

IN THE CIRCUIT COURT OF THE TWENTIETH CIRCUIT  
IN AND FOR LEE COUNTY, FLORIDA

KAREN WOODSON,

Plaintiff,

v.

CASE NO.:

RAYMOND MURPHY, as Chair of the Committee  
for the Recall of Karen Woodson,

Defendant.

\_\_\_\_\_ /

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiff KAREN WOODSON (“Woodson”) sues Defendant RAYMOND MURPHY (“Murphy”) for declaratory and injunctive relief and state as follows:

**JURISDICTION AND VENUE**

1. Woodson is a resident of Lee County, Florida and at all times is sui juris.
2. Murphy is a resident and registered voter of Lee County, Florida as required by Fla. Stat. § 100.361(2)(c) and at all times is sui juris.
3. Lee County is the appropriate venue for this action as all parties reside in Lee County and the cause of action arises in Lee County.

**BACKGROUND FACTS**

4. Woodson is a current Councilor for the Town of Fort Myers Beach, elected in November 2022.
5. Woodson is currently subject to a Recall Petition (the “Petition”) pursuant to Fla. Stat. § 100.361. A copy of the Petition is attached hereto as “**Exhibit 1.**”
6. As grounds for the recall, it is alleged that Woodson: (1) engaged in a private conversation with Vice Mayor Jim Atterholt regarding the rebuilding of Lee County Pier after it

was destroyed by Hurricane Ian, (2) engaged in private conversations to coordinate with Council Member John King in soliciting a replacement Town Attorney (“Allegation Two”), and (3) received unreported gifts of meals and in-kind services from parties who were seeking land use approvals from the Town Council (“Allegation Three”).

7. For Allegation One, Murphy alleges Woodson violated Chapter 286, Florida Statutes.

8. For Allegation Two, Murphy alleges Woodson violated Chapter 286, Florida Statutes, and the Town Council Policies and Procedures Manual for the Town of Fort Myers Beach. The Policies and Procedures Manual is attached hereto as “**Exhibit 2.**”

9. For Allegation Three, Murphy alleges Woodson violated Chapter 112, Florida Statutes, and the Town Council Policies and Procedures Manual for the Town of Fort Myers Beach (“**Exhibit 2**”).

10. Defendant, as Chair of the Committee for the Recall of Karen Woodson (“Recall Committee”), alleges that such actions amount to misfeasance and malfeasance as required by Fla. Stat. § 100.361(2)(d)(1)–(2). *See* Ex. 1.

11. Woodson categorically denies all allegations as never occurring and false as set forth in the recall petition.

12. More importantly, the Petition fails to meet any of the statutory requirements to allow a recall petition to proceed.

13. All conditions precedent to this action have occurred, will occur or have been waived.

14. Plaintiff has retained the law firm of Bentley Goodrich Kison PA and is obligated to pay a reasonable fee for its services.

### COUNT 1: DECLARATORY RELIEF

15. This is an action for declaratory relief pursuant to Fla. Stat. § 86.011, et. seq.

16. Plaintiff realleges the allegations in paragraphs 1-14 above,

17. The sole grounds for recalling an elected official are set forth in Fla. Stat. § 100.361(2)(d). The grounds are:

(d) *Grounds for recall.*-- The grounds for removal of elected municipal officials, shall, for the purposes of this act, be limited to the following and must be contained in the petition:

1. Malfeasance;
2. Misfeasance;
3. Neglect of Duty;
4. Drunkenness;
5. Incompetence;
6. Permanent inability to perform official duties; and
7. Conviction of a felony involving moral turpitude.

Fla. Stat. 100.361(2)(d)(1)–(7).

18. Within the Petition, Murphy alleges that Woodson committed misfeasance and malfeasance with each of the three allegations. *See Ex. 1.*

19. Misfeasance is the “performance of a legal act in an improper or illegal manner.” *Moultrie v. Davis*, 498 So.2d 993, 995–96 (Fla. 4th DCA 1986) (citing *Wolfson v. Work*, 326 So.2d 90 (Fla. 2d DCA 1976)).

20. Malfeasance is the “performance of a completely illegal or wrongful act.” *Moultrie*, 498 So.2d at 995–96.

21. A petition does not meet the statutory requirements of Fla. Stat. § 100.361 when “the statement in the petition is nothing more than a conclusion or opinion without any tangible basis in fact.” *Id.* at 997 (citing *Richard v. Tomlinson*, 49 So.2d 798, 799 (Fla. 1951)).

22. Fla. Stat. § 100.361 is “obviously not intended to allow a petitioner to speak only in vague generality. Were we to uphold a recall petition based on the bare allegations before us, it

would be tantamount to declaring “open season” on any elected official who did anything, or failed to do something, which happened to displease ten percent of the electorate.” *Moultrie*, 498 So.2d at 997.

23. The Florida Supreme Court in *Garvin* held that the presence of any invalid grounds would “almost certainly lead to abuse” and therefore “public officials should not face removal from office they were lawfully and properly elected to on a ballot that contains illegal grounds for recall in express violation of the statute. *Garvin v. Jerome*, 767 So.2d 1190, 1193 (Fla. 2000).

24. Woodson is in doubt about his rights under Fla. Stat. § 100.361 and specifically whether the factual grounds asserted within the Petition are sufficient to establish a right to recall under the statute. *See Bent v. Ballantyne*, 368 So.2d 351, 353 (Fla. 1979).

25. As a result, Woodson seeks a declaration that the factual grounds articulated within the Petition are legally insufficient to establish misfeasance and malfeasance as required by Fla. Stat. § 100.361(2)(d)(1). Therefore, the recall petition is based on unlawful grounds and, as such, is illegal. *Garvin*, 767 So.2d at 1193.

26. In accordance with Fla. Stat. § 86.111, Woodson respectfully requests that this Court advance this matter on the calendar and order a speedy hearing.

**WHEREFORE**, Plaintiff KAREN WOODSON requests that this Court:

1. Declare the Petition to be legally insufficient;
2. Award attorneys’ fees and costs as appropriate; and
3. Reserve jurisdiction to enter such other relief as may be appropriate.

**COUNT 2: INJUNCTIVE RELIEF**

27. Woodson realleges paragraphs 1 through 14 and 16-22 above as if fully set forth herein.

28. This is an action for injunctive relief. Specifically, Woodson seeks to enjoin the recall proceedings resulting from the Petition as the grounds set forth therein are legally insufficient and therefore invalid and improper. *Garvin*, 767 So.2d at 1193.

**WHEREFORE**, Plaintiff KAREN WOODSON requests that this Court enjoin the Defendant from proceeding with the recall proceedings, award attorneys' fees and costs as appropriate, and reserve jurisdiction to enter such other relief as may be appropriate.

Dated: June 25, 2025

**BENTLEY GOODRICH KISON P.A.**

**/s/ Morgan R. Bentley**

\_\_\_\_\_  
MORGAN R. BENTLEY, ESQ.

Florida Bar No. 0962287

[mbentley@bgk.law](mailto:mbentley@bgk.law)

CAROLEEN B. BREJ, ESQ.

Florida Bar No. 0093188

[cbrej@bgk.law](mailto:cbrej@bgk.law)

783 S. Orange Avenue

3<sup>rd</sup> floor

Sarasota, Florida 34236

Telephone: (941) 556-9030

Secondary Emails:

[cserve@bgk.law](mailto:cserve@bgk.law)

[vengel@bgk.law](mailto:vengel@bgk.law)

## **Instructions for Submitting a Remote Petition**

1. Print the attached Recall Petition Form.
2. Trust and closely follow the instructions on the petition form.
3. Please sign the petition the way you've signed your voter card and election ballot. For example, if you are Bill or William and signed as your voter card as William, sign as William.
4. A witness **MUST** sign the form. Anyone can serve as a witness of your signature, a spouse, family, a friend, a neighbor etc. The witness does not have to be a registered voter in FMB.
5. Only the hardcopy original petition will be accepted.
6. Please place completed petition(s) in an envelope, affix first class postage and

Mail To:

**"RECALL"**

**3580 Estero Blvd**

**Fort Myers Beach, FL 33931**

# **THANK YOU!**



# PETITION FOR MUNICIPAL RECALL OF KAREN WOODSON OF FORT MYERS BEACH, FLORIDA

Note:

- All information on this form, including your signature, becomes a public record upon receipt by the Lee County Supervisor of Elections.
- Upon signing this petition, you become part of the recall committee. The chair of the recall committee is Raymond Murphy
- If all requested information on this form is not completed, the form will not be valid.
- Only registered voters in Town of Fort Myers Beach, Florida are eligible to sign this petition.

Karen Woodson should be recalled from her elected office as Councilor for the Town of Fort Myers Beach, Florida for misfeasance and malfeasance, as described below:

- 1- Karen Woodson had a private conversation with Vice Mayor Jim Atterholt regarding rebuilding the Lee County Pier destroyed by Hurricane Ian in violation of Florida's Government-in-the-Sunshine Law, Chapter 286, Florida Statutes.
- 2- Karen Woodson engaged in private conversations to coordinate with John King in soliciting a replacement Town Attorney in violation of Florida's Government-in-the-Sunshine Law, Chapter 286, Florida Statutes and in violation of the Town of Fort Myers Beach Town Council Policies and Procedures Manual.
- 3- Karen Woodson received unreported gifts of meals and in-kind services from parties who were seeking land use approvals from Town Council in violation of Florida's Code of Ethics for Public Officers, Chapter 112, Florida Statutes; and in violation of the Town of Fort Myers Beach Town Council Policies and Procedures Manual.

## Voter Information

Your name: \_\_\_\_\_ Address: \_\_\_\_\_

City: Fort Myers Beach State: FL County: Lee Zip Code: 33391

Voter Registration No: \_\_\_\_\_ OR Date of Birth: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Your signature: \_\_\_\_\_ Date: \_\_\_\_\_

Email: \_\_\_\_\_ Phone: \_\_\_\_\_

I, \_\_\_\_\_, witnessed the signing of this petition form.  
print the name of the petition gatherer or witness

The signature above is the genuine signature of the person it purports to be. The petition was signed in my presence on the date indicated.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
signature of the petition gatherer or witness

**RESOLUTION NUMBER 23-182**

**A RESOLUTION OF THE TOWN OF FORT MYERS  
BEACH, FLORIDA, ADOPTING AND AMENDING THE  
TOWN COUNCIL POLICIES AND PROCEDURES  
MANUAL; 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**, the Town Council has adopted a Policies and Procedures Manual to standardize the way the Town Council conducts its meetings, acts on items before it and adopts, amends, and implements legislative and policy decisions; and

**WHEREAS**, the Town Council desires to amend and update the Town Council Policies and Procedures Manual previously approved by Resolution 23-30.

**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. The amended Town Council Policies and Procedures Manual, attached as Exhibit "A" is approved.

Section 3. This Resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.





Town Council – Final  
1/22/2024

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

Dan Allers, Mayor	Aye
Jim Atterholt, Vice Mayor	Aye
John King, Council Member	Aye
Vacant, Council Member	N/A
Karen Woodson, Council Member	Aye

ADOPTED this 22<sup>nd</sup> day of January 2024, by the Town Council of the Town of Fort Myers Beach, Florida.

**TOWN OF FORT MYERS BEACH**

*Dan Allers*  
Dan Allers (March 8, 2014 to 2015)

Dan Allers, Mayor

**ATTEST:**

*Amy Baker*  
Amy Baker (Nov 6, 2012 to 2015)

Amy Baker, Town Clerk

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

*A. S. A.*  
A. S. A. (March 15, 2014 to 2015)

Vose Law Firm LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 12<sup>th</sup> day of February 2024.

# EXHIBIT “A”

## Town of Fort Myers Beach Town Council Policies and Procedures Manual Table of Contents

<b>1. Introduction</b>	3
<b>2. Town Council Mission and Job Description</b>	3
Mission:	3
Functions, Powers and Duties:	3
Council Member Requirements:	4
<b>3. How Town Council Will Operate</b>	4
Code of Conduct:	4
Code of Ethics:	5
Assignment of a Town Council Representative:	7
Sunshine Issues:	7
Email and Texting Policy:	8
Public Records:	8
<b>4. Training Materials and First Meeting</b>	9
Training Materials:	9
Training Recommendations:	9
Election of Officers:	10
Outside Committee Representation:	10
<b>5. Town Advisory Committees, Boards and Agencies Standing Advisory Committees</b>	11
Council Selection of Advisory Board, Agency, and Committee Members:	11
Ad Hoc Committees:	13
<b>6. Meeting Preparation and Planning</b>	14
Meeting Schedule:	14
Source of Items:	14
Timetable and Preparation Process:	14
Continued Hearings and Legislative Issues:	15
Attendance Policy:	15
Participation by Videoconference:	15
<b>7. Meeting Procedures</b>	16
Generally, the Order of Agenda Items:	16
Conduct of Council Meetings:	16
Rules of Civility:	17
Minutes:	18

# EXHIBIT “A”

Council Members Items and Reports:.....	19
Agenda Management: .....	19
Action List: .....	19
How Voting Order is Established for Roll Call Votes:.....	19
Voting Conflicts:.....	19
Guidelines for Legislative Hearing Procedures: .....	20
Guidelines for Quasi-Judicial Land Use Hearing: .....	21
<b>8. Reimbursement Procedures .....</b>	<b>22</b>
Travel Expenses: .....	22
Business Expenses: .....	22
Educational Reimbursement: .....	22
<b>9. Council Communications Policy and Processing Procedures .....</b>	<b>22</b>
Council Communications Policy: .....	22
Mail Processing Procedures:.....	23
Communications with Potential Applicants for Zoning and Communications with Vendors or Service Providers: .....	23
<b>10. Non-Discrimination and Harassment.....</b>	<b>23</b>
Policies:.....	23
<b>11. Interview/Selection Process for Legal Services .....</b>	<b>24</b>
<b>12. Interview/Selection Process for Town Manager.....</b>	<b>27</b>
<b>13.Appointment to Vacant Council Seats .....</b>	<b>30</b>

# EXHIBIT “A”

## 1. Introduction

This Town Council Policies and Procedures Manual is for the purpose of helping the Council Members in the discharge of their duties. They are intended to be guidelines, not “rules” on how to conduct business. Town Council may vary from these policies and procedures on a case-by-case basis by a majority vote unless in conflict with Florida law, the Town Charter, the Land Development Code, Code of Ordinances, Comprehensive Plan or other Town guiding documents. As the Town Council continues to discover situations that are unique to Fort Myers Beach, it will want to update and amend this manual. Experience may show that some of these policies and procedures need to be modified or eliminated and new ones adopted.

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

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

## 2. Town Council Mission and Job Description

### **Mission:**

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

### **Functions, Powers and Duties:**

- Review and interpret the Comprehensive Plan and conduct public hearings as needed to make changes.
- Review and interpret the Land Development Code and conduct public hearings as needed to make changes.
- Conduct hearings regarding land use matters.
- Introduce and approve Charter Amendments for adoption by referendum.
- Appoint a Town Manager.
- Appoint a Town Attorney.
- Introduce and enact ordinances.

## **EXHIBIT “A”**

- Introduce and adopt resolutions.
- Review and adopt the Operations and Capital Improvement budgets.
- Review and approve budget amendments.
- Create Special Assessment Districts as may be needed.
- Establish advisory committees as needed.
- Review and approve inter-local agreements.
- Review and approve contracts with the Town above the threshold limit allowed to Town Manager.
- Elect a Mayor and Vice Mayor.
- Perform any other duties that are lawfully defined by the Charter and Florida statutes.

### **Council Member Requirements:**

- Electronically file a Statement of Financial Interests and Ethics Training (Form 6) on the Florida Commission on Ethics website every year.
- Complete and file Form 6F – Final Statement of Financial Interest, within 60 days of leaving office.
- Pursuant to state law, all Council members must complete 4 hours of ethics training each calendar year, which addresses, at a minimum, s. 8, Art. II of the State Constitution, the Code of Ethics for Public Officers and Employees, and the public records and public meetings laws of the State of Florida.

### **3. How Town Council Will Operate**

#### **Code of Conduct:**

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

1. Regularly attend all scheduled meetings of the Town Council as well as special or called meetings relevant to the office.
2. Regularly attend all scheduled meetings of outside committees of which they are a member.
3. Prepare for each meeting.
4. Create a positive environment in meetings of Town Council.
5. Maintain an attitude of courtesy and consideration toward colleagues, residents, and staff during all discussions and deliberations.
6. Allow residents, colleagues, and staff sufficient opportunity to present their views within the prescribed rules for conduct of meetings of Town Council.

## EXHIBIT “A”

7. Avoid the use of abusive, threatening, or intimidating language or gestures directed at colleagues, residents, or staff.
8. Avoid comments, body language or distracting activity that conveys a message of disrespect and lack of interest.
9. Respect all local, state, and federal laws, rules, and other regulations.
10. Electronically submit completed financial disclosure forms via the Florida Commission on Ethics website by the specified deadline.
11. Publicly acknowledge the adopted position when asked about a decision of Town Council.
12. Read the Town Comprehensive Plan and follow its directives in all decision-making processes for the Town.
13. Follow the procedural and substantive requirements of the LDC.

### **Code of Ethics:**

Members should ethically serve the public interest by making decisions and taking actions that will enhance the public health, safety and welfare of the region and the residents served by the Town Council and by promoting public confidence in the integrity, independence, ability and impartiality of Town Council.

1. Members shall not convey the impression that they can influence the outcome of a decision of Town Council and shall not attempt to use their office to direct or influence staff recommendations, the Town Manager or Town Attorney without the concurrence of the Town Council.
2. Members shall discharge their duties and responsibilities without favor, bias or prejudice toward any person or group. Members should not allow personal or business relationships to impact upon their conduct or decisions in connection with Town Council business and shall not lend their influence towards the advancement of personal interests, towards the advancement of the interests of friends or business associates or other conflict of interest situations.
3. Members shall avoid creating the appearance of impropriety by refraining from engaging in private discussions with an applicant – or their representatives about specific upcoming Town Council quasi-judicial agenda items unless the ex parte communication is disclosed as required. If a member receives a private written, telephonic or electronic communication about an agenda item, the member will promptly forward the information to the Town Manager and the Town Clerk, or to the member's Town e-mail account so that it may be shared with all other members and filed with the Town official records to comply with the Public Records Law requirement. Any private written, telephonic, or electronic communication about an agenda item, must be submitted to the Town Clerk prior to the commencement of the Town Council meeting at which the agenda item is discussed or it cannot be mentioned or read by any member unless otherwise allowed by majority vote of the Town Council.

## EXHIBIT “A”

4. No member shall communicate, receive, send, or solicit any private written, telephonic, or electronic communication during a Town Council meeting if disruptive to the orderly conduct of the meeting, unless it pertains to an emergency situation (example: audio or video feed of Council meeting not working properly).
5. Members shall refrain from any private discussion of Town Council business, or matters that could come before the Town Council, with other members per the requirements of Florida’s Government-in-the-Sunshine Law, Chapter 286, Florida Statutes.
6. Consistent with Florida law, Members shall not accept or solicit a gift, loan, payment, favor, service, promise of employment or business contract, meal, transportation or anything else of value, if such thing is given with the understanding or possibility that it will influence the official action of the Members during Town Council proceedings. Florida law prohibits the spouse or minor child of that member from soliciting or accepting these as well, and the Member shall be vigilant in ensuring compliance from those family members. Members should contact the Town Attorney or the Florida Commission on Ethics if they have any questions about compliance with Florida law as to gifts.
7. A member whose personal employment or business relationship with a person or entity that is subject to a recommendation of Town Council shall seek the advice and counsel of the Town Attorney, if such relationship could conceivably influence the members’ impartiality during Town Council discussion of the subject. The provisions of Chapter 112, Florida Statutes and the Code of Ethics for Public Officers and Employees, shall govern conflict of interest determinations.
8. Members shall remain vigilant against deviations from Town Council policies and procedures.

As a legislative and quasi-judicial body, Town Council must be ever cognizant of the important legal requirements of due process and equal protection. These principles are derived from the United States Constitution, the Constitution of the State of Florida, and Florida Statutes, the Town Charter, Town code and LDC, and apply to legislative and quasi-judicial actions. The legal requirement for due process is separated into two prongs: substantive due process and procedural due process. The principle of substantive due process requires the benefits of a given regulation be within the scope of governmental authority, i.e., health, safety, morals, or general welfare, and that the regulations be accomplished in a rational manner, i.e., not be unreasonable, arbitrary or capricious. This is a principle of fundamental fairness in the substance of a given regulatory scheme or provision.

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

## **EXHIBIT “A”**

Equal protection limits governmental regulation from establishing irrational classifications, protects the rights of suspect and quasi-suspect classes, and assures against the exercise of fundamental or important rights of persons in ways different from others. Key overarching principles to keep in mind are that every person must be treated equally and reasonably by the quasi-judicial or legislative substance and process and that decisions and recommendations be deliberated in an open process with adequate notice and allowance for participation of affected parties. Reasonable, consistent, and timely notifications in quasi-judicial matters to be heard by the Town Council provide an applicant and other parties potentially affected by a requested decision these fundamental protections.

### **Assignment of a Town Council Representative:**

Town Council may choose to assign a member to lead a project or assess an issue. The Town Council Representative, or often called a “Point Person” may be assigned to do fact-finding and/or research, recommend a course of action and report back to Town Council for direction. Final decisions are made by a majority of Town Council.

### **Sunshine Issues:**

Members of Town Council and all Town advisory committees, boards and agencies are subject to the Sunshine Law (F.S. 286.011). This means that any gathering of, or communication between, two or more members of the same advisory committee, board or agency must comply with all the Sunshine Law requirements if they participate in any discussion, directly or indirectly, regarding any matter where there is known or could be foreseeable action taken by communication through a spouse or other go-between.

Town Council members cannot engage in discussions with each other (directly or indirectly) at outside meetings such as the Chamber of Commerce or civic groups regarding any matter on which it is known or foreseeable that action may be taken, unless the Sunshine requirements are met. These rules apply equally to any gathering, formal or casual, such as a Rotary Club (or other business or fraternal club gathering), fund-raiser, etc. They also apply to social events and functions unconnected to the advisory committee, such as a neighbor’s backyard barbeque. They also apply to casual discussions between or among members coming in the door for the committee meeting, at breaks during the meeting, and going out the door after the meeting. Every component of the decision-making process must occur in the Sunshine.

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



# EXHIBIT “A”

## **Email and Texting Policy:**

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

1. Sending an email to another Council member with anything that could be construed as a position.
2. Copying another Council member on a response to an email sent by a resident, staff member or other person.
3. If another Town Council member's email is inadvertently forwarded to you, respond to the sender recognizing its accidental nature, the fact that it is a Sunshine issue and retain a copy of your response.
4. Sending an email “Reply All” when more than one Council member is also on the email that was received.

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

## **Public Records:**

It is the policy of the State of Florida that municipal records shall be open for personal inspection by any person (s. 119.01, F.S.). To that end, the Legislature has enacted the Public Records Law (Ch. 119, F.S.), which contains requirements that public records, as defined in s. 119.011, F.S., be made available for public inspection, they be kept in usable condition, they be kept in safe places, they be kept in convenient places, and copying of records be provided at reasonable costs. A public record is “any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”

Council members' responsibility is to ensure their own public records are properly handled and preserved, and to see that the law is adhered to by all employees of the Town. The Town Clerk has been assigned the responsibility of being the custodian of public records. Council members must further understand that their public record must be retained even after leaving office.

Any use of personal electronic equipment or email accounts for government business is allowed, but for a council member's own protection, it is suggested that a copy of any documents produced is sent to their Town email account for proper retention. Materials prepared for Town Council meetings, hearings, minutes, and workshop will already be managed by the custodian of public

# EXHIBIT “A”

records and do not need to be retained by the Council member. If there are any questions on retention of a particular document, consult with the custodian of public records and/or the Town Attorney before destroying.

## 4. Training Materials and First Meeting

### Training Materials:

The Town Clerk will provide each new member of the Town Council with copies of:

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

As part of a Council member’s orientation, they will be provided a tour of the Town facilities with introductions with all staff members. ~~Pursuant to state law, all Council members must complete 4 hours of ethics training each calendar year, which addresses, at a minimum, s. 8, Art. II of the State Constitution, the Code of Ethics for Public Officers and Employees, and the public records and public meetings laws of the State of Florida.~~

### Training Recommendations:

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

# EXHIBIT “A”

## **Election of Officers:**

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

## **Outside Committee Representation:**

Charlotte Harbor National Estuary Program – [www.chnep.org](http://www.chnep.org)

Meetings: The Policy Committee meets the third Monday every other month at 9:30 am\*.  
Mission: The CHNEP is a partnership that protects the estuaries and watersheds from Venice to Bonita Springs to Winter Haven. This partnership gives citizens, elected officials, resource managers, and commercial and recreational resource users in the 4,700-square mile study area a voice to address diverse resource management concerns including fish and wildlife habitat loss, water quality and water flow. The watershed in the study area includes all or parts of Lee, Charlotte, Sarasota, Manatee, Polk, Hardee and DeSoto counties.

Coastal Advisory Committee – <https://www.leegov.com/naturalresources/marine/beachmgmnt/CAC>

Meetings: Last Monday of each month at 9:30 am.\*  
Mission: The Council’s charge is to advise the Board of County Commissioners, staff and the various related advisory boards when proceeding with a project affecting beach and shoreline preservation regarding the proper methods in helping to conserve the Beaches of Lee County.

Horizon Council – <https://www.leecountybusiness.com/horizon-council/>

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

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

Human Services Council – <https://www.leegov.com/dhs>

Meetings: Third Tuesday of each month\*  
Mission: The Council will ensure the efficient delivery of community health and human services through:

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

# EXHIBIT “A”

Metropolitan Planning Organization – <https://leempo.com/>

Meetings: Third Friday of each month at 9 am\*

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

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

Southwest Florida Regional Planning Council – [www.swfipc.org](http://www.swfipc.org)

Meetings: Third Thursday of each month at 9 am\*

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

Estero Bay Agency on Bay Management – <https://www.esterobayabm.org/contact>

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

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

\*Meeting times are subject to change.

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

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

Residency: ~~Except as required by Town Charter, Town Ordinance or Florida statute, residency on Fort Myers Beach will not be a requirement for nomination or election to a committee, commission, or board of the Town.~~ As provided by Sec 2-94 of the Town Code, committee members shall be a registered voter or a property owner in the Town's jurisdiction.

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.

## EXHIBIT “A”

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.

Preliminary matters: The Council should decide how to go about voting prior to any voting taking place and decide the number of members on a committee ahead of time.

### Voting:

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 un-selected candidates, not just the ones involved in the tie.

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

# EXHIBIT “A”

## 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

# **EXHIBIT “A”**

## **6. Meeting Preparation and Planning**

### **Meeting Schedule:**

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

### **Source of Items:**

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

When an item arises that requires Town Council action either to make a decision or to direct staff or the Town Attorney how to proceed it will appear on the agenda identified as a Council member's request or as an item under the Town Manager's section of the agenda which is the “catch all” for miscellaneous items, or Town Attorney's section, as appropriate. For an item to appear on an agenda, at least two Council members must agree and shall direct the Town Manager to do so, provided time schedules allow. (Note the agenda preparation timetable below).

Whenever possible, any material written and distributed by Council members as part of the agenda should be included in Council members' packets – allowing ample time for review. This preserves the integrity of the seated Council, conforms to the Florida Public Records law, and lessens the opportunity for misunderstandings and miscommunication. No significant Town staff or Town Attorney time will be spent on an agenda item requested by an individual Council member without advance approval by a majority of the Council. Written requests to be placed on a Council agenda from the public should be submitted directly to the Town Manager. Agenda Management for future meetings is reviewed at each Management & Planning Session.

### **Timetable and Preparation Process:**

A draft agenda will be sent to Town Council for review and comment within 24 hours. The Town Council chair may modify the order of the agenda subject to the approval of the Town Council. Absent an emergency or pressing need, by close of business on the Wednesday prior to the next regular Council meeting, a packet including the finalized agenda and supporting material will be placed in the Council members' mailboxes and placed on the Town website.

The Council members' packets include complete documentation for agenda items (actions required, implications, backup information, memos, ordinances, resolutions, etc.). A sincere effort is made to see that Council packets are complete; if something is not available, a written

## **EXHIBIT “A”**

explanation will be provided. Generally, items requiring documentation (recommendations, memos, ordinances, resolutions, etc.) will not be included on an agenda until the documentation is complete.

The agenda is posted at Town Hall and on the Town website. Meetings may be announced in local newspapers. Hearing notices will be advertised as required by law and may be provided as a service to local newspapers. Occasionally an item comes up late and may be placed on an amended agenda, or as an “add on” (added too late to be included on the published agenda). Such additions should be an exception and require a majority vote prior to the approval of the final agenda at the beginning of the meeting.

### **Continued Hearings and Legislative Issues:**

It is the goal of the Town Council to complete a hearing during the scheduled meeting. If additional time is required and the hearing must be continued to a later date, any Town Council member who missed the initial hearing should attempt to review the DVD prior to participating in the continued hearing or legislative discussion and resolution. If the applicant submits new information or modification(s) to previously submitted information at the hearing, or immediately prior to the hearing, the Town Council shall consult with the Town Manager and the Town Attorney to determine if a continuance of the hearing is appropriate and proceed accordingly. Nothing contained in this section shall be construed to limit the Director’s discretion to defer or continue the public hearing as set forth in LDC Section 34-213(3).

### **Attendance Policy:**

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

### **Participation by Videoconference:**

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

1. Permission is granted from the Council for an “extraordinary circumstance”, including but not limited to a medical situation, unexpected travel delay, transportation issue, etc. or.
2. An emergency order or executive order authorizes the use of communications media technology, as provided in s. 120.54(5)(b)2, F.S.



# EXHIBIT “A”

A quorum of Town Council members must be met without the missing Council member(s) in attendance unless this requirement is suspended by emergency order or executive order.

## 7. Meeting Procedures

### Generally, the Order of Agenda Items:

1. Call to Order
2. Invocation
3. Pledge of Allegiance
4. Approval of Final Agenda
5. Public Comment (Any issue can be discussed, but if an agenda item is addressed, the speaker cannot comment at the time such agenda item comes up. For testimony to be considered for a public hearing, it must be made during the hearing).
6. Local Achievements and Recognitions
7. Advisory Committee Items / Reports / Appointments
8. Approval of Minutes
9. Consent Agenda
10. Items Removed from Consent Agenda
11. Public Hearings of proposed ordinances (At conclusion of hearing, requires motion and roll call vote)
12. Administrative Agenda
  - a. Introduction of proposed ordinances (Requires a motion and a majority vote for scheduling the hearing).
  - b. Resolutions (Requires a motion and vote for passage)
  - c. Unfinished business (Items from previous agendas scheduled by Town Manager – should be listed separately on the agenda)
13. Final Public Comment (not limited to agenda items)
14. Town Manager's Items and Reports
15. Town Attorney's Items and Reports
11. Council Members Items and Reports
17. Adjournment (Requires a motion and vote – no second is required. It is a privileged motion allowing no discussion before vote)

### Conduct of Council Meetings:

- The Mayor will conduct Council meetings, and in the Mayor's absence the Vice Mayor will do so.
- The Town Clerk shall deliver a nondenominational invocation.
- Robert's Rules of Order shall be the reference for parliamentary procedure governing the conduct of Town Council meetings when not in conflict with the Town Charter, Town Ordinances, Florida Statutes or these Policies and Procedures. It is not intended that

## EXHIBIT “A”

Council meetings be unnecessarily formalistic, but rather that parliamentary procedure will be invoked only when necessary to facilitate the business of the meeting.

- All participants and audiences at Town Council meetings are expected to exhibit common courtesy and proper decorum. No personal attacks will be tolerated. The Chair may request that someone who is being disruptive be removed from chambers after providing the individual with notice that the continuation of the disruption will result in removal.
- Individuals wishing to speak during the Public Comment times are requested to (1) fill out an index card (available in the meeting room) indicating their name and the topic they will address and (2) give that card to the Clerk prior to the start of the meeting. When recognized by the Chair, the speakers will advance to the podium and state their name for the public record.
- Public Comments will generally be limited to three minutes per speaker. The Chair may modify the three-minute limit with approval by vote of the Council. The Public Comment times are intended as opportunities for interested parties to present their viewpoints to the Council members. They are not intended as question-and-answer sessions or as dialog with the Council. Response to questions and/or clarifications requested during public comment may, with the approval of Town Council, be answered immediately if there is a straight-forward, short answer, directed to the appropriate person for response at a later time or placed on an agenda for a future Council meeting.
- After a proper motion and second, discussion by the Council members shall be limited to agenda items with expression of ideas, facts, and conclusions. No member will speak twice on the item until all others who want to speak have spoken.
- The discussion by Council members is intended as an opportunity for Council members to share their viewpoints with each other. Since this opportunity does not exist outside of Council meetings under the Florida Sunshine Law, this is the primary purpose of this time and it generally should not be used to obtain information from the Town Manager or Town Attorney, which could be obtained outside of the Council meeting. While there is no time limit or censorship on comments, Council members should take into consideration the total time available in the meeting for the published agenda and the time allocated for the specific item in the agenda.

Any Council member may present resolutions related to celebrations or in support of causes for the benefit of the Town, which must be previously reviewed for form and sufficiency by the Town Attorney and subject to a vote by the Town Council.

### **Rules of Civility:**

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

1. Speakers are permitted to deliver his or her comments without interruption, absent inappropriate language, conduct or personal attacks.
2. Speakers and debates should focus on issues, not on persons or personalities.
3. Persons are encouraged to participate in the governmental process.

## EXHIBIT “A”

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

### **Minutes:**

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

Once completed, the minutes are provided to Council members for approval at their next meeting. The approval of the minutes is intended for Council members to accurately document the proceedings of the Town Council. Before moving approval, the minutes should be amended, if necessary, to portray more accurately what occurred at a Council meeting. This time is not intended for comment or discussion on what should have or should not have been done, but rather to document what was done. Once approved by Council, the original is filed in a secure file and a copy is placed on the Town's web page.

# **EXHIBIT “A”**

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

## **Council Members Items and Reports:**

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

## **Agenda Management:**

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

## **Action List:**

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

## **How Voting Order is Established for Roll Call Votes:**

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

## **Voting Conflicts:**

Florida Statute has very specific rules regarding voting conflicts. If a Town Council member has a voting conflict, he/she must publicly disclose that conflict at the latest at the beginning of the discussion of the subject at the meeting. A Town Council member is permitted to participate in the discussion but cannot vote on the subject. The specific rules are set out in s. 112.3143(3)(a), F.S. as amended, quoted below:

“(3)(a) No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312(2); or which he or she knows would inure to the special private gain or loss of a relative or

## EXHIBIT “A”

business associate of the public officer. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer’s interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.”

NOTE: s. 112.3143(b) F.S. defines “relative” as follows: “any father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law. Also, Section 112.3143(4) prohibits participation by an appointed (as opposed to an elected) official in the event of a voting conflict of interest.

### **Guidelines for Legislative Hearing Procedures:**

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

Notes: There is no ex parte disclosure for legislative hearings.  
Members of the public are not sworn in.

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

# EXHIBIT “A”

## Guidelines for Quasi-Judicial Land Use Hearing:

1. The Chair opens the hearing.
2. Staff present an Affidavit of Publication or copy of the legal advertisement from the newspaper of record when applicable, which shall be kept by Town staff with the hearing's resulting resolution or Order.
3. The Chair asks if any Council member has a conflict of interest or has had an ex parte communication regarding this matter. This includes any site visit, receipt of expert opinion, conducting of investigations, discussions with any person, or any direct or indirect communication in any form with any person outside a public hearing and not on the record. See section 34-52 of the Land Development Code.
4. All witnesses are sworn in. This includes Town staff, applicant and applicant's representatives, and anyone who wishes to make public sworn testimony on this case. All persons are requested to state their name for the record when they address the Council and if presenting testimony as an expert, shall state their qualifications and area of expertise. Town Council shall vote to accept or reject the testimony as expert testimony. No statement of qualifications or additional vote is needed if the individual has been previously accepted as an expert in a particular area and this is stated in the record.
5. The applicant presents its case, including any testimony by its experts or others in support of the applicant's request. Town Council may ask clarification questions of the applicant and others giving testimony in support of the applicant's request. \*
6. Town staff presents its report and recommendation. Town Council may ask for clarification or questions of staff. \*
7. Local Planning Agency representative, if available, presents LPA recommendation. Town Council may ask clarification questions of the LPA representative.
8. Public sworn testimony is opened. At its conclusion, the Chair closes the public sworn testimony portion of the hearing.
9. Applicant presents rebuttal, if any. Town Council may ask detailed informational questions of applicant. \*\*
10. Staff presents rebuttal, if any. Town Council may ask detailed informational questions of staff. \*\*
11. The testimony portion of the hearing is closed, and Council discussion starts.
12. Council votes on a resolution or Order, or takes other action if approval by ordinance is required.
13. Thereafter the hearing is closed or continued, or other action is taken in conformity with the successful motion, and the time of closure is verbally noted for the record.

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

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

# EXHIBIT “A”

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

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

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

## **8. Reimbursement Procedures**

### **Travel Expenses:**

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

### **Business Expenses:**

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

### **Educational Reimbursement:**

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

## **9. Council Communications Policy and Processing Procedures**

### **Council Communications Policy:**

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

# **EXHIBIT “A”**

## **Mail Processing Procedures:**

Mail for the Town should be addressed to the current address. All mail is opened stamped and distributed (it is all public record). Council mail is given to the Administrative Assistant to log and process. Any Council mail that needs a prompt or detailed answer is pulled, copied, and a draft response is prepared for review, usually by the Mayor. The original is distributed, along with other mail, with a note stating a draft response is being prepared. When the response is finalized, it is copied and distributed to all Council members for reading at their leisure.

## **Communications with Potential Applicants for Zoning and Communications with Vendors or Service Providers:**

Section 34-52 of the LDC specifies regulations regarding communications with public officials in non-quasi-judicial matters and ex parte communications with public officials in quasi-judicial matters.

## **10. Non-Discrimination and Harassment**

### **Policies:**

These policies are documented in the Town Personnel Manual



# EXHIBIT "A"

## 11. Interview/Selection Process for Legal Services

The Town Council shall competitively procure Legal Services (Town Attorney) candidates in accordance with the Town's adopted procurement policies and procedures. The following applicant form, and ranking sheet shall be used in the selection of Legal Services candidates. The Town Council may direct the Town Manager or designee to review the proposals submitted by the applicants for Legal Services and provide the Town Council with a list of five (5) candidates, with two (alternates) for interviews as provided for herein. If there are less than five (5) qualified candidates (i.e., meet the criteria in the RFP/RFQ) all candidates shall be interviewed.

### INTERVIEW PROCESS FOR LEGAL SERVICES

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

RFP#: \_\_\_\_\_. Interview date: \_\_\_\_\_

	9:00-9:30 (Public Gathering)	9:30 – 10:00	10:00- 10:30	10:30- 11:00	11:00- 11:30	11:30- 12:00	12:00- 1:00
Councilor 1		Applicant 1	Applicant 2	Applicant 3	Applicant 4	Applicant 5	Lunch
Councilor 2		Applicant 2	Applicant 3	Applicant 4	Applicant 5	Applicant 1	Lunch
Councilor 3		Applicant 3	Applicant 4	Applicant 5	Applicant 1	Applicant 2	Lunch
Councilor 4		Applicant 4	Applicant 5	Applicant 1	Applicant 2	Applicant 3	Lunch
Councilor 5		Applicant 5	Applicant 1	Applicant 2	Applicant 3	Applicant 4	Lunch

Applicant 1: \_\_\_\_\_

Applicant 2: \_\_\_\_\_

Applicant 3: \_\_\_\_\_

Applicant 4: \_\_\_\_\_

Applicant 5: \_\_\_\_\_

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

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

TIME	Applicant Name
1:00 – 1:15	Applicant 1
1:20 – 1:35	Applicant 2
1:40 – 1:55	Applicant 3
2:00 – 2:15	Applicant 4
2:20 – 2:35	Applicant 5

## EXHIBIT “A”

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

**EXHIBIT “A”**

**TOWN COUNCIL RANKING SHEET FOR LEGAL SERVICES**

**RFP#** \_\_\_\_\_

**DATE:** \_\_\_\_\_

Councilor Name:

\_\_\_\_\_

Councilor Signature:

\_\_\_\_\_

Ranking (#1 is top choice)

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_
- 3. \_\_\_\_\_
- 4. \_\_\_\_\_
- 5. \_\_\_\_\_

# EXHIBIT "A"

## 12. Interview/Selection Process for Town Manager

The Town Council shall competitively procure Town Manager candidates in accordance with the Town's adopted procurement policies and procedures. The following applicant form, and ranking sheet shall be used in the selection of Manager candidates. The Town Council may direct the acting current Town Manager or designee to review the proposals submitted by the applicants for Town Manager Services and provide the Town Council with a list of five (5) candidates, with two (alternates) for interviews as provided for herein. If there are less than five (5) qualified candidates (i.e., meet the criteria in the RFP/RFQ) all candidates shall be interviewed.

### INTERVIEW PROCESS FOR TOWN MANAGER

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

RFP# \_\_\_\_\_ Interview date: \_\_\_\_\_

	9:00-9:30 Public Gathering	9:30 – 10:00	10:00- 10:30	10:30- 11:00	11:00- 11:30	11:30- 12:00	12:00- 1:00
Councilor 1		Applicant 1	Applicant 2	Applicant 3	Applicant 4	Applicant 5	Lunch
Councilor 2		Applicant 2	Applicant 3	Applicant 4	Applicant 5	Applicant 1	Lunch
Councilor 3		Applicant 3	Applicant 4	Applicant 5	Applicant 1	Applicant 2	Lunch
Councilor 4		Applicant 4	Applicant 5	Applicant 1	Applicant 2	Applicant 3	Lunch
Councilor 5		Applicant 5	Applicant 1	Applicant 2	Applicant 3	Applicant 4	Lunch

Applicant

1: \_\_\_\_\_

Applicant

2: \_\_\_\_\_

Applicant

3: \_\_\_\_\_

Applicant

4: \_\_\_\_\_

Applicant

5: \_\_\_\_\_

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

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

## EXHIBIT “A”

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

**EXHIBIT “A”**

**TOWN COUNCIL RANKING SHEET FOR TOWN MANAGER**

**RFP#** \_\_\_\_\_

**DATE:** \_\_\_\_\_

Councilor Name: \_\_\_\_\_

Councilor Signature: \_\_\_\_\_

Ranking (#1 is top choice)

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_
- 3. \_\_\_\_\_
- 4. \_\_\_\_\_
- 5. \_\_\_\_\_

# **EXHIBIT “A”**

## **13.Appointment to Vacant Council Seats**

In the event of a vacancy on the Town Council pursuant to Sec. 4-06 of the Town Charter, the Town Council shall:

- 1.Declare and announce at a public meeting the reason the vacancy has been created;
- 2.Direct the Town Manager or designee to notify the public as soon as reasonable by the most appropriate means, including but not limited to posting on the Town’s website, a press release, social media, advertisement, that a vacancy on the Town Council has occurred with instructions on how to apply to serve as a Town Council member and notice that a Form 6 must be filed with the Florida Commission on Ethics pursuant to Florida law.
- 3.Thereafter the Town Council shall appoint an individual, who is qualified as provided in Section 4.01(c) of the Town Charter, to serve as a Town Council member prior to the expiration of the term of the vacant seat.