

TOWN OF LAUDERDALE-BY-THE-SEA

TOWN COMMISSION

REGULAR MEETING MINUTES

Jarvis Hall

4505 Ocean Drive

Tuesday, October 11, 2011

7:00 P.M.

1. CALL TO ORDER, MAYOR ROSEANN MINNET

Mayor Roseann Minnet called the meeting to order at 7:00 p.m. Also present were Vice Mayor Stuart Dodd, Commissioner Birute Ann Clotey, Commissioner Chris Vincent, Town Attorney Susan L. Trevarthen, Town Manager Connie Hoffmann and Town Clerk June White. Commissioner Scot Sasser was excused.

2. PLEDGE OF ALLEGIANCE TO THE FLAG

3. INVOCATION - Reverend George Hunsaker

Reverend Hunsaker gave the Invocation.

4. ADDITIONS, DELETIONS, DEFERRALS OF AGENDA ITEMS

New Business Item 17e – Discussion on approving a Property Owners Association (POA) parking waiver was added to the agenda.

5. PRESENTATIONS

There were no presentations.

6. PUBLIC COMMENTS

Mayor Minnet opened the meeting for public comment.

Guy Contrada thanked the Town Commission and staff, along with Police Chief Llerena for getting downtown businesses together to decide on what to do for New Year's Eve.

Dennis Ritchie announced the Oktoberfest event on October 22, 2011, 6:30 p.m. to 9:00 p.m. He hoped the Town Commission and staff, and members of the community would attend. He asked the Town to waive parking fees the night of the event in the Town Hall parking lot, the El Prado Parking lot, and the behind the fire station.

Dan O'Linn, the Town's building official, said Broward County wished to continue offering Building Department services.

John Boutin preferred the location of the craft fair to remain unchanged. He stated businesses with lodging and pools may need to install pool lifts per new ADA requirements. He was organizing a meeting with those affected by the new law to discuss increasing their buying power for the equipment by buying in bulk and to save on ADA requirement installations.

Edmund Malkoon spoke on item 17D, noting the municipal elections coincided with the Florida Primary on January 31, 2012. He believed the seats up for election would be seats three in the north and four in the south. The Town's Charter stated seats one and two were elected at large, but it did not have the same requirement for the other two seats. This should be examined, as it could be interpreted that the candidate with the most votes in a district would be elected. The Charter stated the qualifying period for candidates was noon on the 75th day and noon on the 61st day prior to an election; this meant November 17 to December 1, which was different from that reflected in the backup. He asked if the County provided the dates and, if so, did they supersede the Town's Charter. Mr. Malkoon questioned whether in an early election, present Commission members would be required to shorten their terms. He said the 2008 election occurred on January 29, which meant the current seats expired two days prior to the election; there did not appear to be language in the Charter addressing a caretaker Commissioner. He urged the Commission to have a Charter Review Committee examine these issues. In addition to the question of the District studies, after 2012, there was no requirement that the Town go back and do further studies after a certain timeframe. Some of the matters needed to be addressed as soon as possible, as time was of the essence. Mr. Malkoon spoke about the partial use of the Town Park by the VFD north of the firehouse; while he supported the VFD, he did not think the parking of recreational vehicles and trailers should be on the grassy area and what used to be the shuffleboard court. The Town should provide alternative parking and/or storage and, with the removal of the trailer, that section should be a landscaped path connecting the Municipal Park with El Prado, allowing pedestrians to bypass the Town Hall parking lot. The area could also be a contender for a green flower market, or a specialty garden, such as for butterflies or native species.

Diana Kugler encouraged the Commission to keep the January 31, 2012 Municipal Election as the Commission previously voted unanimously to piggyback on the date set for the Presidential Preference Primaries to save taxpayer dollars.

With no one else wishing to speak, Mayor Minnet closed the public comment portion of the meeting.

7. PUBLIC SAFETY DISCUSSION

There were no reports for consideration.

8. TOWN MANAGER REPORTS

a. Town Manager's October Report

Town Manager Hoffmann stated that Congress had to cut Community Development Block Grant (CDBG) funds. The Town received a letter from Broward County stating that the grant from Broward County to operate the Town's Senior Program would decrease more than anticipated. She said the Town budgeted \$26,640 based on the grant and would be reduced to \$22,523; the Town experienced a steady decrease of funding for its Seniors Program. She also reported the Broward Sheriff's Office advised the Town it would be receiving a credit of almost \$50,000 against the Town contract with BSO; this was a vacancy credit under the old contract for two positions that remained vacant for a considerable time. Town Manager Hoffmann advised the Commission that Saturday's bad storm damaged the solar panels of the two new buoys which were later removed for repair.

Commissioner Clotney stated volunteer divers from Vone Research and VFD personnel were determined to get the buoys repaired as quickly as possible. She said they informed her that the new panels were being shipped from California and the repairs would be done quickly at no added cost to the Town.

Town Manager Hoffmann affirmed the repairs would be made at no cost to the Town.

Vice Mayor Dodd indicated he had looked at the solar buoys prior to the meeting. He said they were looking into how to ensure the solar panels would not become detached again, exploring ways to lower the weight on the base of the buoys, so they were more stable.

Town Manager Hoffmann said Town staff had difficulty contacting Benihana regarding their expired right-of-way license. She asked if the Commission was comfortable with raising the issue of providing access to that first block of retail stores on Commercial Boulevard coming over the Intercoastal Bridge. U-turns were not permitted in front of the bridge heading west on Commercial Boulevard, and the Town could negotiate right of access across Benihana's parking lot as part of the license agreement.

Commissioner Clotney thought if the Town was trying to help businesses at the west end of Commercial Boulevard, this was the time to negotiate with Benihana.

Commissioner Vincent asked if there was similar access at one time that was vacated.

Assistant Town Manager Bentley spoke with a number of people who remembered an access point where it was possible to turn onto West Trade Winds Avenue and immediately turn and come across the Benihana property into the parking lot. After going back through several years of the assessor's aerials, he could not see the route, so it must have been a local established route. There was never a vacation agreement to his knowledge.

Mayor Minnet thought the real problem arose after the "No U-turn sign" was installed, as it caused numerous problems. She wondered if the Town could ask the Florida Department of Transportation (FDOT) to remove the U-turn sign to allow the turn.

Assistant Town Manager Bentley remarked Town staff could always ask, but the request had to be represented by a traffic engineer or consultant. Traffic Engineer Molly Hughes did not believe that FDOT would remove the sign. She said FDOT believed the U-turns represented a true safety issue due to the lack of sight distance of the cars traveling east across the bridge and should remain prohibited.

Mayor Minnet favored negotiating and discussing some type of agreement with Benihana. Commissioner Vincent concurred.

Vice Mayor Dodd inquired how it would help if the Town negotiated with Benihana for an opening in the car park; he failed to see how it would resolve the issue.

Assistant Town Manager Bentley said it was possible to turn south on West Trade Winds and enter at the existing entrance on the Benihana lot. The design was compatible, as there was one short planting bed that could be removed to provide access into the Town's parking lot.

Vice Mayor Dodd agreed such steps would help the businesses by allowing access.

There was Commission consensus to move forward.

Town Manager Hoffmann stated that Jeff Bowman had resigned his position as Zoning and Code Supervisor, and the other code officer advised she too was resigning. She was aware code enforcement was a huge priority for the Commission and offered two alternatives: 1) recruit and fill the positions; 2) consider outsourcing the service. She added that outsourcing the service would only be done if it was cost effective, and productivity and customer service could be maintained at an acceptable level. Town Manager Hoffmann said the City of Pompano Beach outsourced their code enforcement functions, but recently transferred from BSO doing the job to using a private company, Calvin Giordano. She spoke with the Pompano Beach City Manager and Assistant City Manager, and both were happy with the service; their customer service was greatly improved with the private company. She asked if the Commission would entertain this possibility, if it was financially feasible.

Vice Mayor Dodd fully supported exploring the outsourcing of code enforcement services to Calvin Giordano, as the Town needed to resolve the matter as soon as possible; as the enforcement of the Town code was very important. If affordable, the Town could work with an outside company for a set time and if it did not work out, it would allow time to find qualified code enforcement staff.

Commissioner Clotey preferred the Town hire its own code enforcement staff. She suggested hiring an outside firm on a temporary basis, to give the Town time to hire and

train new code enforcement officers. Commissioner Clotley believed it was important for the Town not to lose its personal touch.

Commissioner Vincent believed Code Officer Williams would remain on a part time basis to help the Town get through any transition period. With respect to the RFP on the building services, he questioned if it were possible to include code enforcement services.

Town Manager Hoffmann was unsure how many of the respondents provide code enforcement services; she would check with other building services companies to see if they offered the service. If they did, an agreement could be structured as a proposal within the RFP, but they could bid on that portion separately.

Commissioner Vincent questioned whether it was advisable to set up a part time contract with Calvin Giordano. Town Manager Hoffmann thought it depended on the length of time of the agreement. She wished to give the situation more thought.

Mayor Minnet favored moving forward with piggybacking with Pompano Beach. She wanted some leeway for the Town if the arrangement did not work out, and this could be incorporated into the contract.

Town Manager Hoffmann stated she reviewed the City of Pompano contract with Calvin Giordano and found that it was not structured in a way that would allow the Town to piggyback on that contract. Thus, the first step would be to find out if any other companies provided code enforcement services; if not, the Town could negotiate with Calvin Giordano on a price that made sense for the Town. If this was not possible, Town staff would return to the Commission for further advice.

Mayor Minnet asked if were possible to negotiate with Calvin Giordano prior to going out to RFP. Town Manager Hoffmann replied the Commission would have to determine it would was a sole source provider, or the Commission could have to waive the purchasing requirements.

Commissioner Clotley recalled Code Officer Williams came to the Town from the City of Fort Lauderdale; it might just be a matter of attracting code enforcement staff from other municipalities.

Town Manager Hoffmann said Town staff tried to recruit someone within the last week who previously worked for the Town, but the individual opted to remain in their present situation. She reiterated contracting out the code enforcement service should only be done if it made financial sense, and it would be a faster way to move forward than recruiting new Town code enforcement staff.

Mayor Minnet remarked her inclination was for the Town to move on the matter right away; this meant going out for an RFP process rather than the Town hiring for those positions for the present.

There was Commission consensus to investigate hiring an outside code enforcement service. Town staff would present a report on their findings at the next Commission meeting.

Municipal Services Director Prince explained the Town wished Plaza East Board to contribute to a cost sharing agreement for the construction and the Board appeared receptive to the idea. He said Plaza East Board discussed the matter in detail and agreed they preferred to see a legal agreement before making a decision. Municipal Services Director Prince said an agreement drafted by the Town Attorney was currently being reviewed and the agreement would be sent to the Plaza East Board.

Town Manager Hoffmann mentioned the construction on the A1A Streetscape Project north of Pine Avenue had commenced.

Mayor Minnet expressed pleasure at seeing the project moving forward.

9. TOWN ATTORNEY REPORT

- a. Update on Propose Broward County Ethics Regulations for Municipal Elected Officials

Attorney Trevarthen distributed copy of her notes (hereto attached as part of these minutes) regarding what transpired at the Broward County Commission meeting at which the Ethics Ordinance passed. She reviewed the contents of the document, including the appeals process, the compensation disclosure, the effective date of the ordinance on January 2, 2012, fundraising by elected officials for charitable organizations, delay of the prohibition of lobbying by elected officials and their family members, the exceptions for serving on a procurement committee, an altered definition of immediate family to include registered domestic partner, and coverage applying to managers and attorneys when acting in their official capacity. The public commentary on the item at the County Commission meeting was copied from a newspaper report, as she was unable to witness that portion of the meeting. Attorney Trevarthen indicated over the next few months she would work with the Town Commission and staff on properly interpreting and adapting to the County's Ethics Ordinance for municipal elected officials. The next step by Broward County would be to investigate establishing an ethics ordinance that would apply to nonelected municipal employees and officials.

Mayor Minnet inquired as to the opinion giving and the Broward County Commission putting the question on the upcoming ballot, wishing to know specifically which election were they referencing, January or November 2012.

Town Attorney Trevarthen believed the time frame was said to be two years from now. It appeared not to be immediate, hence them creating the interim provision of going to one's municipal attorney for a ruling.

Mayor Minnet asked if Broward County would create the financial disclosure form; if not, who was responsible for doing so.

Attorney Trevarthen replied the County would create a new financial disclosure form, and she was unsure if it had been done yet. There were competing amendments brought forward, such as that explicitly proposing elected officials use Form 1; it was unclear but most were rejected.

Mayor Minnet questioned if the disclosures would be made on the Town's website or on the Broward League of Cities' (BLC) website, as she understood the information had to be available to the public.

Attorney Trevarthen said the alternative was that it could be either on the Town's website or on a website maintained by the BLC on behalf of cities without such ability. This was just one aspect the Town had to do, as it would be required to maintain a lobbyist registry and a contact log.

Mayor Minnet asked how elected officials were to work with lobbyists that were vendors of the Town as well as local businesses. It was important for them to understand the parameters in which elected officials had to work were set by the voters and residents of Broward County. She felt they needed to understand that some of the dialog that used to take place would no longer be simple and had to be properly documented.

Town Attorney Trevarthen pointed out with all ethics rules it was necessary to look at individual situations. The two relevant issues were: a prohibition on accepting gifts, on which there was a total prohibition of gifts from lobbyists, a prohibition of gifts of \$50 in an elected official's official capacity, and there was no prohibition of personal gifts. The second issue had to do with the communication aspect, and lobbyists, vendors and contractors were covered under these rules. She noted if a contact occurred, for example, at Town Hall, this would be handled in a similar fashion to that of the County, which would be to log the visit to keep track of such contacts for public disclosure. If the contact took place outside of Town Hall, it was the elected officials responsibility to keep proper records and report the contacts.

Vice Mayor Dodd wondered how the Town's interaction with the Chamber of Commerce would be affected, whether they would be considered as a contractor of the Town and whether he would have to log the contact, if he walked into the Chamber of Commerce office.

Attorney Trevarthen stated it was possible to pose numerous hypotheticals, and she would rather not to speculate but preferred to wait until she received a copy of the final ordinance before responding. It was important to know, however, that the definition of a contractor under the ordinance was extraordinarily broad, as it said anyone with a contract with the Town. She spoke to the County Attorney on that matter, telling him the definition went way beyond procurement; the problem with revisiting some of the issues was the rules of the County were very specifically set up by the charter process. This

caused the County to be very restricted as to what could be changed; she did not believe the County was as restricted in dealing with the ethics regulations that applied to local elected officials. However, Broward County made a choice not to have two sets of rules and kept them as closely similar as possible.

Mayor Minnet mentioned the Inspector General (IG) was accepting anonymous complaints.

Attorney Trevarthen believed this was so, and she was informed this was reflected on the IG's website; some municipal officials expressed concern over the lack of accountability by those making complaints.

Commissioner Clotley believed that the restrictiveness of the ethics ordinance could cause an extreme amount of hardship in a small town such as Lauderdale-By-The-Sea where one could walk into a restaurant and have a conversation with the owner.

Attorney Trevarthen noted the ethics ordinance came into play only if the particular restaurant did business with the Town as a contractor or lobbyist.

10. APPROVAL OF MINUTES

- a. September 27, 2011, Special Commission Meeting Minutes

Vice Mayor Dodd made a motion to approve the September 27, 2011, Commission meeting minutes. Commissioner Clotley seconded the motion. The motion carried 4-0.

11. CONSENT AGENDA

Mayor Minnet pulled items 11a, 11c, 11d, 11e and 11f from the Consent Agenda for discussion.

Vice Mayor Dodd made a motion to approve Item 11b on the Consent Agenda. Commissioner Vincent seconded the motion. The motion carried 4-0.

Mayor Minnet sought clarification if the Town was allowing free parking town-wide for Christmas-By-The-Sea and inquired as to whether the motion was to approve all staff's recommendations.

Assistant Town Manager Bentley stated the application requested free town-wide parking; Town staff's recommendation and conditions provided free parking on El Mar Drive only.

Vice Mayor Dodd indicated he would take Town staff's recommendations. Commissioner Clotley accepted the friendly amendment, but did not want signs left overnight.

Vice Mayor Dodd made a motion to amend his motion as recommended by Town staff. Commissioner Clotney seconded the motion. The motion carried 4-0.

- a. Change of location for the Chamber's November 26-27, 2011, Chamber Lauderdale-By-The-Sea Art and Craft Show (Assistant Town Manager Bud Bentley)

Vice Mayor Dodd questioned if event parking was being requested for the south end of El Mar Drive, though the event was moved to a venue to the north.

Chamber of Commerce Executive Director Judy Swaggerty confirmed they were requesting parking for the whole length of El Mar Drive.

Vice Mayor Dodd asked if the Chamber approached Minto Group, Inc., about allowing event parking on their hard standing vacant area.

Ms. Swaggerty said they received approval from Minto.

Vice Mayor Dodd made a motion to approve Town staff's recommendation to change the location of the event to the El Prado Park and El Prado parking lot. Commissioner Clotney seconded the motion. The motion carried 4-0

- b. Special Event Application for Christmas By-The-Sea on December 7, 2011 (Assistant Town Manager Bud Bentley)

Vice Mayor Dodd stated a resident previously offered to buy the Town a menorah, and the offer was not taken up by the administration. He asked who was providing the menorah in the present event.

Assistant Town Manager Bentley replied the applicant.

Town Manager Hoffmann stated she had to contact the individual who offered to donate the menorah, as there were legal issues involved. After speaking with the Town Attorney, it was better for the menorah be donated directly to the Chabad not the Town.

Vice Mayor Dodd thought the applicant deserved some type of response.

Vice Mayor Dodd made a motion to approve the subject event with Town staff's recommendations. Commissioner Clotney seconded the motion. The motion carried 4-0.

- c. Special Event Application for a Public Menorah Lighting Ceremony on Thursday, December 22, 2011 (Assistant Town Manager Bud Bentley)

This item was approved on Consent.

d. Purchase of Three Pay Stations for the A1A Parking Lot (Assistant Town Manager Bud Bentley)

Vice Mayor Dodd inquired if representations were made to Parker Systems to supply the Town with used stations at a 50 percent discount. He wondered if Parker Systems realized that if the Town waited for a short time, they would be required to supply new ones to the Town contractor at 50 percent discount and suggested could this be part of the negotiations.

Assistant Town Manager Bentley stated that Parker Systems was the Florida distributor for Digital, and they offered the Town the used stations at a 35 percent discount. The national vendor was in contract directly with Digital, and Parker would neither provide nor service the new stations. He said Parker had been approached by Town staff to supply the used stations at a 50 percent discount, and they were continually urged to get Digital to extend an additional discount to the Town; hence the 35 percent discount. There was a difference in purchasing power between national firms and the Florida distributor. He stated they were offering the Town free freight and immediate installation.

Town Manager Hoffmann discussed whether the Town should just wait, and Mr. Bentley was convinced getting them in sooner than later would cover the cost differential over time.

Assistant Town Manager Bentley added Town staff's recommendation was to approve the purchase.

Town Manager Hoffmann stated Digital would not sell the stations to the Town directly, as Parker Systems was their broker in Florida.

Vice Mayor Dodd hoped to see the machines installed as soon as possible, as they made a big difference to the revenue and the convenience for visitors. He supported Town staff's recommendation to work to get them installed as soon as possible.

Commissioner Clotey sought assurance the machines the Town purchased would carry the same warranty as a new machine.

Assistant Town Manager Bentley indicated this was the representation made to Town staff and they would confirm it.

Town Manager Hoffmann pointed out, for the public's benefit, these "used" machines had only been used for 60 days not for years.

Vice Mayor Dodd made a motion to approve the subject item with Town staff's recommendations. Commissioner Vincent seconded the motion. The motion carried 4-0

e. Capitalization Threshold for Capital Purchases (Finance Director Tony Bryan)

Commissioner Clottey asked for a status update on the \$37,000 discrepancy in the General Fund Balance identified by Mr. Bryan.

Finance Director Tony Bryan replied the Finance staff and he were working over the last few weeks on resolving some of the issues identified in the 2010 Comprehensive Annual Financial Report (CAFR) related to fixed assets. He said the last of those issues were resolved prior to the Audit Committee meeting on Wednesday. After spending considerable time looking at fixed asset issues, he thought it made sense to do a high-level reconciliation of what was in the General Ledger System against what was reported in the CAFR for all fund balances. In doing so, he identified two discrepancies; the first was for \$37,000 in the General Fund; and another was a balance of about \$120,000; both were being researched to find out what they were. Though unconfirmed, he believed the \$120,000 had to do with the Town's liability related to accrued vacation and sick leave of Town staff. It seemed the balance should have been adjusted in the General Ledger but was not.

Mayor Minnet felt, though the matter brought up by Commissioner Clottey needed to be known, it should be brought up as another agenda item rather than confusing it with the capitalization threshold for capital purchases.

Town Manager Hoffmann remarked on the two matters, stating a report on how they were resolved would be presented in a future Town Manager's Report.

Ben Freeny, Town Audit Committee member, stated at their last meeting they reviewed the recommendation from Grau & Associates to increase the Town's capitalization threshold from \$500 to \$2,000. In layman's terms, the capitalization threshold related to the purchase price of an asset being determined as large enough to be put on a schedule and depreciated out over a number years or expensed out in a set period. A threshold was set for expense items, and items costing more than the threshold were put on the fixed asset schedule, depreciated and tracked over a set number of years. He noted though Grau & Associates recommended an increase to \$2,000, the Government Finance Officers Association (GFOA) recommended a threshold of \$5,000. Setting a higher capitalization threshold would reduce the workload, as it meant tracking less assets. Thus, the Committee recommended raising the Town's capitalization threshold to \$5,000 to prevent spending an undue amount of staff time dealing with assets. Mr. Freeny noted there had been numerous problems with prior records and this was a way to make them simpler to manage.

Vice Mayor Dodd thanked the Audit Committee on behalf of the Town for the excellent work they did; he was impressed with their expertise and time spent sorting out the matter for the Town.

Commissioner Vincent asked if, prior to Grau & Associates' recommendation, was the Town's capitalization threshold always at \$500, and if so, why had that not been increased before or why was it at \$500 to begin with.

Mr. Freeny stated he did not know and knew of no one who could say why.

Vice Mayor Dodd made a motion to approve the subject item, increasing the capitalization threshold to \$5,000. Commissioner Vincent seconded the motion. The motion carried 4-0.

f. Building Services Proposal (Town Manager Connie Hoffmann)

Vice Mayor Dodd inquired as to the reason for having a chief building official come to the Town a few days a week at \$106 an hour.

Town Manager Hoffmann responded in the request for proposals (RFPs) the Town sent out, the frequency of a chief building official's presence in the Town was unspecified. At present, the Broward County building official was in the Town about four days a week for three to four hours a day. She indicated when the RFP was reissued, the number of hours for the chief building official could be specified, and the Town would not be charged at an hourly rate. Such agreements were structured for the contractor to return a certain percentage of the building fees collected to the Town.

Vice Mayor Dodd questioned if there were Town employees qualified to read sets of plans to avoid problems created in the past, such as Minto putting electrical boxes and cabanas in areas strictly designated as pedestrian corridors on El Mar Drive.

Town Manager Hoffmann hoped to have qualified Town employees. The building plans would be read by the contractor's employees; issues dealing with setbacks would be reviewed by Town staff or a contractor if the option was to go with planning contractors.

Vice Mayor Dodd wondered if the Town needed to reissue the RFP, as Calvin Giordano had a good reputation with Pompano, and residents needed relief, and this was possible with the hiring of a qualified company to fast track permit applications at a reasonable price. He thought Calvin Giordano put together an extremely professional RFP, detailing their experience, the number of qualified staff, their work with other municipalities, and what they could do for the Town. If it transpired that the Town was dissatisfied with their service, the system could be changed. He supported moving forward without sending out another RFP for the subject service based on these factors.

Commissioner Vincent recommended going out for another RFP. As the liaison for the subject proposal for the Building Department, he did not want to look at just one RFP. He felt it was too important to just waive any other potential RFP respondents and go forward with Calvin Giordano.

Commissioner Clotey agreed with Commissioner Vincent's comments. Broward County should also be pushed to submit an RFP. Lauderdale-By-The-Sea was a small town, and the services a company supplied to bigger towns often differed to those provided to smaller towns, such as in the areas of customer satisfaction, timeliness of tasks, etc.

Commissioner Vincent thanked Dan O'Linn for communicating Broward County's interest in remaining to review the Town's plans. The backup indicated the County could not compete with the private sector. And, as they represented other Broward cities, it would be a conflict of interest to reduce fees for the Town and not for other municipalities.

George Keller, Calvin Giordano & Associates, mentioned having a chance to speak with Town Manager Hoffmann, stating they understood the Town's position and staff's recommendation. They were ready to proceed in the RFP process.

Mayor Minnet preferred to stay with Town staff's recommendation to reject the proposal from Calvin Giordano & Associates and send out an RFP for the subject service in an effort to get the Town what it deserved; that is, the best Building Services Department.

Town Manager Hoffmann informed the Commission the County recently raised the issue of whether the proposed building fees schedule the Town reviewed in June 2011 might, in some cases, be more expensive than the County's. Gary Shimun, who conducted the study for the Town, was meeting with Mr. O'Linn the following day to go over his points and analyze them. If there was an issue with the schedule and it needed to be tweaked, this could be done prior to sending out the RFP. She would keep the Commission informed, particularly if Mr. O'Linn found problems with the schedule.

Vice Mayor Dodd questioned how much of a delay reissuing the RFP would cause in relation to residents getting their permit issues resolved.

Town Manager Hoffmann replied the reissued RFP did not have to be out for as long as the first RFP. She anticipated a two-week timeframe to have the RFP responses back to the Town. Once the Commission agreed upon a contractor, the County had to be given 30 days notice; thus, the whole process should take about a month, after the Commission selected the vendor.

Mayor Minnet summarized the motion should be, to accept Town staff's recommendation to reject Calvin Giordano & Associates proposal, and to revise and reissue the RFP.

Commissioner Clotey made a motion to approve the action as summarized by Mayor Minnet. Commissioner Vincent seconded the motion. The motion carried 3-1. Vice Mayor Dodd voted no.

12. ORIDINANCES – PUBLIC COMMENTS

1. Ordinances 1st Reading

- a. **Ordinance 2011-17: AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY-THE SEA, AMENDING SECTION 30-9, OF THE CODE OF ORDINANCES TO AMEND REQUIREMENTS RELATED TO**

ARCHITECTURAL STANDARDS AND REVIEW CRITERIA; PROVIDING
FOR CODIFICATION, SEVERABILITY, CONFLICTS AND AN
EFFECTIVE DATE

Attorney Trevarthen read Ordinance 2011-07 by title.

Mayor Minnet opened the meeting for public comment.

Nectaria Chakas wished to provide clarification on the proposed ordinance. The Villas By The Sea project was halfway completed; there were still two vacant parcels Minto intended to develop. They would be filing an amended site plan, and they wanted to make sure the new architectural standards would not impose the new MIMO style of architecture on any amendment Minto proposed for parcels A and D. She discussed the matter with Town staff, and they agreed there might be some tweaking that needed to occur in the section dealing with alternative architectural styles to clarify what properties were eligible for that style. Ms. Chakas stated that Minto desired to use the Mediterranean style, which was the way Phase I had been developed.

With no one else wishing to speak, Mayor Minnet closed the public comment portion of the meeting.

Assistant Town Manager Bentley introduced Acting Town Planner Linda Connors who had been contracted to assume some of the work formerly done by Jeff Bowman and also assist with the planning priorities assigned to Cecelia Ward. The original goal was to have Town staff provide some of the leg work and planning activity related to those priorities, but that had not been possible. He reviewed Ms. Connor's qualifications that showed her to be a good fit for the Town's needs.

Town Manager Hoffmann pointed out Ms. Connors was also doing the zoning reviews Mr. Bowman used to do for applicants.

Linda Connors, Acting Town Planner, reviewed the contents of the proposed ordinance, as detailed in the backup. Staff recommended approval of the ordinance on first reading with the understanding there would be clarification made with regard to the greater flexibility in the choice of styles at the second reading.

Town Manager Hoffmann clarified the ordinance eliminated the language that the Mediterranean style was a "required" architectural style. The lines Ms. Connors pointed out as problematic was where it was necessary to clearly define what was meant by "adjacent" and "abutting" properties, as they had two different meanings.

Vice Mayor Dodd reiterated the ordinance removed the mandatory requirement for the Mediterranean style; it would include language that MIMO was the preferred style. The change provided greater flexibility for those seeking to develop or redevelop properties.

Commissioner Clotley reiterated her concerns as a future Commission might choose to interpret the word "preferred" as mandatory. The desire for the Mediterranean architectural style was chosen after a long process that included input from numerous parties; many persons she spoke with favored the Mediterranean style. She hoped the language of the ordinance would be consistent with what the Commission and Town staff wished to accomplish.

Mayor Minnet thought Town Manager Hoffmann stated the language of the ordinance would reflect even though MIMO was preferred, it was still permissible to have a Mediterranean Revival type of architectural design.

Town Manager Hoffmann affirmed MIMO was the preference, and there were provisions in the ordinance that outlined when one could use a different architectural style; it would not be a free for all. For example, to do Mediterranean, the developer would have to demonstrate that there were other like buildings nearby and that the style would be consistent with them. The proposed ordinance gave more flexibility than the current code did.

Mayor Minnet reminded everyone the proposed ordinance would go to the P&Z Board and come back to the Commission on November 8, 2011, for a final reading.

Vice Mayor Dodd made a motion to approve Ordinance 2011-17 on first reading with staff recommendations. Commissioner Vincent seconded the motion. The motion carried 3-1. Commissioner Clotley voted no.

13. RESOLUTIONS – PUBLIC COMMENTS

- a. **Resolution 2011-37: A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, 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; AND PROVIDING FOR AN EFFECTIVE DATE**

Attorney Trevarthen read Resolution 2011-37 by title.

Attorney Trevarthen noted the Commission directed her to prepare the resolution to express the Town's displeasure with the City of Fort Lauderdale. The latter was not only increasing the water rates in the traditional fashion, but they were seeking to levy an additional charge on top of the rate increase.

Town Manager Hoffmann stated she received additional information from the Fort Lauderdale City Manager, but she had no chance to discuss it with the Town Attorney. She said Fort Lauderdale adopted the rate increase in September. She checked the Town's water bills from the City of Fort Lauderdale and, on the back of the Town's August utility bill there was the required notice of the increase; it was listed among five

other items. She was unsure where the term "dividend" came from with regard to the charges the City of Fort Lauderdale was making. That term was reported in the newspaper, but the Fort Lauderdale City Manager told her it was a 6.75 percent rate increase that had no fee on top of the increase. Town Manager Hoffmann said the City of Fort Lauderdale used to make a payment from their Utility Fund to their General Fund as a payment in lieu of taxes, and they changed the terminology. She explained that a payment in lieu of taxes occurred in municipal governments when a utility or a nonprofit organization took over a great deal of property that had value and the city lost the tax revenue from that property. A type of token payment was made to the city's general fund to make up for the loss of the tax revenue. She stated, in Fort Lauderdale's case, they had large amounts of land devoted to water plants, sewer plants, pump stations and well fields, so the Fort Lauderdale City Manager told her that the "payment in lieu of tax" was retitled; there was no dividend. Town Manager Hoffmann believed the newspapers might have been speaking about Fort Lauderdale's apparent institution of a return on investment charge on the sewer side of their operation. This would not affect the Town, as the City of Fort Lauderdale did not treat our sewage, but it affected other cities in a big way; thus, there might be some confusion on the issue. She recommended the proposed resolution be changed to strictly object to the 25 percent surcharge the City of Fort Lauderdale charged municipalities purchasing water from them as it was no longer justified. Neighboring cities should not have to continue paying the surcharge, and there should be some sunseting on that charge. She said state law allowed any city providing water and/or sewer services to add a 25 percent surcharge to customers outside their city; thus, the City of Pompano Beach did this to the Town on the sewer side, and to the Town's northern residents on the water service. The City of Fort Lauderdale did the same in the southern section of the Town. She thought this was the issue to be addressed, and the Town should seek to gather surrounding cities in the same situation, band together and find a legislator to introduce legislation to at least limit the amount of time the 25 percent surcharge could be assessed.

Mayor Minnet opened the meeting for public comment. With no one wishing to speak, she closed the public comment portion of the meeting.

Commissioner Vincent commented it was very unlikely any efforts to get the 25 percent surcharge sunsetted would be successful. How the City of Fort Lauderdale presented the situation of the increases left him displeased; in his assessment of the situation, it appeared the City of Fort Lauderdale was suffering from a \$37 million shortfall in their General Fund and sought ways to recover those dollars. There was consideration given to getting \$10 million by assessing a dividend on the cities to whom they provided water service, as they were permitted to do so if they chose, and they gathered considerable legal opinions to justify their action. He believed the matter was presented by the City of Fort Lauderdale very poorly.

Vice Mayor Dodd believed copies of the resolution should be sent to the cities of Oakland Park and Wilton Manors in order to gather more support and place more

pressure on the City of Fort Lauderdale. He suggested adding Oakland Park and Wilton Manors to line 50 of the resolution.

Mayor Minnet thought the next appropriate step would be to bring the proposed resolution back to the next Commission meeting for a vote with the noted revisions.

Attorney Trevarthen agreed the Town was being taken advantage of, but pitting city against city might not be the best route. She agreed the language of the resolution needed to be reworked to identify the correct language and get its meaning properly understood. The resolution would have to go through the legislative process starting at the state level, and involving neighboring cities in like circumstances was important, as all of Broward County was being affected. She stated their water was partly the Town's but the Town was being made to feel left out, and they would continue to impose dividends on municipalities requiring such services.

Town Manager Hoffmann concurred, stating the Commission need not vote on the item at present; staff would bring the resolution back with the noted changes for a vote at the next Commission meeting. She asked for and received a consensus for Town staff to identify all the utility customer cities in Broward County and establish outreach with them with regard to working toward statutory reform.

14. QUASI-JUDICIAL PUBLIC HEARINGS

There were no hearings.

15. COMMISSION COMMENTS

Vice Mayor Dodd offered condolences to Marjorie Evans on the loss of her husband, Geoffrey Evans. He noted Mr. Evans was an active member and secretary of the CIC. Vice Mayor Dodd congratulated and thanked the Marchelos brothers for declaring their pier a "No Smoking" area; it was recognized that that location was the source of many of the cigarette ends floating upon the Town's beaches.

Commissioner Clotley echoed condolences to Marjorie Evans on the passing of her husband. As chair of the Halloween committee, Commissioner Clotley wishing to volunteer or sponsor a table could contact Town Hall or call her directly. She added, the Town would provide the table, but the table needed to be decorated by the sponsor and include some type of container from which to distribute the candy. Commissioner Clotley said the Broward Metropolitan Planning Organization (MPO) was looking at the privatization of the Tri-Rail system, realizing it was not an issue directly impacting the Town's people. She spoke with numerous persons about Fort Lauderdale's sewer rate increase, and it appeared the truth in some of the information was not properly presented to her. For instance, the Town was told Fort Lauderdale charged hotels by the unit in terms of consumption. She viewed copies of bills and noted that a hotel on A1A using 34,000 gallons of water paid \$574 for sewer fees, yet a restaurant that used 373,000 gallons paid \$1,316.34. She also discovered a small Fort Lauderdale hotel was

charged based on the size of the pipe and how much water flowed through it. Commissioner Clotey felt the Town's tourist industry was being overcharged and was unaware of how hard hit they were. Neither the City of Pompano Beach nor the City of Fort Lauderdale charged their hotels in this manner, and the Town owed it to its small businesses to re-evaluate the present system of assessing such charges. There were those on the dais who felt persons in the southern part of the Town should pay the same rate as those in the northern section; there were reasons for and against this opinion. Commissioner Clotey's opinion was that whatever steps were taken, no profit should be made.

Mayor Minnet invited the Commission to the next Broward League of Cities (BLC) membership meeting on October 20, 2011 and noted there would be incredible seminars prior to the meeting. In light of the new County Ethics Ordinance, it was very important for members of the Town Commission to attend; for instance, there would be a social media seminar beginning at 4:00 p.m. She indicated the Town's membership in the BLC allowed for two dinners for two Commissioners attending those meetings; there was no charge to attend only the social networking seminar. Mayor Minnet thanked Congressman West for attending the Town's beach cleanup; the support of the Chamber and By The Sea Realty was also appreciated in this effort; almost 100 people turned out. She echoed thanks to the Marchelos brothers for extending their no smoking program to the pier. Mayor Minnet mentioned in the previous week, Town Manager Hoffmann and she attended a meeting with County Commission LaMarca; it was a Broward County District Four Mayors Summit. One of the most important things to come out of the meeting was where Broward County was with its Beach Renourishment Project set to start in 2012. She commented it was important to identify what areas of the Town's beaches did not need renourishment. There would be a meeting with the Corp of Engineers on October 17, 2011, to discuss such items to ensure those areas in need were included, and those that needed nothing were protected. She reminded everyone of the Property Owners Association (POA) meeting on October 22, 2011, as well as the Oktoberfest event; on October 18, 2011, Congressman West and County Commission LaMarca would attend a Town Hall meeting. Everyone should attend to ask questions and get involved.

Mayor Minnet recessed the meeting at 8:55 p.m. and reconvened at 9:05 p.m.

16. OLD BUSINESS

a. Alternative Police Services (Town Manager Connie Hoffmann)

Mayor Minnet believed it was important to ensure the contract was a fair and equitable one. She was unsure of the Town's position with regard to alternate police services and believed the issue could be revisited at a future date.

Vice Mayor Dodd stated he campaigned vigorously for the reinstatement of the Town's VFD and felt it was the right decision to fully support them. He had to answer residents and voters who claimed American Medical Response (AMR) were only a quick

ambulance to hospital, and the VFD were not trained to deal with a serious high-rise fire. Vice Mayor Dodd said he looked long and hard at the way the Town conducted its public services with the VFD, AMR and the BSO for police. He was unconvinced that the re-establishment of the Town's own police force, the capital equipment outlay, as well as the pension investments would bring the Town any savings or greater efficiency in the work done by BSO under the current contract. Vice Mayor Dodd noted daily newspaper reports of other municipalities going through financial problems trying to negotiate fire and police services, uniting with BSO in order to save money. He said the Town once had its own police force, and they all wanted to join BSO. Town staff's efforts would be better utilized assessing if the current BSO staffing was the optimum for the Town's desired level of service. He continued to be surprised the Town's police did not have GPS technology to know if all the BSO cars assigned to Lauderdale-By-The-Sea were in the Town at any given time. Vice Mayor Dodd believed that the present police team was a great one and it would only adversely affect morale by suggesting the Town investigate the possibility of establishing its own police force.

b. Commission Direction on the Scope & Design Concept for the East Commercial Boulevard Streetscape Project (Town Manager Connie Hoffmann)

Attorney Nectaria Chakas expressed support for modifying the University of Miami's Streetscape design for Commercial Blvd. They wished to state their thanks and gratitude to the Town Commission and staff for recognizing how vital it was for Aruba Beach Café to have vehicular ingress and egress from Commercial Boulevard to their parking areas. It was an important component of their business operation, as this was where their valet and parking lot were located.

Commissioner Clotley felt the subject plan was a good one but had one major concern. She saw the need to provide some public seating, as the Town's taxpayers were paying for the project. It would allow residents to enjoy the surrounding atmosphere without having to pay to do so; she asked for public seating to be included in the Streetscape Project.

Mayor Minnet asked if the public seating provided at the Pavilion would change.

Town Manager Hoffmann thought Commissioner Clotley's point was, as the sidewalks were being expanded, some form of public seating, and benches should be provided and not have the area all dedicated to sidewalk cafes.

Mayor Minnet sought assurance the seating at the Pavilion would remain unchanged.

Town Manager Hoffmann affirmed there would be no seating changes at the Pavilion.

Mayor Minnet inquired if the Commission had time to review the scope of the subject project, as Town staff needed direction on a number of matters, such as: did the

Commission wish to expand the project to include the A1A intersection and Commercial Boulevard west of Bougainvillea Drive.

Town Manager Hoffmann explained her suggestion to do three rather than two blocks was based on a number of factors: in speaking with the Town's traffic engineer, the latter clarified whatever the Town did between the block of El Mar Drive and A1A would require FDOT and Broward Traffic Engineering approval. Though this was a Town road, it was close enough to a state road that they had some say in such decisions. If the Town had to deal with FDOT and Broward County, then it was best to do so once and add in the intersection of A1A and Commercial Boulevard to the project. Since we had to go 50 feet beyond the intersection, coming close to Bougainvillea Drive, and it made sense in dealing with permitting agencies to go to Bougainvillea Drive; it would give a unifying appearance to do the work in this way. She noted the section between A1A and Bougainvillea Drive was already budgeted for in the Town's Five-Year CIP Plan.

Vice Mayor Dodd commented when critically observing the space devoted to vehicular traffic compared to the pedestrian space, it was clear why the area needed to be redesigned to meet the needs of the businesses. He believed Town staff should look at the westbound traffic seeking to turn south on A1A, as it was a dangerous turn with the junction being offset and the traffic only seen at the last minute. The sidewalks should be widened, landscape the edge of the sidewalk, and have narrower medians with lower plantings; this would provide good sight corridors to the ocean and shade on the sidewalks. He said the parking needed to be kept to a maximum, as this was a major source of visitors to the area; the median could be realigned, shortened to include three parallel spaces. Room could be made for a much larger sidewalk area with shade trees outside the Village Grill and Aruba Beach Café. Appropriate signage and road surfaces would help reduce sightseeing traffic, while allowing vehicles to access the pier and Aruba Beach Café. He believed that shortening the median would allow for a safer pedestrian area immediately west of the Pavilion, keeping the turning traffic in the designated roadway. Vice Mayor Dodd believed Aruba Beach Café needed to keep a two-way entry way onto Commercial, as it was unrealistic and impractical to use the alleyway as the sole exit from that car park.

Mayor Minnet concurred, noting a consensus from the dais to move forward with doing three rather than two blocks. Her concerns were: maintaining adequate parking spaces, the flow of traffic in the area, and parallel parking along that street causing traffic delays. She preferred to see the median completely removed if the designers thought it feasible from a vehicular and safety standpoint to remove them.

Town Manager Hoffmann asked if the Commission wished the removal of the median be included as a preference if it could be done safely.

Mayor Minnet and Commissioner Clotey found this acceptable. However, Vice Mayor Dodd's point should be considered and some sort of dividing line could be included.

Town Manager Hoffmann indicated the University of Miami design suggested the removal of the public parking spaces on the eastern most block of Commercial Boulevard entirely and for the block between El Mar Drive and A1A to switch to parallel parking. Parallel parking was also suggested for the block between A1A and Bougainvillea Drive. In the scope of services, she requested the Town be given more alternatives for parking, per the Commission's desire for a more pedestrian friendly atmosphere; there was no way to accomplish this without removing some parking on Commercial Blvd.

Vice Mayor Dodd commented removing one of the lanes would give considerable space for pedestrians. The traffic engineers had to decide if it was feasible to make eastbound Commercial into one lane between A1A and El Mar Drive.

Town Manager Hoffmann reiterated the fourth issue was how to address the valet parking operation that was likely to increase with the removal of parking spaces. The design needed to address where people would drop off beachgoers and their gear, as access in the last block of Commercial Boulevard would be limited to the pier and Aruba Beach Café.

Commissioner Clotey asked how the businesses on the south side of Commercial Blvd. in that block would be affected.

Town Manager Hoffmann replied unless parking spaces were left in, their patrons would parking at the pier or Aruba Beach Café, or elsewhere.

Mayor Minnet remarked there would be more people walking around shopping rather than driving around looking for parking spaces.

Town Manager Hoffmann received Commission direction to be variable on the parking and explore the options. There was a Commission consensus on the fifth issue to maintaining two-way access to the pier and Aruba Beach Café.

Commissioner Clotey restated the need for more public seating.

c. Emergency Reserve (Finance Director Tony Bryan)

Finance Director Bryan requested Commission direction on what the reserve level should be.

Town Manager Hoffmann indicated a large reserve was not necessary for a category one hurricane. However, with a stronger storm, the potential for damage increased, the \$2.3 million was not unreasonable to have in reserve.

Vice Mayor Dodd inquired as to whether staff asked what the bank would charge for a \$1 million loan in the event of a disaster if a loan had to be taken out with relatively short

notice. Town Manager Hoffmann stated it was dependent on what the interest rates were at the time of the event.

Vice Mayor Dodd noted the Town currently held \$2.3 million, and there was a guarantee FEMA would cover 75 percent, so the \$2.3 million actually represented \$9.2 million; the backup indicated the state guaranteed 12.5 percent. This meant the Town's reserve would go much further, possibly resulting in covering expenses in excess of \$10 million.

Finance Director Bryan pointed out with the monies coming from FEMA, the Town would have to initially front the dollars and wait for the reimbursement from FEMA. Depending on the nature of the work performed, the timeline for the FEMA reimbursement could vary from a few months up to over a year.

Commissioner Clotey stated the purpose of an emergency reserve was to deal with the consequences of a catastrophe and have ready access to funds to make needed repairs. If the Town had to borrow \$7.5 million to add to its reserves while awaiting reimbursement from FEMA, the funds would not be easily accessible. Since Lauderdale-By-The-Sea was on a barrier island, she felt the Town should have \$2.5 million in reserve to carry it through the first few months after a catastrophic occurrence.

Commissioner Vincent noted the Town had a total value for buildings of \$11 million, and he doubted any catastrophe would ever destroy every property in the Town. He did agree the Town needed to have readily available funds to carry it through the months immediately after a disaster. It was prudent to keep a reserve fund with Lauderdale-By-The-Sea being a coastal town; however, the reserve was quite substantial with respect to where the Town was located; it did not need to be much more or less.

Mayor Minnet believed it was important for residents to feel comfortable with the level of the Town's reserve in light of the unique challenges the Town faced due to its location, should a catastrophe occur. She believed \$2.3 million was a strong number with which to address needs in the event of a disaster; no changes were necessary.

17. NEW BUSINESS

a. Issuance of RFP for Banking Services (Finance Director Tony Bryan)

John Oughton stated the last time the Town paid off a loan to SunTrust Bank, it cost the Town over \$300,000 in a prepayment penalty; SunTrust Bank was more interested in their own bottom line and not that of Lauderdale-By-The-Sea. As a member of the Town's Audit Committee, when the subject item came up on the renegotiation of a loan, Finance Director Bryan was able to negotiate a 15 percent penalty free pay down on a loan going forward to avoid having a prepayment penalty at the end of the loan in six years. He asked, with the balances the Town kept with SunTrust Bank, what took place several years ago should never have occurred, and it appeared to be happening again. The Town Commission owed it to the Town's citizens and taxpayers to seriously consider another banking relationship. SunTrust should be glad to hold both the Town's

interest bearing and noninterest bearing accounts; no prepayment penalty should be warranted. This was the opinion of the Audit Committee, hence their recommendation to seek alternate banking services.

Town Manager Hoffmann said Town staff's recommendation was to explore other banking services; they wished to put the RFP out after the annual audit was complete and before the budget process began. Analyzing a bank RFP took considerable effort. She suggested a motion to add the bank RFP to the annual performance goals the Commission set.

Vice Mayor Dodd was in total agreement. He asked why it was necessary to wait until winter 2012 and not do the RFP now.

Town Manager Hoffman remarked Finance Director Bryan was already working up to 9:00 p.m. each day and the Town was in the middle of its annual audit. She respectfully requested staff be allowed the three months to get the bank RFP out.

Mayor Minnet summarized the motion: accept staff's recommendation to send out an RFP for bank services in the winter of 2012 after the completion of the annual audit and before the budget process began.

Commissioner Vincent made a motion as noted. Vice Mayor Dodd seconded the motion. The motion carried 4-0.

b. Commission nomination of a Trustee to the Florida Municipal Insurance Trust (FMIT) Board of Trustees (Town Clerk June White)

Town Manager Hoffmann said the FMIT Board of Trustees requested the item be placed on the Commission agenda.

No nomination was been made.

c. Commission Approval of four (4) Hardship Permit Applications (Town Clerk June White)

Commissioner Clotney stated that when the Town charged \$8 per month for a hardship permit to allow someone to provide two parking spaces to a tenant rather than one, this represented income to the property owner. She thought the rates could be left as is for now but should be revisited in 2012 before new permits were issued.

Vice Mayor Dodd felt the hours for which the permits were being issued should be examined, as they might be for persons staying overnight at hotels; thus, Town staff should examine what hours the Town was losing parking revenue.

Mayor Minnet added two of the four hardship applications were hotels; disallowing those permits would be a serious cost burden, particularly in light of Commissioner Clotney's

earlier comments about the need for the Town to help its hotels. One of the concerns with issuing the hardship permits was that they did help out many of the Town's hotels.

Commissioner Clottey reiterated the need to revisit the issue in 2012.

Mayor Minnet stated she had no problem revisiting the issue. She said an effort was being made to encourage a hospitality market, and Lauderdale-By-The-Sea had a unique environment, having been built out in the '50s and '60s when families had only one car. Mayor Minnet pointed out that lifestyles had changed considerably. She supported looking at the rate structure again in 2012.

Vice Mayor Dodd made a motion to approve the four hardship permit applications. Commissioner Vincent seconded the motion. The motion carried 4-0.

d. Official Date of the Municipal Elections (Town Clerk June White)

Town Manager Hoffmann stated the question raised by a resident was whether the Town Charter contained a specific qualifying period. She requested Assistant Town Attorney Bentley look for those dates and he found none in the Charter.

Mayor Minnet recalled the qualifying dates posted in the newspaper were November 8 through 22, 2011; these were the dates announced by the Supervisor of Elections.

Town Manager Hoffmann indicated the Town Attorney would review the Charter to see if any specific numerical dates were listed.

Mayor Minnet sought clarification on what would take place when a current Commissioner stepped down or chose not to step down until March.

Attorney Trevarthen understood the question but preferred to research the Charter prior to giving an answer; there might be case law on interpreting the Charter. Mayor Minnet acknowledged that Attorney Trevarthen would provide additional information at the next Commission meeting. Town Attorney Trevarthen affirmed she would, stating Town staff needed to also bring back formal action for the Commission to approve the election date.

e. Discussion on approving a Property Owners Association (POA) parking waiver

Mayor Minnet stated the POA requested parking waivers for the three parking lots around Town Hall and at El Prado Park. She requested Town staff's recommendation.

Town Manager Hoffmann said staff consistently recommended against waiving parking fees other than in the Town Hall parking lot.

Mayor Minnet thought most of the property owners should have resident permits. She Minnet did not favor free parking, but would consider handing out passes, as this allowed some measure of control.

Assistant Town Manager Bentley remarked it was a policy dilemma. Historically, the Town allowed organizations to hold meetings at Jarvis Hall and granted free parking in the Town Hall lot, and sometimes in the lot behind Town Hall. Staff was fairly consistent in recommending not to allow free parking town wide or at any of the major lots, due to people going to the beach and the commercial area usage. He said the exception was where some events were co-sponsored by the Town. On the issue of the Woman's Club, they met at their building on West Tradewinds were given free permits to park.

Mayor Minnet said if free parking passes were issued to the Garden Club, then the same treatment should be given to the POA to keep it consistent.

Town Manager Hoffmann pointed out that the Garden Club received a defined number parking passes.

Commissioner Clotey said free parking was offered to the POA in the past and should continue.

Commission consensus was to allow free parking in the front and back of Jarvis Hall, and at El Prado Park for the Oktoberfest event.

Town Manager Hoffmann clarified the reduction in the GDBG grant amount was for the next fiscal year.

18. ADJOURNMENT

Vice Mayor Dodd made a motion to adjourn. With no further business before the Commission, Mayor Minnet adjourned the meeting at 9:50 p.m.

19. FUTURE AGENDA ITEMS

Mayor Roseann Minnet

ATTEST:

Town Clerk, June White CMC

Date

Update on County Commission Ethics Item – Passed at 6 pm 10/11/11

Opinion giving

Page 17, Line 14 as in your backup: Municipal officials will be able to get opinions from city attorney. County Commission will put item on upcoming election to allow/require the Inspector General to give ethics opinions.

Disclosure of compensation (FORM 1)

Page 10, lines 9-10: Changed to annually, instead of quarterly.

Page 10, line 13: Proposal to allow officials to avoid financial disclosure if sworn by employer under oath that it would violate their employment agreement, for the remainder of the current term of office, was rejected.

Page 10, line 13: disclose using Form 1? Failed/withdrawn.

Contracted attorneys and managers

Page 4, line 16: Only covered when acting in their official capacity.

Immediate family member

Page 7, line 18 and lines 22-23: parent, spouse, child, sibling or registered domestic partner, (added that phrase to Section 112.3148 definition).

Strong mayor exception re procurement

Page 16, Lines 20 and 22: Expanded to cover a potential future strong County Mayor.

Lobbying prohibition

Page 11, line 1: Impact on municipal official and immediate family is delayed til end of current term (Resnick amendment). County Attorney concern re impairment of ability to earn a living, impairing their contracts for employment.

Salary from a charitable organization

Page 14, line 16: Salary not required to be disclosed if elected official works fulltime for a charity, and payment of that salary shall not be considered improper. *- adopted*

Effective date of ordinance

Changed from upon approval today to Jan. 2, reportedly at request of League of Cities. County Attorney concern re unconstitutional if affects a pending term of office, but alternate proposal for effective at the end of then pending term was rejected by County Commission. May cause special elections in some cases.

Public input, as recorded by the Sun Sentinel's Brittany Wallman on the Broward Politics blog:

“Here was the public input, sort of in reverse order:

One city official, Suzanne Boisvenue of Oakland Park, spoke in favor of the Code of Ethics, saying, "I see absolute, perfect sense in making ethics the county follows, ethics the cities should follow. Please do not water it down."

Susan Starkey of Davie said the Code of Ethics is unconstitutional. "Why would you do that? Why would you put a law in effect that you know, personally, will be challenged?"

Mayor Gunzburger said, "I'd like to point out, there hasn't been a challenge yet."

Roy Gold, mayor of Coral Springs put sunglasses on because his glasses are broken, then said he recently had brain surgery and might have trouble getting his thoughts out clearly. He wanted to know why his private business affairs (salary) are the public's business.

Hillsboro Beach Commissioner Javier Garcia, who said he's Broward's youngest city official, blasted county commissioners, saying that if the state ethics laws aren't enough for them, maybe they should not be in elected office.

Skeet Jernigan for the Broward Chamber of Non-profit Organizations said he's glad politicians still will be allowed to raise money for charities. But he's a "little" concerned about confusion about the disclosures that must be made in fund-raising and whether they might have a "chilling effect" on the raising of money for charities (by politicians). Jernigan said in Palm, you can ask questions and get clarification on how the ethics code applies, before moving forward. He's one of several who've supported an amendment to the code that would allow politicians to get binding opinions from their city attorneys before making moves that could violate the code.

Joann Hollingsworth of Southwest Ranches is another person saying that the county commissioners passed a Code of Ethics on themselves, as demanded by the voters, and is now "passing this on" to the cities. (Voters gave the county authority to impose ethics laws on the cities, in a separate vote.) She complained that volunteer advisory board members would fall under the code. "You may lose your most valuable assets," your volunteers, she said. "... We will all have to resign. We won't put up with it."

Charlotte Greenbarg of the Broward Coalition, a countywide activist, said she "fervently" supports the new Code of Ethics. She likened the need for the code to the need for the Ten Commandments.

"The corruption in this county has caused this county to be an object of ridicule and disgrace, and whatever we can do You need to enforce these ethics as much as you possibly can, as strict as you possibly can. ... It's really important to regain the support of the electorate -- to begin to regain the support."

Donald Lunny, city attorney for Plantation, reiterated some of the cities' concerns. Also, Plantation has a strong-mayor style of government and supports a provision in the code that would treat cities with that form of government slightly differently.

Cooper City Mayor Debby Eisenger argued against city officials having to reveal their outside salaries.

Michael Long, a Lighthouse Point commissioner, said he only makes \$1,800 a year as a commissioner and works on the side as a fundraiser and administrator for non-profits. He argued against having to reveal contributors he solicits to give to the charities.

Thomas Dorsett, a commissioner in West Park, said the code treats them "like children." He objected to having to reveal some of the things required.

Commissioner Linda Sherwood from Hollywood, said the code should be made clear that commissioners can "lobby" or appear before other governmental bodies when they serve on committees or boards and are acting in an official capacity. She also complained that the new inspector general allows people to file complaints anonymously. She said that shouldn't be allowed. She also complained about having to record every time someone lobbies her. Broward Mayor Sue Gunzburger told her "but you will have training. You will have eight hours of training" to learn the requirements.

Southwest Ranches Council Member Doug McKay told the Broward commissioners that the code was "put on you all" and should not be put on them. He said "we're going to have council members who will resign" and "good people won't step up to run" if elected officials have to reveal their side salaries.

Broward Mayor Gunzburger told McKay the voters agreed this code could be imposed on the cities, not just the county."

HANDBOUT TA
RE: BLETNICS ORD

ITEM #6

**ADDITIONAL
AGENDA
MATERIAL**

**SUBMITTED BY
COMMISSIONER LOIS WEXLER**

**FOR MEETING OF
OCTOBER 11, 2011,
2:00 P.M. PUBLIC HEARING**

BROWARD COUNTY COMMISSION
PROPOSED AMENDMENT TO ORDINANCE

Proposed By Commissioner Lois Wexler Date 10/11/11

Subject of Ordinance Municipal Officials Code of Ethics Ordinance #
if existing _____

On Page 10, Line 9, strike
quarterly

Proposed Amendment _____ Adopted _____ Not Adopted By Board _____

BROWARD COUNTY COMMISSION
PROPOSED AMENDMENT TO ORDINANCE

Proposed By Commissioner Lois Wexler Date 10/11/11

Subject of Ordinance Municipal Officials Code of Ethics Ordinance #
if existing _____

In Page 10, Line 10,

Insert after "Office.":

The disclosure referenced in the preceding sentence shall be done quarterly by County Commissioners and annually by Municipal Officials.

Proposed Amendment _____ Adopted _____ Not Adopted By Board _____

BROWARD COUNTY COMMISSION
PROPOSED AMENDMENT TO ORDINANCE

Proposed By Commissioner Lois Wexler Date 10/11/11

Subject of Ordinance Municipal Officials Code of Ethics Ordinance #
if existing

On Page 10, Line 13,

Insert:

To the extent complying with the disclosure requirement contained in this paragraph would violate any written agreement to which a Municipal Official is a party, the Municipal Official shall file, for public inspection, a statement specifying how such violation would result from the required disclosure. Upon filing such statement, the Municipal Official shall not be required to comply with that portion of the disclosure requirement that would result in a violation of the written agreement for the balance of the Municipal Official's current term of office as of the effective date of this Ordinance (such disclosure requirement shall apply in full upon commencement of a new term of office after the effective date hereof, even if such new term results from the re-election of a currently-serving Municipal Official).

Proposed Amendment Adopted Not Adopted By Board

ITEM #6

**ADDITIONAL
AGENDA
MATERIAL**

**SUBMITTED BY
COMMISSIONER ILENE LIEBERMAN**

FOR MEETING OF

**OCTOBER 11, 2011,
2:00 P.M. PUBLIC HEARING**

BROWARD COUNTY COMMISSION
PROPOSED AMENDMENT TO ORDINANCE

Proposed By Commissioner Ilene Lieberman Date 10/11/11

Subject of Ordinance Municipal Officials Code of Ethics Ordinance #
if existing _____

On Page 4, Line 16,

Insert after "officer":

, when such individual is acting in his or her official capacity

Proposed Amendment _____ Adopted _____ Not Adopted By Board _____

BROWARD COUNTY COMMISSION
PROPOSED AMENDMENT TO ORDINANCE

Proposed By Commissioner Ilene Lieberman Date 10/11/11

Subject of Ordinance Municipal Officials Code of Ethics Ordinance #
if existing

On Page 7, Line 18,

Insert:

10. "Immediate Family Member" means a parent, spouse, minor child, sibling, or registered domestic partner.

Proposed Amendment Adopted Not Adopted By Board

BROWARD COUNTY COMMISSION
PROPOSED AMENDMENT TO ORDINANCE

Proposed By Commissioner Ilene Lieberman Date 10/11/11

Subject of Ordinance Municipal Officials Code of Ethics Ordinance #
if existing _____

On Page 7, Lines 22-23, strike

and the term "immediate family" shall be as defined in Florida Statutes section 112.3148

Proposed Amendment _____

Adopted _____

Not Adopted By Board _____

BROWARD COUNTY COMMISSION
PROPOSED AMENDMENT TO ORDINANCE

Proposed By Commissioner Ilene Lieberman Date 10/11/11

Subject of Ordinance Municipal Officials Code of Ethics Ordinance #
if existing _____

On Page 16, Line 20, strike
of municipalities

Proposed Amendment _____

Adopted _____

Not Adopted By Board _____

BROWARD COUNTY COMMISSION
PROPOSED AMENDMENT TO ORDINANCE

Proposed By Commissioner Ilene Lieberman Date 10/11/11

Subject of Ordinance Municipal Officials Code of Ethics Ordinance #
if existing _____

On Page 16, Line 22, strike
municipal

Proposed Amendment _____ Adopted _____ Not Adopted By Board _____

BROWARD COUNTY COMMISSION
PROPOSED AMENDMENT TO ORDINANCE

Proposed By Commissioner Ilene Lieberman Date 10/11/11

Subject of Ordinance Municipal Officials Code of Ethics Ordinance #
if existing _____

On Page 34, Line 14,

Insert after "spouse,":

minor

Proposed Amendment _____ Adopted _____ Not Adopted By Board _____

Item #6

**ADDITIONAL MATERIAL
2:00 p.m. Public Hearing
OCTOBER 11, 2011**

SUBMITTED AT THE REQUEST OF

MAYOR SUE GUNZBURGER

1. **Isn't it true that we – as County Commissioners – have legislative immunity when we act within the normal scope of our duties to adopt ordinances and policies, such as when we adopt the enabling legislation for the County Ethics Code?**

See: *Bogan v. Scott-Harris*, 523 U.S. 44 (1998). (Local legislators [city/county commissioners] are entitled to the same absolute immunity from civil liability under §1983 for their legislative activities as has long been accorded to federal, state, and regional legislators. ... In this context, a "legislative" act is "an integral part of the deliberative and communicative processes by which legislators participate in committee and legislative proceedings" as well as any act that relates to "the consideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of the legislative body.)

2. **Isn't it true to the Florida Constitution and Florida Statutes explicitly have permitting lobbying restrictions/bans – restrictions that remain good law today – suggesting that lobbying restrictions/bans are in fact constitutional? Don't Article II, Section 8(e), Florida Constitution, and Section 112.313(9), Florida Statutes, contain lobbying bans and are both currently considered to be "good law" and constitutional?**

See: Article II, Section 8(e), Florida Constitution: "No member of the legislature or statewide elected officer shall personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or member for a period of two years following vacation of office. No member of the legislature shall personally represent another person or entity for compensation during term of office before any state agency other than judicial tribunals. Similar restrictions on other public officers and employees may be established by law."

Also: Section 112.313(9): "No member of the Legislature, appointed state officer, or statewide elected officer shall personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or member for a period of 2 years following vacation of office. No member of the Legislature shall personally represent another person or entity for compensation during his or her term of office before any state agency other than judicial tribunals or in settlement negotiations after the filing of a lawsuit."

3. **Isn't there a legal presumption of validity and constitutionality in all our legislative actions, if and until such time as they are successfully challenged in court?**

See: *Orange County v. Costco Wholesale Corp.*, 823 So.2d 732, 737 (Fla. 2002) ("Because the challenged ordinance embodies a policy decision of broad application, it reflects a legislative action, rather than conduct that would be classified quasi-judicial. ... The subject ordinance was, therefore, entitled to a presumption of validity. ... [Courts should always start a review of an ordinance] with the presumption of constitutionality and the general rule that courts should try to uphold the constitutionality of the enactment when lawfully possible to do so.")

Item #6

**ADDITIONAL MATERIAL
2:00 p.m. Public Hearing
OCTOBER 11, 2011**

**SUBMITTED AT THE REQUEST OF
MAYOR GUNZBURGER**

Fear, Nancy

From: Gunzburger, Suzanne
Sent: Tuesday, October 11, 2011 10:53 AM
To: Fear, Nancy
Subject: FW: Vote Today for a better government throughout Broward

Yellow sheet this for PH #6.



Sue Gunzburger, Mayor
Broward County Commission - District 6
Phone 954-357-7006 Fax 954-357-7129
www.broward.org/sue



From: Walt Jolliff [mailto:jolliff@bellsouth.net]
Sent: Monday, October 10, 2011 7:23 PM
To: Sharief, Barbara; Lamarca, Chip; Holness, Dale; Lieberman, Ilene; Jacobs, Kristin; Wexler, Lois; Ritter, Stacy; Gunzburger, Suzanne; Rodstrom, John
Subject: Vote Today for a better government throughout Broward

Just a few thoughts based upon previous comments;

Voters fed-up with public corruption are finally getting their wish.

Please read, they are insisting upon it as they voted for this and are probably pretty tired of the delay.

Every public official in every hall of government in Broward's 31 cities will have to live under the new set of rules after it's approved Oct. 11 by the Broward County Commission.

Yes, and if it is good enough for the county commissioners then surely it is good enough for all other elected officials.

After Broward residents watched politician after politician humiliated with public corruption charges that snared city commissioners, county commissioners, and school board members.

It embarrassed and frankly upset many honest voter/taxpayers to watch the spectacle of trusted public officials hanging their heads in court.

"When are the cities going to have a Code of Ethics?"

Take notice: Mayor Debbie Eisinger stonewalled, fought using personal attacks, and numerous 'politicks' to squash several attempts by her fellow commissioner, John Sims, to

have a code of ethics at the municipal level that would ensure the integrity of the actions of everyone.

Now Mayor Eisinger resorts to the lowest level of using the code of ethics as a deterrent to the fundraising efforts of charitable organizations. I wonder how many donations to organizations have been made as a "favor" to certain elected officials.

The main concern remains that the rule is so tough to live by, politicians will be unwittingly tripped up.
When you are elected and placed in a trusted position you are expected to be smart enough not to do some unwittingly (read Stupid) action.

Waiting to punish violators will be new Broward Inspector General John Scott, whose entire office is set up to do just that.

I am glad to hear that somebody is going to do something about violators. Lord knows, we have all given up hoping Mr. Satz will.

*Please Vote today to end this freewheeling atmosphere that has had no real restrictions and virtually no enforcement.
The voters have waited long enough.*

Thank You

Walt Jolliff

ITEM #6

**ADDITIONAL
AGENDA
MATERIAL**

**SUBMITTED BY
COMMISSIONER LOIS WEXLER**

FOR MEETING OF

**OCTOBER 11, 2011,
2:00 P.M. PUBLIC HEARING**

BROWARD COUNTY COMMISSION
PROPOSED AMENDMENT TO ORDINANCE

Proposed By Commissioner Lois Wexler Date 10/11/11

Subject of Ordinance Municipal Officials Code of Ethics Ordinance #
if existing _____

On Page 10, Line 9, strike
quarterly

Proposed Amendment _____ Adopted _____ Not Adopted By Board _____

BROWARD COUNTY COMMISSION
PROPOSED AMENDMENT TO ORDINANCE

Proposed By Commissioner Lois Wexler Date 10/11/11

Subject of Ordinance Municipal Officials Code of Ethics Ordinance #
if existing _____

On Page 10, Line 10,

Insert after "Office.":

The disclosure referenced in the preceding sentence shall be done quarterly by County Commissioners and annually by Municipal Officials.

Proposed Amendment _____ Adopted _____ Not Adopted By Board _____

