

**Town of Fort Myers Beach
Local Planning Agency
Policies and Procedures Manual
January 2025**



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1. Introduction

This Local Planning Agency (LPA) Policies and Procedures Manual is a guide to help LPA Members in the discharge of their duties. 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 the LPA will find in one handy reference answers to questions that come up from time to time. By having an agreed-upon guide, members of the LPA also may develop common expectations on proper conduct of LPA meetings, dealings with the public, and the way it interacts with Town staff.

This manual should be used in conjunction with the Town Charter, Comprehensive Plan, Land Development Code (LDC), strategic plan and other applicable laws, as necessary. Any conflict between the information in this Manual and other codes shall be resolved in favor of the other codes.

Topics included in the Land Development Code shall not be included in this Manual:

1. Composition, appointment and compensation (Section 34-112, LDC)
2. Terms and vacancies (Section 34-114)
3. Forfeiture of office (Section 34-115)
4. Election and duties of officers (Section 34-116)
5. Support staff (Clerk-Section 34-117, Attorney-Section 34-124, Experts/Staff-Section 34-119)
6. Rules and Procedures (Section 34-118)
7. Functions, powers and duties regarding the Comprehensive Plan and LDC (Section 34-120)
8. Functions, powers and duties regarding zoning matters (Section 34-121)
9. Service as the Historic Preservation Board (Section 34-122)

Upon a majority vote, the LPA can waive application of these guidelines. Any waiver or disregard of a guideline shall not be a basis for challenge to any action by the LPA. The manual may be amended as needed and subject to review each year following the vote for LPA officers.

Training & Materials

Each new member of the Local Planning Agency will be provided an orientation and training by staff regarding the following resources, which are available on line or in print upon request:

- Town Charter
- Comprehensive Plan
- Land Development Code
- Florida Code of Ethics
- Florida Sunshine Laws

Election of Officers

Annually, at the first meeting of the Local Planning Agency, after expired member positions have been filled by the Town Council, a chair and vice chair will be chosen. An LPA member may nominate a person for each of these positions or state their own interest in service as Chair or Vice-Chair. Once all nominations are received, the LPA will vote in the same manner as the Town Council votes for appointments to committees, boards, and commissions. If nominated, the LPA member shall accept the nomination on the record. If a nominated LPA member is not present, acceptance of the nomination and a vote on all nominations shall be taken at the next LPA meeting.

Sunshine Issues

Members of Town advisory committees, boards, and agencies are subject to the Sunshine Law (F.S. 286.011). The same Sunshine rules that apply to Town Council apply to the members of the LPA and other Town advisory committees, boards and agencies.

Any gathering of 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 to be taken by the committee. Examples of indirect discussions are the use of email to a committee member or communication through a spouse or other go-between.

Advisory committee members cannot engage in discussions with each other (directly or indirectly) at outside meetings such as the Chamber of Commerce or Civic Association 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.

2. Historic Preservation Board

The LPA also functions as the Historic Preservation Board (HPB) for the Town of Fort Myers Beach. The Historic Preservation Board has the power, authority, and jurisdiction to designate, regulate, and administer historical, cultural, archaeological, and architectural resources in the Town as set forth in LDC section 22-74. For any quasi-judicial or legislative hearings that come before the HPB, the hearing process shall conform to those outlined in Section 7 of this manual.

Annually, at the first meeting of the Local Planning Agency, after expired member positions have been filled by the Town Council, a meeting of the HPB will be convened and a chair and vice chair will be chosen using the same methodology as LPA chair and vice chair election.

Also at that meeting, a sub-committee, the Historic Advisory Committee (HAC), comprised of an approximately equal number of LPA members and Estero Island Historic Society members is established. Members of the Estero Island Historic Society interested in being on the Historic Advisory Committee must submit a statement of interest to the Town Clerk prior to the first annual meeting of the LPA. This sub-committee comprised of a total of six or seven members shall be selected by the HPB.

The HAC sub-committee will meet as needed to discuss and make recommendations to be brought before the Historic Preservation Board for consideration. Recommendations will be consistent with the requirements of the Comprehensive Plan and Land Development Code. At its first meeting after re-formation, the HAC shall select a chair, vice chair and secretary.

3. Ad Hoc Sub-Committees and Interaction with Other Advisory Committees

The LPA has the authority to form other ad hoc sub-committees requesting participation by volunteers. The objectives of a sub-committee, expected products, membership and timelines should be clearly stated and agreed to by the LPA. One LPA member will be asked to chair the ad hoc sub-committee. The intent would be to minimize participation and action items directed at Staff. All Ad Hoc Sub-Committees will be subject to Sunshine and public records laws.

A standing ad hoc sub-committee named the Historic Advisory Committee was established by Resolution 2006-03 (Appendix B).

During discussions arising from land use cases, long-range planning and capital improvement discussions, the LPA will proactively communicate to other appropriate advisory committees while keeping Town Council informed. These interactions could result in the development of joint resolutions.

4. Meeting Preparation and Planning

Meeting Schedule

Section 34-118 of the Land Development Code (LDC) states: "The local planning agency shall meet at least 8 times per year and shall meet no less often than bimonthly..." Regularly planned meetings of the Local Planning Agency (LPA) are scheduled by mutual agreement between the LPA, LPA Attorney and Community Development Director. Special, continued or rescheduled meetings will be determined by consensus of the LPA members, the Director of the Department of Community Development and the LPA attorney.

Length of Agenda Items

In order to set reasonable LPA agendas, the Community Development Director will use best efforts to establish the time needed for presentations, public comment and subsequent discussions of agenda items by the LPA. Any person submitting administrative topics to the Community Development Director will provide an estimate of the time needed. If the time needed for a hearing, legislative matter or administrative topic exceeds the allotted time by more than 15 minutes, the Chair may table the item until later in the meeting or continue the item until a subsequent meeting.

Public Notice of LPA Quasi-Judicial Hearings

Except as specifically addressed in the Town Land Development Code, the Town Clerk shall notice all LPA quasi-judicial hearings as provided in the Land Development Code and Florida law.

Continued Hearings and Legislative Issues

It is the goal of the LPA to complete a hearing during the scheduled meeting. If additional time is required and the hearing must be continued to a later date, any LPA member who missed the initial hearing should review the audio and/or videotapes 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 LPA shall consult with the Director of the Department of Community Development and the LPA Attorney and vote to continue the hearing. 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).

Meeting Preparation

Any LPA member, the Community Development Director, the LPA attorney, Town Council and Town Manager can submit meeting agenda topics for the LPA to the Community Development Director. Topics should be submitted at least fourteen (14) days prior to a planned meeting. The Director of the Department of Community Development and LPA attorney are responsible for scheduling hearings. Potential dates for hearings should be communicated to all participating parties as far in advance of the planned meeting as possible. All staff reports should be complete before a hearing is scheduled. Except in the case of an emergency, cancellation of a planned meeting should be at least 14 days in advance. Only under serious, extenuating circumstances should a hearing be cancelled after it has been publicly noticed.

The goal is to have finalized agenda and supporting material seven (7) days prior to a planned and noticed meeting. The Town Clerk shall email a copy of the agenda packet to all LPA members.

The LPA members' packets should include complete documentation for agenda items (actions required, implications, backup information, memos, ordinances, resolutions, etc.) A sincere effort is made to see that LPA packets are complete. As a general rule, items requiring documentation (recommendations, memos, ordinances, resolutions, etc.) will not be included on an agenda until the documentation is complete. A copy of the agenda is available on the Town's website.

Occasionally an item may come 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 are kept to an absolute minimum so as not to burden the LPA or the public with items not receiving sufficient advance notice. Important, potentially controversial items are not made as "add on items" except in extreme emergencies.

Attendance Policy

Section 34-115(3) of the Land Development Code (LDC) states: "A Local Planning Agency member shall forfeit office if the member is absent from three (3) regular local planning agency meetings per year without being excused by the local planning agency."

An LPA member should notify the Town Clerk of an anticipated absence. The Town Clerk will request a vote from the LPA regarding whether the absence is excused or unexcused. The LPA should be notified of a planned absence as soon as known. It is important that the LPA knows that it will have a quorum of its members as soon as possible prior to an LPA meeting. The LDC implies that the LPA has the discretion to define what will be an "excused" absence. The policy of the LPA is that if an absence is reported at least fourteen (14) days prior to a planned meeting the absence will automatically be considered an excused absence. This will allow sufficient time for a planned meeting to be rescheduled if it appears that a quorum will be questionable.

Absence notification less than 7 days prior to a planned meeting is considered an “emergency”. If an excused absence is desired in less than 7 days, a request must be forwarded to the Town Clerk with an explanation of the nature of the emergency. The Local Planning Agency will decide whether the request will be considered an excused absence. If the Town Clerk receives no request for an excused absence, the absence is counted as an unexcused absence. Three unexcused absences from regularly scheduled LPA meetings will result in automatic forfeiture of office.

“Chronic” absence is defined as missing three consecutive regularly scheduled meetings or four of the last six meetings of the LPA, regardless of whether the absence is excused or unexcused. If a chronic absence occurs, the Town Clerk will be asked to send a letter to the LPA member requesting an explanation of the reasons for the chronic absence. A copy of the letter will be sent to the Town Manager and Town Council. The LPA member will be asked to forward to the Town Clerk a statement of whether the LPA member wishes to remain on the LPA. Failure to reply will automatically make all absences unexcused and grounds for forfeiture of office. In order to provide a diverse representation, it is important that the LPA strive to have as full representation as possible when conducting the Town’s business.

Meetings and Communication between LPA and Town Council

As needed, the Chair, at the request of the LPA members may appear before the Town Council and present information discussed at an LPA meeting or as otherwise requested by a vote of the LPA.

5. Meeting Procedures

LPA Code of Conduct

LPA members shall follow the Florida Code of Ethics for Public Officers and Employees found in Chapter 112 of Part III of the Florida Statutes.

Order of Agenda Items

The general order of the agenda will proceed as follows. However, the procedures may differ depending on what type of hearing is being held.

1. Call To Order – Identify for the record the committee that is meeting, the date of the meeting and who is present.
2. Pledge of Allegiance
3. Invocation
4. Changes to the Agenda
5. Public Comment on any topic – Chair will advise of opportunity to speak during the public hearing of a particular agenda item.
6. Approval of Minutes – Requires a motion and vote.

7. Public Hearings – Public Comment on the topic of the public hearing will be included as part of the record of the hearing
8. Administrative Agenda – Topics submitted by LPA members, staff, LPA Attorney or items from previous agendas
9. Adjourn as LPA; Reconvene as Historic Preservation Board (HPB) if needed
10. Adjourn as HPB; Reconvene as LPA
11. LPA Members Items and Reports
12. LPA Attorney Items
13. Community Development Director Items
14. Public Comment
15. Adjournment – Requires a motion and vote. A privileged motion allowing no discussion before voting.

Conduct of LPA Meetings

The Chair will conduct the LPA meetings, and in the Chair's absence by the Vice Chair. Robert's Rules of Order may be consulted for parliamentary procedure governing the conduct of the LPA meetings when not in conflict with the Town Charter or Florida Statutes and questions arise. Otherwise, the conduct of the meeting may follow as directed by the LPA. When the Chair recognizes a speaker during public comment, they 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 majority vote of the LPA. If a special interest group would prefer to have one person speak for a group of individuals in attendance their allotted times can be combined up to a maximum of 15 minutes. This process could save meeting time if the content of what each person of a special interest group intends to say is similar. It could also allow more time for a presentation containing detailed facts and data. If a special interest group chooses to have a spokesperson represent them, request cards having the names and addresses of all individuals present must be provided prior to the meeting. The public comment times are intended as opportunities for interested parties to present their viewpoints to the LPA members; they are not intended as question-and-answer sessions or as dialog with the LPA unless the LPA otherwise approves.

The time period for LPA members' comments is intended as an opportunity for LPA members to share their viewpoints with each other. Since this opportunity does not exist outside of LPA 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 Community Development Director or Town Attorney which could be obtained outside of the LPA meeting.

Legislative Hearing Procedures

1. The Chair opens the hearing on (announce the agenda number)
2. The Chair or the LPA Attorney reads the ordinance title.
3. Staff and/or the LPA attorney present(s) a brief overview of the draft ordinance.
4. Public input is taken.

5. Public input is closed.
6. LPA members ask questions, if any, of staff/LPA attorney.
7. LPA members discuss ordinance, including changes, deletions, etc. and make a finding that the proposed Ordinance is consistent or not consistent with the Comprehensive Plan or otherwise is in conflict with the Land Development Code without other changes.
8. A Motion is made and seconded to either recommend approval of the Ordinance to Town Council, as-is or with modifications, or to take some other action. If the motion to approve fails, a member should make a motion to recommend denial and state the reason for denial and if it should be with prejudice or without prejudice.
9. The Motion is discussed and voted upon. If successful, the Chair declares the hearing on the ordinance to be concluded.

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

Procedure for Quasi-Judicial Land Use Hearing

1. At the onset of the quasi-judicial matters, the LPA addresses matters relating to all items on the agenda that are quasi-judicial in nature.
2. The LPA Attorney explains the quasi-judicial process and asks whether there are any conflict-of-interest situations or predetermined results that would prevent a member from voting to make sure a quorum is present for that agenda item. If a conflict is disclosed, the LPA member shall announce and complete Form 8B as required by the Florida Code of Ethics.
3. The Town Clerk wears in all witnesses. Any individuals who would like to be considered as experts in a particular area should so state and ask to be accepted as an expert unless already qualified and considered as an expert which shall be disclosed on the record. The Town Clerk reports if all agenda items have been properly noticed and if needed advertised.
4. The Chair announces the agenda item.
5. The Chair asks if any LPA member 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. The Chair asks the Town Clerk if copies of any emails forwarded to the LPA have been provided to the applicant. The Chair asks if the applicant is present and has received a copy of the agenda materials.
6. Staff present a brief introduction of the agenda item.
7. The applicant presents its case and LPA asks questions.
8. Staff presents their case in response to the applicant's presentation and the LPA asks questions.
9. Public comment/testimony is opened. The applicant may question any public speaker. After public testimony/comment is concluded, the Chair closes public comment/testimony.

10. Staff makes any closing comments.
11. The Applicant presents rebuttal, if any to staff's presentation or any public comment and closing comments.
12. The testimony portion of the hearing is closed.
13. LPA discusses the matter and may direct questions to the applicant or staff
14. The Chair requests a motion on the agenda item.
15. LPA votes on the agenda item.

Voting Conflicts

Florida Statutes have very specific rules regarding voting conflicts and municipal advisory committees, boards and agencies. These rules are different from the rules that apply to the Council.

If an LPA member has a voting conflict, he/she must disclose that conflict in writing to Town staff prior to the meeting in question and this disclosure must be publicly read. A form is available from the Town Clerk. The rules also contain an exception for disclosure at the meeting itself. The committee member is permitted to participate in the discussion and vote on the subject. The specific rules are set out in F.S. 112.3145(4), quoted below:

(4) No appointed public officer shall participate in any matter which would inure to the officer's special private gain or loss; which the officer knows would inure to the special private gain or loss of any principal by who he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained; or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer, without first disclosing the nature of his or her interest in the matter.

(a) Such disclosure, indicating the nature of the conflict, shall be made in a written memorandum filed with the person responsible for recording the minutes of the meeting prior to the meeting in which consideration of the matter will take place, and shall be incorporated into the minutes. Any such memorandum shall become a public record upon filing, shall immediately be provided to the other members of the agency, and shall be read publicly at the next meeting held subsequent to the filing of this written memorandum.

(b) In the event that disclosure has not been made prior to the meeting or that any conflict is unknown prior to the meeting, the disclosure shall be made orally at the meeting when it becomes known that a conflict exists. A written memorandum disclosing the nature of the conflict shall then be filed within 15 days after the oral disclosure with the person responsible for recording the minutes of the meeting and shall be incorporated into the minutes of the meeting at which the oral disclosure was made. Any such memorandum shall become

public record upon filing, shall immediately be provided to the other members of the agency, and shall be read publicly at the next meeting held subsequent to the filing of this written memorandum.

(c) For purposes of this subsection, the term “participate” means any attempt to influence the decision by oral or written communication, whether made by the officer or at the officer’s direction.

6. LPA Meeting Output

Unless otherwise directed by the LPA, staff shall be responsible for reporting actions by the LPA to the Town Council. The Chair shall sign a resolution evidencing the LPA’s findings and decision regarding any matter in which the LPA has final agency action.

It is noted that audio and /or video recordings of LPA meetings may be available for public, LPA, or Town Council review should clarification, additional understanding of discussions, or for finding errors or omissions.