



Item No. 13a

AGENDA ITEM MEMORADUM

Town Manager

Pat Himmelberger

Department

Department Director

COMMISSION MEETING DATE (*) - 7:00 PM	Deadline to Town Clerk
<input type="checkbox"/> Oct 25, 2011	Oct 14th

*Subject to Change

- Presentation Reports Consent Ordinance
- Resolution** Quasi-Judicial Old Business New Business

FY2011 DESIGNATED HIGH PRIORITY ITEM - PRIORITY TOPIC

SUBJECT TITLE: Resolution 2011-37: A Resolution opposing the perpetual 25% non-resident surcharge on potable water and wastewater services pursuant to F.S. Section 180.191.

EXPLANATION: At the October 11, 2011 Town Commission meeting, Resolution 2011-37 was presented opposing the City of Fort Lauderdale's proposal to require potable water customers in the Town to pay a "dividend" to subsidize the general operating expenses of the City. Conversations between the Fort Lauderdale City Manager and the Town Manager revealed that the reported "dividend" was in fact a change in accounting reporting by Fort Lauderdale. At greater issue is the 25% surcharge to non resident potable water and wastewater customers, which is the maximum amount allowed through Section 180.191 of the Florida Statutes and is charged by both Fort Lauderdale for non resident potable water customers and Pompano Beach for its non resident wastewater customers.

There was consensus from the Commission to change the resolution to oppose the perpetual 25% surcharge on non resident potable water and wastewater allowed by Florida Statutes.

In additional the resolution provides for the Town to seek the support of a legislator through the Broward County Legislation Delegation to sponsor an amendment to the Florida Statute Section 180.19 to prevent governmental suppliers of potable water and wastewater services from perpetually levying the 25% surcharge on non resident customers, without regard to the actual cost of providing the service. The Town will seek the support of other municipalities who are non resident customers of similar utility providers by forwarding a copy of this resolution.

EXPECTED OUTCOME: Resolution #2011-37

EXHIBIT(S):

Reviewed by Town Attorney

- Yes No

Town Manager Initials PH

RESOLUTION 2011-37

1 **A RESOLUTION OF THE TOWN COMMISSION OF THE**
2 **TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA,**
3 **OPPOSING THE PERPETUAL 25% NON-RESIDENT**
4 **SURCHARGE ON POTABLE WATER AND**
5 **WASTEWATER SERVICES PURSUANT TO SECTION**
6 **180.191, FLORIDA STATUTES; AND PROVIDING FOR AN**
7 **EFFECTIVE DATE**
8

9 **WHEREAS**, the Town of Lauderdale-By-The-Sea does not have its own potable water
10 or wastewater/sewer treatment facilities; and

11 **WHEREAS**, residents and property owners in the southern half of the Town of
12 Lauderdale-By-The-Sea (the "Town") receive potable water from the City of Fort Lauderdale
13 ("Fort Lauderdale") pursuant to the May 6, 2008 Water System Asset Purchase, Services and
14 Franchise Agreement between the Town and Fort Lauderdale (the "Fort Lauderdale
15 Agreement"); and

16 **WHEREAS**, the Fort Lauderdale Agreement establishes the financial arrangement for
17 the sale of the Town's potable water infrastructure to Fort Lauderdale, and grants Fort
18 Lauderdale an exclusive franchise as potable water provider in the Franchise Service Area, for a
19 consideration of only \$350,000; and

20 **WHEREAS**, prior to the Fort Lauderdale Agreement going back at least fifty years, the
21 Town purchased water for many years through a large user agreement with Fort Lauderdale that
22 similarly included a substantial surcharge for being a customer located outside of the Fort
23 Lauderdale boundaries; and

24 **WHEREAS**, residents and property owners of the Town have received wastewater
25 collection and treatment services from the City of Pompano Beach ("Pompano Beach") for at
26 least forty-five years; and

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27 **WHEREAS**, on January 14, 2005, the Town entered into an agreement to turn over to
28 Pompano Beach the sewer collection and distribution system it was constructing for annexed
29 areas comprising the northern end of the Town; and

30 **WHEREAS**, the November 13, 2007 Wastewater Service Agreement (the “Pompano
31 Beach Agreement”), extends the previous forty-year service agreement between Pompano
32 Beach and the Town, provides for the maintenance and operation of the system, and establishes
33 the methodology for the rate structure and other charges to be charged to the Town and its
34 residents and property owners; and

35 **WHEREAS**, the Town Commission faces the same declining revenues and budgetary
36 challenges as all local governments are experiencing, together with the challenge of providing
37 necessary services to residents and businesses without raising taxes; and

38 **WHEREAS**, Pompano Beach and Fort Lauderdale (the “Cities”) are charging Town
39 residents and businesses an amount 25% greater than the charge levied upon customers located
40 within these cities pursuant to Section 180.191, Florida Statutes; and

41 **WHEREAS**, the original rationale behind the 25% statutory surcharge was to enable the
42 governmental water or sewer provider to recover a proportional share of the cost of developing
43 water production and sewage treatment plants and water/sewer collection and distribution
44 systems; and

45 **WHEREAS**, the revenues received by the Cities pursuant to the surcharge are in excess
46 of the amounts supported by the Cities’ respective rate studies, and cover debt service on
47 borrowing that was done to build the aforementioned capital facilities, which debt has since
48 been retired; and

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49 **WHEREAS**, while those costs are recovered and debts are repaid, the Cities do not
50 track that information and the surcharge is not adjusted accordingly; and

51 **WHEREAS**, the surcharge is in the nature of an indirect tax on Town residents and
52 businesses without representation; and

53 **WHEREAS**, the Town Commission desires to see state law changed to sunset the
54 ability of governmental suppliers of utilities to perpetually charge a surcharge on water and
55 wastewater rates to nonresident residents and businesses; and

56 **WHEREAS**, the Town Commission finds that the adoption of this Resolution is in the
57 best interest of the Town of Lauderdale-By-The-Sea.

58 **NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE TOWN**
59 **COMMISSION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, AS**
60 **FOLLOWS:**

61
62 **Section 1.** **Recitals.** The recitals contained in the preamble to this Resolution are
63 incorporated by reference herein.

64 **Section 2.** **Request to the Broward County Legislative Delegation.** The Town
65 desires to see an amendment to the Florida Statutes to prevent governmental suppliers of potable
66 water and wastewater services from perpetually levying the 25% surcharge on non-resident
67 customers, without regard to the actual cost of providing the service. The law should require
68 accounting for the use of revenues received from the surcharge, and reduction or removal of the
69 surcharge once the costs in excess of those supported by the provider's rate studies have been
70 recovered.

71 **Section 3.** **Direction to Town Clerk.** The Town Clerk is directed to forward a copy
72 of this Resolution to the members of the Broward County Legislative Delegation, and to the

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73 other municipalities in Broward County that are wastewater or potable water customers of other
74 local governments.

75 **Section 4.** **Effective Date.** This Resolution shall become effective immediately
76 upon its adoption.

77 PASSED AND ADOPTED THIS ___ day of _____, 2011.
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81
82

83 _____
84 Mayor Roseann Minnet
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86
87 ATTEST:
88

89
90 _____
91 Town Clerk June White, CMC
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93 APPROVED AS TO FORM AND LEGAL SUFFICIENCY:
94

95
96 _____
97 Town Attorney Susan L. Trevarthen