

EMERGENCY ORDINANCE NO. 24-33

AN EMERGENCY ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTION 2-94 “QUALIFICATIONS AND APPOINTMENTS OF MEMBERS” AND SECTION 2-96 “REMOVAL OF AGENCY, BOARD, COMMITTEE OR COMMISSION MEMBERS” OF DIVISION 2 “PROCEDURES FOR THE ESTABLISHMENT OF BOARDS, COMMITTEES AND COMMISSIONS” OF ARTICLE IV “BOARDS, COMMISSIONS, COMMITTEES AND OTHER AGENCIES” OF CHAPTER 2 “ADMINISTRATION” AND SECTION 34-113 “COMPOSITION, APPOINTMENT AND COMPENSATION OF MEMBERS” OF DIVISION 3 “LOCAL PLANNING AGENCY” OF ARTICLE II “ZONING PROCEDURES” OF CHAPTER 34 “ZONING DISTRICTS, DESIGN STANDARDS AND NONCONFORMITIES” OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH, FLORIDA, REMOVING PROPERTY OWNERSHIP AS A QUALIFICATION REQUIREMENT FOR THE MEMBERS OF THE TOWN’S AGENCY, BOARDS, COMMITTEES OR COMMISSIONS, AND ADDING A VOTING REGISTRATION REQUIREMENT FOR MEMBERS OF THE LOCAL PLANNING AGENCY AND AUDIT COMMITTEE; ELIMINATING DUPLICATIVE AND UNENFORCEABLE LANGUAGE; ADDING A PROVISION TO SECTION 34-113, REGARDING THE MANDATORY ANNUAL FINANCIAL DISCLOSURE FORM AS REQUIRED BY THE FLORIDA COMMISSION ON ETHICS; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER’S ERRORS, CONFLICTS OF LAW, AND AN EFFECTIVE DATE.

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

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

WHEREAS, Section 166.041(3)(b), Florida Statutes, permits the governing body of a municipality, by a two-thirds vote, to enact an emergency ordinance without complying with the requirements of paragraph (a) of Section 166.041; and

WHEREAS, the Town Council is in the process of amending several sections of its Code of Ordinances, as provided in more detail herein, regarding individuals appointed to serve on its Boards, Agencies, Committees and Commissions, which may not be completed until October 21, 2024; and

WHEREAS, the terms of several individuals serving on the Town’s voluntary Boards, Agencies, Committees and Commissions expire on October 1, 2024; and

WHEREAS, the Town Council desires to adopt an emergency ordinance so that its appointments to vacancies on the Town’s Boards, Agencies, Committee, and Commissions can be expeditiously filled prior to final adoption of proposed ordinance changes; and

WHEREAS, the Town Council determined that adoption of this emergency ordinance as provided herein is in the best interests of the health, safety, welfare, and morals of the Town’s residents.

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

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

Section 2. This Emergency Ordinance is adopted to address a situation in the Town of Fort Myers Beach in the interests of the public health, safety, welfare, and morals, and for the following purposes:

- a. To address the fact that vacancies on the Town’s Boards, Agencies, Committees, and Commissions will be created as of October 1, 2024; and
- b. To avoid disruption and delay in the vital role individuals perform in voluntary positions on advisory Boards, Agencies, Committees, and Commissions; and
- c. To provide the Town with time to formally amend sections 6- 2-94 and 2-96 of the Code of Ordinances and 34-113 of Land Development Code.

As a result, immediate revisions to the referenced sections of the Code of Ordinances and Land Development Code are needed as set forth herein.

Section 3. Section 2-94 “Qualifications and appointments of members” and Section 2-96 “Removal of agency, board, committee or commission members” of Division 2 “Procedures for the Establishment of Boards, Committees and Commissions” of Article IV “Boards, Commissions, Committees and Other Agencies” of Chapter 2 “Administration” of the Code of Ordinances of the Town of Fort Myers Beach, Florida, as well as Section 34-113 “Composition, appointment and compensation of members” of Division 3 “Local Planning Agency” of Article II “Zoning Procedures” of Chapter 34 “Zoning Districts, Design Standards and Nonconformities” of the Town’s Land Development Code, are hereby amended to read as follows:

Sec. 2-94. - Qualifications and appointments of members.

In addition to qualifications, which may be specified for membership by state statutes, Charter, ordinance, or resolution, a person appointed to an agency, board, committee, or commission shall give preference to a registered voter within the town's jurisdiction, a property owner within the town's jurisdiction, persons having a Fort Myers Beach zip code, other individuals with specialized experience or knowledge, or individuals who have shown interest in the subject matter. No specific experience requirements shall be necessary as a prerequisite to appointment.

(1) *Anchorage advisory committee.* The anchorage advisory committee shall advise the town council concerning all matters relevant to the management and use of the waters of the town for mooring and anchoring. The anchorage advisory committee shall prepare and submit the Matanzas Harbor Management Plan and any amendments thereto for review and approval by the town council and make recommendations for the establishment of managed municipal anchorages and mooring fields where warranted by objective evidence of environmental damage or user conflicts; or any other topics as assigned by the town council.

(2) *Audit committee.* All members of the audit committee shall be registered voters within the territorial boundaries of the Town of Fort Myers Beach who do not have any direct financial or business interests involving the town. The town council may waive the residency requirements by majority vote if there are an insufficient number of applicants who reside in the town. All members should, through education and experience, possess a basic understanding of governmental financial reporting and auditing. At least one member of the audit committee shall have accounting, auditing, or related financial management expertise that is specifically relevant to the government sector. The audit committee shall advise the town council on these matters and other matters pursuant to F.S. § 218.391, or any other topics as assigned by the town council.

(3) *Bay Oaks Recreational Campus Advisory Board.* The purpose of BORCAB is to serve the town as a community center and recreational facility providing individuals and groups passive and active recreational, social and community activities and events for both residents and visitors. BORCAB members shall work closely and in cooperation with the parks and recreation director, and advise the town council regarding matters concerning the Bay Oaks Recreational Campus and the community pool; or any other topics as assigned by the town council.

(4) *Community Resource Advisory Board.* The broad objectives of CRAB are to further the welfare of the citizens of the town in the implementation of our community as a "living park" as defined in the comprehensive plan and make recommendations to the town council on acquisition and management of public areas including, but no limited to, pools, parks, beach accesses, streetscapes and other public easements and property to further the living park concept. The CRAB shall advise the town council on these matters or any other topics as assigned by the town council.

(5) *Cultural and environmental learning center advisory board.* The broad objectives of CELCAB are to ensure and promote the mission of the Mound House and Newton Beach Park to be accomplished through stewardship, advocacy and oversight according to best practices of museums and the requirement as stated in the Florida Communities Trust Agreements for each property. The CELCAB shall advise the town council on these matters or any other topics as assigned by the town council.

(6) *Marine and Environmental Resource Task Force.* The broad objectives of MERTF are to further the welfare of the business owners, residents, and visitors of the town by helping to promote a better, more healthful, safe, and attractive community environment and to ensure that the unique and natural characteristics of our marine and environmental resources are preserved; or any other topics as assigned by the town council.

(7) *Public Safety Committee.* The PSC shall address any safety and transportation issues specifically assigned to the committee by the town council for the purpose of the health, safety and welfare of the business owners, residents, and visitors to the town. The committee shall review, discuss, and evaluate the most significant safety and transportation issues within the town. The PSC shall advise the town council on these matters or any other topics as assigned by the town council.

(8) *Local Planning Agency.* Notwithstanding the criteria set forth herein, the criteria for the members of the Local Planning Agency of Fort Myers Beach as outlined in section 34-113 shall prevail.

Sec. 2-96. – Removal of agency, board, committee or commission members.

Unless otherwise precluded by state statutes, ordinance, or resolution, any member of an agency, board, committee or commission shall serve at the pleasure of town council and may be removed by town council with or without cause. In the event that any member no longer possesses the required qualifying criteria, or is convicted of a felony, while in office or has unpaid fines or liens due the Town of Fort Myers Beach, the town council shall terminate the appointment of such person as a member of the agency, board, committee or commission for cause.

Sec. 34-113. - Composition, appointment and compensation of members.

(a) The local planning agency shall consist of up to seven members appointed by the town council. No members of the local planning agency shall be salaried officials of the town. Membership on the local planning agency shall not affect a person's eligibility for membership on any other advisory committee for the Town of Fort Myers Beach during his/her term of office. One spouse per household will be eligible for membership on the local planning agency during any given term of office. No current member of town council shall be eligible to serve on the local planning agency. Except for inclusion of members required under Florida law, all members must be registered voters within the territorial boundaries of the Town of Fort Myers Beach at the time of application for membership on the local planning agency and during the period of service on the local planning agency. All applicants must apply on or before October 1 of the appointment year. Each application must include a short biography and short explanation as to why the applicant wishes to serve on the local planning agency.

(b) The members of the local planning agency shall serve without compensation but may be reimbursed for expenses as are necessary to conduct the work of the agency from funds appropriated by the town council.

(c) In addition to the up to seven voting members, the local planning agency shall also include as a nonvoting member a representative of the Lee County School District, as designated by the Lee County School Board, to attend and participate in those meetings at which the local planning agency considers comprehensive plan amendments and rezonings that would, if approved, increase residential density on the property that is the subject of the application (see F.S. 163.3174(1), 2002).

(d) All appointed members of the local planning agency must file an annual financial disclosure as required by the Florida Commission on Ethics.

Section 4. Whenever the requirements or provisions of this Ordinance conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive shall apply. The provisions of this Emergency Ordinance shall not be codified as it is temporary in nature.

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

Section 6. This Ordinance shall become effective upon adoption by the Town Council and shall terminate no later than 60 days from the date of adoption.

The foregoing Emergency Ordinance was adopted by the town council upon a motion by Council Member King and seconded by Council Member Safford, and upon being put on a roll call vote, the results were as follows:

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

ADOPTED this 21st day of October 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH


Dan Allers (Oct 31, 2024 07:30 EDT)

Dan Allers, Town Mayor

ATTEST:


Amy Baker (Oct 31, 2024 09:14 EDT)

Amy Baker, Town Clerk

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


Nancy Stuparich (Oct 25, 2024 23:13 EDT)

Vose Law Firm, Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this 29th day of October 2024.