advertising the special event across the Town of Fort Myers Beach right-of-way at the base of the Sky Bridge. All banners must be~~

~~approved by town manager. Banners may not contain any commercial information for the purpose of advertising anything other than the special event. Banners will not be approved until approval has been obtained for the associated special event. Banners are hung on a on a first come first served basis. Banners may hang for a period of two weeks prior to the event; provided, however, that the town manager may permit a banner to be hung for a period of up to four weeks if availability allows. All banners must have grommets that are no less than two feet apart on the top and bottom. Banners can be no larger than 16 feet in width and three feet high.~~

~~(c) For any special event where a requested road closure has the potential to affect a sizeable segment of the community, notice of such closure must be provided to the public at least five days prior to event if variable message signs are utilized or 14 days prior to an event if static signs are utilized. Type and placement of signs will be determined by public works director. The applicant is responsible for any fees associated with the static signs or variable message boards.~~

Sec. 22-16. - Revocation.

The town manager has the authority to revoke a special event permit issued pursuant to this chapter upon violation of any of the requirements contained in the permit or in this Code or the LDC.

Section 3. Section 6-366 of Chapter 6 of the Town of Fort Myers Beach Land Development Code is hereby amended to read as follows:

Sec. 6-366. - Location of construction near beaches.

(a) Except for beach renourishment and for minor structures such as lifeguard support stands and beach access ramps, all construction must be located a sufficient distance landward of the beach to permit natural shoreline fluctuations and to preserve dune stability. In addition to complying with all other provisions of this code, major structures must be built landward of the 1978 coastal construction control line except where a major structure may be specifically allowed by this code to extend across this line. The 1978 coastal construction control line is depicted on the Future Land Use Map as the seaward edge of land-use categories allowing urban development and as the landward edge of the recreation land-use category. This line is also the landward edge of the EC (Environmentally Critical) zoning district.

(b) Occasional minor structures are permitted by right in the EC zoning district if they are placed on private property and do not alter

the natural landscape or obstruct pedestrian traffic (examples are mono-post shade structures, movable picnic tables, beach volleyball courts, and similar recreational equipment, see § 34-652 of this LDC). Artificial lighting and signs may not be installed in the EC zoning district unless approved by special exception or as a deviation in the planned development rezoning process or unless explicitly permitted by §§ 14-5 or 27-51 of this LDC.

(1) Other provisions of this code provide for certain other minor structures in the EC zoning district:

a. Perpendicular dune walkovers are permitted by right in accordance with § 10-415(b) and subsection (d), below.

b. Some temporary structures such as tents may be permitted through a ~~temporary use permit~~ for special events ~~permit held on the beach~~, in accordance with ~~§ 14-11 of this LDC Ch. 22 of the Code~~.

c. Licensed beach vendors may place rental equipment and/or a temporary movable structure in accordance with § 14-5, Ch. 27, and § 34-3151 of this code.

Section 4. Section 14-11 of Chapter 14 of the Town of Fort Myers Beach Land Development Code is hereby repealed:

~~Sec. 14-11. Special events on the beach.~~

~~(a) Special events on the beach are any social, commercial, or fraternal gathering for the purpose of being entertained, instructed, viewing a competition, or any other reason that would bring them together in one location that normally would not include such a concentration of people on or near the beach.~~

~~(b) Special events on the beach are temporary, short-term activities, which may include the construction of temporary structures; temporary excavation, operation, transportation, or storage of equipment or materials; and/or nighttime lighting that is visible seaward of the coastal construction control line (CCCL). Generally, activities within this category include, but are not limited to: sporting events (e.g., volleyball, personal watercraft races, offshore powerboat races), festivals, competitions, organized parties (e.g., weddings), promotional activities, concerts, film events, balloon releases, and gatherings under tents.~~

~~(c) Due to the potential for adverse impacts, certain special event activities may not be compatible with sea turtle nesting areas. In some cases this is due to the type of activity where permit conditions alone cannot provide adequate protection. In other cases the density of sea turtle nesting prevents certain activities from being conducted safely.~~

~~(d) Special events that occur on or near the beach or dune, or where lighting from the special events directly or indirectly illuminates sea turtle habitat, may contain special conditions for protection of the beach, dune and sea turtles. These conditions are in addition to the basic requirements of the town's special events permit provisions, which must still be met in full.~~

~~(1) Along with the regular application for an event permit, a site plan must be submitted depicting the property corners and the dimensions of the area where the event is proposed to occur, the location of existing vegetation, structures, and any existing sea turtle nests, and a summary of the activities proposed. A lighting plan that includes the location, number, type, wattage, orientation, and shielding for all proposed artificial light sources that will be used must also be submitted. All lighting must be in compliance with § 14-75.~~

~~(2) Prior to the granting or denying of the application, an on-site inspection will be conducted to determine if the proposed event conforms to the requirements of this section and if any native vegetation or sea turtle nests exist to be protected.~~

~~(3) Based upon the information contained in the application and the site inspection, the application shall be approved or denied. approve or deny the application.~~

~~(4) Site-specific conditions may be attached to the permit relating to identifying, designating, and protecting any existing vegetation and sea turtle nests in accordance with this code. These conditions are in addition to the following standard permit conditions for all special events on the beach:~~

~~a. During the sea turtle season (May 1 through October 31), special event activities including construction shall be confined to daylight hours and shall not begin before 8:00 a.m. or before completion~~

~~of daily monitoring for turtle nesting activity by a FWC authorized marine turtle permit holder, whichever occurs first. However, no activity shall take place until after a daily sea turtle nest survey is conducted as indicated below.~~

~~b. During sea turtle nesting season (May 1 through October 31), the permittee is responsible for ensuring that a daily sea turtle nest survey, protection, and monitoring program is conducted throughout the permitted special events area. Such surveys and associated conservation measures shall be completed after sunrise and prior to the commencement of any activity. The sea turtle survey, protection, and monitoring program shall be conducted only by individuals possessing appropriate expertise in the protocol being followed and a valid F.A.C. Rule 68-E permit issued by the FWC. To identify those individuals available to conduct marine turtle nesting surveys within the permitted area, please contact the FWC, Bureau of Imperiled Species Management, at (850) 922-4330.~~

~~c. All turtle nests will be marked with wooden stakes, flagging tape, and a FWC sea turtle nest sign. No activities (including the placement of equipment or the storage of materials) are allowed within 30 feet of the marked nest. The permittee shall ensure that all personnel are briefed on the types of marking utilized and be able to easily contact the individual responsible for the nest survey to verify any questionable areas.~~

~~(5) A violation of the special or standard conditions will automatically invalidate the permit. Periodic compliance inspections will be conducted to insure compliance with the permit conditions and this article.~~

~~(6) The release of balloons is prohibited in accordance with F.S. § 372.995, except as permitted by that statute.~~

Section 5. Section 34-2 of Chapter 34 of the Town of Fort Myers Beach Land Development Code is hereby amended to read as follows:

Sec. 34-2. - Definitions

Use, temporary means a use or activity ~~which~~ that is permitted only for a limited time, which will not inhibit the usual flow of pedestrian or vehicular travel on public rights-of-way, subject to specific regulations and permitting procedures. See article IV, division 37 of this chapter.

Section 6. Section 34-2441 of Chapter 34 of the Town of Fort Myers Beach Land Development Code is hereby repealed:

~~Sec. 34-2441. -- Special events defined.~~

~~A special event is any social, commercial, or fraternal gathering for the purpose of entertaining, instructing, viewing a competition, or for any other reason that would assemble an unusual concentration of people in one location. Specifically excluded from this definition are any gatherings formed and/or sponsored by any recognized religion or religious society. Sec. 34-2442. -- Permits for special events.~~

~~(a) The Town of Fort Myers has established a permitting process for special events through Ordinances Nos. 98-01 and 00-16 and any future amendments.~~

~~(b) No person, corporation, partnership, or other entity shall advertise or sell or furnish tickets for a special event within the boundaries of the town, and no such event shall be conducted or maintained, unless and until that person or entity has obtained a permit from the town to conduct such event.~~

~~(c) Special events on the beach shall also comply with § 14-11 of this code.~~

Section 7. Section 34-3041 of Chapter 34 of the Town of Fort Myers Beach Land Development Code is hereby amended to read as follows:

Sec. 34-3041. - Generally.

(a) *Purpose.* The purpose of this subdivision is to specify regulations applicable to certain temporary uses which, because of their impact on surrounding land uses, require a temporary use permit.

(b) *Permit required.* No temporary use shall be established until a temporary use permit has been obtained from the director in accordance with the requirements of ~~§ 34-3050~~ this chapter. ~~Some temporary uses may qualify as special events that are regulated by Ordinance No. 98-01 as amended, or may qualify as special events on or near the beach, which are further regulated by § 14-11 of this code. Ch. 22.~~ A temporary use permit must be obtained for the following uses in compliance with these requirements:

(1) Christmas tree sales lots for up to 45 days prior to the holiday;

(2) Holiday, seasonal or annual sales lots for up to 30 days;

(3) Temporary promotional activities involving the sale and promotion of goods and services available at a business on the premises, subject to the following:

a. Activities that obstruct private parking or are held on the adjacent public sidewalk may be held for up to three consecutive days up to three times per calendar year.

b. Activities that do not obstruct parking and are held on private property may be held for up to ten consecutive days up to three times per calendar year.

c. Outdoor display of merchandise, not associated with a temporary promotional activity shall be in compliance with LDC Sec 34-678 Outdoor display and sales of merchandise and food.

(4) Garage sales or yard sales, with a maximum of two permits per parcel per year for a maximum of three consecutive days. Garage sale permits will be free of charge.

(5) Construction projects which require storage, parking areas, construction trailers, site screening and/or any other temporary activities during construction of the project and which terminate upon completion of the project.

(6) Temporary wireless communications facilities, as are necessary to meet demand, for up to six (6) months.

(7) One-day permits for consumption of alcohol on-premises associated with a temporary event.

(8) Other similar uses of a temporary nature.

(c) *Lighting.* No permanent or temporary lighting shall be installed without an electrical permit and inspection.

(d) *Time limit.*

(1) All temporary uses shall be confined to the dates specified by the director, on the temporary use permit; provided, however, that:

a. ~~Except as provided for seasonal parking lots in §§ 34-2022 of this chapter and for other uses where specifically provided in §§ 34-3043 through 34-3048 of this chapter, the director may not authorize a temporary use for more than 30 days; and~~ If no time period is specified on the temporary use permit, then the temporary use permit will expire and the use must be abated within 30 days from the date of issuance.

b. ~~If no time period is specified on the temporary use permit, then the temporary use permit will expire and the use must be abated within 30 days from the date of issuance.~~

(2) A temporary use permit may not be renewed or reissued to the same applicant or on the same premises for a similar use more than three (3) times per year. ~~for a period of six months from the date of expiration of the previous temporary use permit.~~

(e) *Hours of operation.* Hours of operation shall be confined to those specified in the permit.

(f) *Cleanup.* The site shall be cleared of all debris at the end of the temporary use and all temporary structures shall be removed within 48 hours after termination of the use. A cash bond of a minimum of \$25.00 and not to exceed \$5,000.00 or a signed contract with a disposal firm may be required as a part of the application for a temporary use permit to ensure that the premises will be cleared of all debris during and after the event.

(g) ~~Traffic control.~~ Traffic control as may be required by the county sheriff's department and the county department of transportation shall be arranged and paid for by the applicant. Signs. A sign permit may be required for any proposed signs.

(h) ~~Damage to public right-of-way.~~ A cash bond of a minimum of \$25.00 and not to exceed \$5,000.00 may be required to ensure the repair of any damage resulting to any public right-of-way as a result of the event. In lieu of. Any proposed use which exceeds the criteria or regulations of this code subdivision may apply for a Special Event permit.

Section 8. Sections 34-3042, 34-3043, 34-3044, 34-3045, 34-3046, 34-3047, 34-3048, and 34-3055 of Chapter 34 of the Town of Fort Myers Beach Land Development Code are hereby repealed:

~~Sec. 34-3042.-- Carnivals, fairs, circuses and amusement devices.~~

(a) ~~Location of amusement devices and other structures.~~ Refer to §§ 34-2142(a) and (b) above, for setback requirements.

(b) ~~Off-street parking.~~ Refer to § 34-2020(d)(3)g. of this chapter for off-street parking requirements.

(c) ~~Hours of operation.~~ The hours of operation shall be limited to 10:00 a.m. to 10:00 p.m., unless otherwise extended by the director in writing.

(d) ~~Special event permit.~~ In addition to a temporary use permit, a carnival, fair, circus, or amusement device, or other event may be subject to the provisions of the town's Special Events Ordinance No. 98-01, as amended (see also division 34 of this article). Ch. 22.

~~Sec. 34-3043.-- Christmas tree sales.~~

(a) ~~Christmas tree sales may be permitted in any commercial district, provided that:~~

(1) ~~No parking lot required for another use shall be used for display of trees; and~~

(2) ~~Temporary off-street parking for at least five vehicles shall be provided utilizing an existing or approved parking lot entrance or driveway.~~

(b) ~~The maximum length of time for display and open lot sales shall be 45 days.~~

~~Sec. 34-3044. -- Temporary contractor's office and equipment storage shed.~~

~~A contractor's office or construction equipment shed may be permitted in any district where use is incidental to an ongoing construction project with an active building permit or development order. Such office or shed shall not contain sleeping or cooking accommodations. The contractor's office and construction shed shall be removed within 30 days of the date of final inspection for the project.~~

~~Sec. 34-3045. -- Alcoholic beverages.~~

~~Temporary one-day permits for the service of alcoholic beverages may be permitted in accordance with § 34-1264(d) of this chapter.~~

~~Sec. 34-3046. -- Temporary use of mobile home.~~

(a) ~~Rehabilitation or construction of residence following disaster.~~

(1) ~~When fire or disaster has rendered a single-family residence unfit for human habitation, the temporary use of a mobile home or recreational vehicle located on the single-family lot during rehabilitation of the original residence or construction of a new residence may be permitted subject to the regulations set out in this section.~~

(2) ~~The maximum duration of the use shall be 18 months after the date the President of the United States issues a disaster declaration. If no disaster declaration is issued, the maximum duration of the use is six months. The director may extend the permit once for a period not to exceed 60 days in the event of circumstances beyond the control of the owner. Application for an extension shall be made prior to expiration of the original permit.~~

(b) ~~Rehabilitation or construction of damaged business or commercial uses following disaster.~~

(1) ~~Business or commercial uses damaged by a major or catastrophic disaster that are necessary for the public health and safety or that will aid in restoring the community's~~

~~economic base may be permitted to use a mobile home or similar type structure to carry out their activities until the damaged structure(s) is rebuilt or replaced according to applicable development or redevelopment regulations.~~

~~(2) The maximum duration of the temporary use is nine months after the date the President of the United States issues a disaster declaration. If no disaster declaration is issued, the maximum duration of the use is six months. The director may extend the permit once for a period not to exceed 60 days in the event of circumstances beyond the control of the owner. Application for an extension shall be made prior to expiration of the original permit.~~

~~(e) Conditions for use.~~

~~(1) Required water and sanitary facilities must be provided.~~

~~(2) The mobile home or recreational vehicle shall be removed from the property within ten days after the certificate of occupancy is issued for the new or rehabilitated residence, business, or commercial use, or upon expiration of the temporary use permit, whichever occurs first.~~

~~Sec. 34-3047. -- Temporary telephone distribution equipment.~~

~~Telephone distribution equipment may be granted a temporary use permit during planning and construction of permanent facilities, provided that:~~

~~(1) The equipment is less than six feet in height and 300 cubic feet in volume; and~~

~~(2) The maximum length of the use shall be six months, but the director may extend the permit once for a period not to exceed six additional months in the event of circumstances beyond the control of the telephone company. Application for an extension shall be made at least 15 days prior to expiration of the original permit.~~

~~Sec. 34-3048. -- Ancillary temporary uses in parking lots.~~

~~(a) The following ancillary temporary uses may be permitted in parking lots upon application and issuance of a temporary use permit (see § 34-3050 of this chapter):~~

- (1) Seasonal promotions.
- (2) Sidewalk or parking lot sales.
- (3) Fairs and carnivals (see § 34-3042 of this chapter).
- (4) Tent sales.
- (5) Flea markets by nonprofit organizations.
- (6) Welcome stations in accordance with § 34-3051 of this chapter.

(b) ~~In approving a temporary use permit, the director shall require that the area of the lot to be used is clearly defined and that the use will not obstruct pedestrian and vehicular movements to portions of the lot not so used.~~

~~Sec. 34-3055. Special events.~~

- (a) ~~A special event is any social, commercial, or fraternal gathering for the purpose of entertaining, instructing, viewing a competition, or for any other reason that would assemble an unusual concentration of people in one location.~~
- (b) ~~See division 34 of this chapter for a summary of permitting rules for special events.~~

Section 9. The Town Council intends that the provisions of this ordinance be made a part of the Fort Myers Beach Code of Ordinances, and that sections herein may be renumbered or re-lettered and the words or phrases herein may be changed to accomplish codification; regardless, typographical errors that do not affect intent may be corrected with notice to and authorization of the Town Manager without further process.

Section 10. Whenever the requirements or provisions of this ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive shall apply.

Section 11. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the ordinance as a whole, or any part thereof, other than the part so declared.

Section 12. This ordinance shall become effective upon adoption by the Town Council.

The foregoing Ordinance was adopted by the Town Council upon a motion by Councilmember _____ and seconded by _____ and upon being put to a roll call vote, the result was as follows:

Raymond P. Murphy, Mayor	_____
Rexann Hosafros, Vice Mayor	_____
Dan Allers, Council Member	_____
Jim Atterholt, Council Member	_____
Bill Veach, Council Member	_____

ADOPTED this _____ day of _____, 2021 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Raymond P. Murphy, Mayor

ATTEST:

Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH SOLELY:**

John R. Herin, Jr., Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this ____ day of _____, 2021.

Land Development Code Amendments

Sec. 6-366. - Location of construction near beaches.

- (a) Except for beach renourishment and for minor structures such as lifeguard support stands and beach access ramps, all construction must be located a sufficient distance landward of the beach to permit natural shoreline fluctuations and to preserve dune stability. In addition to complying with all other provisions of this code, major structures must be built landward of the 1978 coastal construction control line except where a major structure may be specifically allowed by this code to extend across this line. The 1978 coastal construction control line is depicted on the Future Land Use Map as the seaward edge of land-use categories allowing urban development and as the landward edge of the recreation land-use category. This line is also the landward edge of the EC (Environmentally Critical) zoning district.
- (b) Occasional minor structures are permitted by right in the EC zoning district if they are placed on private property and do not alter the natural landscape or obstruct pedestrian traffic (examples are mono-post shade structures, movable picnic tables, beach volleyball courts, and similar recreational equipment, see § 34-652 of this LDC). Artificial lighting and signs may not be installed in the EC zoning district unless approved by special exception or as a deviation in the planned development rezoning process or unless explicitly permitted by §§ 14-5 or 27-51 of this LDC.
 - (1) Other provisions of this code provide for certain other minor structures in the EC zoning district:
 - a. Perpendicular dune walkovers are permitted by right in accordance with § 10-415(b) and subsection (d), below.
 - b. Some temporary structures such as tents may be permitted through a ~~temporary use permit~~ for special events permit held on the beach, in accordance with ~~§ 14-11 of this LDC~~ Ch. 22.
- c. Licensed beach vendors may place rental equipment and/or a temporary movable structure in accordance with § 14-5, ch. 27, and § 34-3151 of this code.

Explanation- We are consolidating all info regarding special events into one place.

~~Sec. 14-11. - Special events on the beach.~~

- ~~(a) Special events on the beach are any social, commercial, or fraternal gathering for the purpose of being entertained, instructed, viewing a competition, or any other reason that would bring them together in one location that normally would not include such a concentration of people on or near the beach.~~
- ~~(b) Special events on the beach are temporary, short-term activities, which may include the construction of temporary structures; temporary excavation, operation, transportation, or storage of equipment or materials; and/or nighttime lighting that is visible seaward of the coastal construction control line (CCCL). Generally, activities within this category include, but are not limited to: sporting events (e.g., volleyball, personal watercraft races, offshore powerboat races), festivals, competitions, organized parties (e.g., weddings), promotional activities, concerts, film events, balloon releases, and gatherings under tents.~~
- ~~(c) Due to the potential for adverse impacts, certain special event activities may not be compatible with sea turtle nesting areas. In some cases this is due to the type of activity where permit conditions alone~~

~~cannot provide adequate protection. In other cases the density of sea turtle nesting prevents certain activities from being conducted safely.~~

- ~~(d) Special events that occur on or near the beach or dune, or where lighting from the special events directly or indirectly illuminates sea turtle habitat, may contain special conditions for protection of the beach, dune and sea turtles. These conditions are in addition to the basic requirements of the town's special events permit provisions, which must still be met in full.~~
- ~~(1) Along with the regular application for an event permit, a site plan must be submitted depicting the property corners and the dimensions of the area where the event is proposed to occur, the location of existing vegetation, structures, and any existing sea turtle nests, and a summary of the activities proposed. A lighting plan that includes the location, number, type, wattage, orientation, and shielding for all proposed artificial light sources that will be used must also be submitted. All lighting must be in compliance with § 14-75.~~
 - ~~(2) Prior to the granting or denying of the application, an on-site inspection will be conducted to determine if the proposed event conforms to the requirements of this section and if any native vegetation or sea turtle nests exist to be protected.~~
 - ~~(3) Based upon the information contained in the application and the site inspection, the application shall be approved or denied. approve or deny the application.~~
 - ~~(4) Site-specific conditions may be attached to the permit relating to identifying, designating, and protecting any existing vegetation and sea turtle nests in accordance with this code. These conditions are in addition to the following standard permit conditions for all special events on the beach:
 - ~~a. During the sea turtle season (May 1 through October 31), special event activities including construction shall be confined to daylight hours and shall not begin before 8:00 a.m. or before completion of daily monitoring for turtle nesting activity by a FWC-authorized marine turtle permit holder, whichever occurs first. However, no activity shall take place until after a daily sea turtle nest survey is conducted as indicated below.~~
 - ~~b. During sea turtle nesting season (May 1 through October 31), the permittee is responsible for ensuring that a daily sea turtle nest survey, protection, and monitoring program is conducted throughout the permitted special events area. Such surveys and associated conservation measures shall be completed after sunrise and prior to the commencement of any activity. The sea turtle survey, protection, and monitoring program shall be conducted only by individuals possessing appropriate expertise in the protocol being followed and a valid F.A.C. Rule 68-E permit issued by the FWC. To identify those individuals available to conduct marine turtle nesting surveys within the permitted area, please contact the FWC, Bureau of Imperiled Species Management, at (850) 922-4330.~~
 - ~~c. All turtle nests will be marked with wooden stakes, flagging tape, and a FWC sea turtle nest sign. No activities (including the placement of equipment or the storage of materials) are allowed within 30 feet of the marked nest. The permittee shall ensure that all personnel are briefed on the types of marking utilized and be able to easily contact the individual responsible for the nest survey to verify any questionable areas.~~~~
 - ~~(5) A violation of the special or standard conditions will automatically invalidate the permit. Periodic compliance inspections will be conducted to insure compliance with the permit conditions and this article.~~
 - ~~(6) The release of balloons is prohibited in accordance with F.S. § 372.995, except as permitted by that statute.~~

~~(Ord. No. 15-12, § 1, 1-19-2016)~~

Explanation – The above section will be added to Ch 22

~~Sec. 34-2441. Special events defined.~~

~~A special event is any social, commercial, or fraternal gathering for the purpose of entertaining, instructing, viewing a competition, or for any other reason that would assemble an unusual concentration of people in one location. Specifically excluded from this definition are any gatherings formed and/or sponsored by any recognized religion or religious society. Sec. 34-2442. Permits for special events.~~

- ~~(a) The Town of Fort Myers has established a permitting process for special events through Ordinances Nos. 98-01 and 00-16 and any future amendments.~~
- ~~(b) No person, corporation, partnership, or other entity shall advertise or sell or furnish tickets for a special event within the boundaries of the town, and no such event shall be conducted or maintained, unless and until that person or entity has obtained a permit from the town to conduct such event.~~
- ~~(c) Special events on the beach shall also comply with § 14-11 of this code.~~

Explanation – deleting and consolidating

Definition Sec. 34-2: *Use, temporary* means a use or activity which is permitted only for a limited time, which will not inhibit the usual flow of pedestrian or vehicular travel on public rights-of-way, subject to specific regulations and permitting procedures. See article IV, division 37 of this chapter. In Sec 30-3041(b)

Sec. 34-3041. - Generally.

- (a) *Purpose.* The purpose of this subdivision is to specify regulations applicable to certain temporary uses which, because of their impact on surrounding land uses, require a temporary use permit.
- (b) *Permit required.* No temporary use shall be established until a temporary use permit has been obtained from the director in accordance with the requirements of § 34-3050 of this chapter. Some temporary uses may qualify as special events that are regulated by Ordinance No. 98-01 as amended, or may qualify as special events on or near the beach, which are further regulated by § 14-11 of this code. Ch. 22. A temporary use permit must be obtained for the following uses in compliance with these requirements:
 - (1) Christmas tree sales lots for up to 45 days prior to the holiday;
 - (2) Holiday, seasonal or annual sales lots for up to 30 days;
 - (3) Temporary promotional activities involving the sale and promotion of goods and services available at a business on the premises, subject to the following:
 - a. Activities that obstruct private parking or are held on the adjacent public sidewalk may be held for up to three consecutive days up to three times per calendar year.
 - b. Activities that do not obstruct parking and are held on private property may be held for up to ten consecutive days up to three times per calendar year.
 - c. Outdoor display of merchandise, not associated with a temporary promotional activity shall be in compliance with LDC Sec 34-678 Outdoor display and sales of merchandise and food.
 - (4) Garage sales or yard sales, with a maximum of two permits per parcel per year for a maximum of three consecutive days. Garage sale permits will be free of charge.
 - (5) Other similar uses of a temporary nature.

(6) Construction projects which require storage, parking areas, construction trailers, site screening and/or any other temporary activities during construction of the project and which terminate upon completion of the project.

(7) Temporary wireless communications facilities, as are necessary to meet demand, up to six (6) months.

(8) One-day permits for consumption on-premises associated with a temporary event.

(c) *Lighting.* No permanent or temporary lighting shall be installed without an electrical permit and inspection.

(d) *Time limit.*

(1) All uses shall be confined to the dates specified by the director, on the temporary use permit; provided, however, that:

a. ~~Except as provided for seasonal parking lots in §§ 34-2022 of this chapter and for other uses where specifically provided in §§ 34-3043 through 34-3048 of this chapter, the director may not authorize a temporary use for more than 30 days; and~~

b. If no time period is specified on the temporary use permit, then the temporary use permit will expire and the use must be abated within 30 days from the date of issuance.

(2) A temporary use permit may not be renewed or reissued to the same applicant or on the same premises for a similar use more than three (3) times per year. ~~for a period of six months from the date of expiration of the previous temporary use permit.~~

(e) *Hours of operation.* Hours of operation shall be confined to those specified in the permit.

(f) *Cleanup.* The site shall be cleared of all debris at the end of the temporary use and all temporary structures shall be removed within 48 hours after termination of the use. A cash bond of a minimum of \$25.00 and not to exceed \$5,000.00 or a signed contract with a disposal firm may be required as a part of the application for a temporary use permit to ensure that the premises will be cleared of all debris during and after the event.

~~(g) *Traffic control.* Traffic control as may be required by the county sheriff's department and the county department of transportation shall be arranged and paid for by the applicant.~~

(g) *Signs.* A sign permit may be required for any proposed signs.

~~(h) *Damage to public right-of-way.* A cash bond of a minimum of \$25.00 and not to exceed \$5,000.00 may be required to ensure the repair of any damage resulting to any public right-of-way as a result of the event.~~

(g) Any proposed use which exceeds the criteria or regulations of this code subdivision may apply for a Special Event permit.

~~Sec. 34-3042. Carnivals, fairs, circuses and amusement devices.~~

~~(a) *Location of amusement devices and other structures.* Refer to §§ 34-2142(a) and (b) above, for setback requirements.~~

~~(b) *Off-street parking.* Refer to § 34-2020(d)(3)g. of this chapter for off-street parking requirements.~~

~~(c) *Hours of operation.* The hours of operation shall be limited to 10:00 a.m. to 10:00 p.m., unless otherwise extended by the director in writing.~~

~~(d) *Special event permit.* In addition to a temporary use permit, a carnival, fair, circus, or amusement device, or other event may be subject to the provisions of the town's Special Events Ordinance No. 98-01, as amended (see also division 34 of this article). Ch. 22.~~

~~Sec. 34-3043.— Christmas tree sales.~~

~~(a)— Christmas tree sales may be permitted in any commercial district, provided that:~~

- ~~(1)— No parking lot required for another use shall be used for display of trees; and~~
- ~~(2)— Temporary off-street parking for at least five vehicles shall be provided utilizing an existing or approved parking lot entrance or driveway.~~

~~(b)— The maximum length of time for display and open-lot sales shall be 45 days.~~

~~Sec. 34-3044.— Temporary contractor's office and equipment storage shed.~~

~~A contractor's office or construction equipment shed may be permitted in any district where use is incidental to an ongoing construction project with an active building permit or development order. Such office or shed shall not contain sleeping or cooking accommodations. The contractor's office and construction shed shall be removed within 30 days of the date of final inspection for the project.~~

~~Sec. 34-3045.— Alcoholic beverages.~~

~~Temporary one-day permits for the service of alcoholic beverages may be permitted in accordance with § 34-1264(d) of this chapter.~~

~~Sec. 34-3046.— Temporary use of mobile home.~~

~~(a)— *Rehabilitation or construction of residence following disaster.*~~

- ~~(1)— When fire or disaster has rendered a single-family residence unfit for human habitation, the temporary use of a mobile home or recreational vehicle located on the single-family lot during rehabilitation of the original residence or construction of a new residence may be permitted subject to the regulations set out in this section.~~
- ~~(2)— The maximum duration of the use shall be 18 months after the date the President of the United States issues a disaster declaration. If no disaster declaration is issued, the maximum duration of the use is six months. The director may extend the permit once for a period not to exceed 60 days in the event of circumstances beyond the control of the owner. Application for an extension shall be made prior to expiration of the original permit.~~

~~(b)— *Rehabilitation or construction of damaged business or commercial uses following disaster.*~~

- ~~(1)— Business or commercial uses damaged by a major or catastrophic disaster that are necessary for the public health and safety or that will aid in restoring the community's economic base may be permitted to use a mobile home or similar type structure to carry out their activities until the damaged structure(s) is rebuilt or replaced according to applicable development or redevelopment regulations.~~
- ~~(2)— The maximum duration of the temporary use is nine months after the date the President of the United States issues a disaster declaration. If no disaster declaration is issued, the maximum duration of the use is six months. The director may extend the permit once for a period not to exceed 60 days in the event of circumstances beyond the control of the owner. Application for an extension shall be made prior to expiration of the original permit.~~

~~(c)— *Conditions for use.*~~

- ~~(1)— Required water and sanitary facilities must be provided.~~
- ~~(2)— The mobile home or recreational vehicle shall be removed from the property within ten days after the certificate of occupancy is issued for the new or rehabilitated residence, business, or commercial use, or upon expiration of the temporary use permit, whichever occurs first.~~

~~Sec. 34-3047.— Temporary telephone distribution equipment.~~

~~Telephone distribution equipment may be granted a temporary use permit during planning and construction of permanent facilities, provided that:~~

- ~~(1) The equipment is less than six feet in height and 300 cubic feet in volume; and~~
- ~~(2) The maximum length of the use shall be six months, but the director may extend the permit once for a period not to exceed six additional months in the event of circumstances beyond the control of the telephone company. Application for an extension shall be made at least 15 days prior to expiration of the original permit.~~

~~Sec. 34-3048.—Ancillary temporary uses in parking lots.~~

- ~~(a) The following ancillary temporary uses may be permitted in parking lots upon application and issuance of a temporary use permit (see § 34-3050 of this chapter):~~
- ~~(1) Seasonal promotions.~~
 - ~~(2) Sidewalk or parking lot sales.~~
 - ~~(3) Fairs and carnivals (see § 34-3042 of this chapter).~~
 - ~~(4) Tent sales.~~
 - ~~(5) Flea markets by nonprofit organizations.~~
 - ~~(6) Welcome stations in accordance with § 34-3051 of this chapter.~~
- ~~(b) In approving a temporary use permit, the director shall require that the area of the lot to be used is clearly defined and that the use will not obstruct pedestrian and vehicular movements to portions of the lot not so used.~~

~~Subdivision III.—Special Events~~

~~Sec. 34-3055.—Special events.~~

- ~~(a) A special event is any social, commercial, or fraternal gathering for the purpose of entertaining, instructing, viewing a competition, or for any other reason that would assemble an unusual concentration of people in one location.~~
- ~~(b) See division 34 of this chapter for a summary of permitting rules for special events.~~

Explanation – deleting and consolidating

Non-LDC Code of Ordinances

Chapter 22 - SPECIAL EVENTS^[1]

Sec. 22-1. - Definitions.

Political demonstration. A public gathering, procession or parade, the primary purpose of which is the exercise of the rights of assembly and free speech as guaranteed by the First Amendment to the Constitution of the United States.

Special event. ~~Any activity conducted on public or private property that will or has the potential to substantially affect the ordinary and customary use of beaches, public streets, rights-of-way, sidewalks, and other public forums, including any temporary activity conducted on private property that is not authorized by the certificate of use or certificate of occupancy issued for any business operating on the property where the activity is planned, or any temporary activity conducted on private property where the area of the activity coincides with parking spaces required for the operation of any business.~~

An activity within the boundaries of the town of Fort Myers Beach which would inhibit the usual flow of pedestrian or vehicular travel or which occupies any public area or building so as to preempt use of said

area by the general public or which deviates from the established use of said area of building, but such term does not include the following:

- (1) Any usual and customary noncommercial accessory use of a residential dwelling unit;
- (2) Any use or activity specifically approved by a development permit issued by the city; or
- (3) Private gatherings that will make no use of a public property other than for lawful parking;
- (4) ~~Any garage sale conducted in compliance with the requirements of this chapter.~~

Sec. 22-2. - Permit required.

No person or entity ~~can initiate, sponsor, organize, promote,~~ **may** conduct or advertise a special event unless a permit has been obtained from the town.

(Ord. No. 16-03, § 1, 8-22-2016)

Sec. 22-3. - Exemptions from permit requirement.

The following do not require a special event permit:

- (1) Private events that will make no use of a public property other than for lawful parking.
- (2) Events conducted solely for the purpose of exercising a group's first amendment right of free speech and/or assembly. If an event has any commercial aspect, ~~or~~ is a political demonstration as defined in section 22-1, or requires the closure of roadways, sidewalks or the use of Town or County staff then this exemption will not apply.

(Ord. No. 16-03, § 1, 8-22-2016)

Sec. 22-4. - Fees.

All fees that relate to special events and special events permits will be as stated in the current Town of Fort Myers Beach Fee Schedule.

(Ord. No. 16-03, § 1, 8-22-2016)

Sec. 22-5. - Permit fee exemption for special events conducted by the town.

The town is exempt from all permit fees relating to special events conducted by the town.

(Ord. No. 16-03, § 1, 8-22-2016)

Sec. 22-6. – Types of events requiring a special event permit.

The following types of events will require a special event permit. Events, other than these specifically listed, may also require a special event permit.

- (1) Carnivals, Fairs, Festivals and Circuses;
- (2) Farmer's Markets and Flea Markets;
- (3) Art Shows;
- (4) Running, Walking or Bicycling Events;

- (5) Concerts;
- (6) Fireworks;
- (7) Parades;
- (8) Similar events requiring off-site parking, street or sidewalk closures, sound amplification or use of public property or Town staff.

Sec. 22-~~6.7.~~ - General criteria and limitations.

The following general criteria and limitations apply to special event permits:

- (1) The activity proposed must be compatible with the surrounding land uses.
- (2) An individual applicant may not receive a special event permit more than six times within a calendar year, provided, however, that the town council may grant businesses or entities approval for a recurring event permit that is not subject to this limitation (see section 22-7) and provided further that the town council has the authority to permit an individual applicant to exceed the six event annual limitation in its discretion.
- ~~(3) For any special event that will include a temporary use regulated by LDC chapter 34 (see LDC sections 34-3041 through 34-3051) a temporary use permit may also be required.~~
- (43) For any special event that will take place all or in part upon the beach will be subject to all requirements contained in ~~LDC section 14-11~~ this chapter and any requirements of state or federal agencies relating to activities that take place on the beach.
- (54) For any special event where alcoholic beverages will be sold, the applicant ~~must~~ **may need to** obtain a temporary one-day permit as ~~prescribed~~ described in LDC section 34-1264, as applicable. Applicants must obtain any required permits from the Florida Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco.
- (65) The following types of special events must be approved by the town council:
 - a. Special events with a duration of four days or more where alcohol will be served;
 - b. Special events with an anticipated attendance of more than 500 people;
 - c. Recurring special events (see section 22-7);
 - d. Any special event that includes a waiver of the town's open container regulations (see Code chapter 4, article IV);
 - e. Special events held annually, once initially approved by town council, may be administratively approved by the town manager (i.e., without formal action by town council) for subsequent years, so long as they do not include a noise ordinance waiver request (see subsection (6)g). of this section, or a material change in the nature of the annual special event. Material changes include an anticipated increase in attendance of ten percent or more, an increase of the area of the special event of ten percent or more; changes or additions to the parking plan for the special event; or other changes as determined in the sole discretion of the town manager;
 - f. Special events for which a waiver of ~~parking or other~~ **town** fees is requested. If the waiver was previously approved by the town council in conjunction with approval of a recurring special event or annual event and special event is subject to administrative approval, then the related waiver may also be administratively approved; and
 - g. Special events for which a waiver of the Fort Myers Beach Noise Ordinance is requested.
 - h. Special events which require the closure of streets or sidewalks.

- ~~(76)~~ Special events that occur on or near the beach or dune

- a. Due to the potential for adverse impacts, certain special event activities may not be compatible with sea turtle nesting areas. In some cases this is due to the type of activity where permit conditions alone cannot provide adequate protection. In other cases the density of sea turtle nesting prevents certain activities from being conducted safely.
- b. Special events that occur on or near the beach or dune, or where lighting from the special events directly or indirectly illuminates sea turtle habitat, may contain special conditions for protection of the beach, dune and sea turtles. These conditions are in addition to the basic requirements of the town's special events permit provisions, which must still be met in full.
 1. Along with the regular application for an event permit, a site plan must be submitted depicting the property corners and the dimensions of the area where the event is proposed to occur, the location of existing vegetation, structures, and any existing sea turtle nests, and a summary of the activities proposed. A lighting plan that includes the location, number, type, wattage, orientation, and shielding for all proposed artificial light sources that will be used must also be submitted. All lighting must be in compliance with §-section 14-75 of the Fort Myers Beach Code of Ordinances.
 2. Prior to the granting or denying of the application, an on-site inspection will be conducted to determine if the proposed event conforms to the requirements of this section and if any native vegetation or sea turtle nests exist to be protected.
 3. Based upon the information contained in the application and the site inspection, the application shall be approved or denied. approve or deny the application.
 4. Site-specific conditions may be attached to the permit relating to identifying, designating, and protecting any existing vegetation and sea turtle nests in accordance with this code. These conditions are in addition to the following standard permit conditions for all special events on the beach:
 - i. During the sea turtle season (May 1 through October 31), special event activities including construction shall be confined to daylight hours and shall not begin before 8:00 a.m. or before completion of daily monitoring for turtle nesting activity by a FWC-authorized marine turtle permit holder, whichever occurs first. However, no activity shall take place until after a daily sea turtle nest survey is conducted as indicated below.
 - ii. During sea turtle nesting season (May 1 through October 31), the permittee is responsible for ensuring that a daily sea turtle nest survey, protection, and monitoring program is conducted throughout the permitted special events area. Such surveys and associated conservation measures shall be completed after sunrise and prior to the commencement of any activity. The sea turtle survey, protection, and monitoring program shall be conducted only by individuals possessing appropriate expertise in the protocol being followed and a valid F.A.C. Rule 68-E permit issued by the FWC. To identify those individuals available to conduct marine turtle nesting surveys within the permitted area, please contact the FWC, Bureau of Imperiled Species Management, at (850) 922-4330.
 - iii. All turtle nests will be marked with wooden stakes, flagging tape, and a FWC sea turtle nest sign. No activities (including the placement of equipment or the storage of materials) are allowed within 30 feet of the marked nest. The permittee shall ensure that all personnel are briefed on the types of marking utilized and be able to easily contact the individual responsible for the nest survey to verify any questionable areas.
 5. A violation of the special or standard conditions will automatically invalidate the permit. Periodic compliance inspections will be conducted to insure compliance with the permit conditions and this article.
 6. The release of balloons is prohibited in accordance with F.S. § 372.995, except as permitted by that statute.

(Ord. No. 16-03, § 1, 8-22-2016)

Sec. 22-~~7~~.8. - Recurring special events.

To qualify as a recurring event, the event must be the same type of event and must be held in the same location. Examples of a recurring event include, but are not limited to, farmers' markets, "sunset celebrations," and music or art themed events. Recurring special events are subject to the following requirements:

- (1) Each event must be held at the same location at the same time of day.
- (2) All dates for the recurring event must be listed on the original application.
- (3) Each individual event must be of the same genre with similar anticipated attendance.
- (4) A recurring special event may not occur more often than weekly over a period of one year based upon a single application.

(Ord. No. 16-03, § 1, 8-22-2016)

Sec. 22-~~8~~.9. - Application requirements.

- (a) Any person or entity seeking issuance of a special event permit must file a written application with the town manager on forms provided by the town.
- (b) If any town council actions are required in connection with a planned special event, the application for the permit must be filed at least 60 days prior to the date of the planned event.
- (c) Applications for special event permits that do not require town council action must be filed at least 15 days prior to date of the planned event.
- (d) Incomplete applications will not be processed for approval.
- (e) Applications received less than the specified days before the date of the planned event, may be accepted at the discretion of the town manager. If the late application is accepted, the town manager has the discretion to impose additional permit fees, as per the Town of Fort Myers Beach Fee Schedule, to facilitate timely review and approval.
- (f) A complete permit application must include, but may not be limited to, the following:
 - (1) The name of the special event and its purpose in general terms.
 - (2) The name(s) of the person(s) or organization(s) sponsoring the special event, together with the addresses and telephone numbers of all such persons or organizations.
 - (3) The proposed date or dates of the special event.
 - (4) The expected number of persons who will attend the event.

a. Events with an anticipated attendance exceeding 500 people requires approval by the Town Council.

- (5) The specific location(s) within the town where the special event is to be held. The applicant must submit a general site plan that identifies the area(s) of the property used for the event activities, any and all tents, canopies, recreational vehicles, or accessory structures that are to be utilized in connection with the special event activity. A parking plan must be included as part of the special event permit application. The location of any parking and accessory structures may not obstruct traffic or violate any applicable town, county or state laws.
- (6) In instances where a proposed special event will be held within 500 feet of residential property and will include any amplified sound, the applicant shall provide notice to such owners and advise

them of the nature of the event and the dates and times when the event will be held. The 500 feet shall be measured from the perimeter of the site where the event will take place and for condominium properties, a single written notification to the condominium association will be sufficient. The notification shall advise the owner of their right to submit a letter of objection to the town manager, and shall include the date by which any such letter of objection must be submitted.

- (7) Whether any street closings are requested and, if so, which streets and the times when they will be closed.

a. A request to close any streets requires approval by the Town Council.

- (8) Whether any alcoholic beverages will be sold or served. If alcoholic beverages will be sold the applicant must obtain all necessary permits as described in section 22-6.

a. A request to waive the Town's open container regulations requires approval by the Town Council.

b. Any event which is four days or longer and where alcohol will be served, requires approval by the Town Council.

- (9) If any entertainment will be included, details as to the type of entertainment, times and location must be provided.

- (10) Whether utility services such as electrical power or water will be required.

- (11) ~~Whether the applicant is requesting have a banner hung in association with the event, see section 22-15. A proof of the proposed banner is required. All proposed signage shall be in compliance with Chapter 30 Signs of the Land Development Code. The applicant shall provide application for signs or shall propose signs exempt from the ordinance per LDC Sec 30-6.~~

- (12) Proof indicating approval of the event from all applicable outside state and local agencies.

- (13) In instances when the sound emanating from a proposed special event is anticipated to exceed the limits established in Code section 14-23 of the Fort Myers Beach Code of Ordinances, the applicant must provide proof of application for a waiver for relief from the maximum allowable noise levels in accordance with section 14-25 of the Fort Myers Beach Code of Ordinances. As part of the waiver application process, the applicant is required to provide notice to all property owners within 500 feet of the location of the proposed special event, advising them of the nature of the event and the dates and times when the event will be held. The 500 feet is measured from the perimeter of the site where the special event will take place; and for condominium properties, a single written notification to the condominium association is sufficient.

a. A request to waive the noise ordinance requires approval by the Town Council.

- ~~(14) Proof of application for approval of any temporary use permits required in conjunction with the special event, see sections 34-3041—34-3051 of the Fort Myers Beach Land Development Code.~~

- (15) An affidavit, signed by the applicant, that all the information provided in the application is a complete and accurate description of the proposed event **and that permission has been obtained from the owner of any land upon which the special event is to be held, unless the event is to be held exclusively on public property.**

- ~~(16) An affidavit, signed by the applicant, that permission has been obtained from the owner of any land upon which the special event is to be held, unless the event is to be held exclusively on public property.~~

- (176) The town manager has the authority to require any **reasonable** additional information from the applicant that the town manager deems necessary.

(Ord. No. 16-03, § 1, 8-22-2016)

Sec. 22-~~9~~.10. - Review of application.

Upon receipt of an application that contains all of the items listed in section 22-8 and required application fees, the town manager will forward copies of the application to all affected town departments for their review.

- (1) If the special event permit can be approved by the town manager administratively, the town manager will grant or deny an application for a special event permit within ten days of receipt of a complete application.
- (2) Special event permits requiring town council action will be scheduled for consideration at the next regularly scheduled town council meeting.
- (3) The town manager and town council have the right to place conditions on a special event permit to mitigate any anticipated adverse effects on nearby properties.

(Ord. No. 16-03, § 1, 8-22-2016)

Sec. 22-~~10~~.11. - Grounds for denial.

- (a) The town manager or town council may deny an application for a special event permit if the applicant, or the person on whose behalf the application for a permit was made, has on a prior occasion made a material misrepresentation regarding the nature or scope of an event or activity previously permitted by a special event permit, or, who has previously violated the terms of a prior special event permit, issued to or on behalf of the applicant. An application for a special event permit may also be denied for any of the following reasons:
 - (1) The application for a special event permit (including any required attachments and submissions) is not fully completed and properly executed;
 - (2) The applicant has not tendered the required application fee, if any, with the application or has not tendered any other required fees, indemnification agreement, insurance certificate, or security deposit, if any, within the times prescribed by the town manager;
 - (3) The application contains a material falsehood or misrepresentation;
 - (4) The applicant or the person on whose behalf the application for the special event permit has been made has on prior occasions damaged town property and has not paid in full for such damage, or has other outstanding and unpaid debts to the town;
 - (5) A fully executed prior application for a special event permit for the same time and place has been received, and a special event permit has or will be granted to the prior applicant, authorizing uses or activities which do not reasonably permit multiple occupancy of the area where the event is proposed to be held;
 - (6) The use or activity intended by the applicant will conflict with previously planned programs organized or conducted by a governmental agency and previously scheduled for the same time and place;
 - (7) The use or activity intended by the applicant would present an unreasonable danger to the health or safety of the public;
 - (8) The applicant has not complied or cannot comply with applicable licensure requirements, laws, ordinances or regulation of the state, the county or the town concerning the sale or offering for sale of any goods or services; or
 - (9) The use or activity intended by the applicant is prohibited by state or federal law or by ordinances or regulations of the county or the town.

- (b) If the special event application is denied, the applicant is not be entitled to receive any reimbursement from the town for any costs incurred during the application process, including the application fee.

(Ord. No. 16-03, § 1, 8-22-2016)

Sec. 22-~~11~~.12. - Notification of denial and right of appeal.

- (a) Any applicant who is denied a special event permit by the town manager will be notified in writing. Said notification will state the reasons for the denial and the right of appeal to the town council, and will be sent by registered mail to the applicant.
- (b) The applicant will have ten days from receipt of the written notification of permit denial to request an appeal hearing before the town council. If the appeal cannot be heard by the town council prior to the date when the event is scheduled to be held, the filing of an appeal will not entitle the applicant to conduct the event on that date but, if the appeal is successful, the applicant may hold the event on a rescheduled date that is after the town council meeting at which the appeal was heard.
- (c) An appeal of the decision of the town council may be made to the circuit court by filing a petition for writ of certiorari as provided for under the Florida Rules of Appellate Procedure. A decision of the town council will be deemed to have been rendered on the date the town council votes to either grant or deny the appeal.

(Ord. No. 16-03, § 1, 8-22-2016)

Sec. 22-~~12~~.13. - Litter.

- (a) Special event permit holders are responsible for ensuring that the area where the event is held is free of all litter and debris within 24 hours of the time the special event ends. Events that span more than a 24-hour period are responsible for removing all garbage and litter at the end of each day.
- (b) In the event this section is not complied with, the town manager has the authority to contract with a cleaning service and the cost of the cleanup will be the responsibility of the permit holder and, if not promptly paid, may be deducted from any required security deposit (see section 22-14).

(Ord. No. 16-03, § 1, 8-22-2016)

Sec. 22-~~13~~.14. - Security for unpaid expenses.

The town manager may require the posting of a security deposit, or other form of security acceptable to the town, to ensure that any unpaid expenses or damages incurred as a result of the event are satisfied.

(Ord. No. 16-03, § 1, 8-22-2016)

Sec. 22-~~14~~.15. - Indemnification and liability insurance.

- (a) Prior to the issuance of the special event permit, the applicant is required to execute an indemnification and hold harmless agreement in a form acceptable to the town attorney.
- (b) Prior to the issuance of the special event permit, the applicant is required to obtain, at its sole expense, public liability insurance, with minimum limits as required by the town, that includes coverage for any town property utilized and naming the town as an additional insured.

(Ord. No. 16-03, § 1, 8-22-2016)

~~Sec. 22-15.—Signage.~~

- ~~(a) All signage relating to special events must comply with LDC chapter 30.~~
- ~~(b) *Banners across Town of Fort Myers Beach rights-of-way.* Special event permit applicants may request to hang a banner advertising the special event across the Town of Fort Myers Beach right-of-way at the base of the Sky Bridge. All banners must be approved by town manager. Banners may not contain any commercial information for the purpose of advertising anything other than the special event. Banners will not be approved until approval has been obtained for the associated special event. Banners are hung on a on a first-come first-served basis. Banners may hang for a period of two weeks prior to the event; provided, however, that the town manager may permit a banner to be hung for a period of up to four weeks if availability allows. All banners must have grommets that are no less than two feet apart on the top and bottom. Banners can be no larger than 16 feet in width and three feet high.~~
- ~~(c) For any special event where a requested road closure has the potential to affect a sizeable segment of the community, notice of such closure must be provided to the public at least five days prior to event if variable message signs are utilized or 14 days prior to an event if static signs are utilized. Type and placement of signs will be determined by public works director. The applicant is responsible for any fees associated with the static signs or variable message boards.~~

~~(Ord. No. 16-03, § 1, 8-22-2016)~~

Sec. 22-16. - Revocation.

The town manager has the authority to revoke a special event permit issued pursuant to this chapter upon violation of any of the requirements contained in the permit or in this Code.

(Ord. No. 16-03, § 1, 8-22-2016)

Explanation – Sec. 22 now becomes the place to go for most info regarding special events. It contains a new definition and other additions which we agree are beneficial. Necessary portions of Sec. 14-11 Special events on the beach, (which was deleted in its entirety) are added to Sec. 22-6 as item 7

1. Requested Motion:

Meeting Date: December 7, 2020

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA ADOPTING AMENDMENTS TO THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN UTILITIES ELEMENT TO UPDATE DATA AND ANALYSIS AND THE GOALS, OBJECTIVES, AND POLICIES RELATED TO WATER SUPPLY PLANNING REQUIREMENTS OF CHAPTER 163, FLORIDA STATUTES; PROVIDING FOR SEVERABILITY; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND PROVIDING FOR AN EFFECTIVE DATE. Open the first public hearing and schedule for second reading and final adoption on March 1, 2021 at 9:00 AM

Why the action is necessary:

State Law requires periodic updates to local governments water supply plan and Comprehensive Plan

What the action accomplishes:

Provides compliance with State Law for water supply planning

2. Agenda:

PUBLIC HEARINGS

3. Requirement/Purpose:

Ordinance

4. Submitter of Information:

5. Background:

Florida Statute 373.709 and 163.3177(6)(c)3 require local water supply and work plan be updated within 18 months after the water management districts governing board updates its regional water supply plan. The plan shall consider a 10-year planning period. The included document is an update to the Town of Fort Myers Beach Comprehensive Plan Utilities Element. The amendment updates data and analysis, along with Goals, Objectives, and Policies.

The transmittal qualifies for an expedited state review. Following review of the Department of Economic Opportunity, the Town Council will hold another public hearing to consider an Ordinance to adopt the proposed amendments to the Utilities Element of the Town of Fort Myers Beach Comprehensive Plan.

Attachments:

1. 20-18, Transmittal of Comprehensive Plan Utilities Element Amendments-C3
2. 20-18, Exhibit A Utilities Element Amendments

Financial Impact:

See attachment

6. Alternative Action

7. Management Recommendations:

First reading and transmittal to DEO, set second and final hearing for March 1, 2021

8. Recommended Approval:

Jason Green, Community Development Services

Created/Initiated - 12/1/2020

Jason Green, Community Development Services
John R Herin Jr, Town Attorney
Amy Baker, Deputy Town Clerk
Roger Hernstadt, Town Manager

Approved - 12/1/2020
Approved - 12/2/2020
Approved - 12/2/2020
Final Approval - 12/2/2020

ORDINANCE NO. 20-18

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA ADOPTING AMENDMENTS TO THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN UTILITIES ELEMENT TO UPDATE DATA AND ANALYSIS AND THE GOALS, OBJECTIVES, AND POLICIES RELATED TO WATER SUPPLY PLANNING REQUIREMENTS OF CHAPTER 163, FLORIDA STATUTES; PROVIDING FOR SEVERABILITY; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND PROVIDING FOR AN EFFECTIVE DATE

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

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

WHEREAS, the Town Council desires to update the Town's Comprehensive Plan Utilities Element to remain in compliance with water supply planning requirements outlined in State law; and

WHEREAS, on December 1st, 2020 the Local Planning Agency, after giving consideration to the staff recommendation, public testimony, and consistency with the Comprehensive Plan, recommended approval of the proposed amendment to the Town Council and transmittal to the Department of Economic Opportunity; and

WHEREAS, on December 7th, 2020 the Town Council held a first reading of the proposed Ordinance and directed staff to transmit the proposed amendments to the Department of Economic Opportunity for an Expedited State Review; and.

WHEREAS, on March 1st, 2021 the Town Council held a second reading of the proposed Ordinance; and.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:¹

Section 1. The above recitals are true and correct, and incorporated herein by this reference and are hereby adopted as the legislative and administrative findings of the Town Council.

^{1/} Additions to existing text are shown by underline, changes to existing text on second reading are shown by double underline, and deletions are shown as ~~striketrough~~.

Section 2. The Town of Fort Myers Beach Comprehensive Plan Utilities Element is hereby amended to update Data and Analysis and Goals, Objectives, and Policies as described in Exhibit A, attached hereto and incorporated herein by reference.

Section 3. The Town Council does not intend that the provisions of this ordinance be made a part of the Fort Myers Beach Code of Ordinances; regardless, typographical errors that do not affect intent may be corrected with notice to and authorization of the Town Manager without further process.

Section 4. Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive shall apply.

Section 5. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared.

Section 6. This ordinance shall become effective upon adoption by the Town Council.

The foregoing Ordinance was adopted by the Town Council upon a motion by _____ and seconded by _____ and upon being put to a roll call vote, the result was as follows:

Raymond P. Murphy, Mayor	_____
Rexann Hosafros, Vice Mayor	_____
Dan Allers, Council Member	_____
Jim Atterholt, Council Member	_____
Bill Veach, Council Member	_____

ADOPTED this 1st day of March, 2021 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Raymond P. Murphy, Mayor

ATTEST:

Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

John R. Herin, Jr., Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this __ day of _____, 2021.

UTILITIES ELEMENT

INTRODUCTION

The Town of Fort Myers Beach is a retail provider of drinking water but does not provide other direct utility services. Three major utility services are provided by others:

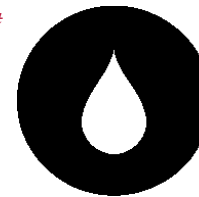
- **Bulk water** is provided by Lee County Utilities, a branch of Lee County government;
- **Sewer service** is provided directly to town residents and businesses by Lee County Utilities; and
- **Solid waste**, with pickup by investor-owned companies operating under a franchise from the Lee County government. Lee County also handles the ultimate disposal of trash from its various contracted trash haulers.

This comprehensive plan examines each of these services and assesses future expansion needs to accommodate growth. This plan also establishes “minimum levels of service” that must be met at all times in order for growth to continue.

Even though some of these services are actually provided by others, the **†Town** must ensure that proper provisions are being made for continued high-quality service into the future. The **†Town** may also wish to play a greater role in utilities in the future, for example by directly franchising its trash hauler rather than being included in one of Lee County’s larger contracts. Other alternatives for the **†Town** are discussed in this element.

PURPOSE OF THIS ELEMENT

The Utilities Element analyzes the availability of public facilities to meet the existing and future needs of the **†Town**. This analysis of potable water, sanitary sewer, and solid waste disposal service is mandated by Florida’s growth management legislation. [Chapter 163.3177 Florida Statutes](#)~~Rule 9J-5.001 of the Florida Administrative Code~~ requires that water, sewer, and solid waste services be provided in accordance with future land use projections, and it identifies a basic framework for inventories of existing infrastructure and services. It also provides the basis for the goals, objectives, and policies to be adopted in this comprehensive plan.



If proper water, sewer, and solid waste facilities are not available, the timing and location of development can be affected, as occurred during sewer moratoriums at Fort Myers Beach in the 1980s. Planning for these services is an integral part of any comprehensive plan.

WATER SUPPLY

Florida Cities Water Company, a private company, provided potable (drinking) water to the Town of Fort Myers Beach and surrounding areas until 2001, when the company was acquired by Lee County Utilities, a branch of Lee County government. Lee County then resold the water distribution system on Estero Island to the Town of Fort Myers Beach.

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UTILITIES ELEMENT

~~AS AMENDED BY ORDINANCE 09-03 [2008-11-12 TEXT]~~

PAGE 8 - 1 / ~~as amended 11-25-2009~~

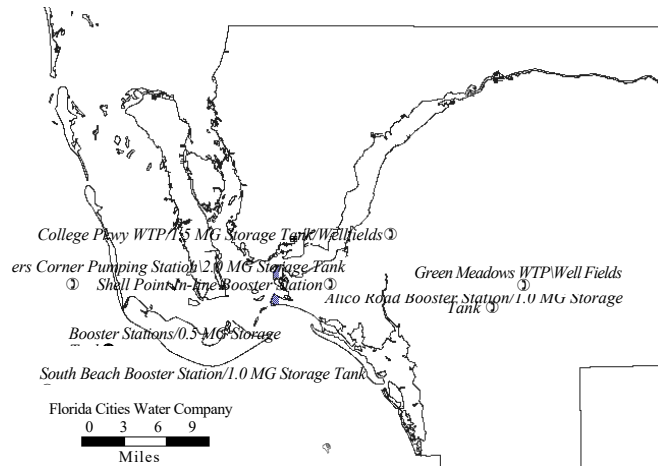


Figure 1. Former Florida Cities' south franchise boundaries & location of facilities

Figure 1 identifies the former Florida Cities' South Fort Myers certificated potable water supply area, which included the Town of Fort Myers Beach and nearby portions of mainland Lee County.

Lee County Utilities in 2001 acquired Florida Cities' two water treatment plants in the South Fort Myers area, which had supplied the following data about their operation. The Green Meadows Water Treatment Plant and College Parkway Treatment Plant, and their accompanying well fields, served this area. These plants had permitted and plant design capacities of 9,000,000 gallons per day (Green Meadows) and 1,500,000 gallons per day (College Parkway). These plants served approximately 16,000 water customers and an estimated population of about 56,000 (at an average of 3½ persons per connection). Land uses served are primarily residential and some commercial. Florida Cities

estimated that 3,000 of these customers and 10,500 of the population were located within the ~~T~~Town's limits. (The number of customers is less than the total number of dwelling units because a majority of dwellings within the ~~T~~Town are multi-family units, which share a water meter and are considered as "one customer.")

Florida Cities had a number of other facilities that served this area. These include:

- South Beach booster station and 1,000,000-gallon ground storage tank;
- North Beach booster station and 500,000-gallon ground storage tank;
- Marina in-line booster station;
- Miners Corner pumping station and 2,000,000-gallon ground storage tank; and
- Alico Road booster station and 1,000,000-gallon ground storage tank.

These facilities are also delineated on Figure 1. Figure 2 displays the potable water lines within the Town of Fort Myers Beach, indicating that potable water service is available throughout the ~~T~~Town.

The average annual daily water demand within the South Fort Myers area averaged 5,757,000 gallons per day in 1997. The peak monthly demand was 7,306,000 gallons per day in 1997; the peak daily demand was 7,781,000 gallons on March 23, 1997.

~~Florida Cities did not have a meter at Matanzas Pass that measured total water consumption in the Town of Fort Myers Beach. In place of this data, a "proportional capacity" can be calculated to estimate the percentage of actual water consumption and of water treatment capacity used by the town, relative to the entire service area on the mainland. This capacity~~

is based on the peak number of customers within each location, compared to the peak month's average daily water demand and the total design capacity of the treatment plant. These figures are shown in Table 8-1. (Proportional capacity figures can be somewhat misleading since demand may be greater in one location one day and less on another day.)

The "level of service" currently being provided can be estimated using various methods. Residential levels of service are expressed here in "gallons per person per day." This calculation uses the peak month's average daily demand, which is then divided by the estimated peak population for the entire service area, yielding a figure of about 130 gallons per person per day, as shown in Table 8-2. (Note that this calculation does not apportion water consumption to commercial or industrial uses.) This computation is based on the entire service area rather than just the town because the actual peak population of the town greatly exceeds the population estimates used by Florida Cities.

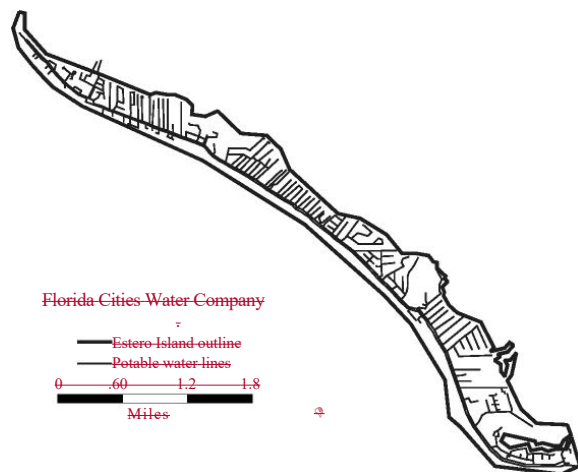


Figure 2. Potable water lines on Estero Island

Table 8-1 — Proportionate Capacity of Potable Water Treatment Facilities, 1995/96

	Town of Fort Myers Beach	Remainder of Lee County certificated area
Customers/ Water Consumption		
Approximate number of customers	3,000	13,000
Estimated peak population served	10,500	45,500
Estimated share of consumption using peak month water demand (gpd)	1,369,875	5,936,125
Estimated share of total plant design capacity (gpd)	1,968,750	8,531,250

Source: Population and total gpd figures from Florida Cities Water Company

**Table 8-2
Current Levels of Service for Potable Water**

Peak Month Average Daily Water Demand (gpd):	Estimated Peak Population Served:	Gallons Per Person Per Day:
7,306,000	56,000	130.46

Existing and Projected Water Facility Needs

Florida Cities used fixed gallon-per-day rates when designing its facilities. Single-family dwelling units are assumed to use up to 300 gallons per day, which constitutes one equivalent residential connection (ERC), and 240 gallons per day for multifamily units. Those standards have also been established in the Lee County Comprehensive Plan which has jurisdiction until the Town's own plan is adopted. Lee County also established minimum standards for mobile homes and recreational vehicles at 187.5 and 150 gallons per day respectively. The state has established a



Figure 2, Potable water lines on Estero Island

minimum water pressure standard of 20 pounds per square inch. An average pressure of 55 to 60 pound per square inch is maintained throughout the Fort Myers Beach distribution system.

For comprehensive planning purposes, the Town of Fort Myers Beach need not adopt these same standards. However, it would be best to use a standard based on dwelling units rather than people, since new housing is approved one dwelling unit at a time. By further defining this standard on an “ERC” basis, it can also be applied to new commercial development, which at Fort Myers Beach usually does not depend primarily on island residents for its customers. A simple and uniform standard would be 260 gallons per ERC (based on 130 gallons per person per day, times 2 people per typical unit). Since no further mobile home or recreational vehicle developments are expected, separate standards are not needed for them.

The 1990 U.S. Census reported 7,420 dwelling units within the town’s limits in April of that year. An additional 472 units were later constructed for a 1996 total of 7,710. As noted in the Future Land Use Element, housing units ~~are~~ were forecasted to increase to 8,738 at buildout before the year 2020, but was reached in 2018. ~~An additional 175 dwelling units built after 2008 are forecasted to require an additional 45,500 gallons per day of potable water. Table 8-3 summarizes these forecasts. Since buildout has been reached additional demands for water are negligible to nonexistent. In 2016 Fort Myers Beach issued a Rate Study Report that forecasted Customers and Demand through 2026. Table 8.1 summarizes the study’s report with the projected number of accounts and water usage that Fort Myers Beach has and will have through the year 2026. These additional demands are a minute portion (0.1%) of the supply increases being planned by Lee County Utilities by 2030 (source: *Lee County’s Water Supply Facilities Work Plan*, as updated in July 2008/January 2016).~~

**Table 8-3 — Forecasted Water Demand
for the Town of Fort Myers Beach**

<i>Year</i>	<i>Permanent Peak-Season Population</i>	<i>Population</i>	<i>Total Number of Dwelling Units</i>	<i>Total Daily Water Demand (at 260g/DU)</i>	<i>Forecasted Number of New Dwelling Units after 2008</i>	<i>Additional Forecasted Water Demand after 2008</i>
1996	6,039	15,680	7,710	2,004,600	—	—
2003	6,792	17,635	8,157	2,120,820	—	—
2008	7,100	18,435	8,527	2,217,020	—	—
2013	7,240	18,800	8,696	2,260,960	140	36,400
2018	7,275	18,890	8,738	2,271,880	175	45,500
2023	7,275	18,890	8,738	2,271,880	175	45,500

Source: See Future Land Use Element and Evaluation/Appraisal Report (2007) for details on forecasts

Table 8.1 Forecasted Water Demand for the Town of Fort Myers Beach

<u>Year</u>	<u>Accounts*</u>	<u>Meter Equivalents</u>	<u>Units</u>	<u>Total Water Demand (MGD)</u>	<u>Additional Daily Forecasted Water Demand after 2018 (MGD)</u>	<u>Mo. Use per Unit (MG)</u>
2015	3,200	3,901	9,467	1.343	-	4.31
2016	3,224	3,925	9,491	1.348	-	4.32
2017	3,248	3,949	9,515	1.352	-	4.32
2018	3,273	3,974	9,540	1.356	-	4.32
2019	3,298	3,999	9,565	1.360	0.004	4.32
2020	3,323	4,024	9,590	1.364	0.008	4.33
2021	3,348	4,049	9,615	1.368	0.012	4.33
2022	3,374	4,075	9,641	1.372	0.016	4.33
2023	3,400	4,101	9,667	1.376	0.020	4.33
2024	3,426	4,127	9,693	1.380	0.025	4.33
2025	3,452	4,153	9,719	1.384	0.029	4.33
2026	3,479	4,180	9,746	1.389	0.033	4.33
2027	3,506	4,207	9,773	1.394	0.038	4.33
2028	3,533	4,234	9,800	1.399	0.043	4.33
2029	3,560	4,261	9,827	1.404	0.048	4.33

**The Town of Fort Myers Beach has reached build out with a permanent population of 7,275 and a peak seasonal population of 25,000. Minimal population growth is expected. Population growth is presented in the form of water use accounts, increasing by less than 30 accounts each year.*

Source: See Fort Myers Beach Rate Study Report 2016 for details on forecasts.

Commented [HM1]: New Forecast Table

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| UTILITIES ELEMENT

~~AS AMENDED BY ORDINANCE 09-03 (2008-11-12-TEXT)~~

~~PAGE 8-4 / as amended 11-25-2009~~

Bulk Water Agreement with Lee County

In August 2001, the Town of Fort Myers Beach entered into a binding contract with Lee County concerning the source of potable water that would be supplied to customers within ~~town~~ Town boundaries.

The county agreed to be fully responsible for providing a bulk supply of water to the ~~town~~Town, which the ~~town~~Town would then resell to its retail customers. The county confirmed that its water production and treatment facilities met all state and federal standards (and would meet all future standards), and that the county has and would continue to have the ability to provide sufficient water to the ~~town~~Town for the duration of the agreement (a period of 25 years).

The ~~town~~Town agreed not to purchase water from any other source, not to resell this bulk water to any other wholesale customer, and not to construct its own water production and/or treatment facilities.

This contract did not quantify future water demand within the ~~town~~Town, inasmuch as the ~~town~~Town was nearing buildout and little additional demand was anticipated. Continued planning by Lee County Utilities merely assumes that water customers within the ~~town~~Town will require water at the same rates and with the same seasonal patterns as other nearby county water customers. This same approach is reflected in Lee County's ~~July 2008~~January 2016 "Water Supply Facilities Work Plan," which is being incorporated into this plan by Policy 8-A-4.

Traditional and Alternative Water Supply Sources

The South Florida Water Management District updated its Lower West Coast Water Supply Plan in ~~July 2006~~December 2017. The focus of this update was the development of "alternative" water sources, such as wells drilled into deeper aquifers, desalination, re-use of wastewater for irrigation, water conservation measures, and "aquifer storage and recovery" (ASR) where excess water during the rainy season is stored underground for later recovery during the dry season.

Lee County Utilities is committed to developing alternative water sources, including:

- ~~Constructing a Reclaimed Water ASR system in West Lee County to provide seasonal storage of reclaimed water produced at the Fort Myers Beach WWTP and/or the Fiesta Village WWTP. Tapping the Lower Hawthorne aquifer at four wellfields.~~
- ~~Improve reuse systems to enhance delivery and increase utilization. Expanding ASR wells from the two current wellfields to two additional wellfields, and expanding its use further in the future to include reclaimed water.~~
- Upgrade the reuse main from Fiesta Village WWTP to Fort Myers Beach Reuse System

Essentially all future water supply development by Lee County Utilities will use alternative water supply sources, although traditional sources such as shallow wells will continue in use and will be spread out onto larger wellfields to reduce adverse impacts on wetlands.

Work Plan for Constructing New Water Supply Facilities

In ~~July 2008~~January 2016, a *Water Supply Facilities Work Plan* was published jointly by Lee County Utilities and Lee County Planning. This plan was first mandated state law in 2002 to coordinate water supply planning between local, regional, and state agencies. The objectives were to:

- Identify population and water demands for a planning period from ~~2007-2017~~ to 2030 with focus on the planning period from ~~2007-2017~~ to ~~2017-2027~~.
- Identify existing and planned potable and reclaimed water facilities that will be utilized to meet the projected demand to ~~2017-2027~~.
- Identify sources of raw water required to meet the projected demand.
- Identify planned potable water supply and reclaimed water projects required to meet projected demands and specify when they must be developed and how they will be funded.

- Demonstrate that the proposed water supply development projects are feasible with respect to facility capacity and consumptive use permitting.
- Describe Lee County Utilities' efforts in developing alternative water supplies.

Table ~~6-5~~ of the *Lee Plan 2019 Codification* (last updated in May 2019) is a document used to supplement the *Water Supply Facilities Work Plan*. This table ~~Water Supply Facilities Work Plan~~ (last updated in July 2008) presents a ten-year expansion program for Lee County Utilities (see Policy 8-A-4). Existing and proposed uses of traditional and alternative water supply sources are detailed there in conformance with SFWMD's ~~2005-2006~~2017 Lower West Coast Water Supply Plan Update (approved on ~~July 12, 2006~~December 2017).

Lee County ~~has will~~ adopted Table ~~6-5~~ into its Comprehensive Plan potable water sub-element exactly as reprinted below. At present none of these improvements are needed to meet the potable water level of service at Fort Myers Beach; if any are needed during any upcoming five-year period, they will need to be included in the five-year schedule of capital improvements (Table 11-7) in the Capital Improvements Element.

TABLE 6
CAPITAL IMPROVEMENT PROJECTS
10 YEAR WATER SUPPLY DEVELOPMENT PROJECTS

CIP PROJECT #	LCU PROJECT NAME/ LWCWSP Project Name	DESCRIPTION	PROJECT STATUS	TOTAL PROJECT COST	ESTIMATED COMPLETION DATE	FUNDING SOURCE
7097	Corkscrew WTP Wellfield- Aliso Road / Corkscrew Lower Hawthorne Wells	Design and construct a 5.0 mgd wellfield capacity and raw water transmission system	The total wellfield expansion project is 30% complete and expected to be completed by November 2008. The alternative water supply portion of this project is 70% complete and expected to be complete in June 2009.	\$15,896,910.00	November 2008	Grant/Enterprise Fund
7187	Green Meadows WTP Plant Expansion / Green Meadows Lower Hawthorne Wells	Expand Green Meadows WTP capacity, construct additional wells and transmission lines to support plant expansion	Completed an Expansion Process and Regulatory Evaluation. Currently constructing two test/production wells in the Lower Hawthorne aquifer	\$37,000,000.00	2014	Grant / Debt Finance / Enterprise Fund
7602	North Lee County R.O. Plant Wellfield Expansion / Not included in the LWCWSP	Well installation of 2 Lower Hawthorne wells to reduce upconing and premature water quality decline	Surveying for well sites and wellfield design expected to be underway by May 2008. Expected completion date is December 2008.	\$1,650,000.00	December 08	Grant/Enterprise Fund
7028	North Lee County WTP Expansion to 10 MGD / North Lee County Lower Hawthorne Wellfield and Plant Expansion	Expand the treatment capacity of the existing R.O. plant from 5.0 MGD to 10.0 MGD. Includes construction of the well field expansion	Surveying for well sites and wellfield design expected to be underway by May 2008.	\$16,250,000.00	2010	Grant/Enterprise Fund
7156	Pinewoods WTP DRW & Wellfield Expansion / Pinewoods WTP Expansion Phase II	Construct a deep injection well for disposal of brine and construct at least 4 Lower Hawthorne wells to provide raw water for R.O. plant	Project substantially complete	\$15,924,800.00	January 2007	Grant/Enterprise Fund
7110	ASR Wells @ No. Reservoir & Oiga WTP	Complete construction of 30 MGD storage additional ASR wells	Project on hold due to Arsenic issues	\$2,435,552.00	Unknown	Grant/Enterprise Fund
7188	Green Meadows WTP Raw Water Line Improvements	Upsize/Replace raw watermain to increase wellfield efficiency	scheduled for construction in 2008	\$2,300,000.00	December 2008	Enterprise Fund

ALTERNATIVE WATER RESOURCE PROJECTS

CIP PROJECT #	LCU PROJECT NAME/ LWCWSP Project Name	DESCRIPTION	PROJECT STATUS	TOTAL PROJECT COST	ESTIMATED COMPLETION DATE	FUNDING SOURCE
7280	Three Oaks WWTP Expansion / Three Oaks Reclaimed Water Transmission System	Expand the Three Oaks WWTP to 6.0 MGD	Reuse pumpstation portion of this CIP project for AWS Project, Project substantially complete	\$27,452,896.00	January 2007	Grant/Enterprise Fund
7279	Three Oaks Parkway Widespread Sewer / Three Oaks Play	Relocate and Upgrade Existing water, sewer and reuse lines along Three Oaks Parkway	Reuse Pipeline portion of this CIP for AWS Project, Project substantially complete	\$6,939,250.00	January 2007	Grant/Enterprise Fund
7287	FMB WWTP Elevated Reuse Storage Tank / FMB Reclaimed Elevated Storage Tank	Construct an elevated reuse storage tank in the Fort Myers Beach WWTP Reuse system	A low cost interim alternative has delayed the need for this project, now scheduled for 2011	\$4,000,000.00	2011	Grant/Enterprise Fund
7284	Reclaimed Water ASR / Health Park Reclaimed Water ASR Phase I and Phase II	Pilot and construction of a Reclaimed Water ASR for Wastewater Treatment Facilities	Issues related to Arsenic and ASR have delayed this project to 2011	\$600,000.00	2011	Grant/Enterprise Fund
Future	Festa Village WWTP Reuse ASR and reject Storage	Study, design, and construct reuse ASR Well and convert existing GST to reject tank	scheduled for 2011	\$1,500,000.00	2012	Grant/Enterprise Fund
7292	FGCU/Micromar Lakes Reuse Extension / FGCU/Micromar Lakes Reclaimed Water Main	Construct 900 L.F. of 12" reuse main from 3 Oaks WWTP to FGCU	design underway	\$126,000.00	2009	Grant/Enterprise Fund
7217	Pinelone Reuse System Improvements	Install reuse lines to serve to serve FMB reuse service area	Reuse lines will be constructed as need arises	\$1,307,503.00	2008-2011	Enterprise Fund
7240	Pine Island WWTP Reuse System	Expand effluent transmission system to provide irrigation for future customers	Reuse lines will be constructed as need arises	\$1,082,806.00	2008	Enterprise Fund
7305	Three Oaks Reuse Transmission Lines	Upsize/expand 3 Oaks reuse transmission lines to handle increased flows to various sites	Reuse lines will be constructed as need arises	\$780,000.00	2008	Enterprise Fund
7111	Automated Flushing Devices	Install automated flushing devices on existing dead-end water mains	on-going	\$160,865.00	2008-2010	Enterprise Fund

TABLE 5
10 Year Water Supply Development Projects
APPROVED LEE COUNTY CIP FY 18/19

WATER SUPPLY DEVELOPMENT PROJECTS					
CIP #	Lee County Project Name / LWCWSP Project Name	Description	Project Status	Total CIP Budget	Estimated Completion Date
207187	Green Meadows WTP Expansion / Green Meadows Water Treatment Facility RO Expansion	Expansion of the Green Meadows WTP from 9.0 MGD to 14.0 MGD and Expansion of the Green Meadows Wellfield Utilizing Lower Hawthorn Wells	Under Construction	\$89,380,335	2019
200633	North Lee County WTP Expansion to 15 MGD	Expand the existing North Lee County Treatment Plant from 10 MGD to 15 MGD treatment capacity. The expansion will utilize a reverse osmosis treatment system.	Planning	\$36,572,000	2024
207619	North Lee County Wellfield Expansion to 15 MGD	Design, permitting, land/easement acquisition and construction of six additional Lower Hawthorn Wells to provide the necessary raw water source for the North Lee County Water Treatment Plant expansion to 15 MGD	Under Construction	\$14,477,763	2023
ALTERNATIVE WATER SUPPLY PROJECTS					
207284	Reclaimed Water ASR / West ASR Wells for Reclaimed Water Storage	Construct a Reclaimed Water ASR system in West Lee County to provide seasonal storage of reclaimed water produced at the Fort Myers Beach WWTP and / or the Fiesta Village WWTP	Design & Permitting	\$6,524,723	2025
207455	Reuse System & Site Improvements	Improvements to reuse system to enhance delivery and increase utilization	Planning	\$6,269,563	2023
200616	Fiesta Village Reuse Main Upgrade	Upgrade the reuse main from Fiesta Village WWTP to Fort Myers Beach Reuse System	Under Construction	\$5,586,000	2020

Water Conservation

With an ever-increasing population and a limited potable water supply, water conservation programs become increasingly important. Citizens of Fort Myer Beach must do their part to conserve this resource. The South Florida Water Management District developed a water conservation program in 1990 which identified six measures specifically for urban areas. These measures identified in the District Water Management Plan (April 1995) include:

- limiting lawn irrigation to the hours between 5:00 P.M. and 9:00 P.M.;
- requiring the adoption of xeriscape landscape ordinances;
- requiring the installation of ultra-low-volume plumbing fixtures in all new construction;
- requiring the adoption of conservation-oriented rate structure by utilities;
- requiring the implementation of leak detection programs by utilities with unaccounted water losses greater than 10%; and
- requiring implementation of water conservation public education programs.

Active water conservation activities as of 2008-2016 are summarized here (also see Policy 8-A-5):

- *Permanent Irrigation Ordinance:* Lee County has imposed an ordinance restricting landscape irrigation to the hours of 5:00 PM to 9:00 AM two days per week (Ordinance No. 05-10). This ordinance is more restrictive than rules of the South Florida Water Management District.
- *Rain Sensors Required:* The Land Development Code requires rain sensors on new irrigation systems (§ 10-154(7)m).
- *Xeriscape-Florida Friendly Landscaping Requirements:* The Land Development Code requires xeriscape-Florida friendly principles for all required landscaping (§ 10-421(b)). Xeriscape principles conserve water

through drought-tolerant landscaping, the use of appropriate plant material, mulching, and the reduction of turf areas.

- *Leak Detection Program:* Lee County Utilities has an unaccounted-for water and leak detection program. The latest available data indicate that “unaccounted for” water losses are only 6.22% (calendar year 2006)-less than 1% per month (2018 calendar year)
- *Water Conservation Education:* Lee County TV airs daily information on water conservation, addressing many ways that water customers can conserve. The Lee County Utilities web site contains several pages devoted to water conservation (start at www.lee-county.com/utilities/). The annual Consumer Confidence Report directs customers to the web site for conservation information. Water conservation posters and pamphlets are placed in schools, libraries, and county offices. About 20 water conservation presentations are made to third-grade students each year, and 4-5 water conservation presentations are made to civic organization throughout Lee County.
- *Ultra-Low Volume Plumbing in New Construction Ordinance:* Table 901.1.1 titled, “Maximum Allowable Water Usage for Plumbing Fixtures” establishes maximum flow rates for plumbing fixtures.
- *Water Conservation Based Rate Structure:* Town of Fort Myers Beach has a conservation-based water rate structure, which includes an increasing rate with increasing use, as a means of reducing demand.
- *Meter Replacement Program:* Town of Fort Myers Beach has replaced all water meters in its water distribution system with remote read meters (AMI).

As the Town of Fort Myers Beach develops and maintains its public facilities, water conservation measures such as these should be followed, both to reduce consumption and to lessen costs for water supply. The town should take the lead by example (for instance by installing ultra-low volume plumbing fixtures in new government facilities) and also by adopting

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~~ordinances requiring sound water conservation practices. The town should consider implementing a strong “conservation rate structure” where large water users pay a higher rate per gallon~~

~~than is charged to frugal users. This approach could discourage excessive lawn irrigation while maintaining low rates for frugal users.~~

UTILITIES ELEMENT

~~*AS AMENDED BY ORDINANCE 09-03 (2008-11/12-TEXT)*~~

~~*PAGE 8 – 7 / as amended 11-25-2009*~~

SEWER SERVICE

Lee County Utilities, a branch of Lee County government, provides sewer (wastewater) service to the Town of Fort Myers Beach. One of its service areas, known as the Fort Myers Beach/Iona-McGregor Service Area, includes Estero Island, San Carlos Island, and the Iona-McGregor district. This service is known as “sanitary sewer service” to distinguish it from “storm sewers” that collect excess rainwater.

Wastewater collected within the service area is transferred to the Fort Myers Beach Wastewater Treatment Plant where it is treated. A portion of the resulting effluent (after thorough treatment) is redistributed for irrigation purposes. Sewer bills are based on water usage, with charges billed by Florida Cities and then remitted to Lee County Utilities.

Figure 3 shows the boundaries of the Fort Myers Beach/Iona-McGregor sewer service area and the location of the wastewater treatment plant. Figure 4 shows the sanitary sewer lines within

the Town of Fort Myers Beach.

The original design capacity of the wastewater treatment plant in 1978 was 2,700,000 gallons per day. In 1989 it was expanded to its current design and permitted capacity of 6,000,000 gallons per day. As of September 1995, the plant served 7,015 residential and commercial customers. Land uses served are primarily residential (6,519 customers) with some commercial (496 customers).

The permanent and peak season populations within its service area are estimated to be 26,138 and 39,207 persons respectively. Lee County Utilities does not distinguish between the number of customers located within the separate districts of the service area. There are no legal on-site treatment and disposal systems remaining (package treatment plants or septic systems) on Estero Island, and the vast majority if not all structures are connected to the central sewer system in accordance with a mandatory connection policy. Therefore, the number of sanitary sewer customers within the Town of Fort Myers Beach can

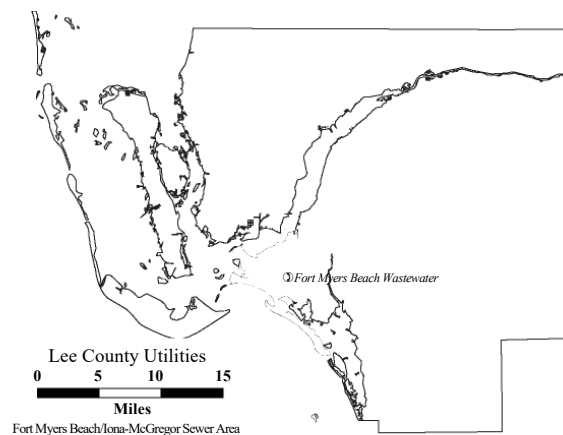


Figure 3. Sewer service area and wastewater plant

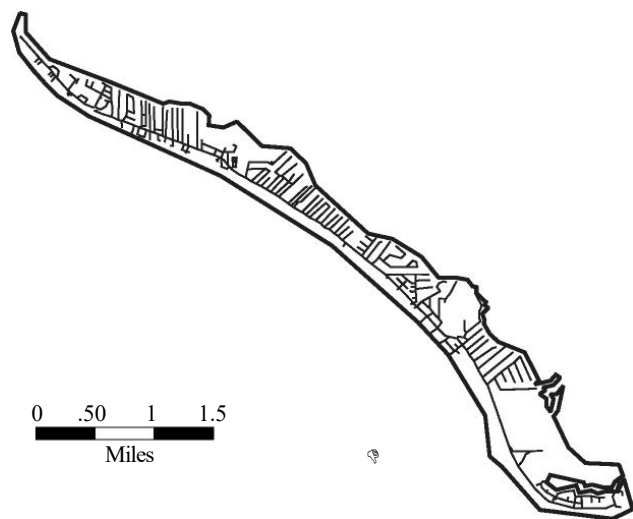


Figure 4, Sanitary sewer lines on Estero Island

be assumed to be the same 3,000 potable water customers reported by Florida Cities.

The average annual daily sewer demand within the South Fort Myers franchise area was 2,840,000 gallons per day between October 1994 and September 1995. The peak monthly demand was 3,436,000 gallons per day in February 1995. This type of data is reported every month by all utilities to the Florida Department of Environmental Protection.

As with potable water supply, a proportional capacity can be calculated to reflect the town's share of the larger service area of Lee County Utilities. This capacity identifies the percentage of actual wastewater flows and of wastewater treatment plant capacity used by the town and by the remainder of the service area. It is based on the peak number of customers within each

location, compared to the peak month's average daily sewer demand and the total capacity of the treatment plant. (As with potable water, the proportional capacity may be somewhat misleading since demand may be greater in one location one day and less on another day.) Table 8-4 reports the proportional capacity available to Fort Myers Beach.

Table 8-4 — Proportionate Capacity of Wastewater Treatment Facilities, 1995/96

<i>Customers/ Sewage Plant Consumption</i>	<i>Town of Fort Myers Beach</i>	<i>Remainder of Lee County service area</i>
Approximate number of customers	3,000	4,015
Estimated peak population served		
	1,469,423	1,966,577
	10,500	28,707
Estimated share of consumption using peak month sewer flows (gpd)		
Estimated share of total plant		
<u>design capacity (gpd)</u>	2,565,930	3,434,070

Source: Population from Florida Cities; gpd figures from Lee County Utilities

In the same manner as for potable water, the level of service *currently being provided* for sanitary sewer is expressed here in "gallons per person per day." This calculation uses the peak month's average daily flow, which is then divided by the estimated peak population for the entire Lee County Utilities sewer service area, yielding a figure of about 87½ gallons per person per day, as shown in Table 8-5. This is substantially less than the 130 gallons of *water* used per day, reflecting water consumption such as lawn irrigation that never flows into the sewer system. (Note that this calculation does not apportion sewer usage to commercial or industrial uses.)

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Table 8-5
Current Levels of Service for Sewer Service

<i>Peak Month Average Daily Sewage Flows (gpd):</i>	<i>Estimated Peak Population Served:</i>	<i>Gallons Per Person Per Day:</i>
3,436,000	39,207	87.64

Existing and Forecasted Sewer Service Needs

Lee County Utilities uses minimum level of service standards which have been established within the Lee County Comprehensive Plan. Those standards state that county sewage treatment plants will have the capacity to treat and dispose of 200 gallons per day per “Equivalent Residential Connection” (ERC) during the peak month. For mobile homes, the minimum level of service standard is 150 gallons per day and for recreational vehicles it is 120 gallons per day.

The town’s new comprehensive plan should use sewer standards comparable to those used for potable water, based in the same manner on observed usage rates adjusted “per ERC” rather than per person. A simple and uniform standard would be 175 gallons per day per ERC (based on $87\frac{1}{2}$ gallons per person per day, times 2 people per typical unit). Since no further mobile home or recreational vehicle developments are expected, separate standards are not needed for them.

Table 8-6 displays the forecasted sanitary sewer demand for the Town of Fort Myers Beach for the two planning periods of this comprehensive plan. Assuming a growth of 411 dwelling units by the end of the first five-year planning timeframe in 2003, additional forecasted sanitary sewerage demand will be approximately 71,925 gallons per day using the 175-gallons-per-day standard. At buildout, an additional 617 dwelling units are forecasted to require an additional 107,975 gallons per day of

sanitary sewerage treatment capacity. These additional demands are only a small portion of the available capacity of the wastewater treatment plant (6,000,000 gallons available minus 3,436,000 gallons used during the busiest period).

Table 8-6 — Forecasted Sanitary Sewer Demand for the Town of Fort Myers Beach

<i>Year</i>	<i>Total Number of Dwelling Units</i>	<i>Forecasted Number of New Dwelling Units</i>	<i>Additional Forecasted Sewer Demand</i>
1996	7,710 (based on actual building permits)		
2003 (first planning timeframe)	8,121	(forecasted)	411
2020 (second planning timeframe)	71,925 gpd		
	8,738 (forecasted)	617	107,975 gpd

Source: See Future Land Use Element for permit forecasts

Performance of Existing Facilities

The Fort Myers Beach Wastewater Treatment Plant has been in operation since 1979. It is in good condition, with sufficient treatment capacity but inadequate effluent disposal capacity during extended rainy periods. The utility provides monthly monitoring reports to the Department of Environmental Protection which regulates the operations of the treatment plant. In the past, the plant has made improper discharges into a drainage ditch that is connected to Estero Bay. The Department of Environmental Protection found that this action violated state requirements, and Lee County was required to halt the illegal discharges. A \$20,000 fine was levied, and Lee County Utilities was forced to increase the effluent disposal capacity during peak periods.

Expansion Needs

Lee County Utilities reported no major problems specific to the ~~town~~-Town regarding facility replacement, expansion, or siting of new facilities. The treatment plant was recently upgraded with the addition of two chlorine contact tanks, which increase disinfection retention time. Private developers are installing a new sewage force main across Big Carlos Pass in order to replace a failing on-site sewer plant at the Grandview Resort and to serve two new buildings being constructed nearby on Black Island.

Lee County is installing a \$2.7 million deep-well injection system to increase disposal capacity during periods when demand for irrigation water is insufficient. Deep-well injection of sewage effluent appears to be environmentally sound but it is very expensive and is a waste of valuable irrigation water; it should be used only to avoid overflows into surface waters.

The Town of Fort Myers Beach contains many of the major users of this sewer service and it lies directly downstream of any effluent discharges into tidal waters. Both of these roles justify the town government's involvement in policy matters concerning sewer service. Although the ~~town~~-Town does not directly franchise or control this service, its long-range goal should be a significant role in its operation.

SOLID WASTE

The Lee County government uses a public-private partnership for collection and disposal of solid wastes throughout the county. All of the household garbage that is collected is taken by private contractors to the Lee County Resource Recovery Plant. There it is burned to reduce its volume and produce electricity; the ash residue is then transported to the county landfill. This ash product takes up 90% less room by volume in the landfill than

the unburned garbage would, greatly extending the life of the landfill.

Solid Waste Collection at Fort Myers Beach

Kimmins Recycling, Inc. is the primary solid waste collector for the Town of Fort Myers Beach. Its franchised service area includes the ~~town~~-Town as well as other locations within Lee County. Figure 5 delineates Kimmins Recycling, Inc.'s entire service area.

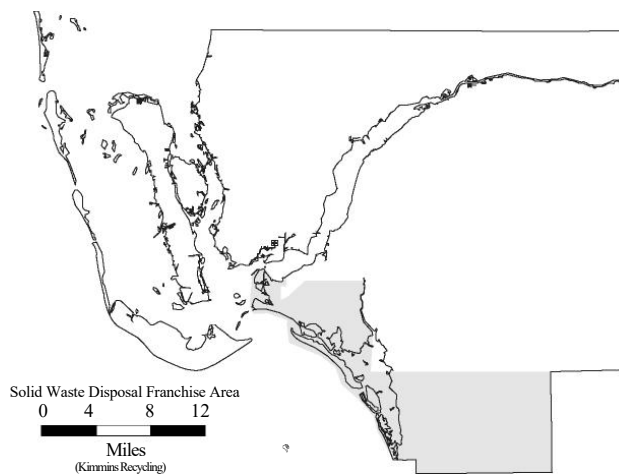


Figure 5, Solid waste disposal franchise area

Prior to the expiration of Lee County's existing contract with Kimmins, the ~~town~~-Town should research the alternative of seeking its own competitive bids from solid waste haulers rather than staying with the county's larger contract. The ~~town~~-Town may be able to obtain service better suited to its own needs, or may be able to reduce costs by eliminating superfluous county contracting requirements or using a smaller hauling company. Conversely, separate contracting might increase costs due to losses of

Ord 20-18, Exhibit A

economies of scale. Nonetheless, the alternative of separate competitive bids should be explored prior to expiration of the existing contract.

Lee County has adopted a minimum level of service standard for solid waste disposal of 7 pounds per person per day for proper collection, disposal, and management. The Town of Fort Myers Beach can simply adopt that same standard.

Landfill Operations

The Town of Fort Myers Beach does not need to own or operate a landfill because it has full use of Lee County's modern waste disposal facilities. Lee County's landfill is the Gulf Coast Landfill located on SR 82 south of Colonial Blvd., operated by Waste Management, Inc. of Florida. The remaining lifespan of the Gulf Coast Landfill filled to its permitted height of 100 feet above sea level, is estimated to be the years 2000 to 2004, assuming renewal of its DEP operating permit.

The Lee/Hendry Landfill is a Lee County-owned landfill that is currently under construction. Phase I is scheduled for completion in 1997. The estimated ultimate capacity of the Lee/Hendry Landfill to receive solid waste is 40 years, assuming continued renewal of necessary permits and construction of additional phases at the landfill. However, no additional phases are currently planned.

Because of the high water table found throughout southwest Florida, landfills are created by depositing layers of waste and other fill material *on top of* the existing ground surface. In Lee County's case, ash from the Resource Recovery Plant is now the primary waste product which is deposited. The ash accumulates over time and is formed into a mound. Upon reaching a designated height, the landfilled waste receives a final cover of soil and vegetation. Landfill closures are governed by Rule 62701 of the *Florida Administrative Code*.

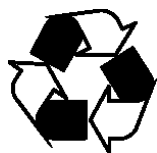
Resource Recovery Plant

The Resource Recovery Plant is also known as a waste-to-energy plant because it produces electricity from burning trash. The plant receives, on average, 900 TPD (330,000 tons per year), and produces up to 39.7 megawatts of power, which is enough electricity for about 25,000 homes (more than all of the homes in Bonita Springs and Lehigh Acres combined). The resource recovery plant is forecasted to reach its current capacity of 1,200 TPD within the next 10 years. Additional disposal capacity is available for approximately 100 TPD of construction debris at the Gulf Coast Landfill.

The resource recovery plant has a forecasted operating lifespan of 30 years, with sufficient capacity to serve all of Lee County until 2027. The projection of plant life is based on engineering design, operational techniques, forecasted population, and average per capita solid waste generation.

The resource recovery plant is equipped with extensive air pollution control systems. It is the first operational plant in the United States to be built with a permanent activated carbon injection system for controlling mercury emissions. The environmental control systems were designed with the new, more stringent *Clean Air Act* standards in mind, and emissions have met the proposed standards without any modification. It was the only waste-to-energy facility in the world to win the *Power Engineering* and *Power Engineering International* magazine's 1995 Project of the Year Award.

Recycling Program



The State of Florida mandated a thirty-percent reduction in municipal solid waste deposited at landfills beginning in 1988. Fifteen percent of this reduction was to come from glass, aluminum, steel cans, plastic, and newspaper recycling. The other fifteen percent would come from the recycling of yard trash, appliances, construction and debris material, and automobile tires. The Town of Fort Myers Beach needs to continue in the successful county-sponsored recycling program.

This voluntary program consists primarily of the residential curbside collection of recyclables utilizing 90-gallon carts and other suitable methods. The ~~town's~~ Town's franchised solid waste hauler, Kimmins Recycling, Inc., provides curbside collection of paper, aluminum, metal, plastic, and glass products. The hauler sorts the recyclables at the curb each week and then transports the recyclables to markets located in Fort Myers. Lee County's current recycling rate is 33%, which exceeds state recycling requirements. The ~~town~~ Town should strongly encourage all of its residents, visitors, and businesses to participate to the greatest extent possible in the existing voluntary recycling program.

Residential wastes are collected using a 1-1-1 system with once-per-week garbage, recycling, and yard waste collection. Commercial collection is mandatory for businesses and institutions. Commercial wastes are primarily generated by retail stores, restaurants, and resorts.

Fees

Residents of the Town of Fort Myers Beach pay for garbage collection, recycling, and disposal through an annual assessment (garbage bill) from the Lee County Tax Collector. Other residents (of condominiums and mobile home parks) and

businesses pay their hauling company directly for collection and part of the disposal expenses.

The fixed operating expenses of the county-owned solid waste disposal facilities are paid to the Lee County Tax Collector as a special assessment (separate bill). The fixed disposal facility expenses are divided equally among all Lee County areas, and each customer pays their share. Figure 6 shows the proportion of the solid waste fee used for different purposes.

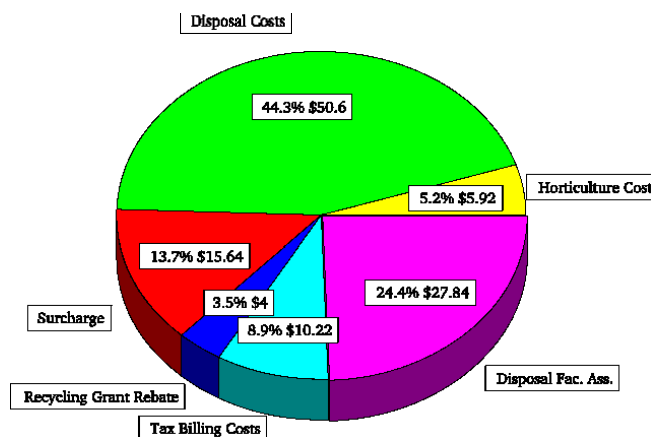


Figure 6. Annual residential solid waste rates FY 1996-97
(source, Lee County Solid Waste Rates: FY 96/97, 1996)

Residents of the ~~town~~ Town received their first solid waste assessment in 1995. Property taxes were reduced when the assessment was added. Table 8-7 shows the unincorporated Lee County solid waste rate summary for fiscal year 1996-97. This table details the fees, recycling rebates, and collection fees for unincorporated

Ord 20-18, Exhibit A

UTILITIES ELEMENT

JANUARY 1, 1999

PAGE 8 – 11

Lee County. Table 8-8 compares household disposal costs from property taxes versus the new special assessment. The assessment costs less than a property tax-based assessment under the assumptions included in this table.

**Table 8-7 — Unincorporated Lee County
Solid Waste Rate Summary FY 96-97**

<i>Solid Waste Rate</i>	<i>FY 96-97</i>	<i>% Increment</i>
Disposal Tipping Fee	\$49.61/Ton \$50.60/HH	4%
Surcharges	\$12.90/Ton \$15.74/HH	(30%)
Recycling Grant Rebate	\$4.00/HH	NA
Residential Collection Fees	\$73.91 - 91.05/HH	3%
Billing Costs (Includes Late Payment Allowance)	\$10.22/HH	110%
Average Residential Bills	\$189.67/HH	(5%)

HH = household

Source: "Lee County Solid Waste Rates, Fiscal Year 96/97," 1996

Hazardous Waste

The Lee County Department of Solid Waste sponsors several "household hazardous waste collection days" throughout the year. Many of these products can be harmful or fatal if swallowed. These are items such as fluorescent tubes, paint, paint thinner, drain cleaners, automobile oil, thermostats, polishes, strippers, car/boat batteries, pool chemicals, pesticides, float switches, or anything marked corrosive, toxic, flammable, or reactive. The ~~town~~-Town may be able to sponsor an occasional pickup day right on Estero Island for these products.

Existing and Forecasted Solid Waste Needs

There are no major problems of development or physical deterioration which will adversely affect solid waste collection within the ~~town~~-Town over the next two planning timeframes. The waste-to-energy facility is new and has very modern equipment, and the new landfill for the safe disposal of the ash has capacity until 2027.

Lee County has implemented a successful recycling program and has plans to expand it. By 1991, the county's 115,000 single-family homes were involved in the recycling program. Currently, all single-family homes as well as all multi-family complexes (apartments, condominiums, and mobile home parks) have the opportunity to participate in the recycling program. However, motels are not included. In 1995, 33% of the county's total waste stream was recycled. In comparison, only 5% was recycled in 1989. The county is working toward a voluntary goal of 50% by the year 2000.

The quantity of solid waste will grow with the ~~town's~~-Town's population. Table 8-9 and Figure 7 display population and solid waste forecasts through the year 2020. It is clear that the ~~town's~~-Town's proportionate capacity of the Resource Recovery Plan and new landfill are minuscule, and that adequate service will be available for both planning timeframes.

These forecasts include solid wastes that will be recovered and recycled. In order to more accurately project the life expectancy of the waste-to-energy facility, recycled wastes must be accounted for because they will not be incinerated. In 1995, the Town of Fort Myers Beach achieved an adjusted recycling rate of 33 percent, based on Lee county's results. The adjusted recycling rate places goals on specified categories of recyclables; therefore, actual recyclable percentages may exceed those ceilings.

**Table 8-8 — Town of Fort Myers Beach
Comparison of Household Disposal Costs
Property Tax vs. MSBU Assessment**

Collection Options	Property Tax FY 95-96	MSBU Assessment FY 97-98
Disposal Facility Assessment Rate/Ton	\$27.29	\$27.29
Total Revenue Required	\$7,835,000	\$8,426,300
Payment Basis	Property Value	Disposal Tonnage
Tonnage Disposed		6,180
Fort Myers Beach Payment Share in %	5%	2%
Fort Myers Beach Total Payments in \$	\$391,750	\$168,652
Unincorporated Lee County Payment Share in %	58%	65%
Unincorporated Lee County Total Payments in \$	\$4,544,300	\$5,447,095
Average Household Tonnage	1.07	1.02
Estimated Tax Millage	0.405	
Fort Myers Beach Household Annual Facilities Payment in \$	\$192.38	\$33.84
Tipping Fee, \$/Ton (Escalated)	\$47.70	\$51.10
Disposal Payment in \$	\$51.04	\$52.12
Total Household Annual Disposal Payment in \$	\$91.54	\$85.96

Source: "Lee County Solid Waste Rates, Fiscal Year 96/97" and
"Finding Sound Solutions -- Solid Waste Rates, FY 97-98"

"MSBU" means Municipal Services Benefit Unit.

**Table 8-9 — Solid Waste Forecasts by Population:
Collection of Total Solid Waste, 1990 — 2020**

Year	Total Dwelling Units	Effective Population	Tons of Solid Waste Per Day	Tons of Solid Waste Per Year
1990	7,420	8,826	30.9	11,279
1996	7,710	9,171	32.1	11,717
2003	8,121	9,660	33.8	12,337
2020	8,738	10,393	36.4	13,286

Sources:

— Dwelling units count for 1990: compilation of STF1A data for Census Tract 601, BG 3-7 plus Census Tract 602, BG 1-6

— Dwelling unit estimates for 1996, 2003, 2020: Future Land Use Element

— Effective population estimated as follows: Peak population = [(total dwelling units x 38.2% dwelling units occupied by permanent residents) + (total dwelling units x 61.8% x .33 allowing for 4 months out of year 100% dwelling units occupied)] x 2.03 persons per household

— Solid waste forecasts: based on standard of 7 pounds per person per day

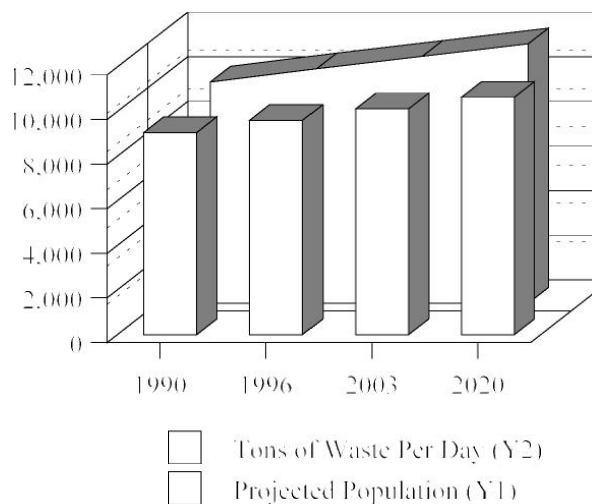


Figure 7, Tons of waste and population growth

Expansion Needs

The preceding analysis shows that Lee County's current system of incineration and landfilling is adequate for a 30- to 40-year period. There are no apparent problems with this system. Fort Myers Beach may wish to separately franchise its trash hauler if, after careful examination, there would be benefits to the town in this course of action.

UTILITIES AND CONCURRENCY

The Town of Fort Myers Beach must ensure that infrastructure and services are provided in order to support new development. This process is implemented through a concurrency management system, a requirement of Florida's growth management legislation. A concurrency management system coordinates the issuance of development orders/permits and certificates of occupancy with continuing measurements of infrastructure and services needed to support development (see the Capital Improvements Element). For potable water, sanitary sewer, and solid waste disposal services, the ~~town~~ Town depends heavily upon reports furnished by the utility providers to measure availability according to the standards contained in this plan.

The inventory and analysis of utility providers indicates that adequate services can be expected to be available to serve new development through build-out of Fort Myers Beach. Even though there appears to be no problem with the provision of these services, the ~~town~~ Town must still monitor continuing reports through its concurrency system to ensure that no unexpected problems are developing.

GOALS - OBJECTIVES - POLICIES

Based on the analysis of utility services in this element, the following goals, objectives, and policies are adopted into the Fort Myers Beach Comprehensive Plan:

GOAL 8: To improve the existing systems that provide safe drinking water, irrigation water, sewer service, and solid waste disposal in order to reduce environmental impacts on land and water while keeping costs as economical as possible.

**OBJECTIVE 8-A RELATIONS WITH UTILITIES —
Increase the town's role in influencing utility providers about service alternatives, facility locations, and conservation of resources.**

POLICY 8-A-1 Mandatory customer connections to water and sewer utilities shall continue to be the policy of the Town of Fort Myers Beach.

POLICY 8-A-2 When considering improvements to utility systems, utility companies should expect involvement by the ~~town~~-Town in evaluating alternatives and seeking the best interests of utility customers and other people and resources affected by those decisions.

POLICY 8-A-3 The ~~town~~-Town shall seek a significant role in policy matters concerning Lee County Utilities' sewer service, based on the ~~town's~~-Town's dual roles as a major user of this service and its location directly downstream of any effluent discharges into tidal waters.

POLICY 8-A-4 The ~~town's~~-Town's potable water supply distribution system is supplied by Lee County Utilities under terms set forth in a bulk water agreement approved in August 2001. Lee County

has a long-term expansion plan to address existing and proposed uses of traditional alternative water supply sources, in accordance with SFWMD's Lowland Water Coast Water Supply Plan Update (2006December 2016). Lee County's long-term expansion plan, the Water Supply Work Plan, was last updated in 2008January 2016 and is incorporated by reference.

POLICY 8-A-5 The ~~town~~-Town shares a common responsibility with Lee County government in ensuring that potable water supplies will be sufficient to meet future demands. The ~~town~~-Town coordinates with Lee County on an ongoing basis regarding the following matters:

1. Analyzing peak season demand and providing sufficient allocation.
2. Using consistent population projections and level-of-service standards.
3. Conserving water by adopting a conservation rate structure (see Section 6).
4. Implementing a leak detection program and replacing obsolete portions of the system.

OBJECTIVE 8-B LEVELS OF SERVICE — Maintain minimum acceptable levels of service for potable water, sanitary sewer, and solid waste disposal.

POLICY 8-B-1 The minimum acceptable level of service standards for utility services within the Town of Fort Myers Beach shall be:

i. for potable water service:

- (a) available supply, treatment, and delivery capacity of 260 gallons per day per equivalent residential connection (ERC), and delivery of potable water at a minimum pressure of 20 pounds per square inch (psi) at the meter anywhere in the system.
- (b) Prior to issuance of building permits, the town must obtain assurances from Lee County Utilities that an adequate bulk water supply will be available to the town's water distribution system to serve new development at these same rates.

ii. for sanitary sewer service: available capacity to collect, treat, and dispose of wastewater of 175 gallons per day per equivalent residential connection (ERC).

iii. for solid waste disposal service: the ability to collect and manage 7 pounds of municipal solid waste per person per day. An ERC is defined as the total number of meter equivalents using the methodology of the Florida Public Service Commission (and is synonymous with their use of the term "equivalent residential units"). ERCs are used to convert commercial and industrial water or sanitary sewer use into standard units that are based on typical rates of use in dwelling units.

POLICY 8-B-2 The ~~town~~-Town will enforce the service under the concurrency requirements of the law by requiring one of the following: issuance of development permit or

- i. development orders or building permits will be issued subject to the condition that, at the time of the issuance of a certificate of occupancy, the facilities and services must be available and available to serve the development being authorized; or
- ii. at the time development orders or permits are issued, the necessary facilities and services are guaranteed to be available and available to serve the development at the time of issuance of a certificate of occupancy through an enforcement agreement pursuant to Section 163.3220, *Florida Statutes*, through an agreement or development order pursuant to Chapter 38, *Florida Statutes*.

POLICY 8-B-3 The concurrency management standards ~~town's~~-Town's Land Development Code shall be amended to require the town to maintain water supply capacity, in addition to sewer plant capacity, when determining concurrency with the potable water level of service.

OBJECTIVE 8-C WATER CONSERVATION — Take all reasonable steps to conserve potable water supplies, ~~aiming for a 10% per-capita reduction in water use by 2005.~~

POLICY 8-C-1 The town shall, by resolution, encourage Lee County Utilities to expand its facilities and agreements for recycling treated wastewater for reuse as irrigation water; deep-well injection of surplus wastewater should be limited to emergency use only.

POLICY 8-C-2 The town shall consult with the South Florida Water Management District to obtain suggestions on regulations to conserve water before adopting such regulations.

POLICY 8-C-3 The town will use drought-tolerant vegetation, xeriscape techniques, recycled water, or other available methods for landscaping publicly owned lands, and encourages private landowners to do the same to reduce usage of potable water for irrigation purposes.

POLICY 8-C-4 The town will continue to require, through its building codes, the use of water-saving plumbing fixtures in all new development and redevelopment.

POLICY 8-C-5 The town will support public educational programs that encourage water conservation practices.

POLICY 8-C-6 The town should consider implementing a strong conservation rate program where large water users pay a higher rate per gallon than is charged to frugal users.

OBJECTIVE 8-D SOLID WASTE — Add recycling pickup at commercial enterprises, and maintain an efficient solid waste system that stresses recycling of reusable materials plus safe and efficient disposal of that which cannot be recycled.

POLICY 8-D-1 The town will ensure the routine collection of residential and commercial wastes; special collections of bulky items; separate curbside and bulk collection of recyclable materials; and separate collection of yard wastes and construction debris.

POLICY 8-D-2 The town will continue its participation in Lee County's program of recycling, incineration, and disposal of solid wastes.

POLICY 8-D-3 The town will seek to expand the current program to collect recyclables from motels and other tourist lodgings, and to collect and recycle additional materials.

POLICY 8-D-4 The town will consider an ordinance requiring mandatory recycling of solid waste if voluntary participation does not achieve standards set by state or regional agencies.

POLICY 8-D-5 The town will evaluate methods of improving the cost-effectiveness of solid waste collection, and may consider franchising the collection process independently of Lee County.

POLICY 8-D-6 The town will cooperate with Lee County in implementing programs to decrease the volume of solid waste requiring landfilling (e.g. source separation of material which can be reused, recycled, or disposed of in another manner). The town shall also support and assist in programs to reduce roadside litter and illegal dumping, such as Keep Lee County Beautiful's annual coastal cleanups.

POLICY 8-D-7 The town will cooperate with the Lee County in educating businesses and residents on the proper management of hazardous wastes and the provision of convenient disposal opportunities for the benefit of the town's citizens and visitors. This cooperation shall include distributing written material prepared by Lee County and publicizing their regular schedule of household hazardous waste collection days.

1. Requested Motion:

Meeting Date: December 7, 2020

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING THE DEFINITIONS IN THE FORT MYERS BEACH LAND DEVELOPMENT CODE AND AMENDING DIVISION 3 OF ARTICLE III OF CHAPTER 34, OF THE FORT MYERS BEACH LAND DEVELOPMENT CODE, ENTITLED "EXPLANATION OF PROPERTY DEVELOPMENT REGULATIONS FOR ALL ZONING DISTRICTS" REVISING HEIGHT AND SETBACK REQUIREMENTS; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND PROVIDING FOR AN EFFECTIVE DATE. Open the first public hearing and schedule for second reading and final adoption on January 11, 2021 at 9:00 AM

Why the action is necessary:

Town Council has directed staff to preview matter with the LDC.

What the action accomplishes:

The proposed edits incorporates the Town Council's direction on how to address height and setback related issues with new development.

2. Agenda:

PUBLIC HEARINGS

3. Requirement/Purpose:

Ordinance to amend the Land
Development Code

4. Submitter of Information:

5. Background:

The Town Council has discussed options to address height and setback issues with new development since September of 2019. In February and March of 2020, the Town Council directed staff to make edits to staff prepared and proposed language for various sections addressing height and setbacks. The updated Staff Report provides a summary of the changes incorporated per the Council's direction. The Council's direction included providing a "carrot and stick" method to encourage greater setbacks for new development.

Attachments:

1. 20-19, LDC Amendment Ch 34 Height and Setbacks (1)-C3
2. 20-19 Height and Setbacks Exhibit A
3. Height and Setbacks LDC Memo Town Council Dec 7 First Reading

Financial Impact:

N/A

6. Alternative Action

Direct staff to make changes

7. Management Recommendations:

Recommend setting a second and final adoption hearing for January 11, 2021.

8. Recommended Approval:

Jason Green, Community Development Services

Created/Initiated - 12/1/2020

Jason Green, Community Development Services
John R Herin Jr, Town Attorney
Amy Baker, Deputy Town Clerk
Roger Hernstadt, Town Manager

Approved - 12/1/2020
Approved - 12/3/2020
Approved - 12/3/2020
Final Approval - 12/3/2020

ORDINANCE NO. 20-19

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING THE DEFINITIONS IN THE FORT MYERS BEACH LAND DEVELOPMENT CODE AND AMENDING DIVISION 3 OF ARTICLE III OF CHAPTER 34, OF THE FORT MYERS BEACH LAND DEVELOPMENT CODE, ENTITLED “EXPLANATION OF PROPERTY DEVELOPMENT REGULATIONS FOR ALL ZONING DISTRICTS” REVISING HEIGHT AND SETBACK REQUIREMENTS; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER’S ERRORS; CONFLICTS OF LAW AND PROVIDING FOR AN EFFECTIVE DATE

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

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

WHEREAS, the Town Council desires to update the Fort Myers Beach Land Development Code to clarify, improve, and create consistency among sections regarding building heights and setbacks; and

WHEREAS, on December 1, 2020 the Local Planning Agency, after giving consideration to the staff recommendation, public testimony, and consistency with the Comprehensive Plan, recommended approval of the proposed amendments; and

WHEREAS, on December 7, 2020 the Town Council held a first reading of the proposed Ordinance; and.

WHEREAS, on January 11, 2020 the Town Council held a second reading of the proposed Ordinance; and.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:¹

Section 1. The above recitals are true and correct, and incorporated herein by this reference and are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. Section 34-2 of the Fort Myers Beach Land Development Code is hereby amended to read as follows:

^{1/} Additions to existing text are shown by underline, changes to existing text on second reading are shown by double underline, and deletions are shown as ~~striketrough~~.

Sec. 34-2. - Definitions

Balcony means a cantilevered, open, unroofed portion of an upper floor extending beyond (or indented into) a building's exterior wall.

Porch is a single-story wooden or concrete structure that is elevated off of the ground and has a railing at least 42 inches tall. A porch must be covered with an awning or roof ~~or umbrellas~~. ~~Wood must be painted or stained.~~

Section 3. Section 34-933 of the Fort Myers Beach Land Development Code is hereby amended to read as follows:

Sec. 34-933 – Definitions

Balcony means ~~an~~ a cantilevered, open, unroofed portion of an upper floor extending beyond (or indented into) a building's exterior wall.

Section 4. Division 3, of Article III, of Chapter 34 of the Town of Fort Myers Beach Land Development Code entitled “Explanation of Property Development Regulations for All Zoning Districts” is hereby amended to read as follows (edits to Table 34-3 “Dimensional Regulations in Conventional Zoning Districts” are included as Exhibit “A” attached hereto and incorporated herein):

Sec. 34-631 – Building Height

(a) *Methods of measurement.* Maximum building heights specified in this code are measured in two ways, as shown in Figure 34-1-a. Both measurement methods apply to each building.

(1) *Measured in stories,* the height includes enclosed or unenclosed space at ground level as the first story, provided it is six feet or more in height.

a. Space within a roofline that is entirely non-habitable shall not be considered to be a separate story, for example overhead space enclosed by a cathedral ceiling, cupola, or similar roof enclosure.

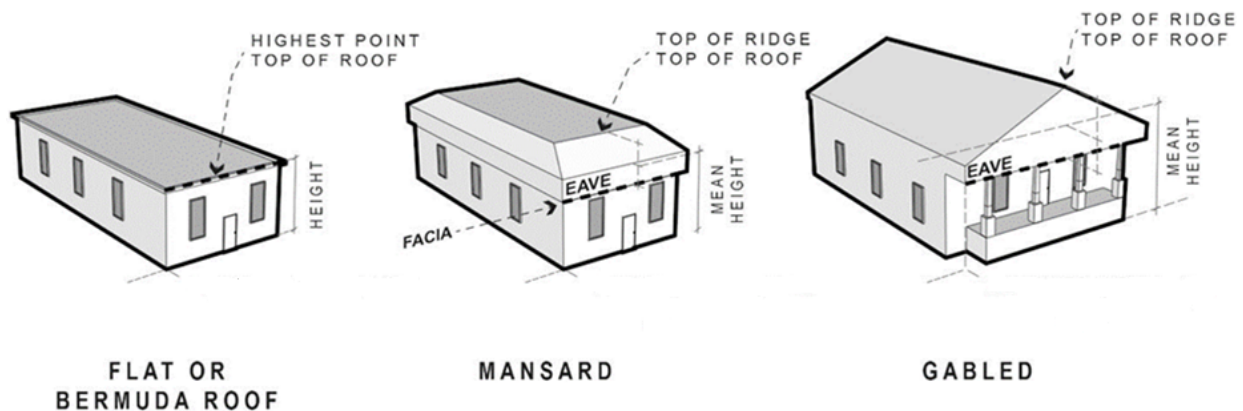
b. ~~Any single story cannot exceed 16 feet in height, including structural members, except that the first story may be taller if required to comply with any regulation in this code.~~

(2) Measured in feet, the height of a building shall be the vertical distance measured from one foot above the base flood elevation (BFE), (up to three feet above the BFE if the developer chooses to elevate the first living level more than the required minimum) to the following point on each roof type:

a. Flat or Bermuda Roof, the high point is the highest point on the roof, the roof itself or parapet walls;

b. Mansard Roof, the high point is the mean height between the eave and highest part of the roof;

c. Gable, Hip and Gambrel Roof, the high point is the mean height between eaves and ridge and the top of the structural members that serve as the ceiling for the highest habitable story of the building.



a. ~~Where ceilings are sloped, height is measured to the highest vertical point on a wall of the highest habitable story of the building.~~

b. ~~For parking garages, height is measured to the top of the structural members of the highest ceiling, or if parking is allowed on the roof level, to the highest point on the rooftop parking level.~~

~~e. — When determining maximum building heights only, base flood elevation (BFE) means the minimum required elevation for a property as established by the floodplain maps described in § 6-408 of this chapter, or the minimum 100-year storm elevation as established by the Florida Department of Environmental Protection for structures seaward of the 1991 coastal construction control line, whichever is higher for a particular property.~~

~~d. — On July 31, 2006, FEMA released maps showing preliminary BFE increases that could become mandatory in 2007. Landowners who voluntarily meet the higher elevations shown on the preliminary FEMA maps may measure their building's height in feet from the higher elevation.~~

~~e. — Landowners who to choose to elevate up to three feet above the heights in subsections c. or d. above, may increase their maximum building height by the same number of feet.~~

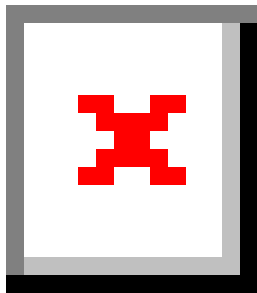
(3) *Specific height regulations* are provided for each zoning district.

a. For conventional zoning districts, see Table 34-3 in division 4 of this chapter.

b. For redevelopment zoning districts, see individual districts in division 5 of this chapter.

c. For planned development zoning districts, see division 6 of this chapter.

(b) *Exceptions to height regulations.*



Roofed towers, Figure 34-1-b

(1) ~~Roof structures and parapet walls may exceed the height limit defined in any zoning district provided there is no habitable space inside the roof structure~~ For structures to receive an additional 5 feet of height above the current building height regulations:

a. The third story (second story above BFE) must be set back an additional 5 feet from the required property line setback; and

b. The third story must not begin more than 15 feet above base flood elevation; and

c. Roof overhangs may not protrude more than 3 feet into the additional required setback. Balconies may not encroach the additional setback; and

d. Vegetation in side yards will be limited to trees and low shrubs, which will not block the view corridor above six feet along beach and bay front properties.

(2) ~~Non-habitable architectural appurtenances such as cupolas, clerestories, and steeples may also extend above the height limit if they do not exceed an area of 250 square feet. A habitable roofed tower up to 150 square feet, whether open-sided or enclosed, may also qualify as an acceptable architectural appurtenance and extend above the height limit provided it is roofed in a manner consistent with the design of the building. Decks do not qualify as architectural~~

~~appurtenances for the purposes of this subsection. Any proposed appurtenance taller than an additional 15 feet or larger than the specified sizes would require a variance from this code.~~ For structures to receive an additional story. The overall height shall not exceed 5 feet of height above the current building height regulations and the following requirements shall apply:

a. The primary structure setbacks for the building shall be increased by 5 feet on all sides or the first floor; and one or more of the following:

1. Below flood must be unenclosed other than a maximum 300 square feet enclosure for parking, storage, or upper level access;

2. A signed Declaration of Restrictive Covenant in a form acceptable to the Town shall be recorded in the Lee County Public Records prior to issuance of the Certificate of Occupancy stating the ground floor, below flood, may never be enclosed.

3. All requirements for the 5-foot increase in height shall apply.

4. The fourth story (third story above BFE) must be set back 10 feet from all of the required property line setbacks.

5. Roof overhangs may not protrude into the additional required setback.

6. Vegetation in side yards will be limited to trees and low shrubs, which will not block the view corridor above six feet along beach and bay front property.

Sec 34-638 – Minimum Setbacks

(d) *Exceptions to setback dimensions.* In addition to the

following general exceptions to minimum setbacks, commercial buildings that are subject to the commercial design standards may encroach into certain setbacks as provided in §§ 34-991—34-1010 of this chapter.

(2.) *Exceptions to street setbacks.* Certain structures are exempt from the street setback requirements as follows. See also § 34-1174 of this chapter.

a. *Build-to lines.* Some zoning districts do not have any street setback requirements but instead have build-to lines, as described in § 34-662 of this chapter. Awnings, canopies, balconies, bay windows, porches, stoops, arcades, and colonnades may extend forward of the build-to line provided that they comply with the commercial design standards (see § 34-995(e) of this chapter).

b. *Porches, balconies and stoops.* Porches, balconies and stoops may extend up to ten feet into the 25-foot street setback on the first living level ~~zone~~ of residential buildings, provided that:

1. Any walls, screened areas, or railings in the setback zone extend no higher than 42 inches above the floor of the porch, balcony or stoop; and
2. No portion of a porch or balcony and no walls or screened areas may be closer than ten feet to the edge of any street right-of-way or street easement.

(4) *Exceptions for certain nonconforming lots.*

~~a. Certain nonconforming residential lots are subject to the modified side and rear setback requirements that are found in § 34-3273 of this chapter.~~

~~a~~b. Certain nonconforming mobile home lots in the village zoning district are subject to the modified side and rear setback requirements that are found in § 34-694 of this chapter.

be. Certain nonconforming commercial lots are subject to the modified side and rear setback requirements that are found in § 34-3277 of this chapter.

Section 5. The Town Council intends that the provisions of this ordinance be made a part of the Fort Myers Beach Code of Ordinances, and that sections herein may be renumbered or re-lettered and the words or phrases herein may be changed to accomplish codification; regardless, typographical errors that do not affect intent may be corrected with notice to and authorization of the Town Manager without further process.

Section 6. Whenever the requirements or provisions of this ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive shall apply.

Section 7. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the ordinance as a whole, or any part thereof, other than the part so declared.

Section 8. This ordinance shall become effective upon adoption by the Town Council.

The foregoing Ordinance was adopted by the Town Council upon a motion by Councilmember _____ and seconded by _____ and upon being put to a roll call vote, the result was as follows:

Raymond P. Murphy, Mayor	_____
Rexann Hosafros, Vice Mayor	_____
Dan Allers, Council Member	_____
Jim Atterholt, Council Member	_____
Bill Veach, Council Member	_____

ADOPTED this ____ day of _____, 2021 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Raymond P. Murphy, Mayor

ATTEST:

Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH SOLELY:**

John R. Herin, Jr., Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this __ day of _____, 2021.

Secs. 34-653—34-660. - Reserved.

Table 34-3— Dimensional Regulations in Conventional Zoning Districts

	street	side - waterfront lot	side - non- waterfront	rear	water body (1)	Gulf of Mexico (2)	area	width	depth	ratio	percentage		feet	stories
ZONING DISTRICT	Setbacks (see § 34-638 for explanation and exceptions)						Lot size (see § 34-637 for explanations and exceptions)			F.A.R. §34- 633	Building Coverage § 34-634	Density § 34- 632	Height (see § 34- 631)	
<i>RS Residential Single-family</i>	25	7.5 (8)(9)/ 10 (9)	7.5 (8)(9)/ 10 (9)	20	25	50	7,500	75	100	-	40%	(3), (4)	2530	3
<i>RC Residential Conservation</i>	25	7.5 (8)(9)/ 10 (9)	7.5 (9)/ 10 (9)	20	25	50	4,000	45	80	-	40%	(3), (4), (5)	2530	3
<i>RM Residential Multifamily</i>	25	20 (6)	20 (6)	20	25	50	7,500	75	100	1.2	-	(3), (4), (5)	3035	3
<i>CR Commercial Resort</i>	10	20	15	20	25	50	20,000	100	100	1.2	-	(3)	30	3
<i>CM Commercial Marina</i>	20	20	20	20	0	50	20,000	100	100	1.0	-	-	35	3
<i>CO Commercial</i>	10	10	7	20	25	50	7,500	75	100	1.2	-	(3), (4),	30	3

<i>Office</i>												(5)		
<i>Santos</i>	10	7	5	20	25	50	5,000	50	100	0.6	-	(3), (4), (5)	25	3
<i>IN Institutional</i>	20	10	7	20	25	50	7,500	75	100	0.8	-	(3)	35	3
<i>CF Community Facilities</i>	20	15	10	20	25	50	N/A	N/A	N/A	0.1	-	(3)	35	3
<i>BB Bay Beach</i>	— see § 34-651(b) —													
<i>EC Environmentally Critical</i>	20	25	-	25	20	50	(7)	N/A	N/A	.01	-	(3), (7)	25	2

Note (1): An additional wetland buffer is required for new development; see § 34-638(c).

Note (2): See § 34-638(d)(3)a.

Note (3): Maximum densities are established by the Fort Myers Beach Comprehensive Plan; see § 34-632.

Note (4): Accessory apartments are allowed in owner-occupied homes under certain conditions; see §34-1178.

Note (5): A second dwelling unit or accessory apartment may be allowed on larger lots; for details, see §§ 34-632, 34-1177, and 34-1178.

Note (6): Single-family and two-family homes on waterfront lots in the RM zoning district must maintain only a 7.5-foot side setback for lots less than 70 feet in width and 10 feet for lots 70 feet or greater in width.

Note (7): See § 34-652(e)(3).

Note (8): For all RS lots fronting on Matanzas Street and Matanzas Court, all side setbacks shall be at least 10 feet.

Note (9): Side yard setbacks for all RS and RC lots less than 70 feet in width shall be 7.5 feet; lots 70 feet or greater in width shall be 10 feet.



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

STAFF REPORT

TYPE OF CASE: Text Amendment to Chapter 34 Land Development Code, Including but not limited to Table 34-3; LDC Section 34-638 Minimum Setbacks; LDC Sect 34-631 Building Height; Figure 34-1-a.

STAFF RECOMMENDATION: Requesting approval of recommended edits to staff proposed changes

SUBMITTED BY: Carl Bengé
Jason W. Green, AICP, CFM

BACKGROUND

Staff has been directed to propose options that may resolve or improve some of the negative impacts from new development which is currently occurring on Ft. Myers Beach. Very tall homes are being constructed with little change in wall planes or articulation to break up the massing. In some cases this leads to flat walls up to 40 feet above grade only 7.5 feet from the property line. These structures cause adjacent properties to be overshadowed. The following are requested as amendments to LDC Sections as applicable.

The following alternative options have been provided based on feedback from multiple meetings with the LPA.

RECOMMENDATION

Original Discussion Item 1: Side Setbacks and Porch Setbacks

Side Yard:

At the LPA hearings the discussion centered around increasing side yard setbacks from 7.5 ft. to 10 ft. for lots that are 55 feet wide or more. This lot width cutoff may not be correct, staff has gotten feedback from some architects regarding this provision that a more appropriate lot width may be 65 feet.

Revision:

Revise Table 34-3 to remove RS and RC zoning district specific setbacks and add note **<5570 ft lot: 7.5 ft setback; ≥5570 ft lot or any lots on water: 10 ft setback.**

Original Discussion Porch:

Currently the code allows porches to extend up to 10 feet into the right-of-way setback. This has led to double decker porches that create a front façade only 15 feet from the right-of-way. Several

photos which opted for the two story porches are attached as exhibit A.

The LPA members voiced support for allowing a porch to encroach into the right-of-way setback up to 10 feet only on the first living level. Staff proposes the following changes to definitions, in the strikethrough/underline format, to accomplish the goal of clarifying which types of structures are permitted to encroach.

Revisions

Porch Definition: Porch is a single-story wooden or concrete structure that is elevated off of the ground and has a railing at least 42 inches tall. A porch must be covered with an awning or roof ~~or umbrellas~~. ~~Wood must be painted or stained.~~

Balcony Definition: Balcony means an cantilevered, open, unroofed portion of an upper floor extending beyond (or indented into) a building's exterior wall.

Stoop Definition: Stoop means a small elevated entrance platform or staircase leading to the entrance of a building.

Below is the strikethrough/underlined edits that implement the side setback and porch option recommended by the LPA at the December 10th 2019 hearing for LDC 34-638 Minimum Setbacks. *No changes since discussion.*

(d) *Exceptions to setback dimensions.* In addition to the following general exceptions to minimum setbacks, commercial buildings that are subject to the commercial design standards may encroach into certain setbacks as provided in §§ 34-991—34-1010 of this chapter.

(1) *Exceptions to all setbacks.*

a. *Administrative setback variances.* Under certain limited circumstances, administrative variances can be granted to minimum setbacks as provided in § 34-268 of this chapter.

b. *Overhangs.* An overhang which is part of a building may be permitted to encroach into any setback as long as the overhang does not extend more than three feet into the setback and does not permit any balcony, porch, or living space located above the overhang to extend into the setback.

c. *Shutters.* A shutter which is attached to a building may be permitted to encroach one foot into the setbacks.

d. *Awnings and canopies.*

1. Awnings and canopies which are attached to a building may be permitted to encroach three feet into the setbacks, as long as their location does not interfere with traffic, ingress and egress, or life safety equipment.

2. For purposes of this section, awnings and canopies may be attached to a nonconforming building and shall not be considered an extension or enlargement of a nonconformity, as long as the building is properly zoned for its use and the conditions as set forth in this section are met.

e. *Essential services.* Essential services and essential service equipment shall not be required to meet the minimum setbacks for the district wherein located (see § 34-1617 of this chapter).

f. *Two-family dwelling units.* If a two-family dwelling unit is on a lot of sufficient size to allow it to be subdivided into a separate lot under each dwelling unit (see Table 34-3), the side setback regulations in this section shall not be interpreted to forbid such subdivision. Existing two-family

buildings that are being subdivided must be separated by not less than one-hour fire resistance.

g. *Mechanical equipment.* Mechanical equipment such as air conditioners may encroach up to three feet into rear and waterbody setbacks but must meet the same street and side setbacks as the building it serves. These requirements apply to new buildings and to new mechanical equipment but will not apply to replacement of mechanical equipment on existing buildings if the equipment was installed in conformance with prior regulations.

(2) *Exceptions to street setbacks.* Certain structures are exempt from the street setback requirements as follows. See also § 34-1174 of this chapter.

a. *Build-to lines.* ~~Some~~ zoning districts do not have any street setback requirements but instead have build-to lines, as described in § 34-662 of this chapter. Awnings, canopies, balconies, bay windows, porches, stoops, arcades, and colonnades may extend forward of the build-to line provided that they comply with the commercial design standards (see § 34-995(e) of this chapter).

b. *Porches, balconies and stoops.* Porches, balconies and stoops may extend up to ten feet into the 25-foot street setback on the first living level zone of residential buildings, provided that:

1. Any walls, screened areas, or railings in the setback zone extend no higher than 42 inches above the floor of the porch, balcony or stoop; and
2. No portion of a porch or balcony and no walls or screened areas may be closer than ten feet to the edge of any street right-of-way or street easement.

(4) *Exceptions for certain nonconforming lots.*

a. ~~Certain nonconforming residential lots are subject to the modified side and rear setback requirements that are found in § 34-3273 of this chapter.~~

ab. Certain nonconforming mobile home lots in the village zoning district are subject to the modified side and rear setback requirements that are found in § 34-694 of this chapter.

be. Certain nonconforming commercial lots are subject to the modified side and rear setback requirements that are found in § 34-3277 of this chapter.

Discussion Item 2: Height

Proposed “Sticks and Carrots” Option:

This option was selected by the LPA as the preferred method of accomplishing a change to the height of buildings. This option includes additional regulations which permit opportunities to exceed current requirements for height and number of stories if additional setbacks are provided. The recommended trade-offs would include limitations on vegetation, increases in setbacks for the ground floor and additional stories, keeping area below flood unenclosed in exchange for additional height and additional stories.

One way this could be structured is as follows:

Revisions to be added to 34-631:

1. *For structures to receive an additional 5 feet of height above the current building height regulations:*

- a. *The third story (second story above BFE) must be set back an additional 5 feet from the required property line setback; and*
- b. *The third story must not begin more than 15 feet above base flood elevation; and*
- c. *Roof overhangs may not protrude more than 3 feet into the additional required setback. Balconies may not encroach the additional setback; and*

d. *Vegetation in side yards will be limited to trees and low shrubs which will not block the view corridor above six feet along beach and bay front properties.*

2. *For structures to receive an additional story. The overall height shall not exceed 5 feet of height above the current building height regulations and the following requirements shall apply:*

a. *The primary structure setbacks for the building shall be increased by 5 feet on all sides or the first floor; and one or more of the following:*

b. *below flood must be unenclosed other than a maximum 300 square feet enclosure for upper level access;*

i. *A signed Declaration of Land Restriction (Nonconversion Agreement) shall be recorded on the property deed prior to issuance of the Certificate of Occupancy. This agreement shall state that the ground floor, below flood, may never be enclosed.*

c. *All requirements for the 5-foot increase in height shall apply ((d)(2)a. b. and c.);*

d. *The fourth story (third story above BFE) must be set back 10 feet from all of the required property line setbacks;*

e. *Roof overhangs may not protrude into the additional required setback;*

f. *Vegetation in side yards will be limited to trees and low shrubs which will not block the view corridor above six feet along beach and bay front property.*

Discussion Item 3: How Height is Measured

Staff is proposing a new way of measuring height. Height is currently measured to the highest vertical point on a wall of the highest habitable story of the building. Staff proposes that building height be measured to the mean height of the roof, between the eve and the peak. This change will require that architects consider the height of the overall roof when complying with the building height requirements. This will result in roofs that are thoughtful in size, rather than as large and spacious as some are currently be constructed.

This change could be coupled with an increase in allowable height in RS and RC districts, from 25 ft. to 30 ft. This would allow substantially similar height structures as are currently permitted with the roof height considered as part of that measurement. This is similar to many surrounding communities. The LPA recommended increasing the height from 25 ft. to 30 ft.

Below is the ~~striketrough~~/underlined edits that implement the recommended change to implement the proposed way of measuring building height and if an increase to buildable height is desirable, this change would be implemented through changes in Table 34-3 and Sec 34-631:

Sec. 34-631. - Building heights.

(a) *Methods of measurement.* Maximum building heights specified in this code are measured in two ways, as shown in Figure 34-1-a. Both measurement methods apply to each building.

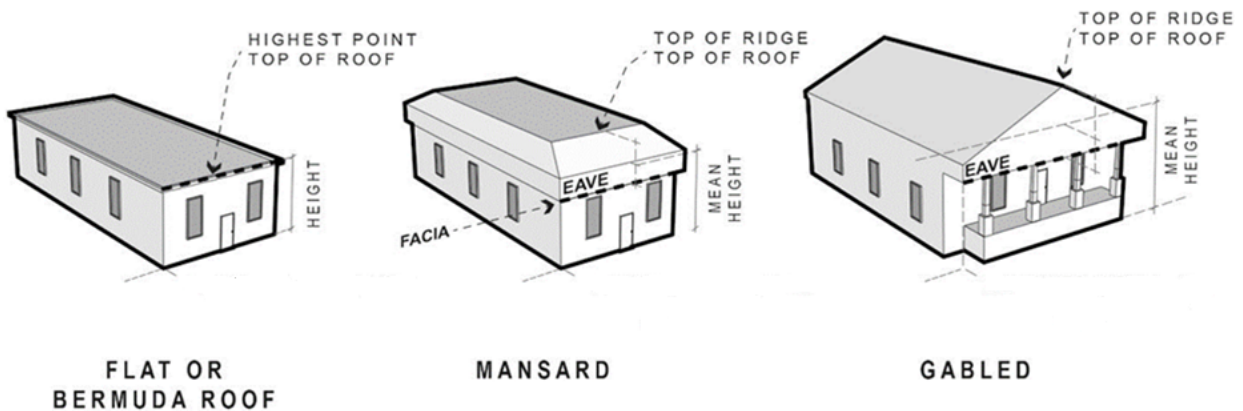
(1) *Measured in stories,* the height includes enclosed or unenclosed space at ground level as the first story, provided it is six feet or more in height.

a. Space within a roofline that is entirely non-habitable shall not be considered to be a separate story, for example overhead space enclosed by a cathedral ceiling, cupola, or similar roof enclosure.

b. ~~Any single story cannot exceed 16 feet in height, including structural members, except that the first story may be taller if required to comply with any regulation in this code.~~

(2) Measured in feet, the height of a building shall be the vertical distance measured from is the vertical distance between one foot above the base flood elevation (BFE), (up to three feet above the BFE if the developer chooses to elevate the first living level more than the required minimum) to the following point on each roof type:

- Flat or Bermuda Roof, the high point is the highest point on the roof, the roof itself or parapet walls;
- Mansard Roof, the high point is the mean height between the eave and highest part of the roof;
- Gable, Hip and Gambrel Roof, the high point is the mean height between eaves and ridge.



and the top of the structural members that serve as the ceiling for the highest habitable story of the building.

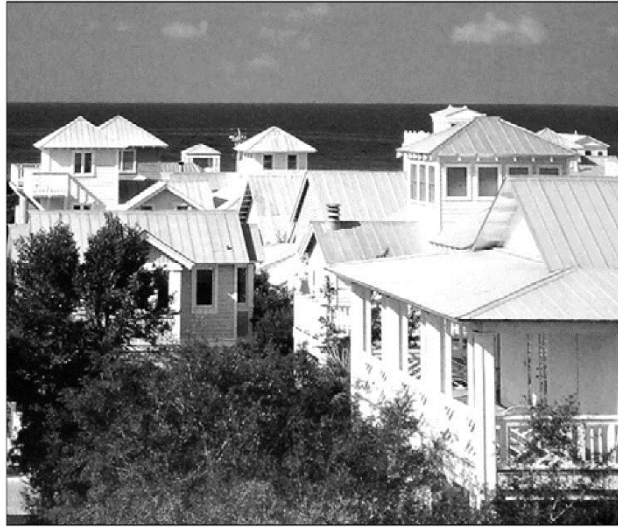
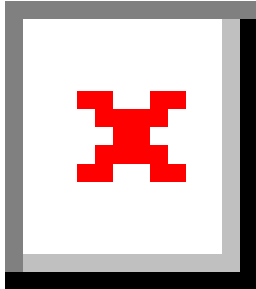
- a. ~~Where ceilings are sloped, height is measured to the highest vertical point on a wall of the highest habitable story of the building.~~
- b. ~~For parking garages, height is measured to the top of the structural members of the highest ceiling, or if parking is allowed on the roof level, to the highest point on the rooftop parking level.~~
- c. ~~When determining maximum building heights only, base flood elevation (BFE). means the minimum required elevation for a property as established by the floodplain maps described in § 6-408 of this chapter, or the minimum 100-year storm elevation as established by the Florida Department of Environmental Protection for structures seaward of the 1991 coastal construction control line, whichever is higher for a particular property.~~
- d. ~~On July 31, 2006, FEMA released maps showing preliminary BFE increases that could become mandatory in 2007. Landowners who voluntarily meet the higher elevations shown on the preliminary FEMA maps may measure their building's height in feet from the higher elevation.~~
- e. ~~Landowners who to choose to elevate up to three feet above the heights in subsections c. or d. above, may increase their maximum building height by the same number of feet.~~

(3) *Specific height regulations* are provided for each zoning district.

- a. For conventional zoning districts, see Table 34-3 in division 4 of this chapter.

- b. For redevelopment zoning districts, see individual districts in division 5 of this chapter.
- c. For planned development zoning districts, see division 6 of this chapter.

(b) *Exceptions to height regulations.*



Roofed towers, Figure 34-1-b

~~(1)—Roof structures and parapet walls may exceed the height limit defined in any zoning district provided there is no habitable space inside the roof structure. For structures to receive an additional 5 feet of height above the current building height regulations:~~

- ~~c. The third story (second story above BFE) must be set back an additional 5 feet from the required property line setback; and~~
- ~~d. The third story must not begin more than 15 feet above base flood elevation; and~~
- ~~e. Roof overhangs may not protrude more than 3 feet into the additional required setback. Balconies may not encroach the additional setback; and~~
- ~~f. Vegetation in side yards will be limited to trees and low shrubs which will not block the view corridor above six feet along beach and bay front properties.~~

~~(2)—Non-habitable architectural appurtenances such as cupolas, clerestories, and steeples may also extend above the height limit if they do not exceed an area of 250 square feet. A habitable roofed tower up to 150 square feet, whether open-sided or enclosed, may also qualify as an acceptable architectural appurtenance and extend above the height limit provided it is roofed in a manner consistent with the design of the building. Decks do not qualify as architectural appurtenances for the purposes of this subsection. Any proposed appurtenance taller than an additional 15 feet or larger than the specified sizes would require a variance from this code. For structures to receive an additional story. The overall height shall not exceed 5 feet of height above the current building height regulations and the following requirements shall apply:~~

- ~~a. The primary structure setbacks for the building shall be increased by 5 feet on all sides or the first floor; and one or more of the following:~~
- ~~b. below flood must be unenclosed other than a maximum 300 square feet enclosure for upper level access;~~
- ~~ii. A signed Declaration of Land Restriction (Nonconversion Agreement) shall be recorded on the property deed prior to issuance of the Certificate of Occupancy. This agreement shall state that the ground floor, below flood, may never be enclosed.~~
- ~~g. All requirements for the 5-foot increase in height shall apply ((d)(2)a. b. and c.);~~
- ~~h. The fourth story (third story above BFE) must be set back 10 feet from all of the required~~

property line setbacks;

- i. Roof overhangs may not protrude into the additional required setback;
- j. Vegetation in side yards will be limited to trees and low shrubs which will not block the view corridor above six feet along beach and bay front property.

- (3) Mechanical or structural appurtenances such as elevator and stairwell enclosures, air conditioning equipment, and antennas may also extend above the height limit provided these appurtenances:
 - a. Do not exceed 250 square feet per type; and
 - b. Screening is provided as required by this code (see, for example, § 6-2(f) of this LDC for rooftop mechanical equipment).
 - (4) When properties are being rebuilt pursuant to the buildback regulations in § 34-3237 and 34-3238 of this chapter, specific height regulations in those sections may supersede the height regulations established for that property's zoning district.
 - (5) In those few cases where individual parcels of land are so surrounded by tall buildings on lots that are contiguous (or directly across a street) that the height regulations in this chapter would be unreasonable, landowners may seek relief through the planned development rezoning process, which requires a public hearing and notification of adjacent property owners. The town will approve, modify, or deny such requests after evaluating the level of unfairness that would result from the specific circumstances and the degree the specific proposal conforms with all aspects of this comprehensive plan, including its land use and design policies, pedestrian orientation, and natural resource criteria. Particular attention would be paid to any permanent view corridors to gulf or bay waters that could be provided in exchange for allowing a building to be taller than the height limits in this chapter. In each case, the town shall balance the public benefits of the standard height limit against other public benefits that would result from the specific proposal.
 - (6) For amateur radio antennas/towers, see § 34-1175 of this chapter. For communication towers and commercial antennas, see §§ 34-1441—34-1550 of this chapter).
- (c) *Space at ground level.*
- (1) Commercial space below the base flood elevation (at ground level) requires dry-floodproofing of the building (see §§ 6-401—6-474 of this LDC).
 - (2) Space below the base flood elevation in new residential buildings may be used only for parking and limited storage (see §§ 6-401—6-474 of this LDC).

REQUEST

Staff requests that Council approve the revisions to Chapter 34 of the Land Development Code regarding the topics included in this staff report.

1. Requested Motion:

Meeting Date: December 7, 2020

Approve the purchase of the replacement vehicle from Sam Galloway Ford in the amount of \$40,457.25 as budgeted in FY 20 budget, piggybacking Lee County Contract ITB160545, and authorizing auction of old van to replace the 2011 Ford F350XL Passenger Van.

Why the action is necessary:

This is a 2011 Ford 350 XL Van that is due for replacement. In 2020, it has exceed its service life and is proposed for replacement. Funding has been set aside and is available for the purchase.

What the action accomplishes:

Replacement and purchase of authorized vehicle using Capital Improvements funding, account codes: 40.50.572.64020.171.

2. Agenda:

ADMINISTRATIVE AGENDA

3. Requirement/Purpose:

4. Submitter of Information:

Alison Giesen, Director of
Cultural, Parks & Recreation

5. Background:

The purchasing policies allow the Town to purchase goods under a contract awarded by another governmental entity if the purchase is advantageous for the Town. Staff has identified another governmental entity, Lee County, which has contracted with Sam Galloway Ford ITB160545 Ford Automobiles, Sport Utility Vehicles, Passenger & Light Duty Vans, Light & Medium Duty Trucks, and Cab & Chassis. Per Lee County Contract, Section14: AUTHORITY TO PIGGYBACK, the Town of Fort Myers Beach may piggyback this contract.

This is the second (of two) vehicle replacements.

The Finance Director has reviewed the bid and determined this purchase methodology would be advantageous for the Town.

Attachments:

1. ITB160545 2020 Renewal
2. Final Bid Package ITB 160545
3. FMB 2021 TRANSIT QUOTE ITB160545

Financial Impact:

6. Alternative Action

Do not approve.

7. Management Recommendations:

Approve requested motion.

8. Recommended Approval:

Randy Paniaqua, Administrative Officer

Created/Initiated - 11/30/2020

Alison Giesen, Director of Cultural, Parks & Recreation
Walter Pierce, Finance Director
John R Herin Jr, Town Attorney
Amy Baker, Deputy Town Clerk
Roger Hernstadt, Town Manager
Town Council,

Approved - 11/30/2020
Approved - 11/30/2020
Approved - 12/2/2020
Approved - 12/2/2020
Approved - 12/2/2020
Final Approval - 12/2/2020

CONTRACT SUMMARY INFORMATION

SUMMARY:	Ford Automobiles, Sport Utility Vehicles, Passenger & Light Duty Vans, Light & Medium Duty Trucks, and Cab & Chassis
Solicitation No.:	ITB160545
Project Title:	Ford Automobiles, Sport Utility Vehicles, Passenger & Light Duty Vans, Light & Medium Duty Trucks, and Cab & Chassis
Procurement Analyst:	Robert Franceschini
Start Date:	12/10/16
Expiration Date:	12/9/20 Renewed Three Times
Board Date:	10/18/2016
Blue Sheet No.:	20160561
Term:	One Year
Renewal Options:	Three One Year Periods
Award Amount/Information:	County's Adopted Budget
Address Book No.:	101033
Awarded Vendor:	Sam Galloway Ford Inc
Contact Person:	Paul Judson
Phone No.:	(239) 274-2321
Fax No.:	(239) 274-2391
Cell Phone/Pager No.:	(239) 633-4990
Local Business Tax No.:	1000056
Local Vendor Preference Used:	
Notes:	Email Address: tyost@gallowayauto.com



Lee County Board of County Commissioners
DIVISION OF PROCUREMENT MANAGEMENT

Invitation to Bid (B) (Non-CCNA)

Solicitation No.:	ITB 160545/RDF		
Solicitation Name	Ford Automobiles, Sport Utility Vehicles, Passenger & Light Duty Vans, Light & Medium Duty Trucks, and Cab & Chassis		
Open Date/Time:	9/13/2016	Time: 2:30 PM	
Location:	Lee County Procurement Management 1500 Monroe St 4th Floor Fort Myers, FL 33901		
Procurement Contact:	Bob Franceschini	Title	Purchasing Manager
Phone:	(239) 533-8881	Email:	rfranceschini@leegov.com
Requesting Dept.	Fleet Services		
Pre-Solicitation Meeting:			
Type:	No meeting scheduled at this time		
Date/Time:	N/A		
Location:	N/A		

All solicitation documents are available for download at
www.leegov.com/procurement



8/12/2016

Notice to Contractor / Vendor

ITB#160545/RDF Ford Automobiles, Sport Utility Vehicles, Passenger & Light Duty Vans, Light & Medium Duty Trucks, and Cab & Chassis

Invitation to Bid (ITB)

Lee County, Fort Myers, Florida, is requesting bid from qualified individuals/firms for

Ford Automobiles, Sport Utility Vehicles, Passenger & Light Duty Vans, Light & Medium Duty Trucks, and Cab & Chassis

Then and there to be publicly opened and read aloud for the purpose of selecting a vendor to furnish; all necessary labor, services, materials, equipment, tools, consumables, transportation, skills and incidentals required for Lee County, Fort Myers, Florida, in conformance with solicitation documents, which include technical specifications and/or a scope of work.

Those individuals/firms interested in being considered for this solicitation are instructed to submit, in accordance with specifications, their proposals, pertinent to this project prior to

2:30 PM Tuesday, September 13, 2016

to the office of the **Procurement Management Director, 1500 Monroe Street, 4th Floor, Fort Myers, Florida 33901**. The Invitation to Bid shall be received in a sealed envelope, prior to the time scheduled to receive proposal(s), and shall be clearly marked with the solicitation name, solicitation number, proposer name, and contact information as identified in these solicitation documents.

The Scope of Services for this solicitation is available from www.lee.gov.com/procurement. Proposers who obtain scope of services from sources other than www.lee.gov.com/procurement are cautioned that the solicitation package may be incomplete. The County's official bidders list, addendum(s) and information must be obtained from www.lee.gov.com/procurement. It is the proposer's responsibility to check for posted information. The County may not accept incomplete proposals.

There will be no Pre-proposal Conference for this solicitation

It has been determined that the specifications and scope of work within this solicitation are adequate to describe the product or services being requested. A pre-proposal conference and site visit has not been scheduled for this solicitation. Questions regarding this solicitation are to be directed, in writing, to the individual listed below using the email address listed below or faxed to (239) 485 8383 during normal working hours.

Bob Franceschini rfranceschini@LeeGov.com

Sincerely,

A handwritten signature in black ink, appearing to read "Mary G. Tucker".

Mary G. Tucker, CPPO, FCCM, FCCN
Procurement Management Director

*WWW.LeeGov.Com/Procurement is the County's official posting site

GENERAL CONDITIONS

Sealed Bids will be received by the DIVISION OF PROCUREMENT MANAGEMENT, until the time and date specified on the cover sheet of this "Request for Bid", and opened immediately thereafter by the Procurement Management Director or designee.

Any question regarding this solicitation should be directed to the Procurement Division Contact listed on the cover page of this solicitation.

1. SUBMISSION OF BID:

- a. Bids must be sealed in an envelope, and the outside of the envelope must be marked with the following information: *(Label Form is attached for your use)*
 1. Marked with the words "Sealed Bid"
 2. Name of the firm submitting the bid
 3. Title of the bid
 4. Bid number
- b. The Bid must be submitted in duplicate as follows:
- c. The Bid package must be submitted as follows:
 1. Submission should consist of the Lee County forms completed and signed, and where applicable, corporate and/or notary seals attached.
 2. Bid Security/Bond(s), if applicable (Construction projects)
 3. Any information (either required or in addition to that asked for by the specifications) necessary to analyze your bid, i.e., required submittals, literature, technical data, financial statements
 4. Warranties and guarantees against defective materials and workmanship.
 5. Two (2) hard copies. Mark each: one "original", one "Copy"
 6. One (1) electronic CD ROM or flash drive sets of the proposal submittal
 - i. One single adobe PDF file and should be copied **in the same order as the original hard copy.**
 - ii. Limit the color and number of images to avoid unmanageable file sizes.
 - iii. Use a rewritable CD and **do not lock files.**
 - iv. If a cost/bid schedule was provided in Microsoft excel format, the completed schedule should be included as a Microsoft Excel file on the CD-ROM or flash drive
- d. **FAILURE TO SUBMIT REQUIRED OR REQUESTED INFORMATION MAY RESULT IN THE BIDDER BEING FOUND NON-RESPONSIVE.**
- e. **BIDS RECEIVED LATE:** It is the bidder's responsibility to ensure the bid is received by the Division of Procurement Management prior to the opening date and time specified. Any bid received after the opening date and time will be promptly returned to the bidder unopened. Lee County will not be responsible for bids received late because of delays by a third party delivery service; i.e., U.S. Mail, UPS, Federal Express, etc.
- f. **ADDENDUM(S):** Each proposer/vendor shall examine the solicitation documents and shall judge all matters relating to the adequacy and accuracy of such documents. Any **inquiries, suggestions or requests concerning interpretation, clarification or additional information** pertaining to the solicitation shall be made in writing, submitted and received at least **eight (8) calendar days prior to the date when proposals/bids are due.** Request(s) for **"approved alternate(s)"** shall be made in writing, submitted and received at least **ten (10) calendar days prior to the date when proposals/bids are due unless otherwise stated in the detailed technical specifications.** Responses

will be done in the form of an Addendum posted on www.leegov.com/procurement. It is the proposer/vendor's responsibility to check the website for information. No notifications will be sent by Lee County Procurement Management.

- g. **BID CALCULATION ERRORS:** In the event there is a discrepancy between the unit price or the extended amounts the unit price will prevail.
- h. **PAST PERFORMANCE:** All vendors will be evaluated on their past performance and prior dealings with Lee County (i.e., failure to meet specifications, poor workmanship, late delivery, etc.). Poor or unacceptable past performance may result in bidder disqualification.
- i. **WITHDRAWAL OF BID:** No bid may be withdrawn for a period of 90 days after the scheduled time for receiving bids. A bid may be withdrawn prior to the bid-opening date and time. Such a request to withdraw must be made in writing to the Procurement Management Director, who will approve or disapprove of the request.
- j. **COUNTY RESERVES THE RIGHT:** The County reserves the right to exercise its discretion, to waive minor informalities in any bid; to reject any or all bids with or without cause; and/or to accept the bid that in its judgment will be in the best interest of the County of Lee.
- k. **EXECUTION OF BID:** All bids shall contain the signature of an authorized representative of the bidder in the space provided on the quote proposal form. All bids shall be typed or printed in ink. The bidder may not use erasable ink. All corrections made to the bid shall be initialed.

2. **ACCEPTANCE**

The materials and/or services delivered under the bid **shall** remain the property of the seller until a physical inspection and actual usage of these materials and/or services is accepted by the County and is deemed to be in compliance with the terms herein, fully in accord with the specifications and of the highest quality. In the event the materials and/or services supplied to the County are found to be defective or do not conform to specifications, the County reserves the right to cancel the order upon written notice to the seller and return such product to the seller at the seller's expense.

3. **SUBSTITUTIONS (Approved Alternate)**

Whenever in these specifications a brand name or make is mentioned, it is the intention of the County only to establish a grade or quality of materials and not to rule out other brands or makes of equal quality. However, if a product other than that specified is bid, it is the vendor's responsibility to submit a request for an approved alternate to the product specified. **Submission for approved alternates must contain necessary information to show minimum specifications have been met and be received no later than 10 calendar days prior to the opening of the solicitation unless stated otherwise in the detailed technical specifications.** Lee County **shall** be the sole judge as to whether a product being offered by the bidder is actually an approved alternate to the one being specified by the detailed specifications. (Note: This paragraph does not apply when it is determined that the technical requirements of this solicitation will require a specific product only, as stated in the detailed specifications.)

4. **RULES, REGULATIONS, LAWS, ORDINANCES & LICENSES**

The awarded vendor shall observe and obey all laws, ordinances, rules, and regulations, of the federal, state, and local government, which may be applicable to the supply of this product or service. The awarded vendor has attested to compliance with the applicable immigration laws of the United States in the attached affidavit. Violations of the immigration laws of the United States shall be grounds for unilateral termination of the awarded agreement.

- a. Local Business Tax – Vendor shall submit within 10 calendar days after request.
- b. Specialty License(s) – Vendor shall possess at the time of the opening of the bid all necessary permits and/or licenses required for the sale of this product and/or service and upon the

request of the County will provide copies of licenses and/or permits within 10 calendar days after request.

- c. The geographic preference established in the Local Vendor Preference ordinance is applicable to all Lee County procurement activities unless otherwise specifically noted in the solicitation package. Provided, however, the Local Vendor Preference ordinance is not applicable to procurement activity or solicitations involving Federal Transit Administration grant funds.
- d. Florida Statutes Section 607.1501 (1) states: A foreign corporation may not transact business in this state until it obtains a certificate of authority from the Department of State.

5. **WARRANTY/GUARANTY** (unless otherwise specified)

All materials and/or services furnished under this bid shall be warranted by the vendor to be free from defects and fit for the intended use.

6. **PRE-BID CONFERENCE**

A pre-bid conference will be held at the location, date, and time specified on the cover of this solicitation. Pre-bid conferences are generally non-mandatory, but it is highly recommended that everyone planning to submit a bid attend.

In the event a pre-bid conference is classified as mandatory, it will be so specified on the cover of this solicitation and it will be the responsibility of the bidder to ensure that they are represented at the pre-bid. Only those bidders who attend the pre-bid conference will be allowed to bid on this project.

7. **LEE COUNTY PAYMENT PROCEDURES**

All vendors are requested to mail an original invoice to:

Lee County Finance Department
Post Office Box 2238
Fort Myers, FL 33902-2238

All invoices will be paid as directed by the Lee County payment procedure unless otherwise differently stated in the detailed specification portion of this bid.

Lee County will not be liable for requests for payment deriving from aid, assistance, or help by any individual, vendor, or bidder for the preparation of these specifications.

Lee County is generally a tax-exempt entity subject to the provisions of the 1987 legislation regarding sales tax on services. Lee County will pay those taxes for which it is obligated, or it will provide a Certificate of Exemption furnished by the Department of Revenue. All contractors or bidders should include in their bid all sales or use taxes, which they will pay when making purchases of material or subcontractor's services.

8. **LEE COUNTY BID PROTEST PROCEDURE**

Any contractor/vendor/firm that has submitted a formal bid/quote/proposal to Lee County, and who is adversely affected by an intended decision with respect to the award of the formal bid/quote/proposal, must file a written "Notice of Intent to File a Protest" with the Lee County Procurement Management Director not later than seventy-two (72) hours (excluding Saturdays, Sundays and Legal Holidays) after receipt of the County's "Notice of Intended Decision" with respect to the proposed award of the formal bid/quote/proposal.

The "Notice of Intent to File a Protest" is one of two documents necessary to perfect Protest. The second document is the "Formal Written Protest", both documents are described below.

The "Notice of Intent to File a Protest" document must state all grounds claimed for the Protest, and clearly indicate it as the "Notice of Intent to File a Protest". Failure to clearly indicate the Intent to file the Protest shall constitute a waiver of all rights to seek any further remedies provided for under this Protest Procedure.

The "Notice of Intent to File a Protest" shall be received ("stamped in") by the Procurement Management Director or Public Works Director not later than Four o'clock (4:00) PM on the third working day following the day of receipt of the County's Notice of Intended Decision.

The affected party shall then file its Formal Written Protest within ten (10) calendar days after the time for the filing of the Notice of Intent to File a Protest has expired. Except as provided for in the paragraph below, upon filing of the Formal Written Protest, the contractor/vendor/firm shall post a bond, payable to the Lee County Board of County Commissioners in an amount equal to five percent (5%) of the total bid/quote/proposal, or Ten Thousand Dollars (\$10,000.00), whichever is less. Said bond shall be designated and held for payment of any costs that may be levied against the protesting contractor/vendor/firm by the Board of County Commissioners, as the result of a frivolous Protest.

A clean, Irrevocable Letter of Credit or other form of approved security, payable to the County, may be accepted. Failure to submit a bond, letter of credit, or other approved security simultaneously with the Formal Written Protest shall invalidate the protest, at which time the County may continue its procurement process as if the original "Notice of Intent to File a Protest" had never been filed.

Any contractor/vendor/firm submitting the County's standard bond form (CMO: 514), along with the bid/quote/proposal, shall not be required to submit an additional bond with the filing of the Formal Written Protest.

The Formal Written Protest shall contain the following:

- County bid/quote/proposal identification number and title.
- Name and address of the affected party, and the title or position of the person submitting the Protest.
- A statement of disputed issues of material fact. If there are no disputed material facts, the Formal Protest must so indicate.
- A concise statement of the facts alleged, and of the rules, regulations, statutes, or constitutional provisions, which entitle the affected party to relief.
- All information, documents, other materials, calculations, and any statutory or case law authority in support of the grounds for the Protest.
- A statement indicating the relief sought by the affected (protesting) party.
- Any other relevant information that the affected party deems to be material to Protest.

Upon receipt of a timely filed "Notice of Intent to File a Protest", the Procurement Management Director or Public Works Director (as appropriate) may abate the award of the formal bid/quote/proposal as appropriate, until the Protest is heard pursuant to the informal hearing process as further outlined below, except and unless the County Manager shall find and set forth in writing, particular facts and circumstances that would require an immediate award of the formal bid/quote/proposal for the purpose of avoiding a danger to the public health, safety, or welfare. Upon such written finding by the County Manager, the County Manager may authorize an expedited Protest hearing procedure. The expedited Protest hearing shall be held within ninety-six (96) hours of the action giving rise to the contractor/vendor/firm's Protest, or as soon as may be practicable for all parties. The "Notice of Intent to File a Protest" shall serve as the grounds for the affected party's presentation and the requirements for the submittal of a formal, written Protest under these procedures, to include the requirement for a bond, shall not apply.

The Dispute Committee shall conduct an informal hearing with the protesting contractor/vendor/firm to attempt to resolve the Protest, within seven working days (excluding Saturdays, Sundays and legal

holidays) from receipt of the Formal Written Protest. The Chairman of the Dispute Committee shall ensure that all affected parties may make presentations and rebuttals, subject to reasonable time limitations, as appropriate. The purpose of the informal hearing by the Dispute Committee, the protestor and other affected parties is to provide an opportunity: (1) to review the basis of the Protest; (2) to evaluate the facts and merits of the Protest; and (3) to make a determination whether to accept or reject the Protest.

Once a determination is made by the Dispute Committee with respect to the merits of the Protest, the Dispute Committee shall forward to the Board of County Commissioners its recommendations, which shall include relevant background information related to the procurement.

Upon receiving the recommendation from the Dispute Committee, the Board of County Commissioners shall conduct a hearing on the matter at a regularly scheduled meeting. Following presentations by the affected parties, the Board shall render its decision on the merits of the Protest.

If the Board's decision upholds the recommendation by the Dispute Committee regarding the award, and further finds that the Protest was either frivolous and/or lacked merit, the Board, at its discretion, may assess costs, charges, or damages associated with any delay of the award, or any costs incurred with regard to the protest. These costs, charges or damages may be deducted from the security (bond or letter of credit) provided by the contractor/vendor/firm. Any costs, charges or damages assessed by the Board in excess of the security shall be paid by the protesting contractor/vendor/firm within thirty (30) calendar days of the Board's final determination concerning the award.

All formal bid/quote/proposal solicitations shall set forth the following statement:

"FAILURE TO FOLLOW THE BID PROTEST PROCEDURE REQUIREMENTS WITHIN THE TIMEFRAMES AS PRESCRIBED HEREIN AND ESTABLISHED BY LEE COUNTY BOARD OF COUNTY COMMISSIONERS, FLORIDA, SHALL CONSTITUTE A WAIVER OF YOUR PROTEST AND ANY RESULTING CLAIMS."

9. **PUBLIC ENTITY CRIME**

Any person or affiliate as defined by statute who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid or a contract to provide any goods or services to the County; may not submit a bid on a contract with the County for the construction or repair of a public building or a public work; may not submit bids or leases of real property to the County; may not be awarded or perform works as a contractor, supplier, subcontractor, or consultant under a contract with the County, and may not transact business with the County in excess of \$25,000.00 for a period of 36 months from the date of being placed on the convicted vendor list.

10. **QUALIFICATION OF BIDDERS** (unless otherwise noted)

Bids will be considered only from firms normally engaged in the sale and distribution or provision of the services as specified herein. Bidders shall have adequate organization, facilities, equipment, and personnel to ensure prompt and efficient service to Lee County. The County reserves the right before recommending any award to inspect the facilities and organization; or to take any other action necessary to determine ability to perform is satisfactory, and reserves the right to reject bids where evidence submitted or investigation and evaluation indicates an inability of the bidder to perform.

11. **MATERIAL SAFETY DATA SHEETS**

In accordance with Chapter 443 of the Florida Statutes, it is the vendor's responsibility to provide Lee County with Materials Safety Data Sheets on bid materials, as may apply to this procurement.

12. **MISCELLANEOUS**

ORDER OF PRECEDENCE:

- a) If a conflict exists between the General Conditions and the technical/detailed specifications, then the technical/detailed specifications shall prevail. If a conflict exists between the technical/detailed specifications and the special conditions, then the special conditions shall prevail.

13. **WAIVER OF CLAIMS**

Once this contract expires, or final payment has been requested and made, the awarded contractor shall have no more than 30 days to present or file any claims against the County concerning this contract. After that period, the County will consider the Contractor to have waived any right to claims against the County concerning this agreement.

14. **AUTHORITY TO PIGGYBACK**

It is hereby made a precondition of any bid and a part of these specifications that the submission of any bid in response to this request constitutes a bid made under the same conditions, for the same price, and for the same effective period as this bid, to any other governmental entity.

15. **COUNTY RESERVES THE RIGHT**

a) **State Contract**

If applicable, the County reserves the right to purchase any of the items in this bid from State Contract Vendors if the prices are deemed lower on State Contract than the prices we receive in this quotation.

b) **Any Single Large Project**

The County, in its sole discretion, reserves the right to separately quote any project that is outside the scope of this bid, whether through size, complexity, or dollar value.

c) **Disadvantaged Business Enterprises (DBE's)**

The County, in its sole discretion, reserves the right to purchase any of the items in this bid from a Disadvantaged Business Enterprise vendor if the prices are determined to be in the best interest of the County, to assist the County in the fulfillment of any of the County's grant commitments to federal or state agencies.

The County further reserves the right to purchase any of the items in this bid from DBE's to fulfill the County's stated policy toward DBE's.

d) **Anti-Discrimination**

The vendor for itself, its successors in interest, and assignees, as part of the consideration there of covenant and agree that:

In the furnishing of services to the County hereunder, no person on the grounds of race, religion, color, age, sex, national origin, handicap or marital status shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.

The vendor will not discriminate against any employee or applicant for employment because of race, religion, color, age, sex, national origin, handicap or marital status. The vendor will make affirmative efforts to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, age, sex, national origin, handicap or marital status. Such action shall include, but not be limited to, acts of employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

Vendor agrees to post in a conspicuous place, available to employees and applicants for employment, notices setting forth the provisions of this anti-discrimination clause.

Vendor will provide all information and reports required by relevant regulations and/or applicable directives. In addition, the vendor shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the County to be pertinent to ascertain compliance. The vendor shall maintain and make available relevant data showing the extent to which members of minority groups are beneficiaries under these contracts.

Where any information required of the vendor is in the exclusive possession of another who fails or refuses to furnish this information, the vendor shall so certify to the County its effort made toward obtaining said information. The vendor shall remain obligated under this paragraph until the expiration of three (3) years after the termination of this contract.

In the event of breach of any of the above anti-discrimination covenants, the County shall have the right to impose sanctions as it may determine to be appropriate, including withholding payment to the vendor or canceling, terminating, or suspending this contract, in whole or in part.

Additionally, the vendor may be declared ineligible for further County contracts by rule, regulation or order of the Board of County Commissioners of Lee County, or as otherwise provided by law.

The vendor will send to each union, or representative of workers with which the vendor has a collective bargaining agreement or other contract of understanding, a notice informing the labor union of worker's representative of the vendor's commitments under this assurance, and shall post copies of the notice in conspicuous places available to the employees and the applicants for employment.

The vendor will include the provisions of this section in every subcontract under this contract to ensure its provisions will be binding upon each subcontractor. The vendor will take such actions with respect to any subcontractor, as the contracting agency may direct, as a means of enforcing such provisions, including sanctions for non-compliance.

16. **AUDITABLE RECORDS**

The awarded vendor shall maintain auditable records concerning the procurement adequate to account for all receipts and expenditures, and to document compliance with the specifications. These records shall be kept in accordance with generally accepted accounting methods, and Lee County reserves the right to determine the record-keeping method required in the event of non-conformity. These records shall be maintained for two years after completion of the project and shall be readily available to County personnel with reasonable notice, and to other persons in accordance with the Florida Public Disclosure Statutes.

17. **DRUG FREE WORKPLACE**

Whenever two or more bids/proposals, which are equal with respect to price, quality and service, are received for the procurement of commodities or contractual services, a bid/proposal received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. In order to have a drug-free workplace program, a business shall comply with the requirements of Florida Statutes 287.087.

18. **REQUIRED SUBMITTALS**

Any submittals requested should be returned with the bid response. This information may be accepted after opening, but no later than 10 calendar days after request.

19. **TERMINATION**

Any agreement as a result of this bid may be terminated by either party giving thirty (30) calendar days advance written notice. The County reserves the right to accept or not accept a termination notice submitted by the vendor, and no such termination notice submitted by the vendor shall become effective unless and until the vendor is notified in writing by the County of its acceptance.

The Procurement Management Director may immediately terminate any agreement as a result of this bid for emergency purposes, as defined by the Lee County Purchasing and Payment Procedure Manual.

Any vendor who has voluntarily withdrawn from a formal bid/proposal without the County's mutual consent during the contract period shall be barred from further County procurement for a period of 180 days. The vendor may apply to the Board of Lee County Commissioners for waiver of this debarment. Such application for waiver of debarment must be coordinated with and processed by Procurement Management.

20. **CONFIDENTIALITY**

Vendors should be aware that all submittals (including financial statements) provided with a bid/proposal are subject to public disclosure and will not be afforded confidentiality.

21. **ANTI-LOBBYING CLAUSE**

All firms are hereby placed on formal notice that neither the County Commissioners nor candidates for County Commission, nor any employees from the Lee County Government, Lee County staff members, nor any members of the Qualification/Evaluation Review Committee are to be lobbied, either individually or collectively, concerning this project. Firms and their agents who intend to submit qualifications, or have submitted qualifications, for this project are hereby placed on *formal notice* that they are *not* to contact County personnel for such purposes as holding meetings of introduction, meals, or meetings relating to the selection process outside of those specifically scheduled by the County for negotiations. Any such lobbying activities may cause immediate disqualification for this project.

22. **INSURANCE (AS APPLICABLE)**

Insurance shall be provided, per the attached insurance guide. Upon request, an insurance certificate complying with the attached guide may be required prior to award.

23. **CONFLICT OF INTEREST**

All firms are hereby placed on formal notice that per Section 3 of Lee County Ordinance No. 92-22:

The County is prohibited from soliciting a professional services firm to perform project design and/or construction services if the firm has or had been retained to perform the project feasibility or study analysis.

And:

A professional services firm who has performed or participated in the project feasibility planning, study analysis, development of a program for future implementation or drafting of solicitation documents directly related to this County project, as the primary contractor/consultant or a prominent member of the team, cannot be selected or retained, as the primary contractor/consultant or a named member of the contracting/consulting team, to perform project design, engineering, or construction services for subsequent phase s or scopes of work for this project. Pursuant to FS. S. 287.057(17) the firm will be deemed to have a prohibited conflict of interest that creates an unfair competitive advantage.

Should your response be found in violation of the above stated provisions; the County will consider this previous involvement in the project to be a conflict of interest, which will be cause for immediate disqualification of the submittal from consideration for this project.

24. **CONTRACTOR/SUB-CONTRACTOR RELATIONSHIP**

The prime contractor on a project may not also be listed as a sub-contractor to another firm submitting a proposal for the same solicitation. Should this occur, all responses from the involved/named firms will be considered non-compliant and rejected for award. Sub-contractors may be listed on multiple proposals for the same solicitation.

25. **MAJOR BREAKDOWNS/NATURAL DISASTERS**

Lee County requires that the awarded vendor provide the name of a contact person and phone number which will afford Lee County access twenty-four hours per day, 365 days per year, of this product or service in the event of major breakdowns or natural disasters.

Lee County reserves the right to purchase the product or service listed in this quotation elsewhere in an emergency situation.

26. **DESIGNATED CONTACT**

The awarded vendor shall appoint a person or persons to act as a primary contact for all County departments. This person or back-up shall be readily available during normal work hours by phone or in person, and shall be knowledgeable of the terms and procedures involved.

27. **AFFIDAVIT CERTIFICATION IMMIGRATION LAWS**

The attached document, Affidavit Certification Immigration Laws, is required and should be submitted with your solicitation package. It must be signed and notarized. Failure to include this affidavit with your response will delay the consideration and review of your submission; and could result in your response being disqualified.

28. **SUB-CONTRACTORS**

The use of sub-contractors under this quote is not allowed without prior written authorization from the County representative.

29. **LOCAL BIDDER'S PREFERENCE**

Note: In order for your firm to be considered for the local vendor preference, you must complete and return the attached "Local Vendor Preference Questionnaire" with your quotation.

The Lee County Local Bidder's Preference Ordinance No. 08-26 is being included as part of the award process for this project. As such, Lee County at its sole discretion, may choose to award a preference to any qualified "Local Contractor/Vendor" in an amount not to exceed 3 % of the total amount quoted by that firm.

"Local Contractor / Vendor" shall mean: a) any person, firm, partnership, company or corporation whose principal place of business in the sole opinion of the County, is located within the boundaries of Lee/Collier County, Florida; or b) any person, firm, partnership, company or corporation that has provided goods or services to Lee County on a regular basis for the preceding consecutive three (3) years, and that has the personnel, equipment and materials located within the boundaries of Lee/Collier County sufficient to constitute a present ability to perform the service or provide the goods.

The County reserves the exclusive right to compare, contrast and otherwise evaluate the qualifications, character, responsibility and fitness of all persons, firms, partnerships, companies or corporations submitting formal bids or formal quotes in any procurement for goods or services when making an award in the best interests of the County.

30. **AGREEMENTS/CONTRACTS**

The awarded vendor will be required to execute an Agreement/Contract as a condition of award. A sample of this document may be viewed on-line at <http://sp.leegov.com/procurement/forms>

31. **BID SECURITY AND FORFEITURE (Bond) (Construction)**

The BIDDER shall submit not less than **5% of proposed dollar amount** (including applicable alternates) as bid security. One **ORIGINAL** Bid Security is to be submitted to the COUNTY.

The following types of Bid Security are acceptable:

- A Certified Check or a Cashier's Check, in the stated dollar amount of not less than **5% of proposed dollar amount**. Any Certified Checks or Cashier Checks submitted in lieu of a Bid Bond shall be drawn on a solvent bank or trust company, made payable to Lee County Board of County Commissioners and shall have all necessary documentary revenue stamps attached (if required by law); or
- A Bid Bond may be submitted on Lee County paper Bid Bond Form. Must be signed by all required parties, of not less than **5% of proposed dollar amount** (including Alternate(s) if applicable) shall accompany each Bid. The Bid Bond shall be issued by a duly authorized surety authorized to do business and in good standing with the Florida Department of State. All such bonds shall be issued or countersigned by a local producing agent who is a Florida resident with satisfactory evidence of its authority to execute the bond being submitted.
- Personal checks are not acceptable to Lee County as Bid Security.

The Bid Security of the Bidder will be retained until Bidder has executed the contract, whereupon the Bid Security may be returned. The Bid Security of other Bidders whom the COUNTY believes to have a reasonable chance of receiving the award may be retained by the COUNTY until the effective date of the Agreement, whereupon Bid Securities furnished by such Bidders may be returned.

If within seven calendar days after notification by Lee County of the COUNTY'S approval to award a contract, the successful BIDDER refuses or otherwise neglects to execute the required written contract, fails to furnish the required Public Payment and Performance Bond, or fails to submit the required Certificate of Insurance, then the COUNTY may annul the Notice of Award. The amount of the BIDDER'S bid security shall be forfeited and may be retained by Lee County.

No plea of mistake in the bid or misunderstanding of the conditions of forfeiture shall be available to the BIDDER for recover of its bid security or as a defense to any action based upon its neglect or refusal to execute a written Contract.

32. **PUBLIC PAYMENT AND PERFORMANCE BOND (Construction)**

If required, in accordance with F.S. 255.05 and Lee County Ordinance 95-12-102, a Public Payment and Performance Bond provided issued in a sum equal to one-hundred (100%) percent of the total awarded contract amount by a surety company considered satisfactory by Lee County and otherwise authorized to transact business in the State of Florida shall be required from the successful BIDDER. This shall insure the faithful performance of the obligations imposed by the resulting contract and protect the COUNTY from lawsuits for non-payment of debts incurred during the successful BIDDER'S performance under such Contract.

A public Payment and Performance Bond must be properly executed, by the Surety Company and successful BIDDER, and recorded with the Lee County Clerk of Court, within seven calendar days after notification by Lee County of the COUNTY'S approval to award the Contract. Only the form provided with the contract documents may be accepted.

A Clean Irrevocable Letter of Credit or Cash Bonds may be accepted by the COUNTY in lieu of the Public Payment and Performance Bond. Only the form provided with the contract documents will be accepted.

33. QUALIFICATIONS OF SURETY COMPANIES

In order to be acceptable to the COUNTY, a Surety Company issuing Bid Guaranty Bonds or 100% Public Payment and Performance Bonds or Letters of Credit called for herein shall meet and comply with the minimum standards set forth in as part of the Contract Documents.

34. LIQUIDATED DAMAGES (CONSTRUCTION)

BIDDER hereby agrees, if this proposal is accepted, to commence Work under this Project on or before ten (10) calendar days from the receipt of the Notice to Proceed and to fully complete all Work on the Project within the Contract Time stipulated. BIDDER further agrees to pay the determined dollar amount in liquidated damages for each consecutive calendar day beyond final completion the Work is delayed.

- a. Liquidated Damages to be determined by means of one of the following methods to be determined (TBD):

- i. Liquidated damages will be based on the entire project amount per calendar day using the table below:

Estimated Project Cost Over	Estimated Project Cost But Less than	Daily Charge Per Calendar Day
\$0.00	\$50,000.00	\$645.00
\$50,000.00	\$250,000.00	\$760.00
\$250,000.00	\$500,000.00	\$970.00
\$500,000.00	\$2,500,000.00	\$1,500.00
\$2,500,000.00	\$5,000,000.00	\$2,400.00
\$5,000,000.00	\$10,000,000.00	\$3,300.00
\$10,000,000.00	\$15,000,000.00	\$4,600.00
\$15,000,000.00	\$20,000,000.00	\$4,300.00
\$20,000,000.00 over		\$5,700.00 plus .00005

Or

- ii. Liquidated Damages amount to be based on the following formula: **Contract Price or GMP/Days to Substantial Completion * 15-20% (TBD).**

The CONTRACTOR shall be liable to the COUNTY for per diem liquidated damages in the amount of \$TBD, for each day of delay in achieving substantial completion as set forth herein. The per diem liquidated damages will be subject to change based upon the establishment of the actual contract price.

END OF SECTION

INSURANCE REQUIREMENTS

Minimum Insurance Requirements: *Risk Management in no way represents that the insurance required is sufficient or adequate to protect the vendors' interest or liabilities. The following are the required minimums the vendor must maintain throughout the duration of this contract. The County reserves the right to request additional documentation regarding insurance provided*

- a. **Commercial General Liability** - Coverage shall apply to premises and/or operations, products and completed operations, independent contractors, contractual liability exposures with minimum limits of:
 - \$1,000,000 per occurrence
 - \$2,000,000 general aggregate
 - \$1,000,000 products and completed operations
 - \$1,000,000 personal and advertising injury

- b. **Business Auto Liability** - The following Automobile Liability will be required and coverage shall apply to all owned, hired and non-owned vehicles use with minimum limits of:
 - \$1,000,000 combined single limit (CSL)
 - \$500,000 bodily injury per person
 - \$1,000,000 bodily injury per accident
 - \$500,000 property damage per accident

- c. **Workers' Compensation** - Statutory benefits as defined by FS 440 encompassing all operations contemplated by this contract or agreement to apply to all owners, officers, and employees regardless of the number of employees. Workers Compensation exemptions may be accepted with written proof of the State of Florida's approval of such exemption. Employers' liability will have minimum limits of:
 - \$500,000 per accident
 - \$500,000 disease limit
 - \$500,000 disease – policy limit

*The required minimum limit of liability shown in a and b may be provided in the form of "Excess Insurance" or "Commercial Umbrella Policies." In which case, a "Following Form Endorsement" will be required on the "Excess Insurance Policy" or "Commercial Umbrella Policy."

Verification of Coverage:

1. Coverage shall be in place prior to the commencement of any work and throughout the duration of the contract. A certificate of insurance will be provided to the Risk Manager for review and approval. The certificate shall provide for the following:

- a. The certificate holder shall read as follows:

Lee County Board of County Commissioners
P.O. Box 398
Fort Myers, Florida 33902

- b. *“Lee County, a political subdivision and Charter County of the State of Florida, its agents, employees, and public officials”* will be named as an **“Additional Insured”** on the General Liability policy, including Products and Completed Operations coverage.

Special Requirements:

1. An appropriate **“Indemnification”** clause shall be made a provision of the contract.
2. It is the responsibility of the general contractor to insure that all subcontractors comply with all insurance requirements.

**LEE COUNTY, FLORIDA
DETAILED SPECIFICATIONS
FOR
FORD AUTOMOBILES, SPORT UTILITY VEHICLES, PASSENGER & LIGHT DUTY VANS, LIGHT &
MEDIUM DUTY TRUCKS, AND CAB & CHASSIS**

SCOPE

The Lee County Board of County Commissioners is seeking sealed bids for the purchase of vehicles for Lee County Government use from Ford Motor Company Division dealers. The vehicles to be purchased under this bid are automobiles, sport utility vehicles, passenger and light duty vans, light and medium duty trucks, and cab/chassis. While the County makes no guarantees to the actual quantities of any vehicle type, we can predict the majority of purchases will be trucks.

These specifications are intended to provide the information by which prospective bidders may understand the requirements of Lee County relative to furnishing and delivering fleet vehicles.

Proposer is required to indicate whether the Firm and/or any proposed sub-consultants are Disadvantaged Business Enterprises (DBE). Lee County encourages the utilization and participation of DBEs in procurements, and evaluation proceedings will be conducted within the established guidelines regarding equal employment opportunity and nondiscriminatory action based upon the grounds of race, color, sex or national origin. Interested certified Disadvantaged Business Enterprise (DBE) firms as well as other minority-owned and women-owned firms are encouraged to respond.

TERM OF AWARD

If awarded, the terms of this solicitation shall be in effect for one year. The County reserves the right to renew this quote (or any portion thereof) for up to three additional one-year periods, upon mutual agreement of both parties and, except as to lower pricing, under the same terms and conditions.

NOTE: All percentage figures bid shall remain firm over the term of the bid.

SPECIFICATION BOOKS

The awarded bidder shall, at no cost, supply Lee County Fleet Management with one (1) current set of specification books covering all models of Ford products at the beginning of each model year change. These specification books must include all specifications including, but not limited to, measurements, capacities, colors, types, model year changes, detailed specifications, etc.

ADDITIONAL DISCOUNTS AND/OR CONCESSIONS

Lee County shall receive any and all additional discounts and/or concessions available at the time of each purchase. These discounts/concessions will be in addition to the percentage quoted under the "Basis of Award" (therefore, they will not be factored into the award process of this bid). All paperwork associated with these discounts/concessions must be sent to Lee County Fleet Management at the beginning/change of each model year or as they become available to the Dealership. In the space provided on Attachment B, please explain how you will pass these discounts/concessions on to Lee County Fleet Management on a per model basis.

STATE CONTRACT/SHERIFF'S ASSOCIATION/OTHER CONTRACTS

The County reserves the right to purchase any of the items in this bid from any of the contracts listed above if the prices are lower and/or it is deemed in the best interest of Lee County to do so. The awarded dealer at the sole discretion of Lee County Fleet Management may be allowed to match these contracted prices.

DESIGNATED CONTACT

The awarded vendor shall appoint a person or persons to act as a primary contact with Lee County Fleet Management. This person or back-up shall be readily available during normal work hours by phone or in person, and shall be knowledgeable of the terms and procedures involved in this bid.

BASIS OF AWARD

1. **Bidders should complete the attached forms as instructed herein.** New vehicle prices will be given as a percentage figure below the "Dealer's Selling Price" column, as shown in the Kelley Blue Book's KARPOWER ON LINE New Car Pricing Software. This percentage figure below the "Dealer's Selling Price" column shall apply to the base price, freight, and all factory production options. Lee County shall participate in all fleet or price incentives or rebates available to the vendor in addition to the percentage figure below the "Dealer's Selling Price" column, as shown in the Kelley Blue Book's KARPOWER ON LINE New Car Pricing Software.

All vehicles purchased under this contract include as part of the base vehicle price: vehicle preparation costs, delivery, three complete sets of keys, vehicle title, vehicle registration, and a new County license plate. The percentage figure below "Invoice" that you submit should take these factors into account.

2. One vendor from all responsive Ford Motor Company dealers and shall be awarded the bid. Since fleet incentives or rebates will be consistent from dealer to dealer (same manufacturer), **the award will be based on the response with the greatest percentage figure below the "Dealer's Selling Price" column of the Kelley Blue Book's KARPOWER ON LINE New Car Pricing Software.**

OPTION A: DEALER INSTALLED OPTIONS

NOTE: In order to be considered for award; Option A must be completed.

1. Dealer installed options may include but are not limited to strobe lights, bed liners, utility bodies, cranes, service manuals, and parts manuals. See Attachment "A" for the approved list of dealer installed option manufacturers (only manufacturers on this list will be accepted). The Division of Fleet Management will provide the awarded vendors with updated lists of approved manufacturers for dealer installed options as needed throughout the contract period. The awarded vendor will also handle any and all warranty claims for the dealer installed items and any accessories added to the vehicle(s). These warranty claims will be handled as quickly as possible to minimize downtime to Lee County. It will be the responsibility of the awarded vendor to pick up and deliver the equipment for all warranty repairs and issues.

All prospective bidders must provide a percentage figure above "actual invoice" for any dealer installed options performed by a sub-contractor (copies of actual invoices must be provided as backup).

PRE-DELIVERY

1. The vendor shall be responsible for delivering vehicles that are new and unused, properly serviced, clean, and in first class operating condition. Pre-delivery service, at a minimum, shall include the following:
 - a. Complete lubrication and check all fluid levels to assure proper fill
 - b. Adjustment of engine to proper operating condition
 - c. Inflate tires to proper pressure
 - d. Check for proper operation of all accessories, gauges, lights, mechanical and hydraulic features.
 - e. Cleaning of vehicle, if necessary, and removal of all unnecessary tags, stickers, papers, etc. Remove window sticker and turn in with the delivery paperwork.
 - f. Overall check for safe operating condition
 - g. All fuel tanks on each new vehicle will come with a full tank of fuel.

- h. All new vehicles will come with three (3) complete sets of keys, including keys for any accessories such as: tool boxes, utility boxes, etc.
2. The vendor understands that the bid covers a complete, fully operative unit, as specified by the purchase order and enclosures, including the mounting of all attachments and connections to the chassis.

CONDITIONS & DELIVERY

1. All units must contain a full tank of fuel as indicated by the vehicle's fuel gauge at the time of delivery.
2. If a vehicle is delivered with more than 250 miles but less than 500 miles as indicated by the vehicle's odometer, the vendor shall be assessed \$0.54 (IRS rate) cents per mile for all miles over 250. Vehicles with 500 miles or more as indicated by the vehicle's odometer may not be accepted.
3. All vehicles shall be delivered with three complete sets of keys – including three sets of keys for any and all accessories including tool boxes and utility boxes.
4. All vehicles shall be delivered to the Lee County's Division of Fleet Management located at 2955 Van Buren Street, Fort Myers, Florida 33916. Vendors must contact the Shop Superintendent or designee at (239) 533-5338 at least twenty-four hours prior to delivery. Deliveries can be made Monday - Friday between the hours of 8:00 AM and 4:00 PM.
5. Delivery does not constitute acceptance. **Acceptance** and authorization of payment will be given only after a thorough inspection indicates that the vehicle meets specifications and conditions listed herein.
6. Vehicles shall be delivered with each of the following documents satisfactorily completed:
 - a. Temporary license plate.
 - b. Owner and/or operator manual(s).
 - c. Warranty certifications, including rust proofing, if applicable.
 - d. Copy of pre-delivery service report.
 - e. Window price sticker.
7. All vehicles shall be equipped with all standard equipment as specified by the manufacturer for this model. All vehicles shall comply with the EPA Emission Standards, and all Motor Vehicle Safety Standards as established by the U.S. Department of Transportation regarding the manufacture of motor vehicles, and OSHA standards CFR 29 1910/1926.

TITLE, REGISTRATION, AND PLATES

1. All vehicles delivered under this contract shall be titled and registered by the vendor (bidder) in accordance with Florida Statutes Chapters 319 and 320. Vendor shall send any necessary form(s), which must be signed by an authorized representative of the Lee County Board of County Commissioners, with the vehicle upon delivery. Vendor shall obtain necessary signature(s) and complete the titling and registration process for the County and return a county plate within twenty-five days of delivery of vehicle. **Vendor shall include all fees involved in the title application, registration, and obtaining new plates in the base price for each vehicle.**

NOTE: The Lee County Board of County Commission is self-insured, therefore, a "Proof of Insurance" form is not required.

END OF SECTION

ATTACHMENT A

LIST OF AUTHORIZED DEALER INSTALLED OPTION MANUFACTURERS

1. EMERGENCY AND WARNING LIGHTS:
 - A. LEDS - GROTE
 - B. ROTATING BEACON – TARGET TECH (FEDERAL SIGNAL CORP)
 - C. CORNER INTERCEPT – NOVA ELECTRONICS
2. BEDLINERS:
 - A. DURALINER
 - B. RHINO LININGS
 - C. LINE-X
3. TOOL BOXES:
 - A. DELTA
 - B. DAYTON
 - C. UNITED WELDING
 - D. JOBOX
4. TRAILER HITCHES:
 - A. DRAW-TITE
 - B. REESE
5. LIFT GATES:
 - A. TOMMY GATE
6. ALUMINUM DUMP BODY INSERTS:
 - A. TRUCK CRAFT
 - B. EZ DUMPER
7. UTILITY AND STAKE BODIES:
 - A. OMAHA
 - B. READING
 - C. KNAPHEIDE
8. CRANES:
 - A. AUTO-CRANE
 - B. LIFTMOORE
9. DUMP AND FLAT BED DUMP HOISTS:
 - A. VENCO CONVERSION HOISTS
10. TRUCK AND VAN ACCESSORIES:
 - A. MASTERACK
 - B. AMERICAN VANS
 - C. WEATHERGUARD

ATTACHMENT B – DISCOUNTS/CONCESSIONS

In the space provided below, please explain how you will pass these discounts/concessions on to Lee County Fleet Management on a per model basis.

REQUIRED FORMS

These forms are required and should be submitted with all proposals. If it is determined that forms in this selection are not applicable to your company or solicitation they should be marked "N/A or Not Applicable" across the form in large letters and returned with your submission package.

Form # Title/Description

1 Solicitation Response Form

The corporate or mailing address must match the company information as it is listed on the Florida Department of state Division of Corporations. Attach a copy of the certification from <http://www.sunbiz.org>. All signatures must be by an authorized company representative. Sample attached for your reference.

1a Proposal Form (required for Non-CCNA solicitations)

This form is used to provide itemization of project cost. A more detailed "schedule of values" may be requested by the County

1b Business Relationship Disclosure Requirement (if Applicable)

Sections 112.313(3) and 112.313(7), Florida Statutes, prohibit certain business relationships on the part of public officers and employees, their spouses, and their children. **If this disclosure is applicable request form "INTEREST IN COMPETITIVE BID FOR PUBLIC BUSINESS" (Required by 112.313(12)(b), Florida Statute (1983)) to be completed and returned with solicitation response. It is the proposer's responsibility to disclose this relationship, failure to do so could result in being declared non-responsive.**

2 Affidavit Certification Immigration Laws

Form is acknowledgement that the proposer is in compliance in regard to Immigration Laws.

3 Reference Survey

Provide this form to a minimum of three references. The reference respondents will need to return this forms to the buyer listed on the form. This form will not be turned in with the proposal package.

1. Section 1: Proposer to complete with reference respondent's information prior to providing to them for their response. (This is **not** the proposer's information)
2. In the "Subject" block enter the name of the project the Proposer completed for that reference respondent
3. Section 2: Enter the name of the Proposer
4. The reference respondent should complete "Section 3" and return directly to Lee County Procurement Management. Reference survey should not be returned by the Proposer.
5. A minimum of 3 reference responses must be returned.
6. Responses are due: *(see front cover for the solicitation type)*
 - **Bids and NON-evaluated (by Committee) solicitations:** Only the awarded proposer(s) will be required to provide reference responses. Responses are due no later than 7 calendar days after the Notice of Intended Decision or Notice of Intent has been issued.
 - **CCNA and other Committee evaluated proposals:** All proposers are required to provide reference responses no later than 7 calendar days after the opening or two days prior to the first evaluation meeting, whichever is sooner.

Failure to obtain reference surveys may make your company non-responsive.

7. Section 4: The reference respondent to print and sign name

4 *Negligence or Breach of Contract Disclosure Form*

The form may be used to disclose any litigation that your company may be a part of involving negligence or breach of contract over the past ten years. You may need to duplicate this form to list all history. This should include at a minimum, litigation for similar projects completed in the State of Florida. Under part 6 of the form the final action needs to include in whose favor the litigation was settled and was a monetary amount awarded. Please do not write N/A on this form. If you have no litigation, enter "None" in section 3 of the form. If the proposer has more than 10 lawsuits, you may narrow them to litigation of the company or subsidiary submitting the solicitation response. See the form for further instruction and what to do if you have no litigation history in the past ten years. You may also submit the information in a table format if you have a large number of litigations to list. Simply put "See Attached Listing" in the block number 3.

5 *Affidavit Principal Place of Business*

Certifies proposer's location information. Local Vendor Preference and Location Point values are excluded when prohibited by grant or funding source. (In such cases form will be informational only.)

6 *Sub-Contractor List*

To be completed and returned when sub-contractors are to be utilized and are known at the time of the submission.

7 *Public Entity Crime Form*

Self explanatory.

8 *Trench Safety (Required for Construction Projects Only)*

Self explanatory.

9 *Disadvantaged Business Enterprise Participation (if applicable)*

Self explanatory

10 *Bid Bond (if applicable)*

Self explanatory

Proposal Label (Required)

Self explanatory. Please affix to the outside of the sealed submission documents.

Proposer Checklist (not a required form)

Self explanatory.

Form 1 – Solicitation Response Form
LEE COUNTY
 SOUTHWEST FLORIDA

LEE COUNTY PROCUREMENT MANAGEMENT
SOLICITATION RESPONSE FORM

 Date Submitted _____ Deadline Date: 9/13/2016

 SOLICITATION IDENTIFICATION: ITB160545/RDF

 SOLICITATION NAME: Ford Automobiles, Sport Utility Vehicles, Vans, Trucks, Etc.

COMPANY NAME: _____

NAME & TITLE: (TYPED OR PRINTED) _____

BUSINESS ADDRESS: (PHYSICAL) _____

CORPORATE OR MAILING ADDRESS: _____

☐ SAME AS PHYSICAL _____

ADDRESS MUST MATCH SUNBIZ.ORG

E-MAIL ADDRESS: _____

PHONE NUMBER: _____ FAX NUMBER: _____

NOTE REQUIREMENT: IT IS THE SOLE RESPONSIBILITY OF THE VENDOR TO CHECK LEE COUNTY PROCUREMENT MANAGEMENT WEB SITE FOR ANY ADDENDA ISSUED FOR THIS PROJECT. THE COUNTY WILL POST ADDENDA TO THIS WEB PAGE, BUT WILL NOT NOTIFY.

In submitting this proposal, Proposer makes all representations required by the instructions to Proposer and further warrants and represents that: Proposer has examined copies of all the solicitation documents and of the following addenda:

No. _____ Dated: _____	No. _____ Dated: _____	No. _____ Dated: _____
No. _____ Dated: _____	No. _____ Dated: _____	No. _____ Dated: _____

Tax Payer Identification Number _____

(1) Employer Identification Number -OR- (2) Social Security Number:

**** Lee County collects your social security number for tax reporting purposes only**

Please submit a copy of your registration from the website www.sunbiz.org establishing your firm as authorized to conduct business in the State of Florida, as provided by the *Florida Department of State, Division of Corporations*. **ALL PROPOSALS MUST BE SIGNED, SEALED (IF APPLICABLE) AND EXECUTED BY A CORPORATE AUTHORITY**

1 **Collusion Statement:** Lee County, Fort Myers, Florida The undersigned, as Proposer, hereby declares that no person or other persons other than the undersigned are interested in this solicitation as Principal, and that this solicitation is submitted without collusion with others; and that we have carefully read and examined the specifications or scope of work, and with full knowledge of all conditions under which the services herein is contemplated must be furnished, hereby propose and agree to furnish this service according to the requirements set out in the specifications or scope of work for said service for the prices as listed on the county provided price sheet or (CCNA) agree to negotiate prices in good faith if a contract is awarded.

2 **Scrutinized Companies Certification:**

Section 287.135, Florida Statutes, prohibits agencies from contracting with companies, for goods or services over \$1,000,000, that are on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Both lists are created pursuant to section 215.473, Florida Statutes.

As the person authorized to sign on behalf of Respondent, I hereby certify that the company identified above not listed on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. I understand that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject company to civil penalties, attorney's fees, and/or costs.

Form 1 – Solicitation Form, Page 2

- 3 Business Relationship Disclosure Requirement:** Sections 112.313(3) and 112.313(7), Florida Statutes, prohibit certain business relationships on the part of public officers and employees, their spouses, and their children. See Part III, Chapter 112, Florida Statutes and/or the brochure entitled "A Guide to the Sunshine Amendment and Code of Ethics for Public Officers, Candidates and Employees" for more details on these prohibitions. However, Section 112.313(12), Florida Statutes (1983), provides certain limited exemptions to the above-referenced prohibitions, including one where the business is awarded under a system of sealed, competitive bidding; the public official has exerted no influence on bid negotiations or specifications; and where disclosure is made, prior to or at the time of the submission of the bid, of the official's or his spouse's or child's interest and the nature of the intended business. The Commission on Ethics has promulgated this form for such disclosure, if and when applicable to a public officer or employee.

If this disclosure is applicable request form "INTEREST IN COMPETITIVE BID FOR PUBLIC BUSINESS" (Required by 112.313(12)(b), Florida Statute (1983)) to be completed and returned with solicitation response. It is the proposer's responsibility to disclose this relationship, failure to do so could result in being declared non-responsive.

Business Relationship Applicable

Business Relationship NOT Applicable

- 4 Disadvantaged Business Enterprise (DBE) proposers' please attach a current certificate Yes No
- 5 The proposer should carefully read all the solicitation documents. Any deviation or modification must be identified. Failure to clearly identify any modifications in the space below or on a separate page may be grounds for the proposal being declared non-responsive, or to have the award of the solicitation to be rescinded by the County.
- 6 Are there any modifications to the solicitation or specifications Yes No
- Modifications:

Where Proposer is a Corporation, add:

Company Name: (Name printed or typed)

Authorized Proposer: (Name printed or typed)

(Seal)

Proposer Title

Secretary Signature:

Authorized Proposer Signature

Attest: (Secretary name printed or typed)

Any blank spaces on the form(s), qualifying notes or exceptions, counter offers, lack of required submittals, or signatures, on County's Form may result in the submission being declared non-responsive by the County.

Form 2 - Affidavit Certification of Immigration Laws



LEE COUNTY
SOUTHWEST FLORIDA

AFFIDAVIT CERTIFICATION IMMIGRATION LAWS

SOLICITATION NO.: ITB160545/RDF SOLICITATION NAME: Ford Automobiles, Sport Utility Vehicles, Vans, Trucks, Etc.

LEE COUNTY WILL NOT INTENTIONALLY AWARD COUNTY CONTRACTS TO ANY CONTRACTOR WHO KNOWINGLY EMPLOYS UNAUTHORIZED ALIEN WORKERS, CONSTITUTING A VIOLATION OF THE EMPLOYMENT PROVISIONS CONTAINED IN 8 U.S.C. SECTION 1324 a(c) {SECTION 274A(e) OF THE IMMIGRATION AND NATIONALITY ACT ("INA").

LEE COUNTY MAY CONSIDER THE EMPLOYMENT BY ANY CONTRACTOR OF UNAUTHORIZED ALIENS A VIOLATION OF SECTION 274A(e) OF THE INA. **SUCH VIOLATION BY THE RECIPIENT OF THE EMPLOYMENT PROVISIONS CONTAINED IN SECTION 274A(e) OF THE INA SHALL BE GROUNDS FOR UNILATERAL CANCELLATION OF THE CONTRACT BY LEE COUNTY.**

PROPOSER ATTESTS THAT THEY ARE FULLY COMPLIANT WITH ALL APPLICABLE IMMIGRATION LAWS (SPECIFICALLY TO THE 1986 IMMIGRATION ACT AND SUBSEQUENT AMENDMENTS).

Company Name: _____

Signature

Title

Date

STATE OF _____
COUNTY OF _____

The foregoing instrument was signed and acknowledged before me this _____ day of _____
20____, by _____ who has produced
(Print or Type Name)

_____ as identification.
(Type of Identification and Number)

Notary Public Signature

Printed Name of Notary Public

Notary Commission Number/Expiration

The signer of this Affidavit guarantees, as evidenced by the sworn affidavit required herein, the truth and accuracy of this affidavit to interrogatories hereinafter made. **LEE COUNTY RESERVES THE RIGHT TO REQUEST SUPPORTING DOCUMENTATION, AS EVIDENCE OF SERVICES PROVIDED, AT ANY TIME.**

Form 3 Reference Survey



LEE COUNTY
SOUTHWEST FLORIDA

Lee County Procurement Management

REFERENCE SURVEY

Solicitation #ITB160545/RDF Ford Automobiles, Sport Utility Vehicles, Vans, Trucks, Etc.

Section 1

FROM:	BUYER: Bob Franceschini	
COMPANY:	DATE: 9/13/2016	
PHONE #:	TOTAL # PAGES: 1	
FAX #:	PHONE #: 239-533-8881	FAX #: 239-485-8383
EMAIL:	BUYER EMAIL: rfranceschini@LeeGov.com	
SUBJECT:	Reference for work completed regarding (Proposer project name):	

You as an individual or Your company has been given as a reference on a project identified above.

Description of Lee County Project: The Lee County Board of County Commissioners, Division of Fleet Management, is seeking sealed bids for the purchase of vehicles for Lee County Government use from Ford Motor Company Division dealers.

Section 2

Proposer name (reference is being provided for):

Section 3

"YES" OR "NO"

1. Was the scope of work performed similar in nature?	
2. Did this company have the proper resources and personnel by which to get the job done?	
3. Were any problems encountered with the company's work performance?	
4. Were any change orders or contract amendments issued, other than owner initiated?	
5. Was the job completed on time?	
6. Was the job completed within budget?	
7. On a scale of one to ten, ten being best, how would you rate the overall work performance, considering professionalism; final product; personnel; resources. Rate from 1 to 10. (10 being highest)	
8. If the opportunity were to present itself, would you rehire this company?	
9. Please provide any additional comments pertinent to this company and the work performed for you:	

Section 4

PLEASE COMPLETE AND RETURN TO THE ATTENTION OF: Bob Franceschini

Email rfranceschini@leegov.com or FAX # 239-485-8383

Reference Name (Print Name)

Please submit non-Lee County employees as references

Reference Signature

Form 4 - Negligence or Breach of Contract Disclosure Form

REVISED 05/31/2016



ALLEGED NEGLIGENCE OR BREACH OF CONTRACT DISCLOSURE FORM

Please fill in the form below. Provide a sheet for each incident that has occurred over the past 10 years. Please compete in chronological order with the most recent incident on starting on page 1. Please do not modify this form (expansion of spacing allowed) or submit your own variation.

Company Name: _____

Type of Incident Alleged Negligence or Breach of Contract	Incident Date And Date Filed	Plaintiff (Who took action against your company)	Case Number	Court County/State	Project	Claim Reason (initial circumstances)	Final Outcome (who prevailed)

Make as many copies of this sheet as necessary in order to **provide a 10 year history** of the requested information. If there is **no action** pending or action taken in the last 10 years, complete the **company name** and write **"NONE"** on line 3 of this page and return with your proposal package. This form should also include the primary partners listed in your proposal. Do not include litigation with your company as the plaintiff. Final outcome should include who prevailed and what method of settlement was made. If a monetary settlement was made the amount may remain anonymous.

Page Number: _____ Of _____ Total pages

Update the page number to reflect the current page and the total number of pages. Example: Page 3, of 5 total submitted pages of this form.

Form 5 - Affidavit Principal Place of Business



LEE COUNTY
SOUTHWEST FLORIDA

AFFIDAVIT PRINCIPAL PLACE OF BUSINESS

Local Vendor Preference (Non-CCNA)
(Lee County Ordinance No. 08-26)
Location Identification (CCNA)

Instructions: Please complete all information that is applicable to your firm

Company Name: _____

Printed name of authorized signer _____

Title _____

⇒

Authorized Signature _____

Date _____

The signee of this Affidavit guarantee, as evidenced by the sworn affidavit required herein, the truth and accuracy of this affidavit to interrogatories hereinafter made. **LEE COUNTY RESERVES THE RIGHT TO REQUEST SUPPORTING DOCUMENTATION, AS EVIDENCE OF SERVICES PROVIDED, AT ANY TIME.**

Notary:

State of _____

County of _____

The foregoing instrument was signed and acknowledged before me this _____ day of _____

20 _____ who has produced

_____ as identification (or personally known)

_____ Type of ID and number

⇒

Notary Public Signature _____

Notary Commission Number and expiration _____

1. Principal place of business is located within the boundaries of:

_____ Lee County

_____ Collier County

_____ Non-Local

Local Business Tax License # _____

2. Address of Principal Place of Business: _____

3. Number of years at this location _____

years

4. Have you provided goods or services to Lee County on a regular basis within the past 3 consecutive years

Yes*

No

*If yes, attach contractual history for past 3 consecutive years

5. Size of Facility (i.e. sales area, warehouse, storage yard, etc.) _____

6. Number of available employees for this contract _____

AFFIDAVIT PRINCIPAL PLACE OF BUSINESS Page 2

7. Describe the types, amount and location of equipment you have available to service this contract.

service this contract.

8. Describe the types, amount and location of material stock that you have available to service this contract.

Available to service this contract.

Area	Comments
Area 1	
Area 2	
Area 3	
Area 4	
Area 5	
Area 6	
Area 7	
Area 8	
Area 9	
Area 10	
Area 11	
Area 12	
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Area 99	
Area 100	

Attach additional page(s), if necessary

Form 6-Sub-contractor List



LEE COUNTY
SOUTHWEST FLORIDA

SUB-CONTRACTOR LIST

[illegible]

Please include sub-contractors name, area of work (i.e. mechanical, electrical, etc.) and a **valid** phone number and email. Also include the dollar value or percentage that the sub-contractor will be performing. If sub-contractors qualify as Disadvantaged Business Enterprise (**DBE**) contractors, please attach a current certificate.

Form 7: Public Entity Crime Form

Page 1 of 2

This form must be signed and sworn to in the presence of a notary public or other officer authorized to administer oaths.

1. This sworn statement is submitted to _____
(Print name of the public entity)

by _____
(Print individual's name and title)

for _____
(Print name of entity submitting sworn statement)

whose business address is _____

(If applicable) its Federal Employer Identification Number (FEIN) is _____

(If the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement: On the attached sheet.) Required as per IRS Form W-9.

2. I understand that a "public entity crime" as defined in Paragraph 287.133(1) (g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including but not limited to, and bid or contract for goods or services to be provided to any public entity or agency or political subdivision or any other state or of the United States, and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

3. I understand that "convicted" or "conviction" as defined in Paragraph 287.133(1) (b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.

4. I understand that "affiliate" as defined in Paragraph 287.133(1)(a), Florida Statutes, means:

1. A predecessor or successor of a person convicted of a public entity crime;
or:

2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members and agents who are active in the management of the affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not fair market value under an arm's length agreement, shall be a facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

5. I understand that a "person" as defined in Paragraph 287.133(1) (c), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of the entity.

6. Based on information and belief, the statement which I have marked below is true in relation to the entity submitting those sworn statement. (Please indicate which statement applies.)

_____ Neither the entity submitted this sworn statement, nor any officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity nor affiliate of the entity have been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____ The entity submitting this sworn statement, or one or more of the officers, directors, executives, partners, shareholders, employees, member, or agents who are active in management of the entity, or an affiliate of the entity have been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, member, or agents who are active in management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearing and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. (Attach a copy of the final order)

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES, FOR CATEGORY TWO OR ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

(Signature)

(Date)

STATE OF _____
COUNTY OF _____

PERSONALLY APPEARED BEFORE ME, the undersigned authority, _____

(Name of individual signing)

who, after first being sworn by me, affixed his/her signature in the space provided above on this _____ day
of _____, 2 _____.

(NOTARY PUBLIC)

My Commission Expires: _____

Form#8: Trench Safety (Required for Construction Projects Only)

TRENCH SAFETY

Contractor/Vendor acknowledges that included in the appropriate solicitation items of the solicitation and in the Total solicitation price are costs for complying with the Florida Trench Safety Act (90-96, Laws of Florida) effective October 1, 1990. The contractor/vendor further identifies the costs of such compliance to be summarized below:

Trench Safety Measure (Description)	Units of Measure (LF, SF)	Unit (Quantity)	Unit Cost	Extended Cost
A. _____	_____	_____	_____	_____
B. _____	_____	_____	_____	_____
C. _____	_____	_____	_____	_____
D. _____	_____	_____	_____	_____
TOTAL \$ _____				

If applicable, the contractor/vendor certifies that all trench excavation done within his control in excess of five (5') feet in depth shall be in accordance with the Florida Department of Transportation's Special Provisions Article 125-1 and Sub-article 125-4.1 (TRENCH EXCAVATION SAFETY SYSTEM AND SHORING, SPECIAL-TRENCH EXCAVATION).

Failure to complete the above may result in the solicitation being declared non-responsive.

(Signature)

(Company Name)

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ by _____ (name and title of corporate officer) of _____ (name of corporation), a _____ (state or place of incorporation) corporation, on behalf of the corporation. He/she is personally known to me or has produced _____ (type of identification) as identification.

(signature line for notary public)

(name of notary typed, printed or stamped)

(title or rank)

My commission expires:

(serial number, if any)

Form 9: Disadvantaged Business Enterprise Participation

DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

NOTE: This form must be signed by the person who will sign, or has signed the Proposal/Quote Form. This form will become part of the contract documents.

DIVISION OF EQUAL OPPORTUNITY CERTIFIED DBE/ _____ MINORITY/ _____ WOMEN/ _____
(Check appropriate designation)

DESCRIPTION OF WORK: _____

SUB-CONTRACTOR'S NAME: _____

EST. DOLLAR VALE OF PROPOSED WORK: _____

DIVISION OF EQUAL OPPORTUNITY CERTIFIED DBE/ _____ MINORITY/ _____ WOMEN/ _____
(Check appropriate designation)

DESCRIPTION OF WORK: _____

SUB-CONTRACTOR'S NAME: _____

EST. DOLLAR VALE OF PROPOSED WORK: _____

DIVISION OF EQUAL OPPORTUNITY CERTIFIED DBE/ _____ MINORITY/ _____ WOMEN/ _____
(Check appropriate designation)

DESCRIPTION OF WORK: _____

SUB-CONTRACTOR'S NAME: _____

EST. DOLLAR VALE OF PROPOSED WORK: _____

DIVISION OF EQUAL OPPORTUNITY CERTIFIED DBE/ _____ MINORITY/ _____ WOMEN/ _____
(Check appropriate designation)

DESCRIPTION OF WORK: _____

SUB-CONTRACTOR'S NAME: _____

EST. DOLLAR VALE OF PROPOSED WORK: _____

TOTAL VALE OF ALL DBE/MINORITY/WOMEN SUBCONTRACT WORK: \$ _____

ESTIMATED TOTAL PERCENT (%) TO BE UTILIZED: _____ %

CONTRACTOR NAME

SIGNATURE

DATE

BID BOND

Complete **EITHER** Lee County Paper Bid Bond

KNOW ALL MEN BY THESE PRESENTS, that we

_____ as Principal, and

(BIDDER'S Name)

_____ a Corporation licensed to do

(Surety's Name)

business under the laws of the State of Florida as a Surety, are held and firmly bound unto LEE COUNTY BOARD OF COUNTY COMMISSIONERS, LEE COUNTY, FLORIDA, a Political Subdivision of the State of Florida,

in the SUM OF _____

for the payment whereof, well and truly to be made, we bind ourselves, our heirs, successors, personal representatives and assigns, jointly and severally, firmly, by these presents.

SIGNED AND SEALED this _____ day of _____, _____

WHEREAS, said Principal is herewith submitting a Proposal for the construction of:

NOW, THEREFORE, the condition of the above obligation is such that if said Principal shall be awarded the Contract upon said Proposal within the specified time and shall enter into a written Contract, satisfactory in form, provide an acceptable Public Payment & Performance Bond from a Surety acceptable to the COUNTY and provide other Insurance as may be required to the COUNTY within seven (7) calendar days after the written Notice of Award date, or within such extended period as the COUNTY may grant, then this obligation shall be null and void; otherwise said Principal and Surety shall pay to said COUNTY in money the difference between the amount of the Bid of said Principal and the amount for which said COUNTY may legally contract with another party to perform said work, if the latter amount be in excess of the former, together with any expenses and reasonable attorney's fees incurred by said COUNTY if suit be brought here on, but in no event shall said Surety's liability exceed the penal sum hereof plus such expenses and attorney's fees. For purposes of unsuccessful bid protests filed by the Principal herein, this obligation shall bind the Surety to pay costs and damages associated with the bid protest or delays to the project upon a finding from the Board of County Commissioners for Lee County that the bid protest was frivolous and/or lacked merit. The liability of the Surety shall not exceed the penal sum of the bid bond.

Witness as to Principal:

(Principal)

(By) _____

Printed Name

(SEAL)

Witness as to Surety:

(Surety's Name)

(SEAL)

(By-As Attorney-in-Fact, Surety) _____

Affix Corporate Seals and attach proper Power of Attorney for Surety.

Sealed Proposal Label

Cut along the outer border and affix this label to your sealed solicitation envelope to identify it as a "Sealed Submission/Proposal".

PROPOSAL DOCUMENTS • DO NOT OPEN	
SOLICITATION NO.:	ITB160545/RDF
SOLICITATION TITLE:	Ford Automobiles, Sport Utility Vehicles, Vans, Trucks, Etc.
DATE DUE:	9/13/2016
TIME DUE:	Prior to: 2:30 PM
SUBMITTED BY:	
	(Name of Company)
e-mail address	Telephone
DELIVER TO: Lee County Procurement Management 1500 Monroe 4 th Floor Fort Myers FL 33901	
Note: <i>proposals received after the time and date above will not be accepted.</i>	



Lee County Procurement Management
1500 Monroe Street, 4th Floor
Fort Myers, FL 33901
(239) 533-8881
www.leegov.com/procurement

PLEASE PRINT CLEARLY

Proposer Check List

LEE COUNTY PROCUREMENT MANAGEMENT **PROPOSER CHECK LIST**

IMPORTANT: Please check off each of the following items as the necessary action is completed:

1	The Solicitation has been signed and with corporate seal (if applicable).
2	The Solicitation prices offered have been reviewed (if applicable).
3	The price extensions and totals have been checked (if applicable).
4	Substantial and final completion days inserted (if applicable).
5	If submitting via hard copy the original must be a manually signed original. Include additional copies, if specified, in the Solicitation documents.
6	All addendums issued, if any, have been acknowledged in the space provided.
7	Licenses (if applicable) have been inserted.
8	Erasures or other changes made to the Solicitation document have been initialed by the person signing the Solicitation.
9	Provided a copy of corporate registration from www.sunbiz.org
10	Required Form 1: Solicitation form completed
	Required Form 1a: Proposal Form (not applicable for CCNA solicitations)
11	Required Form 2: Affidavit Certification Immigration Laws, Signed and Notarized
12	Required Form 3: Reference Surveys have been sent to reference respondents
13	Required Form 4: Negligence or Breach of Contract disclosure, completed or marked None
14	Required Form 5: Affidavit Principal Place of Business
15	Required Form 6: Sub-contractor List, complete is sub-contractors will be utilized
16	Required Form 7: Public Entity Crime Form
	Business Relationship Disclosure Requirement (if Applicable)
17	Required: Solicitation Label, completed and affixed to proposal documents, if hard copy is provided. The mailing envelope MUST be sealed and marked with: ✓ Solicitation Number ✓ Opening Date and/or Receiving Date ✓ Mailing Address: Lee County Procurement Management Division 1500 Monroe Street, 4 th Floor Fort Myers, FL 33901
18	The Solicitation will be mailed or delivered in time to be received no later than the specified <u>opening date</u> and time. (If solicitation is not received prior to deadline it cannot be considered or accepted.)
19	Two (2) identical sets of descriptive literature, brochures and /or data (if required) have been submitted under separate cover.
20	All modifications have been acknowledged in the space provided
	<u>REQUIRED CONSTRUCTION FORMS & DOCUMENTATION</u>
21	Form 8: Trench Safety (if applicable)
22	Form 9: Disadvantaged Business Enterprise Participation (if applicable)
23	Form 10: Bid Bond and/or certified check, if required, have been submitted with the Solicitation in amount indicated (if applicable)
24	Two (2) identical sets of descriptive literature, brochures and /or data (if required)

****This form is not required to be returned with your solicitation, but used as a tool when responding to the solicitation.**

VIRTC1DP V4.55 5432 EN

CNGP530

VEHICLE ORDER CONFIRMATION

11/03/20 12:50:45

==>

Dealer: F24480

2021 TRANSIT NA

Page: 1 of 2

Order No: 0000 Priority: 80

Order Type: 2 Price Level: 115

Ord PEP: 301A Cust/Flt Name:

PO Number:

	RETAIL	DLR INV		RETAIL	DLR INV
X2X HR PASS XL RWD	\$44595	\$42365.00	425 .50 STATE EMISS	NC	NC
148" WHEELBASE			43R REVR SENS SYSTM	295	269.00
YZ OXFORD WHITE			53B HD TRLR TOW PKG	485	442.00
C CLOTH			543 LONG PWR MIR	65	59.00
B EBONY			57A S/ST SWITCH DEL	NC	NC
301A PREF EQUIP PKG			60C CRUISE CONTROL	325	296.00
.XL TRIM			65C PWR SLIDE DOOR	995	906.00
57B .MANUAL A/C	NC	NC	67D BRAKE CONTROLER	405	368.00
998 3.5L PFDI V6					
44U .10-SPEED TRANS			TOTAL BASE AND OPTIONS	51240	48620.75
TC8 .235/65R16C BSW			TOTAL	51240	48620.75
X4L 4.10 LS	NC	NC	*THIS IS NOT AN INVOICE*		
JOB #1 ORDER					
FRT LICENSE BKT	NC	NC	* MORE ORDER INFO NEXT PAGE *		
20J 9400# GVWR	NC	NC	F8=Next		
F1=Help			F3/F12=Veh Ord Menu		
	F2=Return to Order				

VIRTC1DP V4.55 5432 EN

CNGP530

VEHICLE ORDER CONFIRMATION

11/03/20 12:50:57

==>

Dealer: F24480

2021 TRANSIT NA

Page: 2 of 2

Order No: 0000 Priority: 80

Order Type: 2 Price Level: 115

Ord PEP: 301A Cust/Flt Name:

PO Number:

	RETAIL	DLR INV		RETAIL	DLR INV
67E LARGE CNTR CNSL	NC	NC			
68H RUN BRDS	310	282.00			
86F 2 ADDL KEYS	75	69.00			
92E PRIVACY GLASS	500	455.00			
96P 15-PASS SEATS	1495	1361.00			
98F FLEX FUEL CAPBL	NC	NC			
FUEL CHARGE		53.75			
DEST AND DELIV	1695	1695.00			
TOTAL BASE AND OPTIONS	51240	48620.75			
TOTAL	51240	48620.75			
THIS IS NOT AN INVOICE					

Lee CO
40,459.25

F7=Prev

F1=Help

F2=Return to Order

F3/F12=Veh Ord Menu

F4=Submit F5=Add to Library

S099 - PRESS F4 TO SUBMIT

QC04845



November 3, 2020

FMB-LEE CO

2021 HIGH ROOF 350 15 PASS

\$40,448.75 PLUS TAX, TITLE & FEES

TOTAL MSRP BEFORE DISCOUNTS	<u>\$51,240.00</u>	
SGF COMMERCIAL DISCOUNT	<u>\$10,791.25</u>	
YOUR PRICE	<u>\$40,448.75</u>	
DEALER INSTALLED OPTIONS	<u>\$0.00</u>	
TOTAL CASH DELIVERED PRICE	<u>\$40,448.75</u>	
LESS DISCOUNT/TRADE ALLOWANCE	<u>\$0.00</u>	
TRADING DIFFERENCE	<u>\$40,448.75</u>	
LEMON LAW, WASTE TIRE & BATTERY FEE	<u>\$8.50</u>	
ADMINISTRATIVE FEE	<u>\$0.00</u>	<u>\$599.50 WAVED</u>
FLORIDA SALES TAX (6%)	<u>\$0.00</u>	EXEMPT
FLORIDA TAG, TITLE & LIEN RECORDING	<u>\$0.00</u>	MSO
BALANCE DUE ON TRADE IN	<u>\$0.00</u>	
TOTAL AMOUNT DUE	<u>\$40,457.25</u>	
MANUFACTURER'S REBATE	<u>\$0.00</u>	
LESS PARTIAL PAYMENT	<u>\$0.00</u>	
LESS CASH ON DELIVERY	<u>\$0.00</u>	
BALANCE DUE FROM CUSTOMER OR BANK	<u>\$40,457.25</u>	

JAMES PROPP

Commercial Sales Account Manager

Sam Galloway Ford

Direct Line (239) 274-2387

CEL (239) 707-2346

Fax (239) 274-2354

ipsellford@gmail.com

1. **Requested Motion:**

Meeting Date: December 7, 2020

Approval of Wire Transfer Policy and Procedures as recommended by external Auditors.

Why the action is necessary:

Within the FY 2019 audit, the Town's Auditors Mauldin & Jenkins, issued a Management Letter Comment which indicated that the current operating procedures for wire transfers do not align with the written policy of the Town (Section II, page 54).

What the action accomplishes:

The Town will be in compliance with its written wire transfer policy.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

5. **Background:**

This document replaces in its entirety the Wire Transfer Policy and Procedures dated 05/05/2014. This new and comprehensive policy and procedure as approved by the Audit Committee at its November 9, 2020 meeting covers Electronic Fund Transfers (EFT) related to contracts, agreement, investments, and vendor payments. It provides authoritative guidance for outgoing and incoming EFT's. This policy further applies to all departments that need to make or receive payments via EFT. Unless provided otherwise by contract or agreement, all incoming and outgoing EFT's shall take place only through the Town's main operating account.

Attachments:

1. Electronic Funds Transfer Policy and Procedures

Financial Impact:

None

6. **Alternative Action**

None

7. **Management Recommendations:**

Management recommends Approval of the Wire Transfer Policy. The Town Attorney agreed with the wording in the policy on November 15, 2020.

8. **Recommended Approval:**

Walter Pierce, Finance Director
John R Herin Jr, Town Attorney
Amy Baker, Deputy Town Clerk
Roger Hernstadt, Town Manager

Created/Initiated - 11/24/2020
Approved - 11/24/2020
Approved - 11/24/2020
Final Approval - 12/2/2020

Electronic Funds Transfer Policy and Procedures

Effective Date: September 15, 2020

(this document replaces in its entirety the Wire Transfer Policy and Procedures of 5/5/2014)

General Policy and Procedure Overview:

This policy and procedure covers Electronic Fund Transfers (EFT) related to contracts, agreements, investments, and vendor payments. It provides authoritative guidance for outgoing and incoming EFT's. This policy applies to all departments that need to make or receive payments via EFT. Unless provided otherwise by contract or agreement, all incoming and outgoing EFT's shall take place only through the Town's main operating account.

Definition of Key Terms:

Authorized signers - Town Manager, Mayor and Vice Mayor

Electronic Fund Transfer (EFT) – a type of digital transfer of money between two bank accounts and/or between financial institutions. It includes ACH-transactions and wire transfers.

EFT Authorization Form – a form that must be submitted in order to execute an EFT. The information requested on the form includes the sender and receiver's name and financial institution information.

Initiating, reviewing, and authorizing an ETF:

- The initiating Department completes an EFT Authorization Form and attaches supporting documentation. The Form shall be signed by The Department's Director (or authorized designee). By signing the Form (Department Authorization), the Director is attesting that the transaction is authorized by him/her and that the information on the Form and supporting documents has been verified for accuracy.
- EFT's of investment funds to, from, and between the Town's investment accounts (such as CD's and Intergovernmental Investment Pools) shall be channeled through the Town's main operating account.
- The Finance Director (or authorized designee) reviews all EFT Authorization Forms and supporting documentation before authorizing the transaction and signing the Form (Finance Department Authorization). **Reviewing specifically includes verifying the sender's and receiver's account information.**
- EFT Authorization Forms for Incoming EFT's are further reviewed and signed by ONE Authorized Signer for amounts up to and including \$10,000 per transaction and by TWO Authorized Signers for amounts over \$10,000 per transaction (Final Authorization).
- EFT Authorization Forms for Outgoing EFT's are further reviewed and signed by ONE Authorized Signer for amounts up to and including \$10,000 per transaction and by TWO Authorized Signers for amounts over \$10,000 per transaction (Final Authorization).

Special situations:

- Contractually agreed upon EFT's: automatic and/or recurring EFT's incorporated into a properly authorized and approved contract or agreement between the Town and the other party do not require a separate EFT Authorization Form when:
 - the contract or agreement requires or allows an exchange of account information between the parties to accommodate specified incoming EFT's generated by the other party (for example an incoming ETF generated by the other party for a grant payment in accordance with a grant agreement);
 - the contract or agreement requires or allows for an exchange of account information between the parties to accommodate specified outgoing EFT's (direct debit authorization) generated by the other party (for example a recurring outgoing ETF generated by the other party for a monthly lease payment as provided in a Lease Agreement)

Contractually agreed upon EFT's are subsequently reviewed for accuracy by Finance Staff, entered into the accounting records by journal entry, and reconciled against the applicable bank statements in accordance with established procedures.

- Payroll and Retirement Plan related EFT's: outgoing EFT's generated by the payroll processor (direct debit authorization) for payment of the bi-weekly payroll as well as the related outgoing EFT for the employer and employee contributions to the retirement plan do not require a separate EFT Authorization Form. The payroll is prepared, reviewed, processed and recorded (in payroll provider's software) separately by at least two authorized members of the Finance Staff in accordance with established procedures. Access to the payroll provider's software is by password (and two-way authentication if the workstation is not recognized). The Finance Director (or designee) signs for approval of the final payroll and therewith also approves the related outgoing EFT's. Payroll and retirement plan related EFT's are subsequently reviewed for accuracy by Finance Staff, entered into Abila by journal entry or cash disbursement, and reconciled against the applicable bank statements in accordance with established procedures.
- EFT's related to the Town's authorized credit cards: outgoing EFT's for payment of the monthly invoices of the Town's credit cards do not require a separate EFT Authorization Form provided the ETF amount per monthly credit card payment does not exceed \$10,000. Monthly credit card statements are reviewed by Finance Department staff for proper authorization of credit card charges and reconciled against supporting documentation and accounting records. The Town Manager (or other Authorized Signer) signs for approval of the payment amount and therewith also approves the related outgoing EFT's. All credit card transactions and payments are reconciled by Finance Department staff on a monthly basis in Abila against the credit card statement in accordance with established procedures.
- EFT's related to transactions with County, State or Federal entities: EFT's between the Town and County, State, or Federal entities with a transaction amount of less than \$10,000 do not require an EFT Authorization Form. The Town Manager (or other authorized signer) signs for approval of the payment amount and therewith also approves the related outgoing EFT's. All such EFT's are reconciled by Finance Department staff on a monthly basis in Abila against the bank statement in accordance with established procedures.

Processing and verification of outgoing EFT's:

- All properly executed EFT Authorization Forms will be sequentially numbered by Finance Department Staff and entered into the EFT log.
- After receipt of a fully executed EFT Authorization Form (not required for special situations as stated above), two authorized members of the Finance Department staff will process the outgoing EFT in the application software provided by the bank. These staff members will independently verify that bank and account information is correctly copied from the EFT Authorization Form before separately approving/authorizing the EFT within the bank application software. Access to the bank application by staff members requires a password as well as the use of a bank issued authentication device. Bank confirmation of the authorized EFT together with the EFT Authorization Form will be retained as supporting documents of the transaction. Subsequently the EFT's are entered into Abila by journal entry or as a cash disbursement.
- All outgoing EFT transactions are reconciled in Abila by Finance Department staff against the bank statement on a monthly basis in accordance with established procedures.

Processing incoming EFT's:

- A properly executed EFT Authorization for incoming EFT's serves as authorization for Finance Department staff to share our bank information with another party for the purpose of electronically transferring funds from their bank account to our bank account. Two authorized members of the Finance Department will independently verify that bank and account information submitted to the third party is correct.
- All properly executed EFT Authorization Forms will be sequentially numbered by Finance Department Staff and entered into the EFT log. Any incoming EFT amounts received will subsequently be entered into Abila by journal entry or as a cash receipt.
- All incoming EFT transactions are reconciled in Abila by Finance Department staff against the bank statement on a monthly basis in accordance with established procedures.

Approved by:**Roger T. Hernstadt**
Town Manager**Robert Lange, CPM**
Finance Director

1. **Requested Motion:**

Meeting Date: December 7, 2020

Rescind the Town Investment Policy to prevent misunderstanding on how the Town should invest and report on any excess funds available. Also to avoid continued Audit noncompliance.

Why the action is necessary:

The Town's current policy is a good one but is not applicable due to the size of unassigned funds.

What the action accomplishes:

Would prevent misunderstanding on how the Town should invest and report on any excess funds and avoid a potential compliance finding by the Town's Auditors.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

The Town does not maintain a Large unassigned fund balance that would be significant enough to require a high degree of financial expertise and disclosure. The Town needs its existing unassigned fund balance (or unassigned cash) in order to pay up front on projects that requires quick reimbursement turn around in order to maintain a sufficient cash balance in order to operate. If the Town would invest any of its surplus funds it would be in relatively low-risk and easily accessible. Thus the Towns' Investment policy is not commensurate with the nature and the size of its investment activities.

The Audit Committee met on Monday, November 30, 2020 and voted to repeal the existing investment policy by a vote of 6-1.

Attachments:

1. DOC011

Financial Impact:

None

6. **Alternative Action**

None

7. **Management Recommendations:**

Management recommends Deletion of Town's Investment Policy

8. **Recommended Approval:**

Walter Pierce, Finance Director
John R Herin Jr, Town Attorney
Amy Baker, Deputy Town Clerk
Roger Hernstadt, Town Manager

Created/Initiated - 11/24/2020
Approved - 11/24/2020
Approved - 11/24/2020
Final Approval - 12/2/2020



MEMO

Action requested: Repeal the Town of Fort Myers Beach Investment Policy

Management Summary: the Town invests its surplus funds in relatively low-risk type of investments (such as Bank Certificates of Deposit and Intergovernmental Investment Pools) which do not require a high degree of financial expertise to manage. In accordance with Florida Statutes 218.415, the Town is NOT required to have a written investment policy for these type of investments. The Town's written investment policy is not commensurate with the nature and the size of its investment activities. Furthermore, the Town's investment policy comes with many compliance strings attached which increases compliance-risk and unnecessarily creates an administrative burden for the Finance Department. Repealing the investment policy would alleviate the compliance burden, while still maintaining sound investment guidelines as provided under subsection (17) of F.S. 218.415.

Additional detail: Florida Statutes Section 218.415 requires local governments to adopt a written investment policy **OR** alternatively meet the investment guidelines contained in subsection (17) of F.S. 218.415. The Town's current investments are limited to interest bearing time deposits (CD's) as well as two intergovernmental investment pools (SBA and FMIVT). These investments are all within the range of low-risk investments as restricted under subsection (17). Repealing the Town's Investment policy would automatically require that the Town's investment activity be conducted in accordance with subsection (17), and it would NOT require any changes in the current low-risk investment mix. F.S. Section 218.415 provides that if a local government does establish a written investment policy it must meet the provisions of subsections 1-15. These provisions lead to compliance requirements which in the opinion of Finance staff are not commensurate with the nature and size of the investment activity of the town. In order to decrease the administrative burden and to diminish compliance risk, Finance staff recommends repealing the written investment policy and instead rely on the investment guidelines of subsection (17). It should be noted that monitoring of investment activity by the Finance Department, if so desired by the Town Council, could be either delegated to the Audit Committee or put on the agenda as a regularly recurring item of the Town Council's Management & Planning meeting.

Signatures:

Robert Lange, CPM
Finance Director

Cheryl Manning
Assistant Finance Director

Andre Heiting, CPA
Senior Accountant

TOWN OF FORT MYERS BEACH INVESTMENT POLICY

I. PURPOSE

The purpose of this policy is to set forth the investment objectives and guidelines for the management of public funds for the Town of Fort Myers Beach, Florida (Town). This policy is designed to ensure the prudent management of the Town's public funds, the availability of operating and capital funds as needed, and an investment return that is competitive with comparable funds and commensurate with financial market indices and conditions.

II. SCOPE

This investment policy applies to the investment of public funds, which includes cash balances in all of the Town's operating and capital funds, in excess of the amounts needed to meet current expenses. This Investment Policy shall not apply if in conflict with other existing policies or indentures in effect for funds related to the issuance of debt.

III. INVESTMENT OBJECTIVES

All investments shall satisfy the investment objectives of safety of capital as the primary objective, followed by liquidity of funds, and appropriate investment income, in that order. The mitigation of credit risk and interest rate risk are the primary parameters insuring safety of capital. Such investments shall be accomplished in a manner that maximizes total return as a viable and material revenue source for all operating and capital funds.

IV. PERFORMANCE MEASUREMENT

The Town's investment portfolio shall be designed with the objective of regularly meeting or exceeding the average rate of return on three-month U.S. Treasury bills for the calendar quarter immediately preceding the reporting required by this policy. The investment program shall seek to provide returns that exceed this index, consistent with risk limitations identified herein and prudent investment principles. The actual performance of the portfolio may vary due to changes in interest rates or market conditions.

V. PRUDENCE AND ETHICAL STANDARDS

The standard used by the Town manager and other Town employees and officials associated with the investment process shall be the "Prudent Person Rule" and shall be applied in the context of managing the overall investment program. The Prudent Person rule is as follows:

Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived from the investment.

Employees involved in the Town's investment program shall refrain from personal business activity that could conflict with proper execution of the investment program, or impair their ability to make impartial investment decisions. Employees shall subordinate their personal investment transactions to those of the Town, particularly with regard to the timing of purchases and sales.

VI. LISTING OF AUTHORIZED INVESTMENTS

Investments in the following are hereby authorized:

A. The Florida Local Government Surplus Funds Trust Fund ("SBA") or any other intergovernmental pool authorized pursuant to the Florida Interlocal Cooperation Act of 1969, as provided in Section 163.01, Florida Statutes.

B. Direct obligations of the U.S. Treasury, limited to Treasury Bills.

C. Interest bearing time deposits and savings accounts in a qualified public depository as defined in Section 280.02, Florida Statutes.

D. Securities and Exchange Commission registered money market funds with the highest credit quality rating from a nationally recognized rating agency.

Investments in equity securities and other investment products not specifically authorized by this policy are expressly prohibited.

VII. MATURITY AND LIQUIDITY REQUIREMENTS

Investments acquired under this Investment Policy shall be managed to maintain liquidity for meeting the Town's cash needs and to limit potential market risk in periods of rising interest rates. Investments will be made in interest bearing securities in accordance with known or anticipated cash needs and based on cash flow projections that enable the Town to meet current expense and debt service payments.

VIII. PORTFOLIO COMPOSITION

Prudent investing necessitates that the Town's investment portfolio be diversified as to instruments and dealers. The following maximum limits are guidelines established for diversification by investment type:

<u>Security Type</u>	<u>Portfolio Limitation</u>
Intergovernmental Pools	75 percent
U.S. Treasuries	100 percent
Certificates of Deposit	50 percent
Money Market Funds	100 percent

IX. RISK AND DIVERSIFICATION

It is the policy of the Town to diversify its investment portfolios. To eliminate risk of loss resulting from the over-concentration of assets in a specific maturity, issuer, or class of securities, all cash and cash equivalent assets in all Town funds shall be diversified by maturity, issuer, and class of security. Diversification strategies shall be determined and revised periodically by the Town Manager in consultation with the Finance Director for all funds.

X. AUTHORIZED INVESTMENT INSTITUTIONS AND DEALERS

Authorized investment institutions are public depositories qualified by the Treasurer of the State of Florida in accordance with Chapter 280, Florida Statutes and Qualified Public Depositories that provide the services of a securities dealer through a Section 20 (Glass-Steagall Act) subsidiary of the financial institution.

XI. BID REQUIREMENT

Whenever feasible and appropriate, the Town shall solicit competitive bids for a selected type of investment.

XII. RESPONSIBILITY AND INTERNAL CONTROLS

A. Administration and implementation of this Investment Policy shall be the responsibility of the Town Manager in consultation with the Finance Director.

B. The Finance Director shall be responsible for the Town's comprehensive cash management program. The comprehensive cash management program shall include cash flow analysis in order to identify the availability of capital for investment, including the collection of accounts receivable in a timely manner, vendor payments in accordance with invoice terms, and prudent investment of available cash.

C. The Finance Director shall establish written procedures for cash management and shall develop and update, on a periodic basis, a cash forecast for operating and capital funds. This cash forecast will provide the information essential to properly determine investment maturities to meet required disbursement of funds.

D. The Town Manager shall have the responsibility and authority to make investment transactions. The Town Manager, in consultation with the Finance Director, is authorized to buy and sell investment products in accordance with this policy.

E. Certain signatory responsibilities are shared by officials of the Town. All funds transferred between the Town's operating and capital accounts and designated investment funds require two authorized signatures. Authorized signatories are the Town Manager, Mayor and Vice Mayor.

F. The Finance Director shall establish a system of internal controls that are designed to prevent and detect losses of funds from theft, fraud, employee error, misrepresentation by third parties, or imprudent actions by Town employees.

XIII. CONTINUING EDUCATION

Either the Town Manager or the Finance Director must complete no less than eight (8) hours of continuing education annually in subjects and courses of study related to investment practices and products.

XIV. REPORTING

The Finance Director shall provide the Town Manager with a quarterly investment report that includes a listing of holdings in the portfolio with information on cost and current market value. Such report shall be submitted not later than the last day of the month following the end of the reported period. This report shall then be promptly forwarded to the Town Council.

The quarterly report shall include, at a minimum, the following schedules:

A. A listing of individual investments held at the end of the period, separated into short-term and long-term maturities.

B. Acquisition and maturity dates.

C. Average quarterly earning rate, as compared to the average quarterly T-bill rate.

D. Book value "cost" and market value.

E. Transfers of funds into and out of investments.

F. Income earned.

1. Requested Motion:

Meeting Date: December 7, 2020

Determine if Matanzas Inn Commercial Planned Development project has met the conditions of approval for phased development.

Why the action is necessary:

The property owner requested Town Council interpret the intent of the conditions of approval of the Planned Development and find that improvements made to date satisfy the intent of the conditions of approval.

What the action accomplishes:

Determines the appropriate path for the property owner moving forward.

2. Agenda:

ADMINISTRATIVE AGENDA

3. Requirement/Purpose:

Resolution/Ordinance

4. Submitter of Information:

5. Background:

Matanzas Inn Commercial Planned Development was approved with conditions of approval that required phased development to be completed within specific times, including an initial phase within 60 months of approval. The property owner is requesting Town Council to find that work done to date satisfies condition #5 of Resolution 15-05, DCI 2013-0002 Matanzas Inn CPD. Doing so will allow the property owner to receive a building permit for additional work and phasing. The CPD would then be subject to completion of all planned improvements within 120 months of the September 9, 2015 approval. Denial of the request will result in the Planned Development Concept Plan expiring and require an amendment to the Planned Development zoning approval to include a master concept plan.

Staff could not clearly determine the intent of the condition or that all commitments were accomplished within stated deadlines. Town Council can consider the request for approval, denial, or remand the request to the LPA for consideration.

Attachments:

1. Matanzas Phasing and Request Summary
2. 15-05, DCI2013-0002, Matanzas Inn CPD Amendment FINAL

Financial Impact:

N/A

6. Alternative Action

7. Management Recommendations:

8. Recommended Approval:

Jason Green, Community Development Services
Jason Green, Community Development Services
John R Herin Jr, Town Attorney

Created/Initiated - 12/1/2020

Approved - 12/1/2020

Approved - 12/2/2020

Amy Baker, Deputy Town Clerk
Roger Hernstadt, Town Manager

Approved - 12/2/2020
Final Approval - 12/2/2020

To: Jason Green

From: Douglas Speirn-Smith 9/21/2020

Re: Phasing at Matanzas Inn Resort

This CPD has been complicated for a long-time- mostly because it has been modified several times and the parcels have changed. Several restaurant expansions have been completed along the way.

Regardless, progress has been consistent with the CPD approval and continuous. In retrospect, given how nuanced a phased redevelopment plan can be - the MCP, the resolution and the inflexibility of language versus intent or practicality have contributed to a complicated sequence. Nevertheless, there has been steady progress on the property with a number of milestones. We believe this is the intent of the CPD and is consistent to the language and five year phase one completion. In summary:

1. In Sept 2015 the revised new CPD resolution was adopted. The primary change was the transfer of density from a parcel across Crescent Street and a sidewalk cooperation agreement. The plan included multiple phase options for restaurant and resort expansion/change.
2. In summer of 2016, The Development Order was approved that included the entire site and an initial resort Building footprint. Working drawings for the building were retained and completed.
3. In 2016, the four-plex building on Second Street that was added to the CPD in the 2015 amendment was torn down to make way for the density transfer/new building on the resort site.
4. In late May 2016, the initial expansion of the restaurant was consummated with payment of impact fees for the patio/trellis area as shown on the MCP. This expansion was included in the 2015 CPD approval. Several additional options for restaurant expansion still exist in the MCP.
5. In 2017 – Hurricane Irma caused damage- it resulted in the rebuild of the main dock (2018), rebuild of the canal dock (2019-2020) and major retro-fit at the two story resort building in 2018 including Roof, railings and exterior repairs, tile. In addition, in 2018, the restaurant kitchen was repaired, in part because of the storm issues.
6. In 2017- 2018 specific building plans were prepared and building permits applied for in 2019 for the pending resort building that consummates the maximum density on the site, although additional redevelopment options exist on the MCP. This submittal has required negotiation with the Town relating the sidewalks (still ongoing). The plans were revised by the applicant due to a unit size error but the footprint of the building has remained the same. This pending permit is constant with the MCP – the CPD and the Development Order approved in 2016.

In summary, there has been consistent progress, continuous progress and by almost any measures- the initial phase of the contemplated various phases of redevelopment have been satisfied.

We appreciate your time and efforts on these matters.

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 15-05
DCI2013-0002 – Matanzas Inn CPD Amendment

WHEREAS, Jerry Murphy, authorized agent for the owner of property located at 414/416 Crescent Street and 1042/1044 Second Street Fort Myers Beach, Florida has requested to amend a Commercial Planned Development known as the Matanzas Inn CPD; and

WHEREAS, the subject property is located in the Pedestrian Commercial Future Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach; and

WHEREAS, the STRAP numbers for the subject property are 19-46-24-W4-0150E.0210, 24-46-26-W3-00202.0130 and 24-46-23-W3-00202.0150 and the legal description is attached as *Exhibit A*; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on March 11, 2014; and

WHEREAS, at the March 11, 2014 LPA meeting, the LPA continued the case to a date certain of June 10, 2014; and

WHEREAS, at the June 10, 2014 hearing the LPA gave full and complete consideration of the request, recommendations by Staff, the documents in the file, and the testimony of all interested persons, as required by the Fort Myers Beach Land Development Code Section 34-85; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Town Council on October 20, 2014, April 6, 2015, May 4, 2015 and September 9, 2015 at which time the Town Council gave full and complete consideration to the request of the Applicant, LPA Resolution 2014-004, the recommendation of Staff, the documents in the file, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-85.

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

The Town Council **APPROVES** the request to amend the Matanzas Inn CPD, subject to the deviations and conditions set forth with specificity below.

DEVIATIONS:

Deviation #1

Deviation (recast from previously approved deviations) from the requirements of LDC Section 34-953—that the building placement, size, design, and all other property

development regulations in the CPD zoning district must be the same as for the CR or CB zoning district—to allow the dimensions indicated on the MCP.

Deviation #2

Deviation from the LDC Section 34-632(3)c. limitation on combining three (3) or more lots into a development project to allow PARCEL A, PARCEL B, and PARCEL C to include one-half (1/2) of the width of the adjoining street and canals in lot area for the purposes of computing residential densities to allow a total of 36 guest units on PARCEL A.

Deviation #3

Deviation from LDC Section 34-632(4) from the limitation on acreage used primarily for commercial purposes being included in the computation of residential density to allow a total of 36 guest units on PARCEL A.

Deviation #4

Removed.

Deviation #5

Deviation (recast from previously approved deviations) from LDC Section 34-675(b)(2) from the limitation on Crescent Street to building heights no taller than two (2) stories and 30 feet above base flood elevation, to allow 25 percent of the ground floors of the hotel/motel buildings to be enclosed non-living space for office, retail sales, or hotel support services with a maximum building height of 30 feet above base flood elevation with a maximum of two (2) floors total living area over parking or enclosed non-living space.

Deviation #6

Deviation (recast from previously approved deviations) from the provisions of LDC Chapter 34, Division 26, Parking: LDC Sections 34-2015 (location and design) and 34-2016 (dimensional requirements; delineation of parking spaces) to allow the parking plan delineated on the MCP, with dimensional regulations allowing 90° parking spaces 16' deep and 8.5' wide, and a 2-way drive aisle 19' wide.

Deviation #7

Deviation (recast from previously approved deviation) from the provisions of LDC Chapter 10, Article III, Division 2, Transportation, Roadways, Streets, and Sidewalks: LDC Section 10-285(a) from the required connection separation for local roads of 125 feet to allow connection separations as indicated on the MCP.

Deviation #8

Deviation (recast from previously approved deviations) from the provisions of LDC Chapter 10, Article III, Division 6, Open Space, Buffering, and Landscaping: LDC Sections 10-415 (open space) and 10-416 (landscaping standards) to allow the open space and buffers delineated on the MCP.

Deviation #9

Removed. The subject property consists of three (3) businesses, allowed a maximum of 16 square feet of sign area for each business, in addition to the existing 4' x 16', 2-sided projecting landmark rooftop sign previously approved by variance running with the land (all existing non-conforming signs must be removed).

Deviation #10

Deviation (recast from previously approved deviations) from the provisions of LDC Chapter 10, Article III, Division 6, Open Space, Buffering, and Landscaping: LDC Section 10-416 (landscaping standards), subsection (d)(2) and Table 10-8, Buffer Requirements to allow a reduction from the Type D buffer requirements between ROW (rights-of-way) and PRKG (parking and vehicle use areas) to allow the buffer widths delineated on the MCP.

RECOMMENDED CONDITIONS OF APPROVAL:

1. The development of this project must be consistent with the two page master concept plan (MCP) entitled 'Master Concept Plan Matanzas Inn, attached hereto as *Exhibit B*, except as modified by conditions below. This development must comply with all requirements of the Town of Fort Myers Beach Land Development Code (LDC) at time of Development Order amendment, except:

- a. any additional restrictions provided in conditions of this approval; and
- b. any restrictions modified or eliminated by approved deviations.

If changes to the MCP are subsequently sought, appropriate approvals will be required.

2. Allowable uses are limited to the approved Schedule of Uses –

PARCEL A

All principal and accessory uses permitted in the Downtown zoning district.

Plus these additional existing uses:

Bar or cocktail lounge – limited to two.

Consumption on-premises (COP) is limited by Condition #15.

Outdoor entertainment limited to the restaurant premises under roof and eastern rear only; outdoor entertainment at the southern restaurant patio is prohibited.

Restaurant outdoor seating areas as depicted on the MCP.

Boat slips available for public rental/leasing, 18 maximum slips.

Commercial party fishing boats (See Condition 16).

Parking lot, shared permanent.

Ground floor uses of the hotel/motel buildings below flood elevation are limited to office, retail sales, or hotel support services. Ground floor must be flood proofed.

PARCEL B and C

Essential Services.

Parking lots, shared, permanent with valet service.

3. All development, redevelopment, and substantial improvements approved and included in this CPD must meet or exceed the commercial design standards set forth in LDC Section 34-991 through 34-1010.

All outdoor entertainment must cease by 10:00 PM. All ground floor outside entertainment at the existing eastern rear deck must cease by 9:00 PM, outdoor entertainment at the southern restaurant patio is prohibited. All outdoor entertainment, including, but not limited to, vocals, musical instruments, and other equipment generating sound, must comply with the Town's Noise Ordinance and must have its sound regulated and emitted through a fixed internal speaker system managed and controlled by the property owner. Additionally, the property must utilize best management practices that include the following:

- a. all speakers must be pointed away from adjacent residential property owners,
 - b. adopt the mitigation measures identified in the music management plan, *Exhibit D* attached hereto,
 - c. adopt the Environmental Safety Associates March 30, 2004 sound study recommendations for noise mitigation attached as *Exhibit E* attached hereto.
4. All lot area associated with PARCEL B and PARCEL C (upon removal of existing non-conforming residential structure on Lot 15) for density purposes is attributed to PARCEL A as part of the MCP for this CPD district.
5. PARCEL A may be developed in phases in any order, but a certificate of compliance for the initial phase must be reasonably requested no more than 60 months following Town Council approval of this amended CPD. Certificates of compliance for the entire project must be reasonably requested not more than 120 months following Town Council approval of this amended CPD or the undeveloped portion of the MCP will expire and be deemed vacated.
6. Any reconfiguration of the swimming pool located on PARCEL A must not result in an increased elevation of the top surface of the pool deck or the top edge of the pool.
7. The uses listed for PARCEL A are limited to 75,300 square feet of floor area. Of this total floor area, guest units are limited to 36 units; guest unit size is not to exceed a maximum area of 1,200 square feet, not to exceed an average of 750-1000 square feet consistent with Section 34-1803 of the LDC, and not to exceed a total floor area for guest units of 36,000 square feet.
8. An amended Development Order(s) must be obtained to achieve the development that is contemplated by the MCP.

9. Stormwater retention plans and drainage calculations for the project will be required at the time of submission of the Development Order revision.
10. This zoning approval does not address the mitigation of the project's vehicular or pedestrian traffic impacts. A Traffic Impact Statement (TIS) will be required at time of local development order revision and additional conditions may be required at that time.
11. Developer will construct sidewalks acceptable to the Town within or along the rights-of-way of Crescent Street, First Street, and Second Street along the boundary of the subject property. The precise locations, dimensions, and specifications for these sidewalks will be determined in cooperation with the Town Public Works Department, but will not exceed the requirements of LDC Section 10-289. The Developer will construct the sidewalks in conjunction with the Town's construction of other sidewalks along the aforementioned streets—or as part of the construction of Phases B2, C, or D—whichever occurs first.
12. Should the Developer and Town agree to construct all or a portion of the sidewalk on the property owned by the Developer, the elimination of any existing parking and/or buffer or landscaping or portion thereof necessary to complete the sidewalk improvement project will not cause the subject property's CPD/DO/Zoning to become non-compliant with the requirements as provided in the CPD/DO/Zoning.
13. Should it become necessary to utilize a portion of the Developer's property for the construction of the sidewalk, it will be constructed in accordance with the provisions of LDC Sections 2-313 and 10-289.
14. Removed.
15. Consumption on Premises is strictly limited to the existing restaurant, eastern rear deck only, and southern restaurant patio as depicted in the MCP.
16. Commercial boats are limited to utilizing the docks located in Matanzas Pass. The canal dock is limited to ancillary dockage and non-commercial dockage.

FINDINGS AND CONCLUSIONS

Based upon the presentations by the Applicant, Staff, and other interested parties at the hearing, and a review of the application and standards for the planned development zoning approval, the LPA recommends that Town Council reaches the following findings and conclusions:

- a. *Whether there exists an error or ambiguity which must be corrected.*
Staff does not find that any errors or ambiguity exist surrounding the subject property and its zoning category that require correction.

- b. *Whether there exist changed or changing conditions which make approval of the request appropriate.*

The changing condition that exists on the subject property which supports the applicant's request for amending the CPD is the addition and sale of property. The 'Old San Carlos Parcel' was sold to a separate owner in the spring of 2013 and has been rezoned to the "Downtown" zoning category. Additionally the property owner has acquired Lot 15, located immediately adjacent to the current PARCEL C, and is requesting to add that land area into the CPD.

- c. *The impact of a proposed change on the intent of this chapter.*

Amending the existing Matanzas Inn CPD with the specifics of this request will have no impact on the intent of Chapter 34.

- g. *Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.*

As discussed in the analysis section of the staff report, the requested amendment is consistent with the Comprehensive Plan, particularly with the provisions within the Pedestrian Commercial future land use category and the Pre-Disaster Buildback, Hazard Mitigation and Floodproofing policies.

- h. *Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.*

The request to amend the CPD for the Matanzas Inn meets and exceeds all performance and locational standards for the proposed uses. Removal and addition of parcels are requested, as well as density transfers with the subject property, revisions to the site plan and phasing plans. Furthermore, the proposed amendments are consistent with the Comprehensive Plan, and will be required to comply with the Commercial Design Standards, found in Chapter 34-99, and all applicable building code and FEMA requirements.

- i. *Whether urban services are, or will be, available and adequate to serve a proposed land use change.*

As the subject property is currently a functioning Inn and restaurant, urban services are available and adequate for the proposed changes.

- j. *Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.*

As existing commercially developed land, while located directly adjacent to Matanzas Pass, the subject property does not include any sensitive and/or environmentally critical lands. Nor do the proposed amendments to the existing CPD contemplate any land or use changes that would adversely affect critical or sensitive environmental area. However, all elements included on the revisions to the Development Order plans will be required to meet all applicable environmental codes.

- k. *Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.*

The requested CPD amendment will allow the property owner additional flexibility in phasing the project and the construction of new flood compliant buildings. The buildings will be required to meet the commercial design standards and all other applicable codes. The requested uses are those found in the DOWNTOWN zoning district and 'for rent' boat slips are compatible within the existing neighborhood. The property owner has met with Public Works Staff and incorporated Town plans for right-of-way improvements on Crescent Street into their redevelopment plans, allowing for public and private compatibility of enhancements for that section of roadway. Therefore the redevelopment of the subject property will be compatible with existing or planned uses and will not cause damage, hazard, nuisance, or other detriment to persons or property.

- l. *Whether the location of the request places an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.*

The impact of the proposed amendments to the transportation network will be evaluated at the time of revision to the Development Order, due to the dynamic nature of roadway capacity.

The foregoing Resolution was adopted by the Town Council upon a motion by Vice Mayor Andre and seconded by Council Member Hosafros, and upon being put to a vote, the result was as follows:

Anita Cereceda, Mayor
Rexann Hosafros
Summer Stockton

NAY
AYE
NAY

Dan Andre, Vice Mayor
Alan Mandel

AYE
AYE

DULY PASSED AND ADOPTED ON THIS 9th day of September, 2015.

By: _____

Anita Cereceda, Mayor

Approved as to legal sufficiency:

By: _____

Gray Robinson
Town Attorney

ATTEST:

By: _____

Michelle Mayher
Town Clerk

Exhibit A

DESCRIPTION OF A PARCEL OF LAND
LYING IN
SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST
AND
SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST
TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA
(PARCEL A)

A TRACT OR PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE, TOWN OF FORT MYERS BEACH, LYING ON ESTERO ISLAND, BEING A PART OF SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST AND SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST, AND FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 20, BLOCK E, CRESCENT PARK ADDITION AS RECORDED IN PLAT BOOK 4 AT PAGE 46, PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE N00°43'09"W ALONG THE WESTERLY LINE OF SAID LOT 20 FOR 30.00 FEET; THENCE N89°16'51"E FOR 11.60 FEET TO THE EASTERLY LINE OF A RIGHT-OF-WAY TAKING PARCEL PER SETTLEMENT CASE 93-203-CA-RWP (PARCEL NO. 19) AND THE POINT OF BEGINNING; THENCE N02°09'14"W ALONG SAID TAKING PARCEL FOR 124.21 FEET; THENCE N05°46'55"W ALONG SAID EASTERLY LINE FOR 96.21 FEET TO THE NORTHWEST CORNER OF LOT 24, BLOCK E OF SAID CRESCENT PARK ADDITION; THENCE N00°43'09"W ALONG THE EASTERLY LINE OF CRESCENT STREET (25 FEET WIDE) AND ALONG THE RANGE LINE BETWEEN SAID SECTIONS 24 AND 19 FOR 158.83 FEET TO AN INTERSECTION OF SAID EASTERLY LINE WITH THE NORTHEASTERLY LINE OF FIRST STREET (50.00 FEET WIDE); THENCE N64°00'09"W ALONG SAID NORTHEASTERLY LINE FOR 18.87 FEET TO A POINT ON A CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 2904.79 FEET AND TO WHICH POINT A RADIAL LINE BEARS S71°26'08"E; THENCE NORTHEASTERLY ALONG SAID CURVE AND THE SOUTHEASTERLY LINE OF STATE ROAD #865 THROUGH A CENTRAL ANGLE OF 02°17'53.8" FOR 116.52 FEET TO A PK NAIL WITH BRASS DISK STAMPED LB4919 IN A CONCRETE SEAWALL ALONG THE WATERS OF MATANZAS PASS; THENCE S70°18'52"E ALONG SAID WATERS AND SEAWALL FOR 82.79 FEET TO THE BEGINNING OF A CURVE IN SAID SEAWALL, SAID CURVE BEING DESCRIBED WITH THE FOLLOWING CHORD BEARINGS AND DISTANCES; THENCE S59°52'04"E FOR 13.95 FEET; THENCE S47°54'41"E FOR 10.35 FEET; THENCE S36°30'10"E FOR 10.02 FEET; THENCE S25°39'44"E FOR 10.08 FEET; THENCE S14°17'28"E FOR 10.56 FEET; THENCE S07°08'02"E FOR 10.56 FEET TO THE END OF SAID CURVE; THENCE S00°20'42"E ALONG SAID WATERS AND SAID SEAWALL FOR 55.38 FEET TO A STEEL PIN IN SAID SEAWALL; THENCE S83°09'31"E FOR 2.71 FEET TO THE WEST LINE OF A CANAL (60 FOOT RIGHT-OF-WAY) AS SHOWN ON THE RECORD PLAT OF SAID CRESCENT PARK ADDITION; THENCE S00°43'09"E ALONG THE WESTERLY LINE OF SAID PLATTED CANAL FOR 361.22 FEET TO AN INTERSECTION WITH A LINE PERPENDICULAR TO SAID EAST LINE OF SAID CRESCENT STREET PASSING THROUGH THE POINT OF BEGINNING; THENCE DEFLECT 90° TO THE RIGHT AND RUN S89°16'51"W PERPENDICULAR TO SAID EAST LINE OF SAID CRESCENT STREET FOR 121.07 FEET TO THE POINT OF BEGINNING.

CONTAINING 1.41 ACRES (61,404 SQUARE FEET), MORE OR LESS.

BEARINGS ARE BASED ON THE EASTERLY RIGHT-OF-WAY LINE OF CRESCENT STREET AS BEARING N00°43'09"W RELATIVE TO THE FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY MAPS (SECTION 12530-2614).

SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN).

Exhibit A

DESCRIPTION OF A PARCEL OF LAND
LYING IN
SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST
TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA
(PARCEL B)

A PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE, TOWN OF FORT MYERS BEACH, SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, AND FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWESTERLY CORNER OF LOT 25, BLOCK E, CRESCENT PARK ADDITION, ACCORDING TO A PLAT OR MAP THEREOF RECORDED IN PLAT BOOK 4 AT PAGE 46 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, SAID POINT BEING ON THE EAST LINE OF SAID SECTION 24; THENCE RUN NORTHWESTERLY AT AN ANGLE OF 63°16'50" NORTH TO NORTHWEST WITH SAID SECTION LINE FOR 27.99 FEET TO THE NORTHEASTERLY CORNER OF LANDS DESCRIBED IN DEED BOOK 262 AT PAGE 191 OF THE PUBLIC RECORDS OF LEE COUNTY AND TO THE POINT OF BEGINNING; THENCE RUN N64°00'09"W ALONG THE NORTHWESTERLY LINE OF SAID LANDS DESCRIBED IN SAID DEED BOOK 262 AT PAGE 191 ALONG WITH THE SOUTHWESTERLY LINE OF FIRST STREET DESCRIBED IN DEED BOOK 191 AT PAGE 274 OF SAID PUBLIC RECORDS FOR 9.97 FEET TO AN INTERSECTION WITH THE EASTERLY RIGHT-OF-WAY LINE FOR MATANZAS PASS BRIDGE RECORDED IN OFFICIAL RECORD BOOK 1167, PAGE 1576, LEE COUNTY, PUBLIC RECORDS; THENCE RUN SOUTHERLY ALONG SAID EASTERLY RIGHT-OF-WAY ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 2904.79 FEET, SAID CURVE HAVING A CENTRAL ANGLE OF 01°58'53", A CHORD AND CHORD BEARING OF S20°32'55"W, 100.45 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR 100.46 FEET TO THE NORTH LINE OF LOT 6, BLOCK 1, BUSINESS CENTER AS RECORDED IN PLAT BOOK 9 AT PAGES 9 AND 10, PUBLIC RECORDS; THENCE RUN S64°00'09"E FOR 50.76 FEET TO AN INTERSECTION WITH THE WESTERLY RIGHT-OF-WAY LINE OF CRESCENT STREET; THENCE RUN N00°43'09"W ALONG SAID WESTERLY RIGHT-OF-WAY LINE FOR 111.95 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.07 ACRES (3,007 SQUARE FEET), MORE OR LESS.

BEARINGS ARE BASED ON THE EASTERLY RIGHT-OF-WAY LINE OF CRESCENT STREET AS BEARING N00°43'09"W RELATIVE TO THE FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY MAPS (SECTION 12530-2614).

SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN).

Exhibit A

DESCRIPTION OF A PARCEL OF LAND
LYING IN
SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST
TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA
(PARCEL C)

A PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE, TOWN OF FORT MYERS BEACH, SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, BEING ALL OF LOTS 14 AND 15 AND PART OF LOT 13, BLOCK 2, BUSINESS CENTER ACCORDING TO THE MAP OR PLAT THEREOF AS RECORDED IN PLAT BOOK 9, PAGES 9 AND 10, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AND FURTHER DESCRIBED AS FOLLOWS:

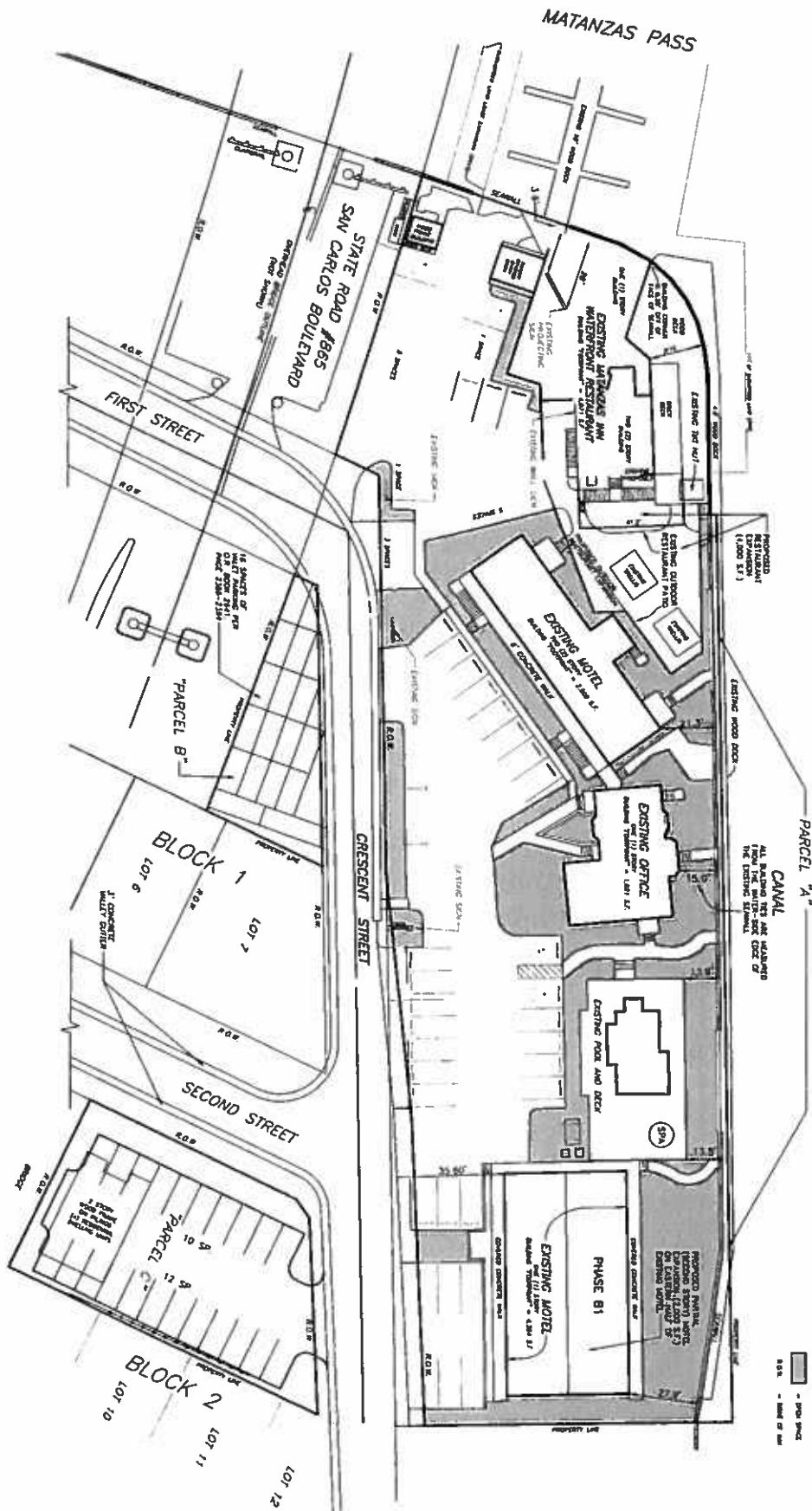
COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 13; THENCE RUN S00°43'09"E ALONG THE EAST LINE OF SAID LOT 13 FOR 82.62 FEET (82.59 RECORD) TO THE SOUTHEAST CORNER OF SAID LOT 13; THENCE RUN N64°00'09"W ALONG THE SOUTH LINE OF SAID LOT 13 FOR 6.15 FEET TO THE SOUTHWEST CORNER OF A RIGHT-OF-WAY TAKING PARCEL AS DESCRIBED IN OFFICIAL RECORD BOOK 2311 AT PAGE 2801 AND TO THE POINT OF BEGINNING; THENCE CONTINUE N64°00'09"W ALONG THE SOUTH LINE OF SAID LOTS 13, 14 AND 15 FOR 135.14 FEET TO THE SOUTHWEST CORNER OF SAID LOT 15; THENCE RUN N25°59'51"E ALONG THE WEST LINE OF SAID LOT 15 AND THE EASTERLY LINE OF STATE ROAD 865 FOR 73.80 FEET TO AN INTERSECTION WITH THE SOUTH RIGHT-OF-WAY LINE OF SECOND STREET (50 FEET WIDE), BEING THE NORTHWEST CORNER OF SAID LOT 15; THENCE RUN S64°00'09"E ALONG THE SOUTH RIGHT-OF-WAY OF SAID SECOND STREET AND THE NORTH LINE OF SAID LOTS 15, 14 AND 13 FOR 89.99 FEET; THENCE RUN S34°44'19"E FOR 9.27 FEET TO THE WEST LINE OF SAID RIGHT-OF-WAY TAKING; THENCE RUN S02°09'05"E ALONG SAID WEST RIGHT-OF-WAY TAKING FOR 78.56 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 0.20 ACRES (8,530 SQUARE FEET), MORE OR LESS.

BEARINGS ARE BASED ON THE EASTERLY RIGHT-OF-WAY LINE OF CRESCENT STREET AS BEARING S00°43'09"E RELATIVE TO THE FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY MAPS (SECTION 12530-2614).

SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN).

Exhibit B



1 OF 2	MASTER CONCEPT PLAN MATANZAS DAM EXISTING SITE REDEVELOPMENT	DRAWING DATE: 1-17-2013	REVISION	DATE	MURPHY PLANNING 9419 CHARTER CLUB CIRCLE, UNIT 1 FORT LYNNER, FL 32940-0001 PHONE: (732) 327-9510 FAX: (732) 327-9700
		DRAWN BY: K. O'NAN (2337-0001)	REVISIONS PER OWNER	07/26/13	
		COUNTY: LEE			
		SECTION: 19, 46 S, 24 E			

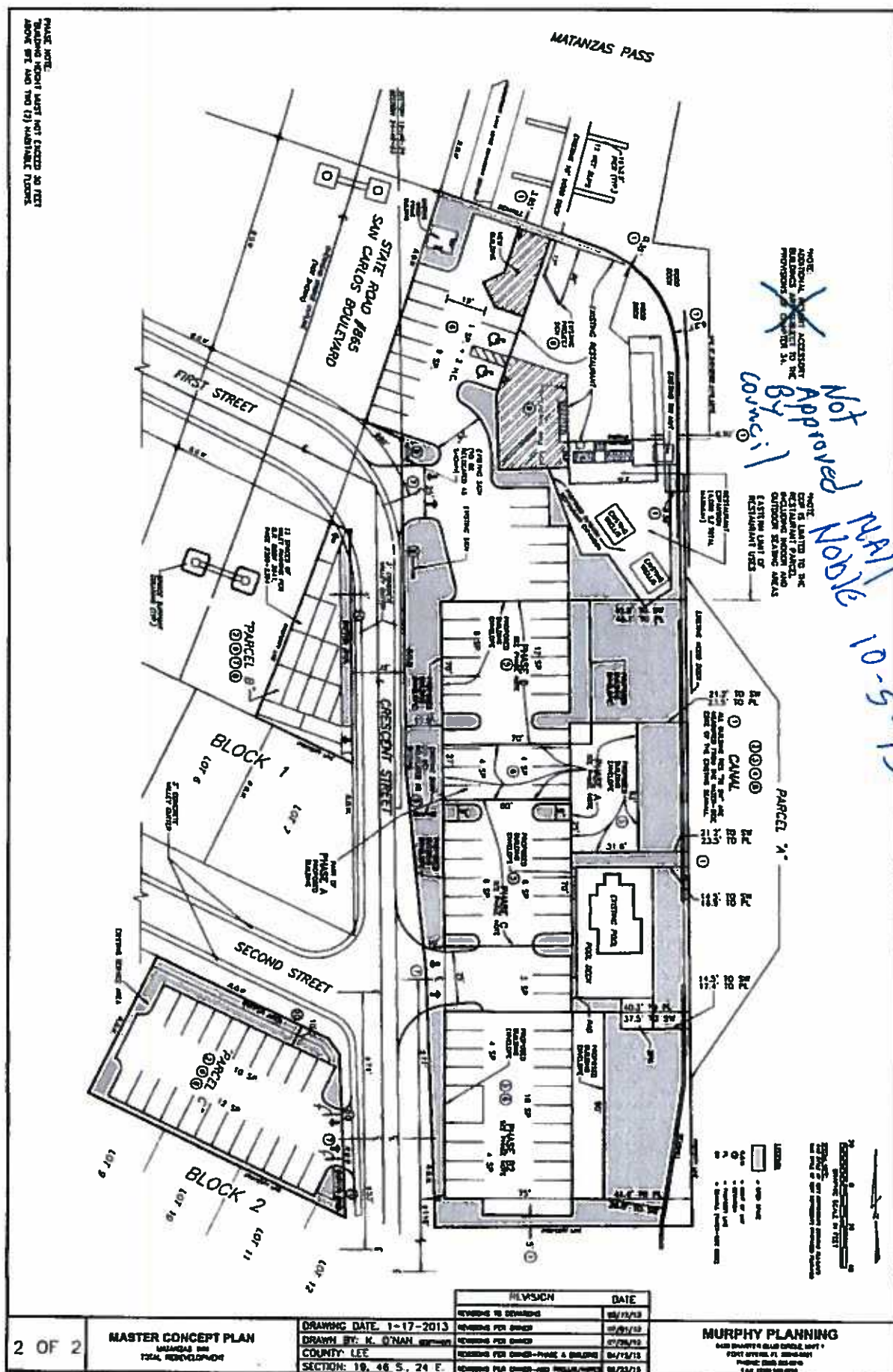


EXHIBIT D

Matanzas CPD Live Music Management Plan- 2015

Background

Several residents have always asked that Matanzas Balance the commercial uses with the nearby residential uses. The entire Crescent Street Downtown plan reflects less height and more modest commercial uses, however the Restaurant Parcel at Matanzas has always had extensive commercial uses including Marina/restaurant/historically a fish packing plant and Marine Industrial.

As the restaurant has evolved, the approvals have been modified a number of times. The current CPD tries to balance these interests by adopting a best sound management practices approach with physical systems designed to provide reasonable outside music at reasonable levels/times for nearby concerned persons. Matanzas has always tried to be supportive of this balance and particularly since further expansion of the restaurant is part of the Current CPD.

Proposed Music Management Plan.

Based on discussions, the previous plan, while well intended, can be improved. Both Matanzas and the residents can both be more pro-active and fact-based to manage this issue in a balanced way for all. Managing reasonable expectations is the goal and perhaps this approach can be useful as a blueprint for similar issues in different locations on the island.

Matanzas feels the downtown resort beach atmosphere for both locals and visitors is generally a strong supporter of live music at reasonable volumes. Realizing that not all residents may feel this way and in specific cases, some residents are concerned about too much and too loud, Matanzas proposes the following:

1. Outside music is permitted under the same provisions of the previous approval with the following changes:
 - i. All speakers pointed 90 degrees to the canal and towards the bay. (current practice with a few exceptions)
 - ii. Where possible all music shall be modest in sound including trying unamplified music when possible. All entertainers will use the Matanzas Sound system with controlled volume monitored by the On-site manager and amplified music will be at a minimum under the circumstances.
 - iii. All entertainers will be oriented 90 degrees to the canal and pointed toward the bay.
 - iv. Any area directly in back of all entertainers shall be enclosed /hardscape in a manner sufficient to help mitigate ambient transmission of entertainment noise. (See diagram of an example).
 - v. Full compliance with the island noise ordinance.

Page two: Matanzas Music Management Plan 2015

- vi. All Upper Deck music shall end by 10 pm. All music is limited only to the restaurant premises.
- vii. Any ground floor music shall end at 9pm and be limited to twelve days per month except for special events.
- viii. Matanzas will install a permanent professional decibel meter in the upper deck in clear view of the on duty staff and do daily monitoring of active noise levels.
- ix. Matanzas will create a new vegetation/sound dampening buffer on the border of the restaurant (see site plan).
- x. Neighborhood Complaints: Matanzas will establish a written log of all complaints. This log will include but not be limited to: time, entertainer playing, person complaining, manager observations on area wide music patterns at the time and recorded decibel readings that night. Where possible, adjustments will be made to solve the issue quickly as needed.
- xi. At any time, the neighborhood can ask for a meeting with Matanzas to specifically discuss music concerns /episodes of dissatisfaction and the parties agree to work in good faith to resolve differences. Whenever possible, all neighborhood complaints should also be emailed to the Matanzas Management team.
- xii. If the parties cannot resolve differences, Matanzas shall hire and independent consultant to monitor the music, verify the magnitude of the issue and to propose possible reasonable solutions. Matanzas agrees to work in good faith to comply with proposed solutions and will agree to mediation if required.
- xiii. Matanzas will share noise information with the town on at least an annual basis or as needed under the circumstances.



**ENVIRONMENTAL SAFETY ASSOCIATES
(ESA Consulting Services)**

P.O. Box 151, Baldwinsville, NY 13027-0151
2600 Kings Lake Blvd., Naples, FL 34112-5409

Tel/Fax: NY 315-636-1929 ~ FL 239-774-5194 ~ Toll-Free 1-888-667-3723 ~ E-Mail: bob@oshex.com

March 30, 2004

Chris Arnberg, Manager
Estero Bay Hotel Company
Matanzas Inn
416 Crescent Street
Fort Myers Beach, FL

Dear Chris:

In response to my earlier report of findings from noise measurements taken in and around your property on March 5, 2004, you asked a simple question: "As a result of actions taken to reduce the sound generated by our entertainment, are we in compliance with the Town of Fort Myers Beach noise ordinance?" The answer is far from simple.

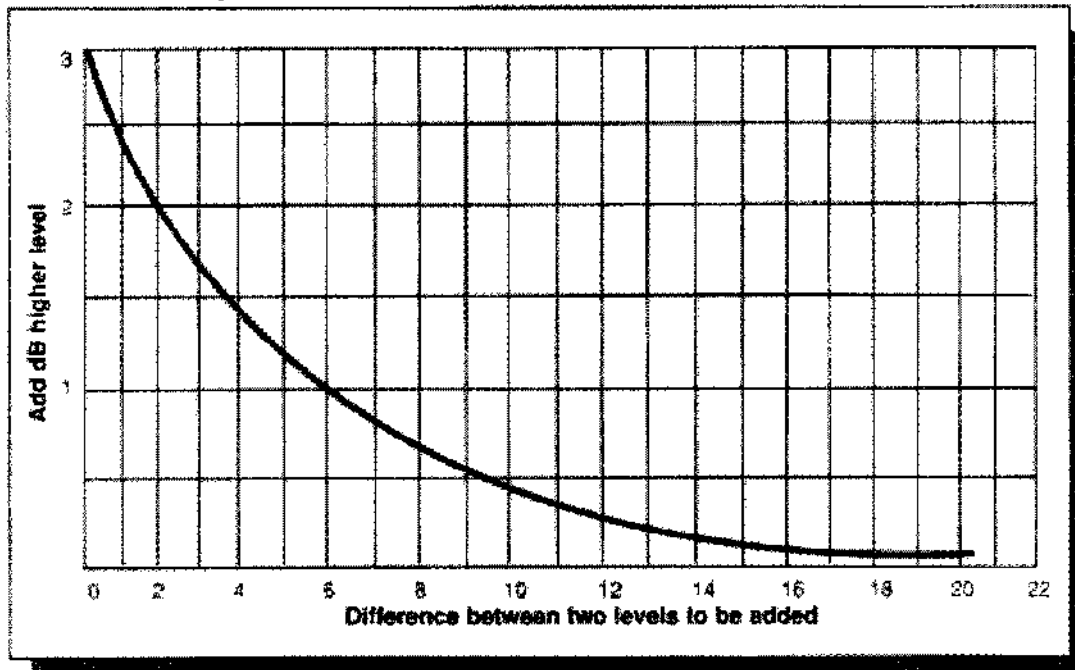
Ordinance 96-24 defines that measurements be taken using a *sound level meter* conforming to ANSI S1.4, Type 2, using slow response and "A" weighting. There is no mention of ANSI E1014-84, the Standard Guide for Measurement of Outdoor A-Weighted Sound Levels. This document provides instructions on how those measurements are to be taken. The ordinance does not.

In our measurements, we recorded RMS *maximum levels* (L_{max}) and *average levels* (L_{eq}) (that equate closely to an L_{10} exceedance level, or level that is exceeded only 10% of the time.) This is the measure typically used to describe environmental noise – because spurious sounds like passing cars or aircraft, people laughing, doors slamming, or an occasional dog bark could cause the sound measurement to easily "exceed" a stated maximum level – particularly one that is so close to the ambient sound level in an area.

The measurements taken during our most recent visit indicate that the changes that you have made have resulted in a decrease of about 3-5dBA in the carryover sound from your entertainment, compared to the previous readings taken in December and earlier this month. The average reading taken at the property directly across the canal, with the entertainment in session, dropped from 59dBA to 54dBA.

Prior and current measurements indicate that the ambient sound level in the area on a typical evening at the time of the measurements is about 53dBA. Correcting for this (see

the chart below), this indicates that the entertainment is contributing less than 50dBA to the total, and is certainly in compliance with the 66dBA allowable maximum for a residential receiving land use defined in Table I of the ordinance.



Going one step further, Section 5B of the ordinance states that, from 7AM until 10PM, the allowable level from impulsive sound is increased by 10dBA. During my observations, it was clear that the sound from your entertainment varied greatly as the singer sang and played. The rise and fall of the singers voice does not meet the criteria of "Continuous Noise" spelled out in Section 3C of the ordinance (as would sound from a running generator or air conditioning unit), but it is also not what we typically call "impulsive" sound (such as a gunshot or door slamming). This adds another element of ambiguity. Because of the way the definition is written, the entertainment may well be considered impulsive sound, thus providing a 10dBA "cushion."

A conflict appears in Section 5C, where the ordinance stipulates that amplified sound that exceeds 60dBA between the hours of 10AM and 10PM is prohibited. If we look at the L_{10} or L_{eq} (average) as the effective maximum, and correct for the background (ambient) in both the Primo Drive and Crescent Street locations, your entertainment is now compliant with the requirements of the ordinance.

If we look at the RMS maximum level, compliance is "borderline." It is clear that your contributed sound level at these property edge locations are *below* that of numerous other sites featuring outdoor entertainment in this commercially-zoned area, as noted in our report dated March 12, 2004.

It is my opinion that, with your current speaker configuration and amplifier settings, the sound from this entertainer complies with the ordinance, insomuch as our measurements

could determine¹, and that no further action is necessary at this time. Under the terms of the ordinance, you are permitted to extend the entertainment until 10PM, if you wish.

Respectfully submitted:
ENVIRONMENTAL SAFETY ASSOCIATES

Robert N. Andres, CSP, DABFE
Principal

¹ We did not have the equipment to measure at the center of the canal at the elevation of the entertainment, nor permission to take readings on the second floor of any residence along Primo Drive.