

RESOLUTION NUMBER 25-296

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, INITIATING THE CONFLICT RESOLUTION PROCEDURES PROVIDED IN CHAPTER 164, FLORIDA STATUTES, WITH THE SCHOOL BOARD OF LEE COUNTY REGARDING A MATERIAL BREACH OF THAT CERTAIN INTERLOCAL AGREEMENT DATED MAY 15, 2023 BETWEEN THE TOWN AND THE SCHOOL BOARD OF LEE COUNTY AS ADOPTED BY THE TOWN IN RESOLUTION 23-45; DIRECTING COMPLIANCE WITH THE GOVERNMENTAL CONFLICT RESOLUTION ACT IN CHAPTER 164, FLORIDA STATUTES; AUTHORIZING THE TOWN MANAGER TO PROVIDE NOTICE TO SCHOOL BOARD OF LEE COUNTY SUPERINTENDENT DENISE M. CARLIN OF THE INITIATION OF THE CONFLICT RESOLUTION PROCESS, INCLUDING THE DATE AND LOCATION FOR THE CONFLICT ASSESSMENT MEETING; AND PROVIDING AN EFFECTIVE DATE.

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

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

WHEREAS, the Town adopted Resolution 20-45 approving an Interlocal Agreement effective as of October 7, 2020 (the “Exchange Agreement”) between the School Board of Lee County (“School Board”) and the Town for the exchange of real property located adjacent to the Town’s Bay Oaks Recreation Center and the Fort Myers Beach Elementary School, which both required renovations, subject to additional terms and conditions; and

WHEREAS, Section X of the Exchange Agreement contained a reversionary interest in favor the Town, which provides that the School Board shall use the Town’s property for educational/recreational use and in the event of failure to use the Town’s property for educational/recreational use, the Town may notify the School Board and request the reverter of its parcels back to the Town; and

WHEREAS, the Town adopted Resolution 21-35 approving an Interlocal Agreement effective as of August 16, 2021 (“Shared Use Agreement”) between School Board and the Town regarding the future continued use of the parties’ respective properties with terms and conditions related to operation and maintenance responsibilities; and

WHEREAS, on September 28, 2022, Hurricane Ian made landfall and inflicted catastrophic damage on the Town, including the Bay Oaks Recreational Facilities and the Fort Myers Beach Elementary School; and

WHEREAS, in view of the challenges related to recovery from Hurricane Ian, the parties negotiated yet another Interlocal Agreement (“Rebuild Agreement”), which the Town adopted by Resolution 23-45, setting forth the terms and conditions of a new collaboration to assist the School Board in “re-building, operating and maintaining” the Fort Myers Beach Elementary School “in a sound and fiscally responsible way”; and

WHEREAS, the Rebuild Agreement clearly stated in Section 1.1 that the purpose of the agreement was to re-build and continue operation of the Fort Myers Beach Elementary school for students from grades K-5 despite concerns raised about declining student enrollment prior to Hurricane Ian; and

WHEREAS, the respective responsibilities of both parties to achieve the purpose of the Rebuild Agreement were set forth in Sections II and III; and

WHEREAS, recent events have created a doubt in the mind of the Town Council regarding the School Board’s willingness to adhere to the terms and conditions, as well as the spirit of the Rebuild Agreement, as evidenced by their failure to meet implementation schedule commitments (SECTION III: PHASED TIMELINE FOR RENOVATION AND BUILD), by failure to meet obligations to fully fund FMBE for all school years through 2027, and by actions indicating an intent to close the Fort Myers Beach Elementary School at the conclusion of fiscal year 2026-27 due to an insufficient number of students for Fort Myers Beach Elementary to financially sustain itself, as determined by the School Board in its sole discretion based on the Cost Per Student Report; and

WHEREAS, the School District has failed to meet Phase I b. and c. obligations “to build additional FMBE facilities to accommodate a permanent kitchen/café” and to “improve the Historic building with additional classroom space to accommodate the growth in student enrollment not to exceed 80 student stations” by fiscal year 2024-2025; and

WHEREAS, the School District has failed to take timely action to remediate hurricane impacts from Hurricanes Helene and Milton and attempt to reopen the school for the 2024-2025 school year; and

WHEREAS, the School District recently took action to erode the FMBE’s identity, integrity and viability by integrating students and teachers within Heights Elementary, making staffing cuts and eliminating the FMBE School Principal position; and

WHEREAS, the School District failed to fulfill its obligation to bear the full costs of operating and maintaining FMBE, without consideration to the cost per student calculation, through the fiscal years 2023-2024, 2024-2025, 2025-2026, 2026-2027 fiscal years pursuant to the terms and purpose of Section II of the ILA; and

WHEREAS, Section 164, Florida Statutes, the Governmental Conflict Resolution Act, requires governmental entities to engage in negotiation and mediation prior to the initiation of litigation to enforce rights and obligations in agreements between one another; and

WHEREAS, the Town recognizes the Rebuild Agreement itself requires written notice of breach and the pursuit of good faith efforts to resolve disputes through negotiation and non-binding alternative dispute resolution prior to litigation; and

WHEREAS, the Town Council finds it in the best interest of the public to formally initiate the statutory conflict resolution process as provided in Chapter 164, Florida Statutes and the dispute resolution as required in the Rebuild Agreement.

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

Section 1. That the above recitals are true and correct and are hereby incorporated by reference as though fully set forth herein and are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. That it is the intent of the Town Council to initiate the conflict resolution procedures provided in Chapter 164, Florida Statutes and n Section VIII of the Rebuild Agreement with the School Board of Lee County, prior to initiating litigation due to the School Board's material breach of the Rebuild Agreement.

Section 3. That the Town Manager shall deliver within 5 days of the passage of this resolution, a letter and a certified copy of Resolution 25-296 to Superintendent Denise M. Carlin, who is the chief administrator of the School Board of Lee County, by certified mail, return receipt requested. The letter shall state the nature of the conflict with the School Board of Lee County, Florida, the justification for initiating the conflict resolution process, the date of Wednesday, November 5, 2025 at 1:00 p.m. and the location for the conflict assessment meeting to be held at the Town of Fort Myers Beach Town Hall, Council Chambers, 6231 Estero Boulevard, Fort Myers Beach, FL 33931, and identification of the officials who should be present at the conflict assessment meeting. On behalf of the Town, the following individuals shall be present: Town Manager William McKannay, Deputy Town Manager Traci Kohler, Town Attorneys Becky Vose and Nancy Stuparich, Mayor Dan Allers and Vice Mayor Jim Atterholt. Participation by the Mayor and Vice-Mayor at the public conflict assessment meeting will be noticed as required by Florida law.

Section 4. That the Town Manager shall report to the Town Council the outcome of the conflict assessment meeting with recommendations of whether a Joint Public meeting with the School Board should be held.

Section 5. That this resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

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

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

ADOPTED this 6th day of October 2025, by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers
Dan Allers (Oct 8, 2025 14:07:52 EDT)

Dan Allers, Mayor

ATTEST:

Amy Baker
Amy Baker (Oct 8, 2025 14:15:27 EDT)

Amy Baker, Town Clerk

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

[Signature]
Nancy Stupanch (Oct 8, 2025 14:01:35 EDT)

Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 8th day of October 2025.