

# **The Town of Fort Myers Beach**

**Incorporated December 1995**



# **CHARTER**

**Adopted April 2016**

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## ARTICLE I. CORPORATE NAME; PURPOSE OF THE CHARTER

### Sec. 1.01. Town of Fort Myers Beach.

The municipality hereby established shall be known as the Town of Fort Myers Beach, Florida.

### Sec. 1.02. Purpose of the charter.

This charter is ordained and established by the people of the Town of Fort Myers Beach, Florida, to promote the general welfare and common good of the community by providing the framework for a municipal corporation to exercise municipal home rule powers under the Constitution and laws of the State of Florida.

## ARTICLE II. TERRITORIAL BOUNDARIES

### Sec. 2.01 Boundaries of the Town of Fort Myers Beach.

The territorial boundaries of the Town of Fort Myers Beach upon the date of incorporation shall include the following areas situated in the County of Lee, State of Florida:

A corporate limit lying offshore from Estero Island, which line is described as follows: all that part of Lee County situated within Estero Island and the area within 1,000 feet in the Gulf of Mexico and 1,000 feet in the inland bays, and parallel with the shoreline of said Estero Island, excluding all of San Carlos Island, Black Island and, structures exclusively attached thereto.

**Sec. 2.02. Extension of the corporate limits; annexation.**

The corporate limits of the Town of Fort Myers Beach may be revised as provided by general law.

**ARTICLE III. GENERAL POWERS OF THE MUNICIPALITY**

The Town of Fort Myers Beach shall have all governmental, corporate, and proprietary powers to enable it to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law. The powers of the Town of Fort Myers Beach shall be construed liberally in favor of the municipality, limited only by the Constitution, general law, and specific limitations contained herein.

**Sec. 3.02. Joint exercise of powers.**

The town may exercise any of its powers or perform any of its functions and may participate in the financing thereof, jointly or in cooperation by contract or otherwise, with any one or more states, counties, municipalities, or any agencies thereof, or the United States or any agency thereof.

**ARTICLE IV. CHARTER OFFICERS**

**Sec. 4.01. Council members; elections.**

(a) There shall be a town council, hereinafter referred to as the council, with all legislative powers of the town vested therein, consisting of five council members, all of whom shall be elected from the town at-large.

(b) Council seats shall be designated as seats #1, #2, #3, #4, and #5. All qualified candidates shall be deemed to be seeking election to all open council seats. Assignment of open seat numbers shall be alphabetically by incoming Council members' last names.

(c) Each member of the council shall be a resident of the town and a registered voter and shall have resided within the corporate limits of the municipality for a minimum of 1 year prior to qualifying for election.

(d) The council are elected officials who are accountable to the citizens at regularly held elections and who are subject to recall as provided by law. The citizens, through these processes, have the opportunity to elect, reelect, or dismiss their elected officials whose promise of performance or actual performance in office best reflects the policies which the citizens desire to implement in the government of the town.

(e) Policy making is the sole prerogative of the elected council. Administrative staff, whether hired or appointed under terms of this charter, is subordinate to the elected officials, whose power derives from the consent of, and election by, the citizens of the town.

(f) Except as otherwise prescribed herein or provided by law, legislative and police powers of the town shall be vested in the council, including the establishment of boards, commissions, and committees. The council shall provide for the exercise of its powers and for the performance of all duties and obligations imposed on the municipality by law.

#### **Sec. 4.02. Mayor.**

At the first meeting after the second Tuesday in November, the council, by majority vote, shall elect from its membership a mayor. The mayor shall serve as chairperson during meetings of the council and shall serve as the head of municipal government for the purpose of execution of legal documents as required by ordinance. The mayor shall also serve as the ceremonial head of the town.

#### **Sec.4.03. Vice mayor.**

At the first meeting after the second Tuesday in November, the council, by a majority vote, shall elect from among its membership a vice mayor who shall serve as mayor during the absence or disability of the mayor and, if a vacancy occurs, shall become interim mayor pursuant to section 4.08 of this charter.

#### **Sec. 4.04. Prohibitions.**

(a) Neither the council, nor any individual member of the council, shall in any manner dictate the employment or removal of any employee other than the town manager and town attorney. No individual member of the council shall give orders to any officer or employee of the town. Recommendations for the improvements in the town government operations shall come through the town manager, but each member of the council shall be free to discuss or recommend improvements to the town manager, and the council is free to direct the town manager to implement specific recommendations for improvement in town government operations. Violations of this Section of the Charter shall constitute malfeasance within the meaning of Section 100.361, Florida Statutes, as may be amended.

(b) No present or former elected town official shall hold any compensated appointive office or employment with the town until 1 year after the expiration of the official's elected term.

#### **Sec. 4.05. Compensation.**

(a) Effective April 1, 2016, base pay for the Mayor will be \$19,200 annually and Council Members will be \$16,800 annually as compensation for their services. Compensation shall be revised annually based on across-the-board adjustments budgeted for staff and administered at the same time as Town employees.

(b) The council may provide for reimbursement of actual expenses incurred by its members while performing their official duties.

**Sec. 4.06. Vacancies.**

The office of a member of the council shall become vacant upon the member's inability to fulfill the duties of the office, resignation, or removal from office as authorized by law or this charter.

**Sec. 4.07. Forfeiture of office.**

A member of the council may forfeit the office, if the member:

- (a) Lacks at any time during the term of office any qualification for the office prescribed by this charter or by law;
- (b) Violates any express prohibition of this charter;
- (c) Is convicted of a felony or criminal misdemeanor which misdemeanor involves the office of town council; or
- (d) Misses three consecutive regularly scheduled council meetings without an excused absence.
- (e) Does not maintain a permanent residence in the Town of Fort Myers Beach.

If any of these events should occur, a hearing shall automatically be conducted at the next regularly scheduled council meeting, and the member may be declared to have forfeited office by majority vote of the council.

**Sec. 4.08. Filling of vacancies.**

A vacancy on the council, except for the position of mayor, shall be filled by appointment by majority vote of the council members remaining, and said appointment shall be effective until a successor is chosen at the next regular election. In the event that a majority of the members are removed by death, disability, law, or forfeiture of office, the governor shall appoint an interim council that shall call a special election to be held within 45 days following the occurrence of the vacancies to elect a new council. In the event that the mayor becomes unable to fulfill the duties of office, ceases to be qualified, or is removed from office as provided by law or this charter, the vice mayor shall assume the full powers and duties of the mayor. The vice mayor shall assume the office of mayor for the remainder of the unexpired term. The council vacancy thus created shall be filled by an interim appointment under the provisions of this charter, to be effective only until such time as the mayor resumes office or until the expiration of the term of the office, whichever occurs first.

**Sec. 4.09. Judge of qualifications.**

The council shall be the judge of the election and qualifications of its members and of the grounds for forfeiture of their office and for that purpose shall have power to subpoena witnesses, administer oaths, and require the production of evidence. A council member charged with conduct constituting grounds for forfeiture of this office shall be notified by the town clerk by certified mail and shall be entitled to a public hearing at the next regularly scheduled meeting of the council as outlined in section 4.07 of this charter. Notice of such hearing shall be published in one or more newspapers of general circulation in the town at least 1 week in advance of the hearing.

**Sec. 4.10. Independent financial audit.**

The council shall provide for an independent annual financial audit of all town accounts and may provide for more frequent audits as it deems necessary. Such audits shall be made by a certified public accountant or a firm of such accountants who have no personal interest, direct or indirect, in the fiscal affairs of the town government or in any of its officers. Residency in the town shall not be construed as a prohibited interest.

**Sec. 4.11. Meetings.**

The council shall meet regularly at least eight times per year and shall meet no less often than bimonthly at such times and locations within the boundaries of the town as the council may prescribe. Special meetings may be held on the call of the mayor or the town manager and with reasonable notice to each member and the public. Action taken at a special meeting shall be limited to the purpose for which the special meeting is called. A special meeting may be held outside the town with reasonable notice. All meetings shall be public and shall be scheduled to commence no earlier than 7 a.m. nor later than 10 p.m.

**Sec. 4.12. Rules.**

The council shall determine its own rules and order of business and shall provide for keeping minutes of its proceedings. The minutes shall be public records. The Town Council shall maintain a Policies and Procedures Manual that provides guidelines for how it will operate.

**Sec. 4.13. Voting; quorum.**

Roll call voting shall be required for ordinances or upon the specific request of a council member and shall be recorded in the minutes; otherwise, voting shall be by ayes and nays. Three members of the council shall constitute a quorum. No action of the council shall be valid or binding unless adopted by the affirmative vote of at least three members of the council, except in an emergency situation. All council members in attendance shall vote on all council actions, except when, with respect to any such member, there is, or appears to be, a possible conflict of interest as defined under general law.

## **ARTICLE V. NOMINATIONS AND ELECTIONS; TERMS OF OFFICE**

### **Sec. 5.01. Elections.**

The regular election of the members of the Town Council shall be held on the first Tuesday after the first Monday in November, so as to coincide with federal and state election dates, or as otherwise provided by general law. The time period that candidates must qualify shall be from noon of the 50<sup>th</sup> day prior to the election to noon of the 46<sup>th</sup> day, or as adjusted by a holiday or leap year.

### **Sec. 5.02. Commencement of Term.**

The term of a member of the council shall begin at the first council meeting following the general election.

### **Sec. 5.03. Terms of office.**

The terms for all council seats, #1, #2, #3, #4, and #5, shall be for four (4) years. No member of the council shall serve for more than two consecutive full terms. After 1 year out of office, a candidate may re-qualify for any vacant seat.

### **Sec. 5.06. Nonpartisan elections.**

All elections for officers of the town shall be conducted on a nonpartisan basis without any designation of political party affiliation.

### **Sec. 5.07. Multiple candidates.**

In the event that more candidates qualify for election than there are open council seats, those candidates shall participate in the regular election and the candidate or candidates receiving the most votes cast shall be elected to the open council seat or seats.

### **Sec. 5.08. Recall.**

The qualified electors of the municipality shall have the power to recall and to remove any elected official of the town as prescribed by general law.

### **Sec. 5.09. Town canvassing board.**

The town canvassing board shall be composed of a Town Council Member, selected by Town Council, who is not a candidate for reelection, the Town Manager and the Town Clerk, who shall act as chairperson. At the close of polls of any town election, or as soon thereafter as practicable, the canvassing board shall meet at a time and place designated by the chairperson and shall proceed to publicly canvass the vote as shown by the returns then on file in the Office of the Supervisor of Elections. The Board shall prepare and sign a certificate containing the total number of votes cast for each person or other measure voted on. The certificate shall be placed on file with the Town Clerk.

## **ARTICLE VI. TOWN MANAGER**

### **Sec. 6.01. Appointment and qualifications.**

The council shall appoint a town manager. The town manager shall be appointed primarily on the basis of executive and administrative qualifications.

### **Sec. 6.02. Removal.**

The council may remove the town manager for any reason by affirmative vote of at least 3 members of the council. If the vote is less than unanimous by all council members, the town manager may, within 7 days of the dismissal motion by council, submit to the mayor a written request for reconsideration. Any action taken by the council at the reconsideration hearing shall be final.

### **Sec. 6.03. Powers and duties.**

The town manager shall be the chief administrative officer of the town and shall implement and administer all ordinances, resolutions, and policies adopted by the council and shall perform such other duties as may be required by the council or law. The town manager shall be responsible to the council and shall have the following powers and duties:

- (a) To hire or fill existing positions and, when the town manager deems it necessary for the good of the town service, suspend or remove town employees, except as otherwise provided by law or this charter.
- (b) To direct and supervise the administration of all employees, departments, and agencies of the town, except as otherwise provided by this charter or by law.
- (c) To attend all council meetings and shall have the right to take part in discussion but may not vote.
- (d) To ensure that all laws, provisions of this charter, and acts of the council, subject to enforcement by the town manager or by officers subject to the town manager's direction and supervision, are faithfully executed.
- (e) To submit to the council and make available to the public a complete report on the administrative activities of the town as of the end of each fiscal year.
- (f) To make such other reports as the council may require concerning the operation of town departments, offices, and agencies subject to the town manager's direction and supervision.
- (g) To keep the council fully advised as to the condition and future needs of the town and to make written recommendations to the council concerning the affairs of the town.
- (h) To perform the duties of town clerk in addition to the duties of town manager during any period of time so appointed by the council.

- (i) To perform such other duties as are specified in this charter or as may from time to time be assigned by the council.

## **ARTICLE VII. TOWN CLERK**

### **Sec. 7.01. Duties and powers**

There may be a town clerk who shall be appointed by the town manager with the consent of the council. The town clerk shall serve at the pleasure of the town manager and shall:

- (a) Give notice of council meetings to its members and the public.
- (b) Keep the journal and minutes of the proceedings of the council and its committees, which shall be public records.
- (c) Authenticate by signature and record in full in books kept for that purpose all ordinances and resolutions passed by the council.
- (d) Be the custodian of the town seal.
- (e) Have the power to administer oaths.
- (f) Perform such other duties as may be assigned by the town manager.

## **ARTICLE VIII. TOWN ATTORNEY**

### **Sec. 8.01. Duties and removal procedure**

There shall be a town attorney appointed by the council, who may represent the town in all legal proceedings and shall perform all other duties assigned by the council. The council may remove the town attorney for any reason by motion requiring three affirmative votes.

## **ARTICLE IX. ADMINISTRATIVE DEPARTMENTS**

### **Sec. 9.01. Establishment of additional departments.**

The council may establish such other departments as it determines necessary for the efficient administration and operation of the town; such departments, offices, or agencies shall be established by ordinance.

## **ARTICLE X. ORDINANCES AND RESOLUTIONS**

### **Sec. 10.01. Definition of ordinances and resolutions.**

As used in this charter, the following words and terms shall have the following meanings unless some other meaning is plainly indicated:

- (a) *Ordinance* means an official legislative action of the council, which action is a regulation of a general and permanent nature and enforceable as a local law.
- (b) *Resolution* means an expression of the council concerning matters of administration, an expression of a temporary character, or a provision for the disposition of a particular item of the administrative business of the town.

### **Sec. 10.02. Adoption of ordinances.**

Every proposed ordinance shall be introduced in writing and in the form required for final adoption. No ordinance shall contain more than one subject and matters properly connected therewith, which shall be clearly expressed in its title. The enacting clause for an ordinance shall be: "IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS..."

- (a) An ordinance may be introduced by any member at any regular or special meeting of the council. A proposed ordinance may be read by title, or in full, on at least two separate council meeting days and shall, at least 10 days prior to adoption, be noticed once in a newspaper of general circulation in the town. The notice of proposed enactment shall state the date, time, and place of the meeting; the title of a proposed ordinance; and the place or places within the town where such proposed ordinance may be inspected by the public.
- (b) The council, as provided by general law, may adopt an emergency ordinance without complying with the requirements of notice expressed in the foregoing paragraph. An emergency ordinance shall become effective upon adoption and automatically stand repealed as of the 61st day following

the date on which it was adopted. This shall not prevent reenactment of such an ordinance under regular procedures.

- (c) Ordinances which rezone specific parcels of private real property or which substantially change permitted use categories shall be enacted pursuant to general law.
- (d) An ordinance shall, upon its final passage, be recorded in a book kept for that purpose and shall be signed by the mayor and the town clerk. A copy of the ordinance shall be available in the town hall.

### **Sec. 10.03. Adoption of resolutions.**

Every proposed resolution shall be introduced in writing and in the form required for final adoption. No resolution shall contain more than one subject which shall be clearly expressed in its title. The clause which shall be used for all resolutions approved by the council shall be: "IT IS HEREBY RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS..." A resolution may be introduced by any member at any regular or special meeting of the council. A resolution shall, upon its final passage, be recorded in a book kept for that purpose and shall be signed by the mayor and the town clerk. A copy of the resolution shall be available in the town hall.

## **ARTICLE XI. FINANCIAL PROCEDURES**

### **Sec. 11.01. Fiscal year.**

The fiscal year of the town shall begin on the first day of October and end on the last day of September.

### **Sec. 11.02. Submission of budget and budget message.**

On or before the 15th day of July of each year, the town manager shall submit to the council a budget in accordance with state law. It shall outline the financial policies of the town for the ensuing fiscal year; describe the important features of the budget; indicate any major changes from the current year in financial policy, including any changes in budgetary accounting methods from the current year expenditures and revenues together with the reasons for such changes; summarize the town's debt position; and include such other material as the town manager deems necessary.

### **Sec. 11.03. Council action on the budget.**

The council shall adopt the budget by resolution on or before the 30th day of September of each year.

**Sec. 11.04. Public records.**

Copies of the budget and the capital program as adopted shall be public records and shall be made available to the public at suitable locations in the town.

**Sec. 11.05. Budget amendments.**

(a) *Supplemental appropriations.* If, during the fiscal year, the town manager certifies that there are available for appropriation revenues in excess of those estimated in the budget, the council, by resolution, may make supplemental appropriations for the year up to the amount of such excess, so long as a fiscally responsible reserve is maintained.

(b) *Emergency appropriations.* To meet a public emergency affecting life, health, property, or the public peace, the council, by resolution, may make emergency appropriations. To the extent that there are no unappropriated revenues to meet such appropriations, the council may by such emergency resolution authorize the issuance of emergency notes, which may be renewed from time to time, but the emergency notes and renewals in any fiscal year shall be paid not later than the last day of the fiscal year succeeding that in which the emergency appropriations were made.

(c) *Reduction of appropriations.* If, during the fiscal year, it appears probable to the town manager that the revenues available will be insufficient to meet the amount appropriated, the town manager shall report to the council without delay, indicating the estimated amount of the deficit, any remedial action taken, and recommendations as to any other steps to be taken. The council shall then take such further action as it deems necessary to prevent or minimize any deficit and for that purpose may, by resolution, reduce one or more appropriations.

(d) *Transfer of appropriations.* At any time during the fiscal year, the town manager may transfer any unencumbered appropriations among programs within a department, office, agency or a program provided by inter local agreement and, upon written request by the town manager, the council may by resolution transfer between funds any unencumbered appropriations from one department, office, agency or a program provided by inter local agreement to another.

**ARTICLE XII. INITIATIVE AND REFERENDUM**

**Sec. 12.01. Initiative and referendum.**

At least 25 percent of the qualified electorate of the town shall have the power to petition the council to propose an ordinance or to require reconsideration of an adopted ordinance, and if the council fails to adopt such ordinance so proposed, or to repeal such adopted ordinance, without any change in substance, then the council shall place the proposed ordinance, or the repeal of the adopted ordinance, on the ballot at the next municipal election.

## **ARTICLE XIII. CHARTER AMENDMENTS**

### **Sec. 13.01. Initiation by ordinance.**

The council may, by ordinance, propose amendments to any or all of this charter to be submitted to the electors, as provided by general law.

### **Sec. 13.02. Initiation by petition.**

The electors of the town may propose amendments to this charter by petition to be submitted to the council to be placed before the electors, as provided by general law.

### **Sec. 13.03. Charter review.**

The charter will be reviewed at least every 10 years. A five-member charter review commission shall be appointed and funded by the council. The charter review commission shall be appointed at least 6 months before the next scheduled election and complete its work and present any recommendations to the Council for change no later than 60 days before the election. The council shall hold a minimum of two public hearings to approve, reject or modify the proposed changes to the charter prior to placing the proposed changes on the scheduled election ballot.

## **ARTICLE XIV. SEVERABILITY**

### **Sec. 14.01. Invalidity of character provision or application.**

If any provision of this charter is held invalid, the other provisions of the charter shall not be affected thereby. If the application of this charter or any of its provisions to any person or circumstance is held invalid, the application of the charter and its provisions to other persons or circumstances shall not be affected thereby.

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