



Fort Myers Beach Management & Planning Session

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

Agenda

Thursday, June 5, 2025

9:00 AM

ORDER OF BUSINESS

- I. CALL TO ORDER
- II. PLEDGE OF ALLEGIANCE
- III. ITEMS FOR DISCUSSION
 - A. Presentation: Lumen Solution Services
Update of fiber internet installation on the island
 - B. Discussion: Annexation of San Carlos Island
Discussion: Annexation of San Carlos Island
 - C. Parking
A discussion regarding parking on Fort Myers Beach
- IV. AGENDA MANAGEMENT
 - A. June 2025
- 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: June 5, 2025

Discussion: Annexation of San Carlos Island

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

ITEMS FOR DISCUSSION

3. **Requirement/Purpose:**

5. **Background:**

Council Member King requested and the Town Council concurred with discussion of the possible annexation of property located to the east of Mantanzas Pass. The Town Attorney was directed to provide guidance. A legal memorandum has been prepared and is attached to this agenda item for discussion.

Attachments:

1. Memorandum of Annexation Procedures

Financial Impact:

6. **Alternative Action**

7. **Staff Recommendations:**

8. **Recommended Approval:**

nancy stuparich, Town Attorney

Date: May 26, 2025

Amy Baker, Town Clerk

Date: May 27, 2025

William McKannay, Town Manager

Date: May 27, 2025

M E M O R A N D U M

TO: Mayor, Vice Mayor and Town Council Members, Town of Fort Myers Beach
FROM: Town Attorneys Nancy Stuparich, Esq., and Taylor Simonds, Esq.
DATE: June 5, 2025
SUBJECT: Overview of the Procedure to Annex Unincorporated Areas into the Town

Background

This memorandum provides guidance for the Town Council’s preliminary discussion regarding the annexation of land in unincorporated Lee County, which is located adjacent to Fort Myers Beach on the east side of Mantanzas Pass. Pursuant to Florida law, municipalities may adjust their boundaries by strictly following the procedures set forth in Chapter 171, Florida Statutes.

Annexation of unincorporated land into a municipality can be accomplished by an involuntary or voluntary annexation in accordance with specific statutory procedures established for each type of annexation. Involuntary annexations are governed by Sections 171.0413 to 171.043, Florida Statutes. Voluntary annexations are governed by Section 171.044, Florida Statutes. All annexations must follow these procedures since annexation procedures have been pre-empted to the state in order to:

- (1) Ensure sound urban development and accommodation to growth.
- (2) Establish uniform legislative standards throughout the state for the adjustment of municipal boundaries.
- (3) Ensure the efficient provision of urban services to areas that become urban in character.
- (4) Ensure that areas are not annexed unless municipal services can be provided to those areas.¹

A. Involuntary Annexation. Section 171.0413, Florida Statutes more specifically provides that “[a]ny municipality may annex contiguous, compact, unincorporated territory” utilizing the procedures set forth in that statutory section. Section 171.031 defines “contiguous” as descriptive of a piece of land which substantially borders the boundary of the annexing municipality, not including existing “minor geographical divisions” such as a highway or body of water. “Compact” means limiting the annexation to a concentrated piece of property in a single area. Contiguous and compact land must not result in the creation of “enclaves, pockets, or finger areas in serpentine patterns.” In

¹ Section 171.044(4) provides a narrow exception to this statement in instances where a charter county has included a delegation of authority to a municipality to adopt a different voluntary annexation procedure. Lee County does not require any additional or alternate procedures for annexation.

other words, an annexation must not create a convoluted set of boundaries as between annexed and unincorporated areas, such as an annexation which carves several houses out of a subdivision and only annexes a single street in the middle of an unincorporated area or leaves an island of unincorporated territory in an otherwise annexed municipality. Note also that for an annexation proceeding to be considered valid, the annexation must take place within the boundaries of a single county.

1. Feasibility Study.

Before beginning the annexation process, the governing body of a municipality must first prepare a “feasibility study” under Section 171.042, Florida Statutes. A “feasibility study” should be conducted by qualified staff or consultants of the economic, market, technical, financial, and management feasibility of the proposed annexation. The Feasibility Study must set forth plans to provide urban services to the proposed annexed area consisting of the following:

- A map of existing and proposed boundaries of annexation, including the present major trunk water mains and sewer interceptors and outfalls, proposed extensions of such mains and outfalls, and the general land use pattern in the area to be annexed;
- A statement certifying that the area to be annexed complies with the requirements of Section 171.043, Florida Statutes. The proposed annexation must meet the standards of subsection (1) and one of *either* subsection (2) *or* (3):

(1) The area is **contiguous** to the municipality’s boundaries, reasonably **compact**, and **not included within the boundary of another incorporated municipality**;

(2) Part or all of the area to be annexed will be developed for urban purposes;

(3) Any area not meeting the requirements of subsection (2) either (a) lies between the municipal boundary and an area developed for urban purposes, so that the area developed for urban purposes is either not adjacent to the municipal boundary or cannot be served by the municipality without extending services or water or sewer lines through such sparsely developed area; or (b) is adjacent, on at least 60 percent of its external boundary, to any combination of the municipal boundary and the boundary of an area or areas developed for urban purposes as defined in subsection (2).

An area “developed for urban purposes” is one which meets any one of the following criteria: (a) it has a total resident population equal to at least one person for each acre of land included within its boundaries; (b) it has a total resident population equal to at least one person and is subdivided into lots and tracts so that at least 60 percent of the total number of lots and tracts are 1 acre or less in size; or (c) it is so developed that at least 60 percent of the total acreage, not counting the acreage used at the time of annexation for nonresidential urban purposes, consists of lots and tracts 5 acres or less in size.

In addition, the Feasibility Study must contain:

- A proposed timetable for construction of any necessary extensions of major trunk water mains and sewer mains into the area to be annexed, to be effectuated as soon as possible following proposed effective date of annexation;
- A plan detailing how municipal services like water and sewer will be extended to encompass the proposed annexed area;
- A plan for how the extension will be financed.

The proposed annexation may not separate, divide, sever, or partition any single parcel of land—in other words, a parcel of land may not be partitioned by the metes and bounds of the annexation map such that part of the land is within the annexing municipality and part is without.

The completed Feasibility Study must be filed with the board of county commissioners of the county in which the annexing municipality is located **not fewer than 15 days** before commencing any further annexation procedures.

Not less than 10 days before the date set for the first public hearing on annexation procedures, as further detailed below, the governing body of the annexing municipality must also mail a written notice² to each person who resides or owns property within the area proposed to be annexed, with such notice including:

- The annexation proposal;
- The date, time and place for each public hearing to be held regarding the annexation; and
- The place or places within the municipality where the proposed ordinance may be inspected by the public.
- The notice should also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance.

2. Ordinance and Public Hearings

Under Section 171.0413, Florida Statutes, after compliance with requirements contained in the Feasibility Study, an ordinance to annex the land must be prepared and presented during two public hearings before adoption. Both hearings must be individually advertised pursuant to the requirements of Section 166.041(3)(c)(2)(b), Florida Statutes, and must occur as follows:

- **First public hearing**—must be held on a weekday at least 7 days after the day that its first advertisement is published.
- **Second public hearing**—must be held on a weekday at least 10 days after the first hearing, and at least 5 days after the day that a second advertisement is published.

² A copy of the notice must be kept available for public inspection during the regular business hours of the office of the clerk of the governing body.

3. Referendum

If the annexation ordinance is adopted at the second public hearing, the local government must present a referendum to the registered electors of the area proposed to be annexed at the local government's expense.³ The governing body of the annexing municipality may also—but is not required to—submit the ordinance to a separate vote of the registered electors of the annexing municipality. Moreover, the governing body must publish notice of the referendum at least once each week for two consecutive weeks immediately preceding the date of the referendum in a newspaper of general circulation in the area in which the referendum is to be held. The notice must contain:

- a. The ordinance number;
- b. The time and places for the referendum;
- c. A brief, general description of the area proposed to be annexed, including a map clearly showing the area and a statement that both the complete legal description by metes and bounds and the annexation ordinance itself can be obtained from the office of the city clerk.

The referendum shall be held at the next regularly scheduled election following the final adoption of the annexation ordinance, OR at a special election called for purposes of holding the referendum. Neither type of election shall be held sooner than 30 days following the final adoption of the annexation ordinance. A copy of the ordinance of annexation and a description of the property proposed to be annexed, by metes and bounds and including a map clearly showing such area, must be prominently displayed at each polling place on the day of the referendum.

Ballots or mechanical voting devices must offer the choice “For annexation of property described in ordinance number _____ of the City of Fort Myers Beach” and “Against annexation of property described in ordinance number _____ of the City of Fort Myers Beach” in that order. If the referendum is held *only in the area proposed to be annexed*, a majority vote will carry. If the referendum is held in *both the area proposed to be annexed and in the annexing municipality*, there must be a separate majority vote in favor of annexation in both referendum for the annexation ordinance to become effective.

If any majority vote against annexation occurs, the ordinance will not become effective, and no annexation ordinance may be proposed against the subject area by the annexing municipality for a period of 2 years from the date of the unsuccessful annexation referendum.

4. Enactment

³ If more than 70 percent of the land proposed to be annexed is owned by individuals, corporations, or legal entities which are not registered electors of such area, the area may not be annexed unless the owners of more than 50 percent of the land consent to such annexation prior to referendum.

If the referendum is approved, the annexation ordinance becomes effective 10 days after the referendum's approval or as otherwise provided in the ordinance, but not more than 1 year following the date of the referendum.

The effects of annexation on an annexed municipality may be found in Section 171.062, Florida Statutes and specifically include the following, effective upon date of annexation:

- a. Annexed areas are subject to all laws, ordinances, and regulations in force in the annexing municipality, and are also entitled to the same privileges and benefits;
- b. If the annexed area was subject to a county land use plan and county zoning or subdivision regulations, such regulations remain in effect until the annexing municipality adopts a new comprehensive plan amendment that includes the annexed area;
- a. Any party that had an exclusive *franchise* to provide solid waste services in an unincorporated area, where such franchise was in effect for at least 6 months prior to the initiation of annexation, may continue to provide such services to the annexed area for 5 years or the remainder of the franchise term, whichever is shorter, if:
 - a. The franchisee provides, if the annexing municipality requires, a level of quality and frequency of service equivalent to that required by the municipality in areas not served by the franchisee;
 - b. The services are provided at a reasonable cost, including (1) capital costs for land, structures, vehicles, equipment, and other items used for solid waste management; (2) operating and maintenance costs for solid waste management; (3) costs to comply with applicable statutes, rules, permit conditions, and insurance requirements; (4) disposal costs; and (5) reasonable profit. If the municipality and the franchisee cannot enter into an agreement as to such cost, they shall submit the matter to arbitration.

Note that a municipality may allow the franchisee to continue providing services pursuant to the existing franchise agreement at its own option, but the municipality may terminate any franchise if the franchisee does not agree to provide the above-listed requirements within 90 days after the effective annexation date.

- c. Any party with a *contract* in effect for at least 6 months prior to the initiation of an annexation to provide solid waste collection services in an unincorporated area may continue to provide such services for 5 years or the remainder of the contract term, whichever is shorter. Within a reasonable time following a written request to do so, the contracting party must provide the annexing municipality with a copy of the pertinent portion of the contract or other written evidence to show the duration of the contract, excluding any automatic renewals or so-called "evergreen"

provisions. This does not apply to contracts to provide solid waste collection services to single-family residential properties in enclaves.

B. Voluntary Annexation.

Alternatively, annexation may also be accomplished by voluntary means. Specifically, voluntary annexation provides that the owner or owners of real property in an unincorporated area of a county which is—as in an annexation by referendum—**contiguous** and **compact** may petition the governing body of the contiguous municipality that their property should be annexed. The petition must bear the signatures of all owners of property in the area proposed to be annexed.

Once these signatures have been confirmed by the governing body, a nonemergency ordinance may be adopted at any regular meeting to annex said property and redefine the boundary lines of the municipality accordingly. The ordinance will pass after notice of the annexation has been published at least one each week for two consecutive weeks in the municipality's newspaper (or, if the municipality does not have a local newspaper, then in a newspaper published in the same county—or, if no such newspaper exists, then by posting at least three printed copies of the notices for four consecutive weeks at a conspicuous place in the city or town). This notice must include the ordinance number and a brief, general description of the area proposed to be annexed, including a map clearly showing the area and a statement that the complete legal description by metes and bounds and the ordinance can be obtained from the office of the city clerk. Not fewer than 10 days prior to publishing or posting the notice, the notice must first be provided via certified mail to the board of county commissioners of the county where the municipality is located.

Within seven days of the adoption of the annexation ordinance, the ordinance must be filed with the clerk of the circuit court and the chief administrative officer of the county in which the municipality is located and with the Department of State. The filed ordinance must include a map clearly showing the annexed area and a complete legal description of that area by metes and bounds. Note that voluntary annexation, like referendum annexation, may not result in the creation of enclaves.

1. **Request:**

June 2025

Meeting Date: June 5, 2025

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

AGENDA MANAGEMENT

3. **Requirement/Purpose:**

5. **Background:**

Attachments:

1. Agenda Management 8.7.25

Financial Impact:

6. **Alternative Action**

7. **Staff Recommendations:**

8. **Recommended Approval:**

AGENDA MANAGEMENT

Subject	Dept		Mtg Date
2nd Reading: Ordinance 25-19; Lighthouse CPD	P&Z	added 4.29.25	6.16.25
2nd Reading: Ordinance 25-11; Lighthouse	P&Z	added 4.29.25	6.16.25
2nd Reading: Ordinance 25-13; EIBC	P&Z	added 5.1.25	6.16.25
2nd Reading: Ordinance 25-12; Salty Crab	P&Z	added 5.1.25	6.16.25
2nd Reading: Ordinance 25-08, Noticing	Planning	added 6.2.25	6.16.25
Impact Fee Update (Axis)		added 6.2.25	6.16.25
Ferguson - AMI Equipment	Utilities	added 5.19.25	6.16.25
Barney's Pumps	Utilities	added 5.21.25	6.16.25
Joint Session - Town Council and LPA - Comp Plan discussion	Planning	added 8.7.24	6.26.25
Set Proposed Millage Rate	Finance	added 3.13.25	8.4.25
Presentation of Final FY24 Audit results	Finance	added 5.27.25	8.4.25
Ordinance: Expedited Special Exceptions	P&Z/Atty	added 2.18.25	8.7.25 M&P
Discussion regarding making of motions/specificity	Attorney	added 5.5.25	8.7.25 M&P
ILA w/TIF Funding (Traci/Judith?)	P&Z	added 4.10.25	8.7.25 M&P
1st reading: Ordinance 25-xx; Florida Certified Local Gov't/HPB	Cultural Resources	added 5.6.25	9.11.25
2nd reading: Ordinance 25-xx; Florida Certified Local Gov't/HPB	Cultural Resources	added 5.6.25	9.24.25
Discussion regarding Ordinance 17-15, Medical Marijuana Dispensaries	Council	added 12.11.24	TBD
Historic Preservation Ordinance changes	Cultural Resources	added 5.13.25	TBD
Discussion: Public/Private partnerships	Council	added 12.11.24	TBD
1st reading: Ordinance 25-xx; Payment of Fees/Charges for Review prior to permits		added 3.12.24	TBD
1 year Review of Ordinance 25-03 (Bicycle Safety)	Council	added 6.16.25	May/June '26 TC meeting
1st Reading Ordinance 24-xx: Lighting	Environmental	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; Silt Fencing	Planning	added 6.17.24	To LPA first