

**RESOLUTION OF THE LOCAL PLANNING AGENCY OF THE
TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 2009 -20**

WHEREAS, the existence of the Local Planning Agency (LPA) is mandated by Florida Statutes Section 163.3174 and the LPA is statutorily responsible under Chapter 163, Florida Statutes, and the Town of Fort Myers Land Development Code (LDC)_Section 34-120 for the review of proposed land development regulations, land development codes, or amendments thereto, and for making recommendations to the Town Council with regard thereto; and

WHEREAS, pursuant to the authority set forth in LDC Section 34-118, on February 27, 2007, the LPA adopted Town of Fort Myers Beach Local Planning Agency Policies and Procedures Manual (PnP Manual) in Resolution 2007-03; and

WHEREAS, at the time of such adoption the LPA stated as a policy matter that regular review and updating of the PnP Manual was in the best interests of the Town of Fort Myers Beach and subsequently amended it on May 15, 2007 and February 19, 2008;

WHEREAS, the LPA has determined that various updates to the PnP Manual are required at this time and has reviewed such updates at its meeting of September 17, 2009.

NOW THEREFORE BE IT RESOLVED, AS FOLLOWS:

1. The LPA hereby adopts the LPA Policies and Procedures Manual as amended on September 17, 2009, as its official rules for transaction of LPA business, and a copy thereof is attached to this Resolution and hereby incorporated by reference. The terms and provisions of such Manual shall continue in full force and effect unless further amended by the LPA.

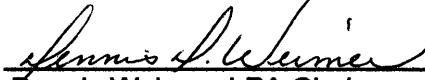
2. The LPA directs the Town Clerk to publish such Manual on the Town website, and to provide an electronic and paper copy of such Manual to all LPA Members, the LPA attorney, and Town staff.

The foregoing Resolution was adopted upon a motion by LPA Member Van Duzer and seconded by LPA Member Mandel. Upon being put to a vote, the result was as follows:


| | |
|----------------------------|--------------------------|
| Rochelle Kay <u>aye</u> | Alan Mandel <u>aye</u> |
| Carleton Ryffel <u>nay</u> | Joanne Shamp <u>aye</u> |
| Bill Van Duzer <u>aye</u> | Dennis Weimer <u>aye</u> |

DULY PASSED AND ADOPTED THIS 17th day of September, 2009.

LOCAL PLANNING AGENCY OF THE TOWN OF FORT MYERS BEACH

By: 
Dennis Weimer, LPA Chair

Approved as to legal sufficiency:

By: 
Anne Dalton, Esquire
LPA Attorney

ATTEST:

By: 
Michelle D. Mayher, Town Clerk

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

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1. Introduction

This Local Planning Agency (LPA) Policies and Procedures Manual is for the purpose of helping the 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 policy and procedure 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) and other applicable laws, as necessary.

2. Local Planning Agency Mission and Job Description

Mission: To further the welfare of the citizens of the Town by helping to promote a better, more helpful, convenient, efficient, healthy, safe community and attractive environment. To insure by strategic planning that the unique and natural characteristics of the island are preserved.

Functions, Powers and Duties:

- Review and interpret the Comprehensive Plan and conduct public hearings as may be needed to fulfill its duties under Town ordinance and Comprehensive Plan.
- Review and interpret the Land Development Code and conduct public hearings as may be needed to fulfill its duties under LDC, Town ordinance and Comprehensive Plan.
- In an advisory capacity to the Town Council, either at Town Manager's, Town Council's, or its own initiation, conduct hearings to fulfill its duties regarding zoning matters.
- Review the Capital Improvement Budget for consistency with the Comprehensive Plan and make recommendations to the Town Council.
- Serve as the Historic Preservation Board for the Town.
- Establish sub-committees as needed.
- Elect a chair and vice chair for the LPA.
- Elect a chair and vice chair for the Historic Preservation Board
- Perform any other duties that lawfully may be assigned to it by the Town Council and/or Town Manager.

LPA Member Requirements:

- Be a resident or property owner in the Town of Fort Myers Beach
- File a Statement of Financial Interests (Form 1) with the Lee County Supervisor of Elections every year.
- Complete and file Form 1F – Final Statement of Financial Interest, within 60 days of leaving office.

Desired LPA Member Qualities:

- Analytical – ability to research and analyze information and data
- Decisive
- Knowledgeable – Such as, the Town Charter, Comprehensive Plan, Land Development Code, Sunshine Laws, Ethics Laws, Parliamentary Procedure
- Communication – Listening, Speaking, Writing
- Proactive – identify and seek solutions
- Ethical - open, sincere and truthful

- Ability to work in a team environment
- Ability to work with and listen to people having diverse interests
- Fair with no strong allegiance to any individual or group
- Common sense
- Time to do the job effectively

3. Training Materials and First Meeting

Training Materials

Each new member of the Local Planning Agency will be provided copies of:

- Town Charter
- Comprehensive Plan
- Land Development Code
- Florida Code of Ethics
- Florida Sunshine Laws
- Policy and Procedures Manual
- Other materials as determined by the LPA Attorney, Community Development Director and LPA members

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. Each LPA member may nominate a person for each of these positions. A second is not required. A vote is taken in the order that a candidate was nominated. The positions are filled by a majority vote. If a majority is not received on the first ballot, a second ballot is taken for the two candidates receiving the most votes from the first ballot.

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.

This means that 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.

4. 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.

5. 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.

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.

6. 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..." This statement was included in the LDC to emphasize that the LPA should meet regularly to conduct required Town business. Thus, as a minimum, the LPA must meet at least 8 times per year.

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, Town Clerk shall advertise all LPA quasi-judicial hearings so that a legal notice will appear at least seven (7) calendar days prior to the LPA hearing date, to enable all interested parties to have notice and the ability to attend. The Community Development Director or designee will enter the *News-Press* Affidavit of Publication into the record at the beginning of the hearing. In the absence of the Affidavit of Publication, the Community Development Director or designee will enter a copy of the actual advertisement as run by the *News-Press* into the record at the beginning of the hearing after being sworn in. The affidavit, or actual advertisement, as the case may be, will be attached to the LPA Resolution following the hearing.

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 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).

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. However, meeting materials will be placed in the LPA members' mailboxes no later than noon of the Friday prior to the scheduled Tuesday meeting. The Community Development Director or assistant will send an email to the LPA members when the packets are available.

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.

The agenda is posted at Town Hall. Copies of the agenda are available to the public.

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 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." This statement was included in the LDC to recognize that because of the significant pre-hearing preparation required by staff, applicants and other supporting personnel it is imperative that a quorum of the Local Planning Agency (LPA) members be present for all noticed meetings.

The LPA should be notified of a planned absence as soon as known. It is important that the LPA know 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 14 days prior to a planned meeting is considered an "emergency." If an excused absence is desired in less than 14 days, a request must be forwarded to the Community Development Director 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 LPA or Community Development Director receives no request for an excused absence, the absence is counted as an unexcused absence.

Three unexcused absences for 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 Community Development Director 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 Community Development Director 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.

7. Meeting Procedures

LPA 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 Local Planning Agency pledges to adhere to the following CODE OF CONDUCT.

1. Regularly attend all scheduled meetings of the LPA as well as special or called meetings relevant to the office.
2. Prepare for each meeting.
3. Create a positive environment in meetings of the LPA.
4. Maintain an attitude of courtesy and consideration toward colleagues, citizens and staff during all discussions and deliberations.
5. Allow citizens, colleagues and staff sufficient opportunity to present their views, within the prescribed rules for conduct of meeting of the LPA.
6. Avoid the use of abusive, threatening or intimidating language or gestures directed at colleagues, citizens of staff.
7. Avoid comments, body language or distracting activity that conveys a message of disrespect and lack of interest.
8. Respect all local, state and federal laws, rules and other regulations.
9. Submit completed financial disclosure forms to the Lee County Supervisor of Elections by the specified deadline.
10. Publicly acknowledge the adopted position when asked about a decision of the LPA.

LPA Code of Ethics

Members shall 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 citizens served by the Local Planning Agency and by promoting public confidence in the integrity, independence, ability and impartiality of the LPA.

1. Members shall uphold the prestige of their office and avoid impropriety and the appearance of impropriety.
2. Members shall not convey the impression that they are in a position to influence the outcome of a decision of the LPA and shall not attempt to use their office to influence or sway the professional staff recommendation.
3. Members shall discharge their duties and responsibilities without favor or prejudice toward any person or group. Members shall not allow personal or business relationships to impact upon their conduct or decisions in connection with LPA business and shall not lend their influence towards the advancement of personal interests or towards the advancement of the interests of friends or business associates.
4. Members shall avoid creating the appearance of impropriety by following the requirements of the Land Development Code with regard to ex parte about specific upcoming LPA quasi-judicial hearings. If a Member receives a private written or electronic communication about an upcoming LPA quasi-judicial hearing, the Member will promptly forward the information to the Town Clerk, with a copy to the Director of the Community Development Department and the LPA Attorney so that it may be shared with all other Members as part of the agenda packet for that hearing.

Members shall refrain from any private discussion of LPA business with other Members if required by Florida's Government-in-the-Sunshine Law, Chapter 286, Florida Statutes.

5. 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 LPA proceedings. The same standard shall apply to a gift, loan, favor, etc. for the spouse, child, relative or business partner of the Member.
6. Members should refrain from participation in any proceeding in which their impartiality may reasonably be questioned. A Member whose personal, employment or business relationship with a person or entity that is subject to a recommendation of the LPA shall seek the advice and counsel of the LPA Attorney, if such relationship could conceivably influence the Member's impartiality during the LPA's 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 determination.
7. Members shall remain vigilant against deviations from LPA policies and mission statement.

As a legislative and quasi-judicial body, the LPA 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, 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 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, which 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.

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 is 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 LPA provide an applicant and other parties potentially affected by a requested decision these fundamental protections.

Order of Agenda Items

The general order of the agenda will proceed as follows. However, the procedures will differ depending on what type of hearings 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. Approval of Minutes – Requires a motion and vote.

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

Invocation

The Chair of the LPA has the discretion of deciding how the Invocation at the beginning of an LPA meeting is handled. However, there is a tradition that has been followed by many LPA's. At the first LPA meeting on April 9, 1996, Chair John Mulholland read an invocation that he had written while Commander of the Power Squadron. Betty Simpson, who was Vice Chair at that time, has carried John's invocation to each subsequent LPA. The Chair has either read the invocation or different LPA members have been asked or volunteered to read the invocation. The invocation reads as follows:

Heavenly Father, we ask that you bless us with your presence here today.

Grant to us the wisdom to see all things in true perspective.

Grant to us the patience to hear one another with open minds and hearts.

Grant us the strength to meet all present challenges.

May all that we do this day, bring honor to you and credit to ourselves. Amen.

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 shall be the reference for parliamentary procedure governing the conduct of the LPA meetings when not in conflict with the Town Charter or Florida Statutes. It is not intended that LPA meetings be unnecessarily formalistic, but rather that parliamentary procedure be invoked only when necessary for orderly conduct of the meeting.

The approval of the minutes is intended for LPA members to accurately document the proceedings of the Agency. Before moving approval the minutes should be amended, if necessary, to more accurately portray what occurred at the LPA 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 actually was done. Audiotapes of the proceedings become the official record of what transpired during a meeting.

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