



Fort Myers Beach Management & Planning Session

Town Hall Council Chambers
2731 Oak Street
Fort Myers Beach, FL 33931

AMENDED Agenda

Thursday, November 7, 2024

9:00 AM

ORDER OF BUSINESS

I. CALL TO ORDER

II. PLEDGE OF ALLEGIANCE

III. ITEMS FOR DISCUSSION

A. Presentation: Bonita Estero Rail Trail

Ms. Deb Orton, President - Friends of BERT (Bonita Estero Rail Trail)

B. Public Benefits

Summary of LPA discussion of public benefits

NEW C. Development Agreements with Deviations - Notice Requirements

Discussion regarding

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING RESOLUTION 24-73, CONTAINING THE PROCEDURES FOR DEVELOPMENT AGREEMENTS WITH DEVIATIONS TO CLARIFY THAT THESE DEVELOPMENT AGREEMENTS ARE HOME RULE DEVELOPMENT AGREEMENTS AND TO AMEND RELATED NOTICE REQUIREMENTS FOR CONSISTENCY WITH NOTICE REQUIREMENTS IN SECTION 2-98 AND CHAPTER 34 OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE; AND PROVIDING AN EFFECTIVE DATE.

D. Electric Bikes

Discussion Regarding the Town's Bicycle Ordinance and Electric Bicycle Regulations

NEW E. Certification of Vote of Appointed Advisory Board Members

Discussion regarding

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTION 5 OF RESOLUTION 23-182 AS AMENDED BY RESOLUTION 24-178, TO INCLUDE CERTIFICATION OF THE VOTE BY THE TOWN COUNCIL BEFORE A VOTE TO APPOINT MEMBERS TO THE TOWN'S ADVISORY BOARDS, COMMITTEES, AGENCY AND

COMMISSIONS; AND PROVIDING FOR AN EFFECTIVE DATE.F. Fireworks**A discussion regarding New Years Eve fireworks.**G. Downtown Lights**At Council's request, a discussion about light pole decorating along Estero Blvd.****IV. AGENDA MANAGEMENT**

A. November 2024

V. ADJOURNMENT**NOTE: THIS MEETING IS STREAMED LIVE ON YOUTUBE.**

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

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. **Request:**

Meeting Date: November 7, 2024

Summary of LPA discussion of public benefits

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

ITEMS FOR DISCUSSION

3. **Requirement/Purpose:**

5. **Background:**

On October 29th, 2024 the LPA held a public meeting to discuss creating a definition and/or process for determining the "public benefit" of a proposed development. The LPA discussed examples of public benefits and special benefits. They recommended that the next step be a joint meeting between the LPA and Town Council to develop a clear definition and use of public benefits. Included in this agenda item is the public benefits discussion staff memo and attachment from November 2023.

Attachments:

1. Public Benefit Memo 11.7.2024
2. Exhibit A: Public Benefits-Dunlap
3. Exhibit B: Public Benefits-Boan
4. Public Benefit Memo 11.9.2023
5. Exhibit A: Polk County Bonus Point Example 11.9.2023
6. Exhibit B: Destin FL Bonus Tier Example Comp Plan Policy 11.9.2023

Financial Impact:

6. **Alternative Action**

7. **Staff Recommendations:**

8. **Recommended Approval:**

nancy stuparich, Town Attorney

Date: November 01, 2024

Amy Baker, Town Clerk

Date: November 01, 2024

Andy Hyatt, Town Manager

Date: November 01, 2024



**Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT**

To: Town Council Management and Planning
From: Judith Frankel, Community Development
Date: November 7, 2024
Re: Development Public Benefit

BACKGROUND

On October 29th, 2024 the LPA held a public meeting to discuss creating a definition and/or process for determining the "public benefit" of a proposed development, which often comes up in discussions of Commercial Planned Development (CPD) applications. The LPA also discussed examples of special benefits, which is part of the Development Agreement process.

The following are brief summaries of where the LPA found agreement:

View Corridors – A view corridor is an unimpeded scenic view, from street-level/eye-level, of the Gulf or Bay that is open to the sky and is outside of any LDC required setback or landscaping. It is a clear line-of-sight, vertically and horizontally, to be enjoyed by the general public. It does not necessarily include any physical access to or through the corridor but could include beach access areas.

Public Benefit-A public benefit must be fully open to the general public in perpetuity. This is relative to CPD applications. Per LDC section 34-631(b)(5), *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.*

Examples identified by the LPA include:

- Undergrounding of utilities
- Sidewalk, bike path or other ROW infrastructure
- Visible landscape
- Public unrestricted beach access



- Public space through which to access private/commercial spaces
- Public parks
- Reduction in density
- View corridors
- Town Deeded parking
- ROW dedication
- Elimination of curb cuts on Estero Blvd.

Special benefit – The LPA defined special benefit as a benefit limited by fees/cost, neighborhood /HOA category and particular to a subset of the community. This is relative to Development Agreements. Resolution 24-71 in paragraph 2.26 of the Procedures for Development Agreements with Deviations requires “A description of any special benefit to the Town as a result of the development such as, the promotion of economic development, affordable housing, hurricane recovery, provision of needed public facilities, provision of public land or recreation, and/or elimination of blight.” The LPA suggested the following items also fall into this category:

- Workforce housing
- Paid Parking garage
- Private transportation system (ex. Water taxi)
- Defined public space for certain residents

Amenities – the LPA considers amenities to be items that contribute to the community but are essentially private in nature. Examples include a membership club, restaurant, or commercial enterprise.

The LPA did not discuss how the public benefits, special benefits or amenities could be quantified to determine the “balance” between height and benefit. The LPA would like the Town Council to provide input on that process if appropriate.

RECOMMENDATIONS

The LPA recommended that the next step be a joint meeting between the LPA and Town Council to develop a clear definition and use of public/special benefits in new developments. Additionally, public meetings and opportunities for public input for the Town’s Comprehensive Plan and Land Development Codes should be scheduled for the next few months as aspects of the results of a joint meeting could be included in those updates.



Staff asks that the Town Council provide input on the discussion of public benefits and advise staff of how or if you would like to proceed.

EXHIBITS

Exhibit A – Public benefit proposal from LPA member Jim Dunlap

Exhibit B – Public benefit proposal from LPA member James Boan

Public Benefit Discussion Document

Local Planning Agency – Fort Myers Beach

Jim Dunlap

Guiding Principles – To be considered as a Public Benefit-some or all of the following should apply:

- 1. Accessible to or for the benefit of all**
- 2. Unique in its nature or physical location**
- 3. A Long-term or perpetual commitment**

Potential Categories for activating the Public Benefit if the baseline Guiding Principles are met.

Disclosure - I have included some potential actual examples of what might be included within a particular category. These are examples only and not meant to be a full list or comprehensive in any way.

- **Financial** – Discounted price for FMB residents for products/services being offered to the public at full rates within the development or location of service. (Room rates, dining facilities, spas, day passes, etc.)
- **Philanthropic/Volunteerism** – Donations in time or money or people to local non-profits to a degree and magnitude that materially positively impacts their project or mission. Multi-year corporate underwriting for FMB sanctioned major events. (Fireworks, Parades, etc.) For example, this has already occurred by the services being offered to the Women's Club by Seagate Development and Studio A.D.
- **Amenity**- Beach Access with comfort stations and/or water/food availability. Public and/or resident access to dining facilities, quick stop shopping marts, or other on-campus amenities being offered to guests and residents of the resort/development.
- **Product or Service** – Transportation (vehicle, water taxi, lift/uber) to and from airport and other designated locations throughout the island. Include space within the development for public access to shipping (UPS/Fed-Ex, Amazon Return) drop site. Shelter/Safety Station – Propose a formal arrangement to allow, for a limited timeframe, public access to rooms and facilities during periods of natural disasters affecting Fort Myers Beach.

- **Expertise-** Providing access to high-quality in-house capabilities such as engineers, architects, financial and project planning, legal/accounting services to local small businesses, non-profits and/or the town of Fort Myers Beach directly.

Public Benefit Tiering and Financial Impact

In addition to the categories mentioned above, I believe it would be appropriate and beneficial to have some sort of Tier based component with the type and financial impact of any proposed public benefit being considered.

Perhaps two tiers to start with, for example.

Tier 1 – Baseline public benefit offerings that would be partially complementary to the development itself, while at the same time, offering or enhancing a benefit to the public as well.

Tier 2 – Those public benefits with significant financial and community-wide impact beyond those adjoining and/or complementing the development itself. This category should include granular description and specific details on the community-wide impact or benefit (Infrastructure for example), as well as the projected financial investment or dollar value equivalent for any in-kind services being proposed.

Examples, for demonstration purposes only, and in some cases what other municipalities have adopted in Florida, of Tier 2 category projects:

- Beach Access Improvements – Could include design, permitting and construction of beach access with facilities that include public restrooms and showers.
- Offsite Public Parking Garage
- Develop Workforce Housing Project
- Relocation and Conversion of Above Ground Utilities to Below Ground Locations
- Construct Open Space Malls that are pedestrian oriented and streetscapes as gathering places for the General Public
- Create and underwrite an Island-wide Pedestrian Friendly Transit System
- Significant Improvements to Public Infrastructure – i.e., purchase of land for right of ways, median landscaping, recreation facility upgrades, construction of sidewalks, and/or other capital improvements projects and expenses currently in planning stages by the town of Fort Myers Beach.

Again, any and all of the above Tier 2 public benefits, would be further documented by the dollar investment and/or public cost offset, to a total beneficial financial impact to Fort Myers Beach.

Process Recommendation- I believe that during the application process, staff should analyze whether the applicant has met the baseline guiding principles criteria to be considered as a potential public benefit or not. Then, during the formal presentation process to LPA and/or Town Council, the applicant will be challenged with making the case for the type and suggested impact of public benefit being offered.

It would then be the responsibility of the LPA or Town Council to challenge, refine, and weigh the potential public benefit against the tradeoffs, exceptions or deviations being requested.

Public Benefit “restaurant” considerations- Assuming public access, I believe there is a significant value to the dining public in locating a restaurant within the confines of a resort or major development and consider it a public benefit.

It allows for a much higher quality product to be more fully patronized and therefore financially supported than a standalone, season-dependent facility would support. The risk of closure or quality deterioration of the restaurant is lower and the ability to recruit and train/cross train qualified employees within the overall operation is higher.

TALKING POINTS FOR WHAT IS A PUBLIC BENEFIT

SINCE THE DEVELOPER/BUILDER'S REQUEST FOR A REZONING, CPD, INCREASED F.A.R., OR DEVELOPMENT AGREEMENT IS GENERALLY FOREVER AND RUNS WITH THE LAND; A PUBLIC BENEFIT SHOULD, LIKEWISE, BE PERPETUAL.

AN AMENITY IS SOMETHING THAT IS DESIRABLE, A CONVENIENCE OR "WOULD BE NICE TO HAVE". THERE IS NO GUARANTEE THAT AN AMENITY WILL ALWAYS BE THERE OR WILL CONTINUE TO BE IN THE FORM THAT WAS ORIGINALLY PRESENTED. BOTH HAVE VALUE TO THE RESIDENTS BUT BECAUSE A PUBLIC BENEFIT IS PERMANENT IT SHOULD BE GIVEN MORE WEIGHT THAN AN AMENITY.

EXAMPLES OF A PUBLIC BENEFIT:

1. REDUCED DENSITY
2. VIEW CORRIDORS
3. PUBLICLY DEEDED OPEN SPACE AND BEACHFRONT ACCESS
4. PUBLICLY DEEDED PARKING SPACES
5. ROAD RIGHT-OF-WAY DEDICATION
6. ELIMINATING CURB CUTS ON ESTERO BLVD
7. PERMANENT SOURCE OF PERIODIC FUNDING FOR TOWN INFRASTRUCTURE.
8. OFFSITE IMPROVEMENTS TO PUBLIC INFRASTRUCTURE
9. INCREASED SETBACKS FROM ESTERO

EXAMPLES OF AN AMENITY:

1. BARS AND RESTAURANTS
2. COMMERCIAL AND RETAIL SPACE
3. WATER TAXI AND AIRPORT TRANSPORTATION (UNLESS THERE IS A PERMANENT SOURCE OF FUNDING FOR MAINTENANCE AND OPERATIONAL COSTS)
4. WORKFORCE HOUSING UNLESS IT IS GUARANTEED TO REMAIN AS A PERMANENT PART OF THE APPROVED PROJECT
5. HEALTH CLUB, SPA, OFFICE SPACE.
6. PRIVATE BEACH CLUB
7. ENHANCED LANDSCAPING UNLESS PART OF AN APPROVED PLAN THAT IS REQUIRED TO BE MAINTAINED.

WHAT IS BEING REQUESTED BY AN APPLICANT (DENSITY, HEIGHT, INTENSITY, SETBACKS, INCREASED F.A.R., DEVIATIONS FROM THE COMPREHENSIVE PLAN OR CODES) SHOULD BE BALANCED WITH THE PUBLIC BENEFIT THAT WOULD BE GRANTED. EACH PROJECT SHOULD BE DECIDED ON ITS OWN MERITS SINCE WHAT IS A BENEFIT OR AMENITY ON ONE SITE MAY NOT BE OF THE SAME IMPORTANCE AT ANOTHER LOCATION.

CONTINUED ON THE BACK

THE ABOVE LIST IS NOT INTENDED TO BE DEFINITIVE OR ALL INCLUSIVE. THIS LIST OF "BENEFITS/AMENITIES" IS ONLY INTENDED TO BE A START FOR THE DISCUSSION ABOUT "WHAT IS A PUBLIC BENEFIT" AND WHAT COULD BE CONSIDERED AS A TRADE-OFF FOR GRANTING THE RELIEF A DEVELOPER REQUESTS.

IN MY OPINION, FOR THE PUBLIC'S UNDERSTANDING AND DEVELOPER GUIDANCE, THE CRITERIA FOR WHAT CONSTITUTES A PUBLIC BENEFITS SHOULD BE AN OBJECTIVE LIST. HOWEVER, THE VALUE PLACED ON EACH ELEMENT AND THE IMPORTANCE OF THAT BENFIT IS SUBJECTIVE AND DECIDED BASED ON A PARTICULAR SITE, THE REQUEST AND THE VALUE OF THE OVERALL PROJECT.

"DON'T SHOOT THE MESSENGER", THESE ARE ONLY MY THOUGHTS.

JIM



**Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT**

To: Town Council Management and Planning
From: Sarah Propst, Community Development
Date: November 9, 2023
Re: Development Public Benefit

BACKGROUND

Staff has been directed to provide some information regarding what the Town should qualify as a public benefit in a development. When development asks for more development intensity than is allowed by right, such as additional floor area ratio (FAR) or a higher density multiplier for the number of rooms or smaller setbacks or taller buildings, they will often propose public benefits as a way to compensate for the additional development they are requesting. The Town Council has to determine if the public benefit that is being proposed is commensurate with the request for additional development and in some instances, whether or not the proposed benefit is even desirable to the Town.

This was discussed previously and staff suggested that the Town could have a bonus point system that made it clear what could be offered to the Town in exchange for development potential. A copy of the code that two communities use for bonus systems is attached. However, this fairly complex option did not seem like the direction that Council was interested in, at the time it was discussed. It is important to note that this type of system would provide clarity for developers but is fairly rigid.

Another option is to develop a list of the items that the Town considers to be high value public benefits and a list of lower value public benefits. This may be helpful to categorize benefits that many developers will list but may be more of a benefit to the development, not the Town. For example, a beach access in a location where one doesn't exist would be a benefit for the Town but building a structure to meet flood and building code requirements is not a benefit to the Town, it is required. Having a list of what qualifies as a public benefit will help developers know what the Town cares about but this will not provide the clarity of a point system.



OPTIONS

At the previous hearing there were many items brought up as public benefits. The list below are the items that seemed to get the most discussion during the meeting.

Potential Public Benefits:

- Giving the Town (local streets) or County (Estero Blvd) additional right of way width,
- Giving the Town beach access points, where desirable,
- Providing or cooperating with multi-modal transportation options (water taxi, airport shuttle, bus shelter, etc.)
- Pedestrian bridges over Estero Blvd,
- Right of way landscaping, where desirable,
- Views of the beach,
- Land for public parks,
- Land for public facilities,
- Public art,
- Affordable housing,
- Significant public infrastructure investment,
- Florida friendly plantings for the entire site, that do not require irrigation,
- Multi-use pathways and trails available to the public,
- Wildlife habitat/native plant community buffers

RECOMMENDATION

Staff asks that the Town Council provide input on the list of options provided and discuss any additional items that might be considered a public benefit. Please also advise staff of how or if you would like this incorporated into the Land Development Code and if there is any interest in a point system.

EXHIBITS

Exhibit A – Polk County Bonus System

Exhibit B – Destin Bonus System

Section 401.04 US Highway 98 Selected Area Plan (Revised 12/1/10 - Ord. 10-082; 5/18/05 - Ord. 05-18)

O. Density and Dimensional Regulations

Changes to the standards as listed in Section D of this SAP shall comply with the following:

1. Non-residential Development Floor Area Ratio (FAR) Range Table - The maximum FAR ranges for non-residential land use designations are provided in Table 4.13a below. The lowest number in the table for each Future Land Use designation is the maximum FAR permitted. However, FARs up to the highest shown in the table, for each Future Land Use designation, may be achieved through bonus points and/or a Planned Development (PD) pursuant to the Land Development Code. FAR standards will not apply to residential development;

Table 4.13a											
	Future Land Use Designations										
	CEX	LCCX	NACX	ECX	INSTX	INDX	BPCX	TCX	LRX	OCX	CCX
P	0.30	0.35	0.35	0.70	0.50	0.65	0.60	0.50	0.50	0.35	0.25
B	0.60	0.60	0.60	0.80	0.75	0.80	0.80	0.75	0.75	0.50	0.50
PD	0.75	0.75	0.70	1.50	1.00	1.50	1.50	1.0	1.0	0.70	0.65
Notes: P = Permitted with a Level 2 Review in the US 98 SAP. B = Density Bonus Points (Table 4.13d) are required and permitted with a Level 2 Review in the US 98 SAP. PD = Planned Development with the necessary Density Bonus Points (Table 4.13d) are required and permitted with a Level 3 Review in the US 98 SAP.											

2. Non Residential Ratio FAR Development - Table 4.13a shall be implemented as follows:
 - a. The FAR shown in the row designated with a "P" will be reviewed through a Level 2, unless other requirements of this Code require a different Level of Review;
 - b. Any FAR above those shown in the row designated as "P" and up to those shown in the row designated B, shall be reviewed through a Level 2, unless other requirements of this Code require a different Level of Review. However, to achieve a higher FAR than those shown in the row designated with a P, shall require 5 bonus points, using Table 4.13d, for an increase of .05 FAR. In addition, bonus points shall be used from at least three sections, even if the amount of bonus points achieved is more than needed. The purpose is to ensure variety of amenities for any development.
 - c. Any FAR above those shown in the row designated as "B" and up to those shown in the row designated as PD, shall be reviewed through a PD. Applicants requesting to use this option shall specifically demonstrate the following in the Level 3 application:
 - i. How the development is different and unique than other developments within the County either incorporated or unincorporated;
 - ii. How the development would improve the area surrounding the proposed development; and,

Polk County Public Benefit

US 98 SAP Bonus Point Example

- iii. Residential development within non-residential districts is required to obtain five bonus points for every one dwelling unit per acre du/ac of density.
3. Residential Development - The US 98 Selected Area Plan is planned for compact, efficient growth. In order to determine how to achieve a certain density, refer to Table 4.13b. This table indicates the maximum average lot size, the density range required, and the steps needed to achieve them. The maximum average lot size describes how development in this SAP may contain a variety of lot sizes provided the average for the entire development does not exceed the maximum allowed in that district. Development exceeding the allowable maximum average size may be requested as part of a Planned Development which includes bonus points from at least three different categories of those listed in Table 4.13d. If a desired density requires bonus points (B) or a Planned Development (PD) approval, the following shall apply:
 - a. FAR standards will not apply to residential development;
 - b. Each request that is required to use bonus points shall, at a minimum, obtain bonus points from at least three different categories even if the points obtained is above the needed amount;
 - c. Suburban Planned Developments within the RSX land use district shall require 10 points to achieve a maximum of two du/ac and then 10 points for each half unit per acre (or fraction thereof) increase up to three units per acre; and,
 - d. Increases or decreases in density within the RLX land use districts as provided in table 4.13b, shall require five points for every half unit per acre (or fraction thereof) change;
 - e. Bonus points for Increases in density for RMX and RHX land uses are provided in Table 4.13b.

Table 4.13b US 98 SAP Density Schedule (Revised 01/24/12 - Ord. 12-003)

Residential Land Use Districts (Maximum Density du/ac) Maximum Average Lot Size (Square Feet) ⁽¹⁾⁽²⁾							
Density (du/ac)	RL-1X 30,000 ⁽¹⁾	RL-2X 15,000 ⁽¹⁾	RL-3X 10,000 ⁽¹⁾	RL-4X 8,000 ⁽¹⁾	Density (du/ac)	RMX ⁽³⁾	RHX ⁽³⁾
#1	P	B			> 5 - 8	B	
> 1 - 2	B	P	B		> 8 - 10	B	B
> 2 - 3	B	B	P	B	> 10 - 12		B
> 3 - 4	PD	B	B	P	> 12 - 15		B
> 4 - 5	PD	PD	B	B			
> 5 - 6	D	D	PD	B			

Notes for Table 4.13b:
 P = Permitted with a Level 2 Review in the US 98 SAP.
 B = Density Bonus Points are required and permitted with a Level 2 Review in the US 98 SAP.
 PD = Planned Development (a Level 3 Review) approval with the necessary Density Bonus Points is required in the US 98 SAP.
 D = Maximum density in the RL-1X and RL-2X can only be achieved with the donation of a public school site.
 (1) Maximum Average Lot Size - A development may contain a variety of lot sizes as long as the average for the entire development does not exceed the maximum allowed in that district.
 (2) Each single-family attached unit (including each duplex unit) shall be placed upon an individual lot and shall be bound to the maximum average lot restrictions of this table.
 (3) RMX and RHX do not have minimum lot sizes. The density requirements dictate land usage.

Polk County Public Benefit

US 98 SAP Bonus Point Example

Table 4.13c Planned Development (PD) Density Bonus Points			
RM		RH	
Points Achieved	Maximum Density du/ac (#)	Points Achieved	Maximum Density du/ac (#)
35	#5.5	35	#8.0
30	6.0	33	8.5
25	6.5	31	9.0
20	7.0	29	9.5
15	7.5	27	10.0
10	8.0	25	10.5
15	8.5	23	11
18	9.0	21	11.5
21	9.5	19	12
24	10.0	17	12.5
		15	13
		13	13.5
		11	14
		9	14.5
		7	15

Table 4.13d Density and Floor Area Ratio Bonus Point Schedule⁽¹⁾

Type of Amenity	Type of Bonus
INFRASTRUCTURE AND SERVICE CATEGORY	
Donation of usable land for public safety ⁽²⁾	An increase in density of 5% for every acre donated. If an entire site is donated, accepted, and can be used for more than one services such as Fire and EMS, the maximum density or FAR of Table 4.13a and 4.13b can be used
Donation of usable land for schools (elementary, middle, or high) ⁽²⁾	If the site is accepted by the School Board, the maximum density or FAR of Table 4.13a and 4.13b can be used. Only entire sites may be counted towards this density increase
Donation of usable land for community or regional parks ⁽²⁾	2 pts per acre up to the amount needed by the County - If the site is accepted by the County, the maximum density or FAR can be used
Extending sidewalks beyond frontage	1 point for every 100 feet beyond the 100 additional feet required by the Chapter 7
Decorative Internal street lighting (historical, art deco, or neo-traditional street lighting). Binding lighting details required	1 pts
DESIGN	

Created: 2022-10-06 12:09:31 [EST]

(Republication)

Polk County Public Benefit

US 98 SAP Bonus Point Example

Public Art (murals and sculptures)	2 pts
Open space (beyond requirements)	2 pts per 5% (up to 12 pts)
Vertical development for mixed use buildings (does not include single unit residential development)	2 pts per story above 1 (up to 10 pts)
Traffic calming	1 point
(1) On street parking outside the TCX	
(2) Crosswalks with cobblestone or other similar pavers	2 points
(3) Intersections with cobblestone or other similar pavers	3 points
(4) Internal Tree lined roads with sidewalks	3 points
(5) Tree lined medians	3 points
(6) Roundabouts	3 points
(7) Others approved by DRC	3 points
Alternative driveways (alleys)	3 pts per phase
Garage entrance to side or recessed garage	1 pt for each 50% of development
Zero lot line/cluster development	2 pts
Village design (See definition)	5 pts
If not part of open space, landscaping the perimeter of storm water ponds with at least a type "A" buffer	2 pts
If not part of open space, shaping wet or dry retention ponds in a natural shape that exists in nature	2 pts per pond
Picnic areas, trails, open space, and natural areas connecting to adjacent offsite land	3 pts
Landscape on all sides of external wall	2 pts
TRANSPORTATION	
Open space with pedestrian use area or corridors to break up parking areas	2 pts
Sidewalks in divider median of parking lots to separate pedestrian and vehicular traffic provided at least every other drive isle	5 pts
Curb and gutter for internal roads (less than 3 du/ac)	1 pts
Mass transit stop including shelter and benches (if on a planned or committed route)	3 pts
Parking Structure (exempt from FAR calculation)	6 pts
RECREATION	
More than one active recreation site with amenities	5 pts
Publicly accessible passive recreation (walking paths/trails, bikeway, nature/hiking trail)	5 pts
CONSERVATION	
Florida Friendly, water-wise landscaping (does not need supplemental irrigation) for the entire project	6 pts
Restoration/creation of wildlife habitat that FFWCC certifies is capable of supporting wildlife	6 pts
Greenway Corridor (land area containing a multi-use paved trail that connects to proposed, committed, or existing greenway facility)	1 pt per 1/5 acre
Upland conservation, existing vegetation retained for (add 3 pts when adjacent to an off-site conservation area):	
15% of site	3 pts (6 pts)
20% of site	4 pts (7 pts)

Created: 2022-10-06 12:09:31 [EST]

(Republication)

Polk County Public Benefit

US 98 SAP Bonus Point Example

25% of site	5 pts (8 pts)
Existing Wildlife habitat or native plant community open space	5 pts per whole acre
Wetland/Waterbody buffer (in addition to the required vegetative buffer) averages an additional:	
25 feet upland	2 pt
50 feet upland	3 pts
75 feet upland	4 pts
Wildlife habitat/Native plant community buffer	
15 feet upland	1 pt
30 feet upland	2 pts
50 feet upland	3 pts
Land reserved for active agricultural production (platted)	4 pts per acre
Land planted as wildflower field (platted)	3 pts per 5000 square feet (may be linear)
DEVELOPMENT	
Affordable housing (based on HUD standards)	10% of project = 0.5 du/ac increase 5% of project = 0.25 du/ac increase
Notes: (1) At a minimum, all development required to provide Density Bonus Points shall select points from at least three of the categories from this table. (2) An agreement must be made with the service provider prior to any approvals/acceptance that the site will be used by the public safety provider. Applicant may use property adjoining the proposed facility site, not within the proposed development, to ensure the total amount of acreage needed by the service provider for the service is secured. Commitment letter will be required by the adjoining land owner with a legal description attached, and final dedication prior to any construction.	

(Ord. No. 19-055 , § 2, 8-20-2019)

3. **Count I properly includes the Tier 3 development bonuses because the City cannot lawfully refuse to grant such development bonuses.**

- a. ***DFF is entitled to the Tier 3 development bonuses as a matter of right upon providing or paying for sufficient "public benefit."***

The City's 2010 Plan provided bonuses for height, intensity, and density ("development bonuses") for the DFF's Property if DFF provided "public benefits." The 2010 Plan specifically provides in pertinent part as follows:

Policy 1-2.1.8: Height, Intensity, and Density Bonus Provisions.

Height, intensity, and density bonus provisions are provided in the HDR, CMU, SHMU, NHMU, TCMU, GRMU, BRMU, HIMU and CBR Land Use Designations. These provisions shall be initiated to stimulate reinvestment in high standards of design through implementation of a tiered regulatory system that grants incentives for actions that are consistent with design criteria that cannot otherwise be mandated. The outcome shall result in high quality, innovative development that enhances site and building design, achieves land use compatibility, promotes non-motorized mobility, and provides the opportunities for achieving extraordinary public benefit. Height, intensity, and density provisions are provided in three levels or "Tiers" of development criteria. The tiered system of regulatory measures shall not be interpreted as establishing a guarantee of an increase in density or intensity. The tiered system simply promotes public-private partnerships, allows for equitable use of land, assists in avoidance of takings and promotes design initiatives that assist in Comprehensive Plan objectives, especially within major activity centers contributing potential transit ridership. Tiers 2 and 3 provide height, intensity and density bonus provisions.

Tier 3: Allows the highest building height and density thresholds based on compliance with a planned unit development regulatory procedure that places special emphasis on attaining a heightened level of amenities beyond Tier 2 levels. The additional height and density will be achievable if the development meets all requirements of a Planned Unit Development (PUD) with special emphasis on providing a specified "public benefit." The Tier 3 development review procedures shall require adherence to Tier 2 development standards and submittal of engineered three-dimensional models, virtual computer images, architectural renderings, shadow analysis and/or other analyses that are appropriate to the character of development proposed. Such submittals shall demonstrate the

Tier System

*- But "reasonable" expectation.
- City cannot keep requiring more + more
- links to the merits of public benefit
- it's being applied to the desired height, density and/or intensity*

Analogy: Vending Machine

Tier 1 vs Tier 2 vs Tier 3

impact of the project on access to light, impact on airflow dynamics, as well as other visual impacts that may be deleterious to adjacent properties, motorists, pedestrians, or segments of the population. Specific examples of “public benefit” promoted by Tier 3 thresholds include the following:

1. **Beach Access Improvements.** For improved access to the Beaches, this objective shall be carried forth within the GRMU, CBR and HIMU designated areas through private investment in the form of dedicating pedestrian easements to the public for access from public areas to the beach (public beach access points), the design, permitting and construction of beach/dune walkovers facilities that include public showers, and access to that portion of the beach from the mean high water line to a reasonable distance to the (public beach).
2. **Off-Site Public Parking Garage.** Within one year from Plan adoption, the LDC shall be amended to allow an additional percentage of the parking spaces required for non-residential uses to be located “off-site.” The “additional percentage” shall be greater than the percentage allowed in the LDC provision that implements Policy 2-1.3.7. However, the LDC shall be amended to require that a certain percentage of the total parking garage spaces built in the previously mentioned off-site parking garage shall be dedicated to the City for public use.
3. **Preserve Significant View of the Gulf and Harbor.** Preserve coastal water views that would clearly be imperiled without the provision of incentives. This incentive is applicable to sites with exceptional waterfront views. Applicants for such incentive must submit scaled three-dimensional models demonstrating the preservation of a valuable view corridor and vista is a public benefit.
4. **Develop Work Force Housing in the North Harbor Mixed Use Area.** The City shall develop a market sensitive affordable housing incentive program for the local low wage work force that generally cannot achieve access to the housing market. The affordable housing program shall include innovative approaches that address both demand and supply issues. The affordable housing program shall incorporate non-conventional housing options designed to meet the basic housing and service needs of the local low wage work force.
5. **Relocation and Conversion of Above Ground Utilities to Below Ground Locations.** Encourage private investment in relocation and converting above ground utilities both on and off site.
6. **Construct Open Space Malls and Arcades Equipped with Pedestrian-Oriented Furniture and Streetscape that Serve**

as Gathering Spaces for the General Public. Encourage private investment in public gathering places. Site plans must demonstrate architecturally designed open space malls and arcades equipped with pedestrian-oriented furniture streetscape.

7. **Create and/or Reinforce a Pedestrian Friendly Transit System.** Encourage private investment in creating and/or reinforcing a pedestrian friendly transit system. Such programs must demonstrate a transit friendly environment consistent with an adopted public plan for public transit. The plan shall include transit stops with dedicated area for safe and convenient off-street transit access and passenger shelters equipped with appropriate furnishings, architecturally design lighting and streetscape.
8. **Significant Improvements to Public Infrastructure.** Encourage private investment in off-site infrastructure improvements located anywhere within the city. Examples of such improvements include: purchase and/or dedication of land for rights-of-way, median landscaping;; public parking located within city rights-of-way; construction of sidewalks identified in city wide sidewalk improvement plan; recreational improvements identified in Policy 7-1.4.3; contributions, either in monetary or real property, that will hasten the implementation of any project identified in the most recently adopted five-year capital improvement plan; and any other significant public benefit that enhances public infrastructure throughout the city.
9. **Annexation into the City Limits.** Unincorporated properties seeking annexation shall be eligible for Tier 3 status within the Future Land Use Category established pursuant to an annexation agreement where Tier 3 heights or densities are necessary to maintain equality with the heights or densities achievable through applicable County plans and ordinances.

The height, intensity, and density limits of each of these Tiers is set forth within the “General Development Standards” tables of the respective Future Land Use Designation to which this policy applies. Some of the future land use designations, HDR, BRMU, and the HIMU in particular, have height bonus standards in Tier 2 and Tier 3, but do not have density bonus standards in Tier 2 or Tier 3 or either. The SHMU, NHMU, and TCMU future land use designations have floor area ratio bonus standards in Tier 2 and Tier 3.

See Policy 1-2.1.8, 2010 Plan. (underlined emphasis added)

1. **Request:**

Meeting Date: November 7, 2024

Discussion regarding

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING RESOLUTION 24-73, CONTAINING THE PROCEDURES FOR DEVELOPMENT AGREEMENTS WITH DEVIATIONS TO CLARIFY THAT THESE DEVELOPMENT AGREEMENTS ARE HOME RULE DEVELOPMENT AGREEMENTS AND TO AMEND RELATED NOTICE REQUIREMENTS FOR CONSISTENCY WITH NOTICE REQUIREMENTS IN SECTION 2-98 AND CHAPTER 34 OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE; AND PROVIDING AN EFFECTIVE DATE.

Why the action is necessary:

Adoption of this Resolution is necessary to ensure that the Town's Procedures for Development Agreements with Deviations are consistent with the Town Land Development Code, section 2-98, pertaining to notices and hearings regarding development agreements. Amendment of paragraph 3 of the Town's Procedures for Development Agreements with Deviations, as outlined in Exhibit A to Resolution 24-247 is further necessary, as not all notice requirements pertaining to development agreements are applicable to every Home Rule Development Agreement.

What the action accomplishes:

This Resolution amends the Town's Procedures for Development Agreements with Deviations for consistency with section 2-98 of the Town Land Development Code.

2. **Agenda:**

ITEMS FOR DISCUSSION

3. **Requirement/Purpose:**

Resolution

5. **Background:**

On April 1, 2024, the Town Council of the Town of Fort Myers Beach adopted Resolution 24-73, approving an administrative code setting forth procedures for the application and approval of development agreements with deviations. The Town Council wishes to amend the procedures to provide greater clarity regarding the process and paragraph 3.3. "Public Hearings" of the Town's Procedures for Development Agreements with Deviations for consistency with Section 2-98 of the Town Land Development Code.

Attachments:

1. Final 24-247 Resolution Amending Resolution 24-73 11-6-2024 ns (1)
2. Final Exhibit A Development Agreement Procedures - 11-6-24 ns - REV-BV (1) (1)
3. ARTICLE_III.____DEVELOPMENT_AGREEMENTS (1)

Financial Impact:

None

6. **Alternative Action**

7. **Staff Recommendations:**

Adopt the Resolution

8. **Recommended Approval:**

nancy stuparich, Town Attorney

Date: November 06, 2024

Amy Baker, Town Clerk

Date: November 06, 2024

Andy Hyatt, Town Manager

Date: November 06, 2024

RESOLUTION NUMBER 24-74

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING RESOLUTION 24-73, CONTAINING THE PROCEDURES FOR DEVELOPMENT AGREEMENTS WITH DEVIATIONS TO CLARIFY THAT THESE DEVELOPMENT AGREEMENTS ARE HOME RULE DEVELOPMENT AGREEMENTS AND TO AMEND RELATED NOTICE REQUIREMENTS FOR CONSISTENCY WITH NOTICE REQUIREMENTS IN SECTION 2-98 AND CHAPTER 34 OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE; 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 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, on April 1, 2024, the Town Council of the Town of Fort Myers Beach adopted Resolution 24-73, approving an administrative code setting forth procedures for the application and approval of home rule development agreements, which among other things may provide for deviations; and

WHEREAS, the Town Council wishes to amend Resolution 24-73 for clarity and consistency with notice provisions in Section 2-98 and Chapter 34 of the Town's Land Development Code; and

WHEREAS, the Town Council has determined it is in the best interests of the residents of Fort Myers Beach to adopt this Resolution.

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

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

Section 2. The Town Council hereby adopts the changes as set forth in Exhibit "A."

Section 3. This Resolution shall be effective retroactive to April 1, 2024 upon 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:

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John R. King, Councilmember	_____
Scott Safford, Councilmember	_____
Karen Woodson, Councilmember	_____

ADOPTED this ____ day of _____ 2024, by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, 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:**

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of _____ 2024.

EXHIBIT A

TOWN OF FORT MYERS BEACH ADMINISTRATIVE CODE PROVIDING PROCEDURES FOR HOME RULE DEVELOPMENT AGREEMENTS ~~WITH~~ ~~DEVIATIONS~~

Pursuant to Section 2-100 and 2-96 of the Town's Land Development Code, the Town may enter into a Home Rule Development Agreement ~~with Deviations~~ with a property owner. A Home Rule Development Agreement ~~with Deviations~~ is a non-statutory development agreement authorized pursuant to the Town's home rule authority that may allow for approval of amendments, modifications, deviations, variances or exceptions (~~"deviations"~~) from the Town's Land Development Code, and, if appropriate under the provisions of the Town's Comprehensive Plan, relief from the building height limitations in the Comprehensive Plan. Approval of a Home Rule Development Agreement and the deviations provided for in such Home Rule Development Agreement shall be considered tantamount to and commensurate to a planned development for purposes of determining consistency with the Comprehensive Plan. Approval of a Home Rule Development Agreement ~~with Deviations~~ shall be subject to the procedures set forth herein.

1. Home Rule Development Agreement ~~with Deviations~~ Application Procedures.

The following information/exhibits shall be required with the application for a Home Rule Development Agreement ~~with Deviations~~ (hereinafter sometimes referred to as "Development Agreement"):

- 1.1. Legal description and address of the parcel of land which will be the subject of the Development Agreement (hereinafter "Land").
- 1.2. The name, address and telephone number of the applicant and any attorney or agent who is or will be representing the applicant.
- 1.3. A title opinion from a Florida attorney (which opinion is in a form acceptable to and in favor of the town), which shall identify and provide the names, addresses and telephone numbers of all legal and equitable owners having interest in the Land, as well as all mortgage or lien holders, holders of easement interests, and other encumbrances, upon the Land. As of the date of recordation of any Development Agreement, the applicant shall be required by the town to update the foregoing information in this subparagraph to the date of recording of the Development Agreement.
- 1.4. An application signed by, or on behalf of, the owner and any lien holder(s) as to the Land subject to the Development Agreement, and if not signed by the owner a notarized consent signed by the owner authorizing the person to sign the application.

1.5. Payment of any required application fee as set by resolution of the town council.

1.6. A survey of the Land showing the approximate location of all environmentally sensitive lands, or lands subject to the jurisdiction of the U.S. Army Corps of Engineers, Florida Department of Environmental Regulation, the Southwest Florida Water Management District or Lee County, Florida.

1.7. A statement and finding demonstrating that the proposed Development Agreement will be consistent with the comprehensive plan of the town.

1.8. The desired duration of the Development Agreement shall not be less than the expected completion of the development on the Land.

1.9. Development uses and regulations currently legally permitted on the Land, including densities, intensities, heights of structures, and setbacks; and, if different, any of the same that are currently on the Land, or that were on the Land at any time in the last 24 months.

1.10. Development uses and regulations, including densities, intensities, heights of structures, and setbacks being requested on the Land.

1.11. A description of the public facilities which will provide services to support the development, the approximate date that new public facilities, if needed, will be constructed, and a schedule to assure that the public facilities and services will be available concurrent with the impacts of development.

1.12. A description of any current or proposed reservation or dedication of land for public purposes.

1.13. Any deed restrictions existing or being imposed upon the Land, and a description of any current or proposed reservation or dedication of land for public purposes.

1.14. The application must explicitly identify each instance of conflict with existing ordinances and expressly provide for the Development Agreement to control, or else all of the provisions of such conflicting ordinances shall control to the extent that the Development Agreement fails to expressly provide otherwise. Any ambiguity with respect to whether a Development Agreement or an ordinance is to control shall be interpreted to favor the ordinance. A statement listing all contemplated zoning districts or land use modifications or requests for more flexibility that will be required if the proposed Development Agreement were to be approved.

1.15. A sketch of site plan showing where buildings (with heights), structures, parking, and other features/amenities of the proposed development shall be

located. If the Land is located on the water, any view corridors or public access location(s), if any, will be located.

1.16. A statement that a copy of the Development Agreement with Deviations Application has been furnished by First Class U.S. Mail to all property owners within 100 feet of the boundaries of the Land at the addresses of such property owners found on the Lee County Property Appraiser website, and a list of such property owners and addresses.

1.17. A concise and complete recital of the proposed contents of the Development Agreement using the Form of Development Agreement with Deviations attached as Ex. "A".

2. Development Agreement Minimum Content Requirements.

The following information shall be required within a Development Agreement.

2.1. A legal description of the land subject to the agreement and the identification of all persons having legal or equitable ownership therein.

2.2. The duration of the development agreement, which duration shall not be less than the anticipated time period needed to fully build out the development.

2.3. The development rights to be permitted on the land, and setting forth densities, intensities, building height(s), and setbacks. Uses of the land shall be those allowed in the underlying zoning district unless otherwise specifically provided, such as when a special exception is a part of the development agreement.

2.4. A description of the public facilities and services, including on-site improvements that will serve the proposed project, including designation of the entity or agency that shall be providing such facilities. Additionally, if new facilities are needed to serve the project, the date by which such facilities will be constructed and a schedule to assure that public facilities and services shall be available concurrent with the impact of the development project.

2.5. A description of any reservation or dedication of land for public purposes. The Development Agreement shall provide specifically how the land dedication obligation for the project, if any, is to be met. In the event that land or any interest herein is to be conveyed to the town or other entity in discharge of the foregoing, the Development Agreement shall provide that such conveyance or dedication will be by warranty deed or easement, or other instrument in form and substance acceptable to the town attorney, together with evidence of title in form acceptable to the town attorney prepared by an attorney who is a member of the Florida Bar, or a title company licensed in Florida, all depicting who is the owner in fee simple of the land subject to the conveyance or dedication, and the holders of

any other interest or liens affecting said land.

2.6. A description of all local permits approved or needed to be approved for the development of the Land, specifically to include at least the following:

Any required submission to the Southwest Florida Regional Planning Council and any required permission of the State of Florida, Department of Environmental Regulation, the U.S. Corps of Army Engineers, the Southwest Florida Water Management District, the U.S. Environmental Protection Agency or any other required governmental permission. The Development Agreement shall specifically provide that said development permission will be obtained at the sole cost of the owner of the Land, and that any approvals previously given, including the Development Agreement, shall not in any manner obligate the town or any other governmental agency to grant other permit approvals. Under these conditions, action in reliance on the Development Agreement or expenditures in pursuance of its terms or any rights accruing to the project owner thereunder shall not vest any development rights in the owner of the Land or the project to a continuation of the Development Agreement.

2.7. A specific finding in the Development Agreement that the proposed project permitted or proposed is consistent with the town's Comprehensive Plan and Land Development Code, or that, if deviations are necessary for the zoning district or land use plan designations on the subject Land, such Development Agreement specifically lists such deviations in detail.

2.8. Statement in the Development Agreement showing how sidewalk and pedestrian travel is being addressed in a conceptual plan showing the proposed layout of streets, lots, green areas, conservation areas, bike ways, parks, public facilities and such other amenities.

2.9. A statement in the Development Agreement describing how environmentally sensitive land, if any, will be preserved and managed.

2.10. A statement in the Development Agreement describing how threatened or endangered species are being protected.

2.11. A statement in the Development Agreement explicitly identifying each instance of conflict with existing ordinances and expressly providing for the Development Agreement to control, or else all of the provisions of such conflicting ordinances shall control to the extent that the Development Agreement fails to expressly provide otherwise. Any ambiguity with respect to whether a Development Agreement or an ordinance is to control shall be interpreted to favor the ordinance. A statement indicating that failure of the Development Agreement to address a particular permit condition, term or restriction shall not relieve the owner or developer of the necessity of complying with the laws governing said permitting requirements, conditions, terms or restriction.

2.12. A provision that any matter or action required under existing ordinances of the town shall not be otherwise amended, modified or waived, unless such modification, amendment or waiver is expressly provided for in the Development Agreement with specific reference to the Code provision so waived, modified or amended (“deviations”).

2.13. A statement whereby if the applicant, upon approval of the Development Agreement, fails to comply with the terms of the agreement, the town may bring an action in a court of law with competent jurisdiction to protect its rights and interests. All associated reasonable costs and attorney's fees shall be reimbursed to the town if an action at law is necessary regardless of whether the Town is the prevailing party

2.14 Post-Development Agreement requirements. An acknowledgement that prior to the issuance of any building permits being issued for the development that:

2.14.1 All existing and proposed utilities and the manner in which existing utilities will be extended to the site and/or expanded for the use of the development including water, sewer, gas, electricity, cable television, and other utilities shall have been approved by the Town;

2.14.2 The proposed drainage plan for the proposed project shall have been approved by the Town;

2.14.3 The proposed grading plan and elevation requirements of the town, including, but not limited to those related to the National Flood Insurance Program as applicable to the town shall have been approved by the town;

2.14.3. The traffic impact and parking plans as applicable to the town shall have been approved by the town; and

2.14.4 All other town requirements are met that are necessary for the initial building permits to build the project on the Land.

2.15. An acknowledgement that the town shall not have any liability whatsoever for any expenses or other damages that may be incurred as a result of denial of the Development Agreement or for denial of building permits due to the failure to meet the town's requirements as to any Post-Development Agreement requirements.

2.16. A description of any special or public benefit to the Town as a result of the development such as, the promotion of economic development, affordable housing, hurricane recovery, provision of needed public facilities, provision of public land or recreation, and/or elimination of blight.

2.17. A finding that the proposed Development Agreement is reasonable and not

arbitrary and in the best interest of the town.

3. Home Rule Development Agreement ~~with Deviations~~ Review Procedures.

The following regulations shall be followed during the review of a Development Agreement ~~_with Deviations_~~.

3.1. Staff negotiation. The town manager or the town manager's designee (typically the town planner) shall review the proposed project and shall meet and hold preliminary nonbinding negotiations with the applicant regarding the appropriate terms and conditions on which said Land should be developed. At such time as a tentative agreement is reached as to the recommended terms and conditions of the Development Agreement, or the town manager or town manager's designee deems that no further negotiations would be useful because of the unlikely possibility of reaching a concurrence on the terms and conditions of a Development Agreement, the proposal shall be reduced to a nonbinding and unexecuted writing. Such tentative agreement, whether oral or written, shall not give rise to any development rights or equitably or legally vest any development rights in the owner of the Land or other substantially affected person.

3.2. Reduction of proposal to writing

3.2.1. In the event that the town manager or the town manager's designee and the applicant have negotiated the terms of a mutually acceptable, nonbinding and tentative Development Agreement, the terms of that Development Agreement shall be reduced to writing in a contractual form for review and for further discussion, consideration and approval or disapproval as provided herein. The Development Agreement may include a provision that authorizes administrative amendments to the site plan provided that height, density and intensity are not increased and the plan remains consistent with the Town's Comprehensive Plan.

3.2.2. In the event that the town manager or town manager's designee and the applicant have been unable to negotiate a mutually satisfactory Development Agreement, within thirty (30) days of said determination by the town manager or the town manager's designee, the applicant may prepare a proposed Development Agreement consistent with all requirements hereof for review by the town's Local Planning Agency ("LPA").

3.2.3 It shall not be required for the town manager, or designee to make a recommendation as to whether the town council should approve or not approve a Development Agreement.

3.3. Public hearings

3.3.1. At such time as the Development Agreement has been reduced to written nonbinding contractual form, or the applicant has prepared a Development Agreement as set forth above in subsection 3.2, the town manager or town manager's designee shall transmit such Development Agreement to the LPA.

3.3.2. A public hearing shall be held by the LPA concerning said application, and the LPA shall issue a recommendation for approval, approval with conditions, or denial of the Development Agreement to the town council. Thereafter, two a public hearings shall be held by the town council as to the Development Agreement. The Development Agreement shall be adopted by Ordinance, following two readings of the title at the two public hearings and publication of a notice 10 days in advance of the second public hearing in a newspaper of general circulation.

3.3.3. ~~Notice of~~ Notice of the each of the public hearings shall be available ~~noticed~~ on the town's website, and a said notice shall be mailed to all property owners within a five hundred (500) foot radius of the boundaries of the Land at the addresses of such property owners found on the Lee County Property Appraiser website prior to the first public hearing in accordance with notice procedures in Chapter 34 of the Land Development Code. ~~Said advertisement and notice of each of the two public hearings may be combined in one notice, but must include:~~

~~3.3.3.1. Location of the Land subject to the Development Agreement.~~

~~3.3.3.2. Proposed development's project land use, building intensities, estimated population and building heights.~~

~~3.3.3.3. Location where a copy of the proposed Development Agreement may be reviewed.~~

~~3.3.3.4. Date, time and place of the public hearing(s).~~

A home rule development agreement shall comply with notice requirements in Chapter 34 of the Land Development Code. Notwithstanding the foregoing, as provided in Section 2-98, failure to comply with Chapter 34 notice requirements shall not be a basis for invalidating a Development Agreement.

3.3.3.~~4~~5. At the public hearings and in compliance with any and all procedures established by law for the conduct of said hearings, the LPA and the Town Council shall accept any public comment on the terms of the Development Agreement. Following the final ~~T~~town ~~C~~council public hearing, the town clerk shall immediately dispatch, postage prepaid by regular, first class, U.S. mail and in

writing, a copy of the determination of the Town Council to the applicant, or anyone who has requested a copy advising them of the town council's decision. The determination shall state that the decision of the town council is final agency action.

4. Development Agreement Execution Procedures and Recording.

Development Agreements shall be executed as established below:

4.1. All Development Agreements shall be executed on behalf of the applicant by all persons having legal or equitable title in the Land subject to the Development Agreement, including the fee simple owner and any mortgagees or other lien holders or owners of other equitable interests in the Land, unless the town attorney approves the execution of the development agreement without the necessity of such joinder or subordination in that the substantial interests of the town will not be adversely affected thereby.

4.2 Development Agreements shall not be executed on behalf of the town and shall not be recorded unless and until all Post-Development Agreement requirements have been met as set forth in Sec. 2-14 above. The applicant shall bear the expense of recording the Development Agreement, which shall be recorded by the town clerk.

5. Amendment to Development Agreement.

5.1 Except for Administrative Amendments, if allowed in the Development Agreement, an amendment to a Development Agreement shall not occur unless and until there have been hearings thereon before the LPA and before the Town Council. ~~Noticing of the LPA and town council hearings shall be in~~ in the same manner as for the original hearings for the Development Agreements.

Sec. 2-91. - Statutory authority.

The Town of Fort Myers Beach has the authority to adopt this article pursuant to article VIII, § 1(f), of the Constitution of the state and F.S. §§ 163.3220(5), 163.3223, and 166.021.

Sec. 2-92. - Applicability of article.

This article shall apply to the entire incorporated area of the town.

Sec. 2-93. - Intent of article.

This article is intended to enable the Town of Fort Myers Beach to invoke the provisions of the Florida Local Government Development Agreement Act while retaining all of the home rule authority given it pursuant to article VIII of the Constitution of the state and F.S. chs. 163, 166 and 380, to enter into other similar agreements beyond the provisions of the Florida Local Government Development Agreement Act, and to establish specific notice and hearing procedures when it makes certain such similar agreements pursuant to its home rule authority.

Sec. 2-94. - Purpose of article.

- (a) The purpose of this article is to invoke the authority recognized in the town by the state in F.S. § 163.3223, to enter into development agreements with any and all persons having legal or equitable interests in real property located in the incorporated area of the town pursuant to the provisions of the Florida Local Government Development Agreement Act. Vendees under a specifically enforceable contract for the sale of real property shall be recognized as having a sufficient equitable interest so as to have legal capacity to become a party to a development agreement made pursuant to the Florida Local Development Agreement Act, but persons having only a mere option to purchase real property shall not be so recognized.
- (b) It is also the purpose of this article to establish notice and hearing procedures similar to those set forth in the Florida Local Development Agreement Act when the town makes agreements pursuant to its home rule authority in those type of agreements which are defined in this article as home rule development agreements. Development agreements made pursuant to this article, whether they are home rule development agreements as defined in this article or agreements made pursuant to the Florida Local Government Development Agreement Act, are intended to protect and further the public health, safety and welfare by providing certain guarantees to land developers in exchange for their agreement to provide specified public facilities or services which are related to and consistent with the town's capital improvement planning and financing.

Sec. 2-95. - Definitions.

- (a) The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Development agreement means either a home rule development agreement or a statutory development agreement.

Home rule development agreement means an agreement made by the town pursuant to its home rule powers, and not pursuant to the Florida Local Government Development Agreement Act, but only in those cases where development, as defined in F.S. § 163.3221(3), is to be undertaken by a person who is not a local government, as defined in F.S. § 163.3221(9), or an agency of the state or the United States of America. Moreover, home rule development agreements specifically do not mean agreements made between the town and other parties where the purpose of the agreement is exclusively to provide or pay for the construction, improvement, maintenance, or other alteration of land or personalty by third parties where the property in question is owned or is to be owned by the town or some other governmental agency.

Statutory development agreement means any agreement made specifically pursuant to the Florida Local Government Development Agreement Act.

- (b) All other terms which are used in any statutory development agreement made by the town pursuant to the Florida Local Government Development Agreement Act, as such act may be amended from time to time, shall be defined as set forth in F.S. § 163.3221, unless otherwise specifically defined in a particular statutory development agreement. Terms not so defined shall be given their ordinary and customary meanings.

Cross reference— Definitions and rules of construction generally, § 1-2 of this LDC.

Sec. 2-96. - Applications for development agreements.

No person shall have the right to apply for or receive development agreement approval, unless such right is so provided in an appropriate administrative code which establishes procedures for such applications. Should such an administrative code be adopted, then the town shall establish a schedule of fees and charges which shall be imposed for the filing and processing of each such application. Unless otherwise provided by administrative code, development agreements shall be considered by the town council only upon the recommendation of the town manager, who may submit a proposed development agreement, in written form, for consideration by the town council pursuant to the public hearing requirements of F.S. § 163.3225 and § 2-98 of this LDC. Each such proposed development agreement so submitted shall include the town manager's recommendation as to whether the council should become or decline to become a party to the agreement, or a modified form of the agreement, with such information as the town manager deems necessary to support his recommendation.

Sec. 2-97. - Minimum requirements of a statutory development agreement.

Statutory development agreements shall include, at a minimum, all of the items enumerated in F.S. § 163.3227, plus such conditions, terms, restrictions, or other requirements which the parties to the agreement may desire to include and which are not otherwise prohibited by law or which exceed the authority of the parties. If a statutory development agreement provides that any public facilities are to be designed or constructed by the developer, then the agreement shall require that the design and construction be in compliance with all applicable federal, state, and town standards and requirements, including but not to be limited to guarantees of performance and quality and project controls, including scheduling, quality, and quality assurance. When public facilities are to be designed or constructed by the developer, or when the developer agrees to dedicate land to the town, the statutory development agreement shall specifically state the extent to which such design or construction or dedication shall be eligible for impact fee credits pursuant to such impact fee ordinances as the town may have in effect at the time when the statutory development agreement is to become effective. Statutory development agreements also shall incorporate the administrative appeal process set forth in § 2-102 of this LDC.

Sec. 2-98. - Notices and hearings.

No statutory development agreement shall be made pursuant to this article unless and until all of the requirements of F.S. § 163.3225 relating to the agreement have been satisfied. To that end, an affected property owner, as the term is used in F.S. § 163.3225, means all owners of property, as reflected on the current year's tax roll, lying within 375 feet in every direction of the subject property. The town council, by adopting an appropriate administrative code, may prescribe more stringent notice requirements. In addition, if a statutory development agreement is intended to rezone property, grant variances, or accomplish any other approval which otherwise would be controlled by ch. 34 of this LDC, the notices required in ch. 34 also shall be given. The same notice and hearing requirements also should be observed when making home rule development agreements. However, failure to satisfy all of such notice and hearing requirements shall not be grounds to invalidate a home rule development agreement.

Sec. 2-99. - Amendment or cancellation of development agreement by mutual consent.

A statutory development agreement adopted pursuant to this article may be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest utilizing the same public hearing and notice requirements as are prescribed for the adoption of development agreements pursuant to this article and any administrative code authorized by § 2-98 of this LDC.

Sec. 2-100. - Reservation of home rule authority.

Nothing contained in this article shall be construed so as to prevent the town from entering into an agreement which is substantially similar to a development agreement adopted pursuant to the Florida Local Government Development Agreement Act, but which is based upon the home rule authority granted the town pursuant to article VIII, § 1(f), of the Constitution of the state and F.S. chs. 163, 166 and 380, and specifically recognized by the state legislature in F.S. § 163.3220(5).

Sec. 2-101. - Conflicts between development agreement and other land development regulations.

To the extent that this code may permit it and a development agreement purports to rezone land, grant deviations or variances from this code, including article II of this chapter, grant development orders or amendments to or extensions thereof equivalent to those which are available pursuant to ch. 10 of this LDC, implement development orders or amendments to development orders for developments of regional impact, or grant building permits or other permits which specifically allow the physical alteration or improvement of land, the development agreement must explicitly identify each instance of conflict with other ordinances and expressly provide for the development agreement to control, or else all of the provisions of such other ordinances shall control to the extent that the development agreement fails to expressly provide otherwise. Any ambiguity with respect to whether a development agreement or an ordinance is to control shall be interpreted to favor the ordinance.

Sec. 2-102. - Appeals.

No person may challenge the validity of a development agreement on the grounds that the agreement conflicts with the town's comprehensive plan except pursuant to the procedures set forth in F.S. § 163.3215. A party or a successor in interest to a party to a development agreement may bring suit to challenge the town's administration of a development agreement only after he has exhausted the administrative remedies prescribed in ch. 34 of this LDC for appeals from administrative actions.

1. **Request:**

Meeting Date: November 7, 2024

Discussion Regarding the Town's Bicycle Ordinance and Electric Bicycle Regulations

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

ITEMS FOR DISCUSSION

3. **Requirement/Purpose:**

Other

5. **Background:**

On May 8, 2024, the Town Council held a discussion regarding ways to make the Town more bicycle and e-bicycle friendly for residents and tourists. The Town Council requested the Town Attorney to research the state statutes and the Town Code to determine the extent to which the Town can regulate bicycles and electric bicycles within the Town's jurisdiction, including but not limited to whether the Town can mandate that bicycle riders stop or get off their bicycles when passing pedestrians on the sidewalk, as well as whether the Town can require businesses that rent bicycles to include additional safety information when renting to customers.

Electric Bicycle Regulations. Section 316.20655(1), Fla. Stat. specifically regulates electric bicycles as follows:

(1) Except as otherwise provided in this section, an electric bicycle or an operator of an electric bicycle shall be afforded all the rights and privileges, and be subject to all of the duties, of a bicycle or the operator of a bicycle, including s. [316.2065](#). An electric bicycle is a vehicle to the same extent as a bicycle. However, this section may not be construed to prevent a local government, through the exercise of its powers under s. 316.008, from adopting an ordinance governing the operation of electric bicycles on streets, highways, sidewalks, and sidewalk areas under the local government's jurisdiction; to prevent a municipality, county, or agency of the state having jurisdiction over a bicycle path, multiuse path, or trail network from restricting or prohibiting the operation of an electric bicycle on a bicycle path, multiuse path, or trail network; or to prevent a municipality, county, or agency of the state having jurisdiction over a beach as defined in s. 161.54(3) or a dune as defined in s. 161.54(4) from restricting or prohibiting the operation of an electric bicycle on such beach or dune.

Sec. 316.008(7)(a), Fla. Stat. contains additional authority for a municipality to regulate electric bikes and provides:

(7)(a) A county or municipality may enact an ordinance to permit, control, or regulate the operation of vehicles, golf carts, mopeds, motorized scooters, electric bicycles, and electric personal assistive mobility devices on sidewalks or sidewalk areas when such use is permissible under federal law. The ordinance must restrict such vehicles or devices to a maximum speed of 15 miles per hour in such areas.

Based on these statutory authorities, the Town may regulate the operation of electric bicycles in accordance with the provisions of the cited statutes.

Forced Stop. An ordinance to force bicycle riders to stop or even get off their bicycles when

passing walkers on the sidewalk, may be permissible under Section 316.008(1)(a); however, caution in adopting such an ordinance is needed to avoid a conflict with any other statutory sections that require the free flow of traffic. Additionally, Sec. 316.2065, Fla. Stat. provides that "a person propelling a bicycle upon and along a sidewalk must yield the right-of-way to any pedestrian and give an audible signal before overtaking and passing such pedestrian." Requiring the bicycle rider to stop in order to provide the pedestrian with the ability to navigate the right-of-way appears to be consistent with the statutory intent and a municipality's ability to adopt additional regulations to ensure pedestrian safety on sidewalks.

Notices by Bicycle Rental Companies. Section 28-85 of the Town's Code already includes a provision regarding entities that rent or loan bicycles to others to inform them of requirements for the lawful operation of a bicycle in the Town:

Sec. 28-85. - Responsible parties.

All bicycle owners or riders/operators of the bicycle, including entities that rent or loan bicycles to others for use on the public rights-of-way, are responsible for compliance with these regulations. Rental contract language shall not redirect or assign responsibility for compliance of [section 28-81](#) of this article.

Requiring the distribution of additional safety information could be added to Sec. 28-81 or Sec. 28-85 of the Town's Code since there does not appear to be any state law prohibition regarding inclusion of such information in rental agreements. Many of the requirements in Sec. 28-81 are duplicative of state law requirements, such as the requirement for a rider under the age of 16 to wear a helmet and the number of persons who can safely ride a single bicycle.

Attachments:

1. 316.008, Fla. Stat.
2. 316.2065, Fla. Stat.
3. 316.20655, Fla. Stat.
4. FMB Code Section 18-33
5. FMB Code Sections 28-81 thru 28-87
6. M&P 5-8-24 - bicycle discussion minutes

Financial Impact:

6. **Alternative Action**

7. **Staff Recommendations:**

8. **Recommended Approval:**

Select Year: 2024 Go

The 2024 Florida Statutes

Title XXIII

MOTOR VEHICLES

Chapter 316

STATE UNIFORM TRAFFIC CONTROL

[View Entire Chapter](#)

316.008 Powers of local authorities.—

- (1) The provisions of this chapter shall not be deemed to prevent local authorities, with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power, from:
- (a) Regulating or prohibiting stopping, standing, or parking.
 - (b) Regulating traffic by means of police officers or official traffic control devices.
 - (c) Regulating or prohibiting processions or assemblages on the streets or highways, including all state or federal highways lying within their boundaries.
 - (d) Designating particular highways or roadways for use by traffic moving in one direction.
 - (e) Establishing speed limits for vehicles in public parks.
 - (f) Designating any street as a through street or designating any intersection as a stop or yield intersection.
 - (g) Restricting the use of streets.
 - (h) Regulating the operation of bicycles.
 - (i) Regulating or prohibiting the turning of vehicles or specified types of vehicles.
 - (j) Altering or establishing speed limits within the provisions of this chapter.
 - (k) Requiring written crash reports.
 - (l) Designating no-passing zones.
 - (m) Prohibiting or regulating the use of controlled access roadways by any class or kind of traffic.
 - (n) Prohibiting or regulating the use of heavily traveled streets by any class or kind of traffic found to be incompatible with the normal and safe movement of traffic.
 - (o) Designating hazardous railroad grade crossings in conformity to criteria promulgated by the Department of Transportation.
 - (p) Designating and regulating traffic on play streets.
 - (q) Prohibiting pedestrians from crossing a roadway in a business district or any designated highway except on a crosswalk.
 - (r) Regulating pedestrian crossings at unmarked crosswalks.
 - (s) Regulating persons upon skates, coasters, and other toy vehicles.
 - (t) Adopting and enforcing such temporary or experimental regulations as may be necessary to cover emergencies or special conditions.
 - (u) Enacting ordinances or erecting signs in the rights-of-way to control, regulate, or prohibit hitchhiking on streets or highways, including all state or federal highways lying within their boundaries.
 - (v) Regulating, restricting, or prohibiting traffic within the boundary of any airport owned by the state, a county, a municipality, or a political subdivision and enforcing violations under the provisions of this chapter and

chapter 318.

(w) Regulating, restricting, or monitoring traffic by security devices or personnel on public streets and highways, whether by public or private parties and providing for the construction and maintenance of such streets and highways.

(2) The municipality, through its duly authorized officers, shall have nonexclusive jurisdiction over the prosecution, trial, adjudication, and punishment of violations of this chapter when a violation occurs within the municipality and the person so charged is charged by a municipal police officer. The disposition of such matters in the municipality shall be in accordance with the charter of that municipality. This subsection does not limit those counties which have the charter power to provide and regulate arterial, toll, and other roads, bridges, tunnels, and related facilities from the proper exercise of those powers pertaining to the consolidation and unification of a traffic court system within such counties.

(3) No local authority shall erect or maintain any official traffic control device at any location so as to regulate the traffic on any state road unless approval in writing has first been obtained from the Department of Transportation.

(4) A county or municipality may enact an ordinance providing a fine for the violation of s. 316.1955 in excess of the fine specified by s. 318.18(6), except that such a fine may not exceed \$250. Any such ordinance may provide for the deposit of such fines in a separate county or municipal account to be used in the following manner:

(a) One-third to be used to defray expenses for the administration of this subsection.

(b) Two-thirds to be used to provide funds to improve accessibility and equal opportunity to qualified persons who have disabilities in the county or municipality and to provide funds to conduct public awareness programs in the county or municipality concerning persons who have disabilities.

(5)(a) A county or municipality may enact an ordinance providing a fine for the violation of s. 316.1945(1)(b)2. or 5. in excess of the fine specified by s. 318.18(2), except that such fine may not exceed the fine specified in s. 318.18(2) by more than \$3. However, such ordinance shall provide that the fines collected pursuant to this subsection in excess of the fines which would be collected pursuant to s. 318.18(2) for such violations shall be used by the county or municipality for the purpose of funding a firefighter education program. The amount of the fines collected pursuant to this subsection in excess of the fines which would be collected pursuant to s. 318.18(2) for such violations shall be reported on a monthly basis by the clerk of the court to the appropriate county or municipality.

(b) A county or municipality may enact an ordinance which dedicates a portion of any fine collected for a violation of such ordinance for the purpose of funding a firefighter education program, if such ordinance is limited to the regulation of parking within a firesafety zone.

(6) A county or municipality may enact an ordinance providing for the establishment of a “combat automobile theft” program, and may charge a fee for the administration of the program and the cost of the decal. Such a program shall include:

(a) Consent forms for motor vehicle owners who wish to enroll their vehicles.

(b) Decals indicating a vehicle’s enrollment in the “combat automobile theft” program. The Department of Law Enforcement shall approve the color, design, and other specifications of the program decal.

(c) A consent form signed by a motor vehicle owner provides authorization for a law enforcement officer to stop the vehicle when it is being driven between the hours of 1 a.m. and 5 a.m., provided that a decal is conspicuously affixed to the bottom left corner of the back window of the vehicle to provide notice of its

enrollment in the “combat automobile theft” program. The owner of the motor vehicle is responsible for removing the decal when terminating participation in the program, or when selling or otherwise transferring ownership of the vehicle. No civil liabilities will arise from the actions of a law enforcement officer when stopping a vehicle with a yellow decal evidencing enrollment in the program when the driver is not enrolled in the program provided that the stop is made in accordance with the requirements of the “combat automobile theft” program.

(7)(a) A county or municipality may enact an ordinance to permit, control, or regulate the operation of vehicles, golf carts, mopeds, motorized scooters, electric bicycles, and electric personal assistive mobility devices on sidewalks or sidewalk areas when such use is permissible under federal law. The ordinance must restrict such vehicles or devices to a maximum speed of 15 miles per hour in such areas.

(b)1. Except as provided in subparagraph 2., a personal delivery device and a mobile carrier may be operated on sidewalks and crosswalks within a county or municipality when such use is permissible under federal law. This paragraph does not restrict a county or municipality from otherwise adopting regulations for the safe operation of personal delivery devices and mobile carriers.

2. A personal delivery device may not be operated on the Florida Shared-Use Nonmotorized Trail Network created under s. 339.81 or components of the Florida Greenways and Trails System created under chapter 260.

(8)(a) A county or municipality may use traffic infraction detectors to enforce s. 316.074(1) or s. 316.075(1) (c)1. when a driver fails to stop at a traffic signal on streets and highways under its jurisdiction under s. 316.0083. Only a municipality may install or authorize the installation of any such detectors within the incorporated area of the municipality. Only a county may install or authorize the installation of any such detectors within the unincorporated area of the county.

(b) Pursuant to paragraph (a), a municipality may install or, by contract or interlocal agreement, authorize the installation of any such detectors only within the incorporated area of the municipality, and a county may install or, by contract or interlocal agreement, authorize the installation of any such detectors only within the unincorporated area of the county. A county may authorize installation of any such detectors by interlocal agreement on roads under its jurisdiction.

(c) Pursuant to s. 316.0083, a county or municipality may use traffic infraction detectors to enforce s. 316.074(1) or s. 316.075(1)(c)1. when a driver fails to stop at a traffic signal on state roads under the original jurisdiction of the Department of Transportation when permitted by the Department of Transportation.

(9)(a) A county or municipality may enforce the applicable speed limit on a roadway properly maintained as a school zone pursuant to s. 316.1895:

1. Within 30 minutes before through 30 minutes after the start of a regularly scheduled breakfast program;
2. Within 30 minutes before through 30 minutes after the start of a regularly scheduled school session;
3. During the entirety of a regularly scheduled school session; and
4. Within 30 minutes before through 30 minutes after the end of a regularly scheduled school session

through the use of a speed detection system for the detection of speed and capturing of photographs or videos for violations in excess of 10 miles per hour over the speed limit in force at the time of the violation. A school zone’s compliance with s. 316.1895 creates a rebuttable presumption that the school zone is properly maintained.

(b) A county or municipality may place or install, or contract with a vendor to place or install, a speed detection system within a roadway maintained as a school zone as provided in s. 316.1895 to enforce unlawful speed violations, as specified in s. 316.1895(10) or s. 316.183, on that roadway.

(c) A county or municipality must enact an ordinance in order to authorize the placement or installation of a speed detection system on a roadway maintained as a school zone as authorized by this subsection. As part of the public hearing on such proposed ordinance, the county or municipality must consider traffic data or other evidence supporting the installation and operation of each proposed school zone speed detection system, and the county or municipality must determine that the school zone where a speed detection system is to be placed or installed constitutes a heightened safety risk that warrants additional enforcement measures pursuant to this subsection.

History.—s. 1, ch. 71-135; s. 3, ch. 71-982; s. 1, ch. 76-72; s. 2, ch. 83-164; s. 1, ch. 84-234; s. 1, ch. 85-227; s. 1, ch. 85-325; s. 3, ch. 86-154; s. 1, ch. 89-34; s. 25, ch. 90-330; s. 1, ch. 93-30; s. 33, ch. 94-306; s. 1, ch. 96-200; s. 4, ch. 96-350; s. 81, ch. 99-248; s. 4, ch. 2010-80; s. 1, ch. 2010-163; s. 44, ch. 2010-223; s. 16, ch. 2011-4; s. 2, ch. 2017-150; s. 2, ch. 2018-130; s. 3, ch. 2020-69; s. 2, ch. 2023-174.

Select Year:

The 2024 Florida Statutes

Title XXIII

MOTOR VEHICLES

Chapter 316

STATE UNIFORM TRAFFIC CONTROL

[View Entire Chapter](#)

316.2065 Bicycle regulations.—

(1) Every person propelling a vehicle by human power has all of the rights and all of the duties applicable to the driver of any other vehicle under this chapter, except as to special regulations in this chapter, and except as to provisions of this chapter which by their nature can have no application.

(2) A person operating a bicycle may not ride other than upon or astride a permanent and regular seat attached thereto unless the bicycle was designed by the manufacturer to be ridden without a seat.

(3)(a) A bicycle may not be used to carry more persons at one time than the number for which it is designed or equipped, except that an adult rider may carry a child securely attached to his or her person in a backpack or sling.

(b) Except as provided in paragraph (a), a bicycle rider must carry any passenger who is a child under 4 years of age, or who weighs 40 pounds or less, in a seat or carrier that is designed to carry a child of that age or size and that secures and protects the child from the moving parts of the bicycle.

(c) A bicycle rider may not allow a passenger to remain in a child seat or carrier on a bicycle when the rider is not in immediate control of the bicycle.

(d) A bicycle rider or passenger who is under 16 years of age must wear a bicycle helmet that is properly fitted and is fastened securely upon the passenger's head by a strap and that meets the federal safety standard for bicycle helmets, final rule, 16 C.F.R. part 1203. As used in this subsection, the term "passenger" includes a child who is riding in a trailer or semitrailer attached to a bicycle.

(e) Law enforcement officers and school crossing guards may issue a bicycle safety brochure and a verbal warning to a bicycle rider or passenger who violates this subsection. A bicycle rider or passenger who violates this subsection may be issued a citation by a law enforcement officer and assessed a fine for a pedestrian violation, as provided in s. [318.18](#). The court shall dismiss the charge against a bicycle rider or passenger for a first violation of paragraph (d) upon proof of purchase of a bicycle helmet that complies with this subsection.

(4) No person riding upon any bicycle, coaster, roller skates, sled, or toy vehicle may attach the same or himself or herself to any vehicle upon a roadway. This subsection does not prohibit attaching a bicycle trailer or bicycle semitrailer to a bicycle if that trailer or semitrailer is commercially available and has been designed for such attachment.

(5)(a) A person operating a bicycle upon a roadway at less than the normal speed of traffic at the time and place and under the conditions then existing must ride in the bicycle lane or, if there is no bicycle lane on the roadway, as close as practicable to the right-hand curb or edge of the roadway except under any of the following situations:

1. When overtaking and passing another bicycle or vehicle proceeding in the same direction.

2. When preparing for a left turn at an intersection or into a private road or driveway.

3. When reasonably necessary to avoid any condition or potential conflict, including, but not limited to, a fixed or moving object, parked or moving vehicle, bicycle, pedestrian, animal, surface hazard, turn lane, or substandard-width lane, which makes it unsafe to continue along the right-hand curb or edge or within a bicycle lane. For the purposes of this subsection, a “substandard-width lane” is a lane that is too narrow for a bicycle and another vehicle to travel safely side by side within the lane.

(b) A person operating a bicycle upon a one-way highway with two or more marked traffic lanes may ride as near the left-hand curb or edge of such roadway as practicable.

(6)(a) Persons riding bicycles upon a roadway or in a bicycle lane may not ride more than two abreast except on a bicycle path. Persons riding two abreast may not impede traffic when traveling at less than the normal speed of traffic at the time and place and under the conditions then existing and must ride within a single lane. Where bicycle lanes exist, persons riding bicycles may ride two abreast if both are able to remain within the bicycle lane. If the bicycle lane is too narrow to allow two persons riding bicycles to ride two abreast, the persons must ride single-file and within the bicycle lane. On roads that contain a substandard-width lane as defined in subparagraph (5)(a)3., persons riding bicycles may temporarily ride two abreast only to avoid hazards in the roadway or to overtake another person riding a bicycle.

(b) When stopping at a stop sign, persons riding bicycles in groups, after coming to a full stop and obeying all traffic laws, may proceed through the stop sign in a group of 10 or fewer at a time. Motor vehicle operators must allow one such group to travel through the intersection before moving forward.

(7) Every bicycle in use between sunset and sunrise shall be equipped with a lamp on the front exhibiting a white light visible from a distance of at least 500 feet to the front and a lamp and reflector on the rear each exhibiting a red light visible from a distance of 600 feet to the rear. A bicycle or its rider may be equipped with lights or reflectors in addition to those required by this section. A law enforcement officer may issue a bicycle safety brochure and a verbal warning to a bicycle rider who violates this subsection or may issue a citation and assess a fine for a pedestrian violation as provided in s. 318.18. The court shall dismiss the charge against a bicycle rider for a first violation of this subsection upon proof of purchase and installation of the proper lighting equipment.

(8) No parent of any minor child and no guardian of any minor ward may authorize or knowingly permit any such minor child or ward to violate any of the provisions of this section.

(9) A person propelling a vehicle by human power upon and along a sidewalk, or across a roadway upon and along a crosswalk, has all the rights and duties applicable to a pedestrian under the same circumstances.

(10) A person propelling a bicycle upon and along a sidewalk, or across a roadway upon and along a crosswalk, shall yield the right-of-way to any pedestrian and shall give an audible signal before overtaking and passing such pedestrian.

(11) No person upon roller skates, or riding in or by means of any coaster, toy vehicle, or similar device, may go upon any roadway except while crossing a street on a crosswalk; and, when so crossing, such person shall be granted all rights and shall be subject to all of the duties applicable to pedestrians.

(12) This section shall not apply upon any street while set aside as a play street authorized herein or as designated by state, county, or municipal authority.

(13) Every bicycle shall be equipped with a brake or brakes which will enable its rider to stop the bicycle within 25 feet from a speed of 10 miles per hour on dry, level, clean pavement.

(14) A person engaged in the business of selling bicycles at retail shall not sell any bicycle unless the bicycle

has an identifying number permanently stamped or cast on its frame.

(15)(a) A person may not knowingly rent or lease any bicycle to be ridden by a child who is under the age of 16 years unless:

1. The child possesses a bicycle helmet; or
2. The lessor provides a bicycle helmet for the child to wear.

(b) A violation of this subsection is a nonmoving violation, punishable as provided in s. [318.18](#).

(16) The court may waive, reduce, or suspend payment of any fine imposed under subsection (3) or subsection (15) and may impose any other conditions on the waiver, reduction, or suspension. If the court finds that a person does not have sufficient funds to pay the fine, the court may require the performance of a specified number of hours of community service or attendance at a safety seminar.

(17) Notwithstanding s. [318.21](#), all proceeds collected pursuant to s. [318.18](#) for violations under paragraphs (3)(e) and (15)(b) shall be deposited into the State Transportation Trust Fund.

(18) The failure of a person to wear a bicycle helmet or the failure of a parent or guardian to prevent a child from riding a bicycle without a bicycle helmet may not be considered evidence of negligence or contributory negligence.

(19) Except as otherwise provided in this section, a person who violates this section commits a noncriminal traffic infraction, punishable as a pedestrian violation as provided in chapter 318. A law enforcement officer may issue traffic citations for a violation of subsection (3) or subsection (15) only if the violation occurs on a bicycle path or road, as defined in s. [334.03](#). However, a law enforcement officer may not issue citations to persons on private property, except any part thereof which is open to the use of the public for purposes of vehicular traffic.

History.—s. 1, ch. 71-135; s. 1, ch. 76-31; s. 2, ch. 76-286; s. 1, ch. 78-353; s. 8, ch. 83-68; s. 5, ch. 85-309; s. 1, ch. 86-23; s. 7, ch. 87-161; s. 21, ch. 94-306; s. 899, ch. 95-148; s. 1, ch. 96-185; s. 2, ch. 97-300; s. 161, ch. 99-248; s. 6, ch. 2010-223; s. 7, ch. 2012-27; s. 6, ch. 2012-181; s. 7, ch. 2020-69; s. 1, ch. 2021-20; s. 5, ch. 2021-180.

Note.—Former s. 316.111.

Select Year:

2024

Go

The 2024 Florida Statutes

[Title XXIII](#)

MOTOR VEHICLES

[Chapter 316](#)

STATE UNIFORM TRAFFIC CONTROL

[View Entire Chapter](#)

316.20655

Electric bicycle regulations.—

(1)

Except as otherwise provided in this section, an electric bicycle or an operator of an electric bicycle shall be afforded all the rights and privileges, and be subject to all of the duties, of a bicycle or the operator of a bicycle, including s. [316.2065](#). An electric bicycle is a vehicle to the same extent as a bicycle. However, this section may not be construed to prevent a local government, through the exercise of its powers under s. [316.008](#), from adopting an ordinance governing the operation of electric bicycles on streets, highways, sidewalks, and sidewalk areas under the local government’s jurisdiction; to prevent a municipality, county, or agency of the state having jurisdiction over a bicycle path, multiuse path, or trail network from restricting or prohibiting the operation of an electric bicycle on a bicycle path, multiuse path, or trail network; or to prevent a municipality, county, or agency of the state having jurisdiction over a beach as defined in s. [161.54\(3\)](#) or a dune as defined in s. [161.54\(4\)](#) from restricting or prohibiting the operation of an electric bicycle on such beach or dune.

(2)

An electric bicycle or an operator of an electric bicycle is not subject to the provisions of law relating to financial responsibility, driver or motor vehicle licenses, vehicle registration, title certificates, off-highway motorcycles, or off-highway vehicles.

(3)

Beginning January 1, 2021, manufacturers and distributors of electric bicycles shall apply a label that is permanently affixed in a prominent location to each electric bicycle. The label must contain the classification number, top assisted speed, and motor wattage of the electric bicycle.

(4)

A person may not tamper with or modify an electric bicycle so as to change the motor-powered speed capability or engagement of an electric bicycle, unless the label indicating the classification number required in subsection (3) is replaced after such modification.

(5)

An electric bicycle must comply with the equipment and manufacturing requirements for bicycles adopted by the United States Consumer Product Safety Commission under 16 C.F.R. part 1512.

(6)

An electric bicycle must operate in a manner so that the electric motor is disengaged or ceases to function when the rider stops pedaling or when the brakes are applied.

(7)

An operator may ride an electric bicycle where bicycles are allowed, including, but not limited to, streets, highways, roadways, shoulders, bicycle lanes, and bicycle or multiuse paths.

History.—

s. 8, ch. 2020-69; s. 2, ch. 2021-20.

Sec. 18-33. - Traffic.

- (a) *Vehicle use.* No vehicle shall be operated on park property or on any area other than that area specifically designated for the use of such vehicle. Motor vehicles are prohibited on all beaches in Lee County. Violations of any of the provisions in this section shall submit the offending vehicle to removal at owner's risk and expense and to other penalties as provided by law.
- (b) *State motor vehicle laws apply.* No person shall fail to comply with all applicable provisions of the state motor vehicle traffic laws in regard to equipment and operation of vehicles, together with such regulations as are contained in this and other ordinances.
- (c) *Enforcement of traffic regulations.* No person shall fail to obey all traffic officers and park employees, such persons being hereby authorized and instructed to direct traffic whenever and wherever needed in the parks and on the highways, streets, or roads immediately adjacent thereto in accordance with the provisions of these or other applicable regulations.
- (d) *Obey traffic signs.* No person shall fail to observe carefully all traffic signs indicating speed, direction, caution, stopping or parking, and all others posted for proper control of vehicles.
- (e) *Speed of vehicles.* No person shall ride or drive a vehicle at a rate of 15 miles an hour.
- (f) *Operation confined to roads.* No person shall drive any vehicle on any area except the paved or graded park roads or parking areas, or such other areas as may on occasion be specifically designated as temporary parking areas by the town manager.
- (g) *Repairs or wash vehicles.* No person shall repair or wash vehicles, except to make minor repairs in the event of a breakdown.
- (h) *Bicycles confined to roads.* No person shall ride a bicycle on other than a paved vehicular road or a path designated for that purpose.
- (i) *Bicycles operation.* No person shall ride a bicycle other than on the right-hand side of the road, as close to the edge thereof conditions permit, and bicycles shall be kept in single file when two or more are operating as a group. Bicyclists shall at all times operate their machines with reasonable regard to the safety of others, signal all turns, pass to the right of any vehicle they are overtaking, and pass to the right of any vehicles they may be meeting.
- (j) *Bicycles rider prohibited.* No person shall ride any other person on a bicycle which is designed for use by only one person.
- (k) *Bicycles designated racks.* No person shall leave a bicycle in a place other than a bicycle rack when such is provided and there is a space available.
- (l) *Bicycles immobile.* No person shall leave a bicycle lying on the ground or paving, or set against trees, or in any place or position where other persons may trip over or be injured by them.
- (m) *Bicycles night operation.* No person shall ride a bicycle on any road between 20 minutes after sunset

and before 20 minutes before sunrise without an attached headlight plainly visible at least 200 feet in front of and without a red tail light or red reflector plainly visible from at least 30 feet from the rear of, such bicycle.

(Ord. No. 97-5, 4-7-1997)

ARTICLE III. - BEACH BICYCLE AND VEHICLE SAFETY

Sec. 28-81. - Requirements.

All bicycles, as defined in F.S. § 316.003(4), operated within the public rights-of-way or sidewalks must meet the following requirements:

- (1) No bicycle shall be used to carry more persons than the number for which it is designed and equipped.
- (2) A bicycle carrying any passenger who is a child under four years of age, or who weighs 40 pounds or less, must be provided with a seat or carrier that is designed to carry a child of that age or size and that secures and protects the child from the moving parts of the bicycle.
- (3) A bicycle rider or passenger who is under 16 years of age must be provided with and must wear a bicycle helmet that is properly fitted and is fastened securely upon the rider's or passenger's head by a strap and that meets the federal safety standard for bicycle helmet, final rule 16 C.F.R. part 1203. As used in this section the term "passenger" includes a child who is riding in a trailer or semitrailer attached to a bicycle.
- (4) Every bicycle shall be equipped with a functioning lamp on the front exhibiting a white light visible from a distance of at least 500 feet to the front and a functioning lamp on the rear exhibiting a red light visible from a distance of 500 feet to the rear. Said front and rear lamps shall be illuminated at all times the bicycle is being ridden, used or operated by any person.
- (5) Every bicycle shall be equipped with a brake or brakes which will enable its rider to stop the bicycle within 25 feet from a speed of ten miles per hour on dry, level, clean pavement.
- (6) Every bicycle shall be equipped with a horn or audible device when operated within a public right-of-way in good working order and capable of emitting sound audible under normal conditions from a distance of not less than 50 feet. No horn or other warning device shall emit an unreasonably loud or harsh sound or a whistle.

(Ord. No. 18-02, § 2, 3-5-2018; Ord. No. 22-03, § 2, 2-7-2022)

Sec. 28-82. - Headsets.

No person shall operate a bicycle while wearing a headset, headphone, or other listening device other than a hearing aid or instrument for the improvement of defective human hearing.

(Ord. No. 18-02, § 2, 3-5-2018)

Sec. 28-83. - Vehicles prohibited.

No person shall drive any vehicle, including one-wheeled vehicles hoverboards, or any type of electronic skateboards, other than by human power upon any public sidewalk or path except for authorized government personnel, emergency vehicles, and special mobile equipment for repair or maintenance of the sidewalk areas. This section does not apply to motorized wheelchairs having three or more wheels. Motorized micro-mobility devices, including but not limited to, electric scooters, electric skateboards, one-wheeled devices, and hoverboards are prohibited.

(Ord. No. 18-02, § 2, 3-5-2018; Ord. No. 22-03, § 2, 2-7-2022; Ord. No. 22-04, § 2, 3-21-2022)

Sec. 28-84. - Assisted bicycles prohibited.

No bicycle having any type of helper motor and having two or more wheels shall be driven upon any public sidewalk, path, or beach. This section does not apply to motorized wheelchairs having three or more wheels. Motorized micro-mobility devices, including but not limited to electric scooters, electric skateboards, one-wheeled devices, and hoverboards are prohibited.

(Ord. No. 18-02, § 2, 3-5-2018; Ord. No. 22-04, § 2, 3-21-2022)

Sec. 28-85. - Responsible parties.

All bicycle owners or riders/operators of the bicycle, including entities that rent or loan bicycles to others for use on the public rights-of-way, are responsible for compliance with these regulations. Rental contract language shall not redirect or assign responsibility for compliance of section 28-81 of this article.

(Ord. No. 18-02, § 2, 3-5-2018; Ord. No. 22-03, § 2, 2-7-2022)

Sec. 28-86. - Operation with flow of traffic.

Bicycles shall travel in the same direction as traffic while being operated in a public right-of-way, and must be operated on the right as other vehicles which results in traveling with and not against the flow of traffic unless directed otherwise by town officials.

(Ord. No. 18-02, § 2, 3-5-2018)

Sec. 28-87. - Penalty.

Violation of any provision of this article or failure to comply with any of the requirements herein for first-time offender(s) shall result in the issuance of a written warning by enforcement officers. All subsequent violations of any provision or requirement of this article incurred by any person or company having previously received a written warning shall result in a fine not to exceed \$50.00, in addition to any penalty that may be imposed under state law.

(Ord. No. 18-02, § 2, 3-5-2018)

Secs. 28-88—28-110. - Reserved.

D. Bicycle / Pedestrian Plan

Per Council's request, a discussion regarding the Town's bicycle ordinance and a discussion regarding an island bike/walk path.

Mayor Allers noted the 2017 MPO (Metropolitan Planning Organization) study was in the packet and included some good information. He indicated that he received emails regarding people who needed e-bikes for various reasons and they rode on the sidewalks because they did not feel safe in the bike lane or on the road. Now, they fear getting ticketed for riding on the sidewalk because of the ordinance. He thought they should not create a policy based on bad actors because most people would do the right thing. He questioned why one could not ride a bike on the beach and was open to changing the policy. Council Member Safford stated that people had to go with the traffic flow, and when they did not feel safe riding bikes, they would drive or go somewhere else. Mayor Allers added that some walkers felt unsafe on the sidewalks.

Council Member King questioned whether they could gather data for a year and revisit the policy. According to the LCSO (Lee County Sheriff's Office), setting speed limits was not feasible. Vice Mayor Atterholt questioned whether they could require bikers to get off their bikes when they pass walkers on the sidewalk. Town Attorney Stuparich stated that some of the requirements in the town's ordinance were in Florida statutes and could not be changed. Mayor Allers supported Vice Mayor Atterholt's suggestion.

Council Member Safford noted that he had not heard anyone complain about incidents with e-bikes on the beach. Town Attorney Stuparich will research whether they can mandate a forced stop on sidewalks. Vice Mayor Atterholt felt they needed to be very careful on the beach because of the relaxed vibe. Mayor Allers stated that education was essential and the enforcement had to have some teeth to help the LCSO.

Vice Mayor Atterholt thought they needed a strategy for next season to be more engaged in monitoring and enforcing the ordinance. Mayor Allers questioned whether they wanted to task the Public Safety Committee (PSC) to research programs. Town Attorney Stuparich noted that volunteers could provide education and advice, not enforcement. Town Manager Hyatt stated that he wanted to revive the CERT (Citizen Emergency Response Team) training through the state.

Vice Mayor Atterholt questioned whether bike rental businesses could be required to include additional information in their waivers. Town Attorney Stuparich will research the topic. Mayor Allers described markings on the sidewalks that directed bikers and pedestrians and mentioned discussing implementation with the county. Council Member Woodson pointed out that some people had challenges stopping their bikes before passing people on the sidewalk. Vice Mayor Atterholt described two different ways to stop.

Council Member Woodson described creating additional paths on the bay side to avoid Estero Blvd. Mayor Allers referred to the map on page 41 and stated that now was the time to create a new path. Director Kropacek indicated that a discussion was held earlier with a group through the R2P2 program and they were working on a plan to present to the town in June.

Mayor Allers referred to page 167 and felt they could quickly implement secured bike storage. He referred to page 63 and TDC (Tourist Development Council) funding to create advertising videos for education. He indicated that other grants were also available. He felt that financial incentives to encourage employers to provide bike parking for employees was a good idea.

E. CRA

Per Council's request, a discussion regarding CRA.

Mayor Allers felt that having three CRAs (Community Redevelopment Agency) made sense. He explained that it took blighted areas that allowed the town to increase the taxes, so when a CRA is set up, whatever increase in that tax base is, comes back to the town to work in areas within the CRA. It would allow them to take the funding from the tax increase and put it in three sections of the island to enable them to help improve the island for specific items within that section.

Town Attorney Stuparich explained that the CRA was designated as a dependent special district and was a local governmental entity. There were requirements to satisfy and the first was to determine whether the area was viewed as a blighted or slum area. The statutory definition of blighted contained several conditions and she felt that the current state of the beach and lack of affordable housing would qualify. She noted the county would have to concur and the town would have to have a discussion with them before moving forward. If they agree, a resolution or interlocal with the county would have to be drafted. The next stop would be to conduct a study from a planning and data perspective to confirm that information and conditions supported the definition of a blighted area. Town Attorney Stuparich noted that the study would cost money, so they should talk to the county first. A CRA board would have to be created with town council members and two additional members could be added. The board would develop a plan and the county would have to approve it. Then, a trust fund would be created to hold the money to be spent annually or build it up for a larger project.

Town Attorney Stuparich indicated that Lee County had a CRA in 1990 for Estero and San Carlos Islands but rescinded it in 2006 due to lack of money. She suggested that the previous CRA be reviewed and built on. She explained that a TIF (Tax Income and Financing) district was part of the CRA. When the boundary lines of the CRA are established, a baseline of the ad valorem revenue from that particular area is determined. As properties are redeveloped, it begins to increase, and that increment is what goes into the trust fund to be spent specifically in that area. She stated there was a lot of flexibility that they could do in the CRA. Council Member Safford noted that Lee Ford and Teresa Brown could provide valuable information about Fort Myers' CRAs. Consensus was reached to begin talks with Lee County and Mayor Allers will initiate contact. Town Attorney Stuparich will continue to research and work on documents.

1. **Request:**

Meeting Date: November 7, 2024

Discussion regarding

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTION 5 OF RESOLUTION 23-182 AS AMENDED BY RESOLUTION 24-178, TO INCLUDE CERTIFICATION OF THE VOTE BY THE TOWN COUNCIL BEFORE A VOTE TO APPOINT MEMBERS TO THE TOWN'S ADVISORY BOARDS, COMMITTEES, AGENCY AND COMMISSIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

ITEMS FOR DISCUSSION

3. **Requirement/Purpose:**

Resolution

5. **Background:**

On October 21, 2024, the Town Council appointed individuals to its committees, boards, and commissions in compliance with its adopted Rules of Procedure. However, several concerns were raised regarding the transparency of the voting process so discussion is requested for clarification and possible revision.

Attachments:

1. M&P Discussion Resolution 24-246 Amending Section 5 of the Town's Procedures 10-31-2024 - BVNS

Financial Impact:

6. **Alternative Action**

7. **Staff Recommendations:**

8. **Recommended Approval:**

nancy stuparich, Town Attorney

Date: November 06, 2024

Amy Baker, Town Clerk

Date: November 06, 2024

Andy Hyatt, Town Manager

Date: November 06, 2024

RESOLUTION NUMBER 24-246

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTION 5 OF RESOLUTION 23-182 AS AMENDED BY RESOLUTION 24-178, TO INCLUDE CERTIFICATION OF THE VOTE BY THE TOWN COUNCIL BEFORE A VOTE TO APPOINT MEMBERS TO THE TOWN'S ADVISORY BOARDS, COMMITTEES, AGENCY AND COMMISSIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Article VIII, Section 2 of the State Constitution and Chapter 166 of the 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, Article X of the Town Charter empowers the Town Council to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, on January 22, 2024, the Town Council amended its Policies and Procedures Manual by approval of Resolution 23-182 and again on October 28, 2024 by Resolution 24-178; and

WHEREAS, the Town Council desires to now further amend Section 5 of its procedural rules to include a vote certifying the results following a public announcement of each vote cast to be followed by appointment of individuals receiving the most votes to provide greater transparency to the appointment process; and

WHEREAS, adoption of this Resolution promotes public participation and enhanced transparency in the best interest of the Town and its residents.

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

Section 1. The foregoing "Whereas" clauses are ratified and confirmed as being true and correct, are the legislative and administrative findings of the Town Council and made a specific part of this Resolution.

Section 2. Revisions to Section 5 of the Town Council's Policies and Procedures Manual, as amended in Exhibit "A," are approved.

Section 4. This Resolution shall take effect immediately upon its adoption by the Town Council.

THE FOREGOING RESOLUTION was adopted by the Town Council upon motion by Council Member _____ and seconded by Council Member _____, and upon being put to a roll call vote, the result was as follows:

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
Karen Woodson, Council Member	_____
Scott Safford, Council Member	_____
John R. King, Council Member	_____

ADOPTED this ____ day of _____ 2024, by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, 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:**

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of _____ 2024.

EXHIBIT “A”

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

Council Selection of Advisory Board, Agency, and Committee Members:

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: In the event of an opening for an advisory board or committee, Town staff will list the opening 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.

Voting:

1. Each Council member makes selections, marking no more than the total number of seats available (or writes the names down), and signs his or her ballot. Each Council member and the Mayor publicly announce their votes. The Town Clerk records each vote and announces the number of votes each individual received.
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 of the remainder of candidates who were not otherwise selected.
4. Once the Town Clerk announces the results and the Mayor will ask for a motion to certify the results. Once the votes have been certified, Council will vote to appoint the individuals, who have been chosen in accordance with the above procedure.

1. ~~Each Council member makes 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 the seats from being filled, the runoff would consist of all the unselected 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 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

AGENDA MANAGEMENT

Subject	Dept		Mtg Date
ITB-24-08-EN; Matanzas Pass Dinghy Dock Award	Envir/Maritime		11.18.24
RFQ-24-06-AD (Prof. Services) Selection Advisory Recommendations	Finance	added 7.19.24	12.2.24
ITB-25-01-PR; Bay Oaks Multipurpose Ballfield Award	Comm. Services	added 10.30.24	12.16.24
RFQ-24-06-AD (Prof. Services) Negotiations/Awards	Finance	added 7.19.24	12.16.24
Review of Town committees (Advisory, HPAC, NAB)	Atty	added 10.4.24	12.5.24 M&P
Charter Review discussion	Clerk	added 5.8.24	Fall 2024
Joint Session - Town Council and LPA (after LDC public meeting data compiled)	Council	added 8.7.24	TBD
2nd Reading Ordinance 24-10; Comprehensive Plan Updates	P&Z	added 3.22.24	TBD
Estero Blvd landscaping discussion	Council	added 8.7.24	TBD
Mobi-Mats to/along the beach discussion	Council	added 8.7.24	TBD
1st Reading Ordinance 24-xx: Lighting	Atty	added 4.6.24	To LPA first
1st reading Ordinance 24-xx; Signage	Legal	added 6.17.24	To LPA first
1st Reading Ordinance 24-xx; E-Bicycles	Legal	added 5.8.24	To LPA first