

**RESOLUTION NUMBER 24-180**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A SECOND AMENDMENT TO THE AGREEMENT FOR SPECIAL MAGISTRATE SERVICES BETWEEN THE TOWN AND MONICA SCHMUCKER, TO PROVIDE SERVICES FOR APPELLATE REVIEW OF THE TOWN BUILDING OFFICIAL'S DECISIONS AS MAY BE REQUIRED UNDER THE TOWN CODE; ADDING REQUIRED STATUTORY PROVISIONS RELATED TO COERCION OF LABOR OR SERVICES TO THE AGREEMENT; AND PROVIDING FOR 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 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**, on February 5, 2024, the Town and the Special Magistrate entered into an Agreement, for the Special Magistrate to perform the duties and responsibilities of a Special Magistrate as provided in the Town's Code of Ordinances and Chapter 162, Florida Statutes, and to perform such services as may be requested by the Town; and

**WHEREAS**, Florida law now requires the inclusion of contractual language prohibiting coercion of labor or services, which has now been added to the standard addendum; and

**WHEREAS**, the Town is in a need of a hearing officer to adjudicate appeals of the decisions by the Town of Fort Myers Beach Building Official, as provided in Division 3 of Article I, and Division 2 of Article II, of Chapter 6 of the Town of Fort Myers Beach Land Development Code; and

**WHEREAS**, the Town and the Special Magistrate wish to amend the Agreement to expand the Special Magistrate's duties to include review of appeals as provided in Division 3 of Article I, and Division 2 of Article II, of Chapter 6 of the Town of Fort Myers Beach Land Development Code; and

**WHEREAS**, the Town Council has determined it is in the best interests of the Town to approve the proposed Second Amendment.

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

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

**Section 2.** The Town Council hereby approves the Second Amendment to an Agreement for Special Magistrate Services between the Town and the Special Magistrate. A copy of the Second Amendment is attached to this Resolution as Exhibit “A.”

**Section 3.** The foregoing Whereas clauses are ratified and confirmed as being true and correct, are the legislative and administrative findings of the Town Council and made a specific part of this Resolution.

**Section 4.** This Resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

This Resolution was adopted by the Town Council upon a motion by Council Member Safford and seconded by Council Member Woodson, and upon being put to a roll call vote, the result was as follows:

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

ADOPTED this 9<sup>th</sup> day of September 2024, by the Town Council of the Town of Fort Myers Beach, Florida.

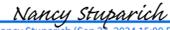
## TOWN OF FORT MYERS BEACH

  
Dan Allers (Sep 21, 2024 09:29 EDT)  
\_\_\_\_\_  
Dan Allers, 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:

  
Nancy Stuparich (Sep 25, 2024 15:00 EDT)  
\_\_\_\_\_  
Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 13<sup>th</sup> day of September 2024.

**SECOND AMENDMENT TO AGREEMENT  
FOR SPECIAL MAGISTRATE SERVICES**

**THIS SECOND AMENDMENT** (“Second Amendment”) is made and entered into by and between the TOWN OF FORT MYERS BEACH, a municipal corporation of the State of Florida (“Town”) and MONICA SCHMUCKER of Schmucker & Lavy Legal, PLLC (“Special Magistrate”), to amend that certain Agreement for Special Magistrate Services, dated February 5, 2024 (“Agreement”).

**WITNESSETH:**

**WHEREAS**, on February 5, 2024, the Town and the Special Magistrate entered into an Agreement, for the Special Magistrate to perform the duties and responsibilities of a Special Magistrate as provided in the Town’s Code of Ordinances and Chapter 162, Florida Statutes, and to perform such services as may be requested by the Town; and

**WHEREAS**, the Town is in a need of a hearing officer to adjudicate appeals of the decisions by the Town of Fort Myers Beach Building Official, as provided in Division 3 of Article I, and Division 2 of Article II, of Chapter 6 of the Town of Fort Myers Beach Land Development Code; and

**WHEREAS**, the Town and the Special Magistrate wish to amend the Agreement to expand the Special Magistrate’s duties to include review of appeals as provided in Division 3 of Article I, and Division 2 of Article II, of Chapter 6 of the Town of Fort Myers Beach Land Development Code; and

**WHEREAS**, this Amendment is in the best interests of the Town and is consistent with promotion of the health, safety, welfare, and morals of its residents.

**NOW, THEREFORE**, in consideration of the covenants set forth herein, the Town and Special Magistrate agree to amend the Agreement as follows:

1. **SCOPE OF SERVICES.** Paragraph 2 of the Agreement is hereby amended to include Special Magistrate’s review of appeals by property owners, whose properties have been deemed unsafe by the Town Building Official, in accordance with Division 3 of Article I, and Division 2 of Article II, of Chapter 6 of the Town of Fort Myers Beach Land Development Code.

2. **NO COERCION FOR LABOR OR SERVICES.** The Special Magistrate swears under penalty of perjury that the Special Magistrate does not use coercion for labor or services as defined as follows:

“Coercion” means:

1. Using or threatening to use physical force against any person;
2. Restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will;
3. Using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined;

4. Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person;
5. Causing or threatening to cause financial harm to any person;
6. Enticing or luring any person by fraud or deceit; or
7. Providing a controlled substance as outlined in Schedule I or Schedule II of Sec. 893.03, Fla. Stat. to any person for the purpose of exploitation of that person.

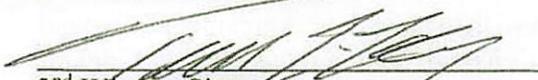
3. **REMAINING TERMS.** All other terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Town and the Special Magistrate have executed this Second Amendment to the Agreement as of the date signed by the last party.

**WITNESSES:**

  
 \_\_\_\_\_  
 1<sup>st</sup> Witness Signature

Valerie Protsman  
 \_\_\_\_\_  
 1<sup>st</sup> Witness Print Name

  
 \_\_\_\_\_  
 2<sup>nd</sup> Witness Signature

Terrence R. Lavy  
 \_\_\_\_\_  
 2<sup>nd</sup> Witness Print Name

**SPECIAL MAGISTRATE**

  
 \_\_\_\_\_  
 Print Name: Monica Schmucker

Date: 9/18/24

**TOWN OF FORT MYERS BEACH**

Dan Allers  
 Dan Allers (Sep 19, 2024 15:29 EDT)

Dan Allers, Mayor of Fort Myers Beach  
 Date: \_\_\_\_\_

**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:**

Nancy Stuparich  
 Nancy Stuparich (Sep 19, 2024 16:51 EDT)  
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 Vose Law Firm, LLP, Town Attorney