

RESOLUTION NO. 22-21

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA PROPOSING THE ESTABLISHMENT AND FUNDING OF THE LAGUNA SHORES DREDGING ASSESSMENT AREA WITHIN THE AREA OF THE TOWN DESCRIBED HEREIN FOR THE PURPOSE OF PAYING THE COST OF THE LAGUNA SHORES CANAL DREDGING PROJECT; PAYING OTHER PROJECT, FINANCING AND COLLECTION COSTS; MAKING CERTAIN FINDINGS AND DETERMINATIONS OF SPECIAL BENEFIT AND THE LOGICAL RELATIONSHIP BETWEEN THE DREDGING PROJECT AND THE BENEFIT RECEIVED; SPECIFYING THE TOTAL ESTIMATED CAPITAL COST OF THE DREDGING PROJECT; SPECIFYING THE UNIT OF MEASUREMENT FOR, AND THE ESTIMATED MAXIMUM AMOUNT OF SAID ASSESSMENT TO BE LEVIED AGAINST EACH PARCEL WITHIN THE DESCRIBED AREA; SPECIFYING THE MANNER IN WHICH THE ASSESSMENT IS TO BE LEVIED; PROVIDING FOR ADJUSTMENTS TO THE AMOUNT OF THE ASSESSMENT IF NECESSARY; PROVIDING FOR CERTAIN OTHER AUTHORIZATIONS AND DELEGATIONS OF AUTHORITY IN RELATION THERETO; AND PROVIDING FOR SEVERABILITY 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 (“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, Chapter 24 of the Code of Ordinances, Town of Fort Myers Beach, Florida (“Town Code”) provides a framework for the Town to provide capital improvements to specially benefited properties; and

WHEREAS, the Town has been approached by the property owners of the Laguna Shores neighborhood to develop a special assessment for the dredging of a portion of Estero Bay to improve water access to Buccaneer Lagoon and Big Carlos Pass (“Dredging Activity”); and

WHEREAS, the Laguna Shore neighborhood property owners conducted a mail survey of property owners in the proposed Assessment Area to determine if most property owners in the Assessment Area are in favor of a special assessment to pay for that portion of the project consisting of the Dredging Activity; and

WHEREAS, the Town believes it is in the best interest of the Laguna Shores neighborhood property owners that live or own property within the Assessment Area, and the business owners, residents, and visitors of the Town to adopt this Initial Resolution establishing the Assessment and Assessment Area.

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

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

Section 2. As used in this Resolution, the following terms shall have the following meanings, unless the context hereof otherwise requires.

"Assessment" means a special assessment imposed against real property located within the Assessment Area to fund the Capital Cost of Dredging Activities to serve the Assessment Area and related expenses, as computed herein.

"Assessment Area" means the proposed Laguna Shores Dredging Assessment Area described herein.

"Assessment Coordinator" means the person designated by the Town Manager to be responsible for coordinating Assessments, or such person's designee.

"Assessment Parcel" means a Condominium Unit Parcel, Parcel of Record, Platted Lot, or other parcel of real property to which the Town has assigned a distinct Assessment identification number.

"Assessment Roll" means a non-ad valorem assessment roll relating to the Capital Cost of the Dredging Activities and related expenses and maintained by the Town for the purpose of the levy and collection of the Assessment.

"Capital Cost" means all or any portion of the expenses that are properly attributable to the Dredging Activities and imposition of the related Assessments under generally accepted accounting principles; and including reimbursement to the Town for any funds advanced for Capital Cost, including but not limited to engineering fees, architect fees, planning fees, permitting fees and materials and labor costs, and interest on any interfund or intrafund loan for such purposes. To the extent an estimate of the Capital Cost is used for purposes of providing maximum cost amounts in the notices provided for herein, such costs shall be adjusted to actual costs once they are finalized for purposes of computing Assessment amounts.

"Collection Cost" means the estimated cost to be incurred by the Town during any Fiscal Year in connection with the collection of Assessments.

"Collection Cost Component" means the amount computed for each Tax Parcel provided for herein.

"Condominium" means a condominium created by a declaration of condominium, pursuant to Chapter 718, *Florida Statutes*.

"Condominium Unit Parcel" means a Tax Parcel constituting a Condominium "unit" (as defined in Section 718.103, *Florida Statutes*).

"Dredging Activities" means the removal, dewatering and disposal of sediment, including but not limited to, the dredging activities as for construction of a boating access channel within Big Carlos Pass to improve water access to Buccaneer Lagoon and Big Carlos Pass.

"Final Assessment Resolution" means the resolution described in Chapter 24 of the Town Code that imposes Assessments within the Assessment Area.

"Fiscal Year" means the period commencing on October 1 of each year and continuing through the next succeeding September 30, or such other period as may be prescribed by law as the fiscal year for the Town.

"Government Property" means real property owned by the United States of America or any agency thereof, the State of Florida or any agency thereof, a county, a special district, or a municipal corporation, or any of their respective agencies or political subdivisions.

"Internal Loan" means the loan from legally available funds of the Town's budget issued or incurred to finance any portion of the Capital Cost of the Dredging Activities the repayment of which, in whole or in part, will be made from proceeds of the Assessments.

"Local Improvement" means a capital improvement constructed or installed by the Town for the special benefit of a localized area, for which special assessments are imposed pursuant to the Town Code.

"Ordinance" means Ordinance No. 2008-07 enacted by the Town Council on June 16, 2008, as amended, and supplemented from time to time and as codified in Chapter 24 of the Town Code.

"Parcel of Record" means an unplatted parcel of record or a subdivided Platted Lot in existence on the effective date of this Resolution.

"Platted Lot" means a building lot described on a map or plat recorded in the Lee County Official Records on or prior to the effective date of this Resolution.

"Property Appraiser" means the Lee County Property Appraiser.

"State" means the State of Florida.

"Town" means the Town of Fort Myers Beach, a municipal corporation duly organized and validly existing under Chapter 95-494, Laws of Florida, and other applicable laws of the State.

"Town Attorney" means the Town's Attorney, or such person's designee.

"Town Clerk" means the official custodian of all Town records and papers of an official character, or such person's designee.

"Town Council" means the Town Council of the Town.

Section 3. It is hereby ascertained, determined, and declared that:

- (a) Pursuant to Article VIII, Section 2(b) of the Florida Constitution, and Sections 166.021 and 166.041, Florida Statutes, and Chapter 95-494, Florida Law, the Town Council has all powers of local self-government to perform municipal functions and to render municipal services except when prohibited by law and such power may be exercised by the enactment of legislation in the form of Town ordinances.
- (b) The Town Council may exercise any governmental, corporate, or proprietary power for a municipal purpose except when expressly prohibited by law, and the Town Council may legislate on any subject matter on which the Legislature may act, except those subjects described in (a), (b), (c), and (d) of Section 166.021(3), Florida Statutes. The subject matter of paragraphs (a), (b), (c), and (d) of Section 166.021(3), Florida Statutes, is not relevant to imposition of assessments related to Local Improvements within the Town.
- (c) The Town Council has enacted the Ordinance to provide for the creation of Assessment Areas and authorize the imposition of Assessments to fund the construction of Local Improvements to serve the real property located therein.
- (d) The Dredging Activities constitute a Local Improvement, as defined in the Ordinance.
- (e) The Town Council desires to create the Assessment Area to fund construction of the Dredging Activities.
- (f) The construction of such Dredging Activities will improve water access to Buccaneer Lagoon and Big Carlos Pass for all abutting real property, thereby providing a special benefit to such real property located within the Assessment Area.

- (g) The Assessment Area includes Assessment Parcels that will derive a special benefit from the Dredging Activities and are therefore included in the Assessment Area.
- (h) The Town has heretofore provided funds to pay for certain costs associated with the Dredging Activities including, but not limited to, the development of engineering studies. Such costs shall not be included in the Capital Cost of the Dredging Activities and the Town shall forgo reimbursement for such costs.
- (i) The Town desires to reduce the burden of the Assessment for property owners in the Assessment Area by contributing approximately fifty percent (50%) of the funds necessary to complete the Dredging Activities in a lump sum from other legally available funds. The amount of Capital Cost paid for by the Town's contribution will exceed any incidental special benefit derived by other property owners that are not otherwise part of the Assessment Area.
- (j) In order to reduce the financial impact, the Assessment will have on the real property owners in the Assessment Area, the Town may decide to loan the remaining fifty percent (50%) of the funds necessary to complete the Dredging Activities from other legally available funds instead of obtaining an external bank loan or other finance vehicle. Such financing shall be considered an Internal Loan from the Town to the real property owners and shall be repaid to the Town as provided herein. The Town has decided that the maximum interest rate that will be charged for the Internal Loan is 3.87% per annum, based on the Town's historical average interest rate earned on investments made over the last year.
- (k) The Town Council hereby finds and determines that the Assessments to be imposed in accordance with this Resolution provide an equitable method of funding the Dredging Activities by fairly and reasonably allocating the cost to specially benefited real property, based upon the number of Assessment Parcels within the Assessment Area that will derive a special benefit from the Dredging Activities.

Section 4. The estimated Capital Cost for the Dredging Activities is \$585,905.00. The Capital Cost of the Dredging Activities will be funded through the imposition of Assessments against real property located in the Assessment Area in the manner set forth herein.

Section 5. The Assessment Coordinator is hereby directed to prepare a final estimate of the Capital Cost of the Dredging Activities and to prepare the preliminary Assessment Roll in the manner provided in the Ordinance. The Assessment Coordinator shall apportion the Capital Cost among the parcels of real property within the Assessment Area as reflected on the Assessment Roll as provided herein. The estimate of Capital Cost and the Assessment Roll shall be maintained on file in the office of the Town Clerk and open to public inspection. The foregoing

shall not be construed to require that the Assessment Roll be in printed form if the amount of the Assessment for each Assessment Parcel can be determined by use of a computer terminal available to the public.

Section 6. A public hearing will be conducted by the Town Council at 9:00 A.M., or as soon thereafter as the matter can be heard, on June 21, 2008, at 2523 Estero Boulevard, Town of Fort Myers Beach, Florida, to consider the creation of the Assessment Area; imposition of the Assessments; and collection of the Assessments.

Section 7. the Assessment Coordinator shall publish a notice of the public hearing authorized herein in the manner and the time provided in Section 2.05 of the Ordinance. Such notice shall be in substantially the form attached hereto as Appendix A.

Section 8. Upon completion of the materials required herein, the Assessment Coordinator shall, at the time and in the manner specified in Section 2.06 of the Ordinance, provide first class mailed notice of the public hearing authorized by this Resolution to each real property owner proposed to be assessed at the address indicated on the Tax Roll. Such notice shall be in substantially the form attached hereto as Appendix B.

Section 9. The Town Council proposes to create the Laguna Shores Dredging Assessment Area including those parcels described in Appendix C attached hereto. The Assessment Area is proposed for the purpose of improving the use and enjoyment of real property by funding certain Dredging Activities to provide improved water access to Buccaneer Lagoon and Big Carlos Pass.

Section 10. Assessments shall be imposed against real property located within the Assessment Area. The Assessment will be included on the monthly Town water bill to be mailed in August 2022. When imposed, the Assessment shall constitute a lien upon the Tax Parcels located in the Assessment Area.

Section 11. The Assessment for Assessment Roll purposes shall be computed for each Assessment Parcel in the following manner:

- (a) The estimated Capital Cost for the Dredging Activities of \$585,905.00 divided by the number of Assessment Parcels in the Assessment Area; divided by 2 (approximately \$3,000.00 per Assessment Parcel).

Section 12. If an Assessment Parcel includes more than one Platted Lot or Parcel of Record, the Assessment imposed against such Assessment Parcel may be reallocated among the Platted Lots or Parcels of Record upon (1) application of the owner and (2) assignment of a distinct ad valorem property tax identification number to each Platted Lot or Parcel of Record or any combination of Platted Lots or Parcels of Record by the Property Appraiser.

Section 13. All costs incurred by the Town to collect the Assessment from the owner of any Assessment Parcel ("Collection Costs"), shall be considered and paid by the property owner(s) as if the Collection Costs were part of the Assessment.

Section 14. The Town Attorney, Town Clerk, and Town Manager or designees are authorized to take all necessary steps to implement this Resolution.

Section 15. If any section, subsection, sentence, clause, or phrase of this Resolution is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the Resolution, or any part thereof, other than the part so declared.

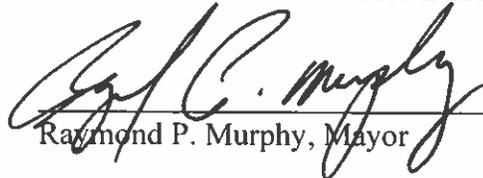
Section 16. This Resolution shall take effect immediately upon its adoption.

THE FOREGOING RESOLUTION was adopted by the Town Council upon a motion by Council Member Atterholt and seconded by Vice Mayor Hosafros, and upon being put to a vote, the result was as follows:

DULY PASSED AND ADOPTED on this 16th day of May 2022.

Raymond P. Murphy, Mayor	aye
Rexann Hosafros, Vice Mayor	aye
Dan Allers, Council Member	aye
Bill Veach, Council Member	aye
Jim Atterholt, Council Member	aye

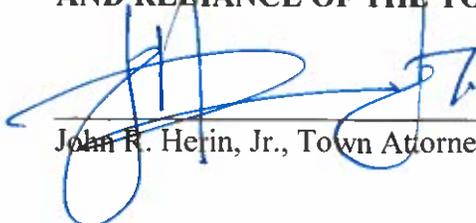
TOWN OF FORT MYERS BEACH


Raymond P. Murphy, Mayor

ATTEST:


Amy Baker, Town Clerk

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


John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 18 day of May 2022.

APPENDIX A

[INSERT SMALL MAP OF ASSESSMENT AREA]

NOTICE OF HEARING TO IMPOSE AND PROVIDE FOR COLLECTION OF SPECIAL ASSESSMENTS IN THE LAGUNA SHORES DREDGING ASSESSMENT AREA

Notice is hereby given that the Town Council of the Town of Fort Myers Beach will conduct a public hearing to consider creation of the Laguna Shores Dredging Assessment Area, as shown above, and imposition of special assessments to fund certain Dredging Activities to improve water access to Buccaneer Lagoon and Big Carlos Pass. The hearing will be held at 9:00 A.M., or as soon thereafter as the matter can be heard, on June 21, 2022, at 2523 Estero Blvd., Town of Fort Myers Beach, Florida 33931, for the purpose of receiving public comment on the proposed Laguna Shores Dredging Assessment Area and collection of the assessments on the Town's water bill. All affected real property owners have a right to appear at the hearing and to file written objections with the Town Clerk any time prior to the public hearing. If a person decides to appeal any decision made by the Town Council with respect to any matter considered at the hearing, such person will need a record of the proceedings and may need to ensure that a verbatim record is made, including the testimony and evidence upon which the appeal is to be made. In accordance with the Americans with Disabilities Act, persons needing a special accommodation or an interpreter to participate in this proceeding should contact the ADA Coordinator at amy@fmbgov.com at least seven days prior to the date of the hearing.

The assessment for each parcel of real property will be based upon the estimated cost of the dredging project divided by the total number of parcels in the assessment area on the date the assessment is imposed, divided by two. A more specific description of the dredging activities and the method of computing the assessment for each parcel of real property are set forth in the Initial Assessment Resolution adopted by the Town Council on May 16, 2022. Copies of the Initial Assessment Resolution and the preliminary Assessment Roll are available for inspection at the offices of the Town Clerk located at 2523 Estero Blvd., Town of Fort Myers Beach, Florida 33931.

The assessments will be collected by the Town as provided for on each assessed property's Town water bill to be mailed in August 2022. Failure to pay the assessments will cause a lien to be placed on the assessed parcel and possible subsequent foreclosure, which may result in a loss of title. If you have any questions, please contact the Town's Assessment Coordinator at (239) 765-0202.

TOWN OF FORT MYERS BEACH, FLORIDA

APPENDIX B

TOWN OF FORT MYERS BEACH, FLORIDA
2523 Estero Blvd.
Fort Myers Beach, Florida 33931 [239/765-0202]

May __, 2022

[Property Owner Name]
[Street Address]
[Town, State, and zip]

Re: Parcel Number [Insert Number]
Laguna Shores Dredging Assessment Area

Dear Property Owner:

The Town of Fort Myers Beach is considering creation of the Laguna Shores Dredging Assessment Area for the funding of certain dredging activities to improve water access to Buccaneer Lagoon and Big Carlos Pass. The assessment for each parcel of real property will be based upon the estimated cost of the dredging project divided by the total number of parcels in the assessment area on the date the assessment is imposed, divided by two. A more specific description of the assessment program is included in the Initial Assessment Resolution adopted by the Town Council on May 16, 2022. Copies of the Initial Assessment Resolution and the preliminary Assessment Roll are available for your review at the offices of the Town Clerk located at 2523 Estero Blvd, Town of Fort Myers Beach, Florida. Information regarding the assessment for your specific real property is attached to this letter.

The Town intends to finance this project internally. Please do not send payment now. If the assessments are imposed, you will receive a separate notice of the date and place for payment. The assessment will include your proportionate share of the cost of the dredging project. The maximum assessment is estimated to be \$ 3,000.00 per parcel unit. The Town intends to include the assessment on your water bill mailed to be mailed in August 2022. Failure to pay your assessment(s) will cause a lien to be placed on the assessed parcel and possible subsequent foreclosure, which may result in a loss of title. If you have any questions, please contact the Town's Assessment Coordinator at (239) 765-0202.

The Town of Fort Myers Beach will hold a public hearing at 9:00 A.M., or as soon thereafter as the matter can be heard, on July 21, 2022, at 2523 Estero Blvd., Town of Fort Myers Beach, Florida, for the purpose of receiving comments on the proposed Assessment Area and the assessments, including collection on the ad valorem tax bill. You are invited to attend and participate in the public hearing or to file written objections with the Town Clerk any time prior to the public hearing.

If you decide to appeal any decision made by the Town Council with respect to any matter considered at the hearing, you will need a record of the proceedings and may need to ensure that a verbatim record is made, including the testimony and evidence upon which the appeal is to be made. In accordance with the Americans with Disabilities Act, if you need a special accommodation or an interpreter to participate in this proceeding, please contact the ADA Coordinator at (239) 765-0202 at least seven days prior to the date of the hearing.

Questions regarding your assessment and the process for collection may be directed to the Town's Assessment Coordinator at (239) 765-0202

TOWN OF FORT MYERS BEACH, FLORIDA

******* SEND NO MONEY NOW, THIS IS NOT AN INVOICE *******

LAGUNA SHORES DREDGING ASSESSMENT AREA

[Property Owner Name]
Parcel Number [Insert Number]

Number of assessable parcels located within the assessment area: [insert number of parcels]

Maximum payment on water bill: \$3,000.00 x number of assessable parcels

Expected date of bill: August 2022.

******* SEND NO MONEY NOW, THIS IS NOT AN INVOICE *******

APPENDIX C

**DESCRIPTION OF PARCELS IN THE LAGUNA SHORES DREDGING ASSESSMENT
AREA**

(see attached parcel map)