



# AGENDA ITEM REQUEST FORM

Item No. 3C

**Town Attorney**

**Susan Trevarthen**

Department Submitting Request

Dept Head's Signature

**REGULAR**  
**COMMISSION MTG**  
**Meeting Dates - 7:00 PM**

**DEADLINE TO**  
**Town Clerk**

**ROUNDTABLE**  
**MEETING**  
**Meeting Dates - 7:00 PM**

**DEADLINE TO**  
**Town Clerk**

- April 27, 2011
- May 24, 2011
- June 28, 2011
- July 26, 2011

- April 15 (5:00 pm)
- May 13 (5:00 pm)
- June 10 (5:00 pm)
- July 15 (5:00 pm)

- April 12, 2011
- May 10, 2011
- June 14, 2011
- July 12, 2011

- April 1 (5:00 pm)
- April 29 (5:00 pm)
- June 3 (5:00 pm)
- July 1 (5:00 pm)

**SUBJECT TITLE: LEGAL FEES**

**EXPLANATION:** Explanation of factors affecting legal fees this fiscal year and proposed budget for next fiscal year.

**EXPECTED OUTCOME:** Commission discussion and direction on next year's budget for legal fees.

**RECOMMENDATION:**

**EXHIBITS:** Memo dated 6/10/2011 from Town Attorney

**FISCAL IMPACT AND APPROPRIATION OF FUNDS:**

Town Manager Initials CA

# Memo

To: Mayor and Town Commission, Town of Lauderdale-By-The-Sea

From: Susan L. Trevarthen, Town Attorney

Cc: Connie Hoffmann, Town Manager

Date: June 10, 2011

Re: **Legal Expenses**

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As scheduled last October, this memo analyzes the Town's legal expenses to date for Fiscal Year 2010-11, in preparation for the next budget cycle. Some of the same issues that drove the Town's expenses last year have carried over to the current fiscal year. Some of the more significant special projects or non-recurring items this year include:

- **Labor:** Continued litigation and activity related to terminations of personnel in the last fiscal year. Most recently, this has included the filing of litigation by John Olinzock, and continued activity related to the claims filed by Kaola King. Together, these matters have cost about \$25,000. The Town Manager has indicated that most of this has been reimbursed by the League of Cities.
- **Reef:** The coral reef agreement, which was heavily negotiated several times and involved changes of policy direction from the Town Commission, necessitating several rewrites and revisions of that agreement. About half of that was part of last year's budget, and half was in this year's budget. The expense for this project was approximately \$24,000.
- **Solid Waste:** Resolving issues with the implementation of solid waste hauling contract for multi-family uses and for live-work units, which involved negotiations, code amendments and a contract amendment. This also crossed budget years, and was active in the first quarter. We also dealt with various inquiries on interpretation of the agreement and billing and enforcement of solid waste charges, the acquisition of the Town's hauler, and the County's proposed solid waste disposal ILA and the recent amendment to that ILA in this fiscal year. Together, solid waste issues were under \$10,000.
- **Town Properties:** An analysis of the real estate and land use constraints for all Town-owned properties and rights of way, in preparation for implementing the Town's Master Plan and other Town priorities. This work cost approximately \$10,000, with an additional \$4,000 in charges for title searches by a title company.
- **Code/Lien:** The implementation of the lien mitigation program, including one with heavy legal argumentation (\$14,000 of which was recovered from the applicant). The mitigation orders approved by the Town Commission resulted in revenue to the Town of nearly \$200,000, more than offsetting the costs of all involvement with the Code process. Also, we have gotten involved in the code enforcement and unsafe structures process as requested by the Town Manager, to

assure that matters are being handled correctly and resolve issues earlier in the process and, once that process is updated, these costs will decrease. We also provided analysis and advice on the nuisance abatement process.

- Purchasing: Procurement documents and contracts related to the FDOT LAP improvements on A1A, including project management component, compliance with state requirements, and review or drafting of various contracts.
- Parking: The overall revamp of the parking system. The revisions to parking regulations for private property and the Town's public parking system had many different demands for legal services. Many aspects of this work involved several revisions and additional meetings, as the Commission and staff developed the policy direction. These included:
  - Preparation or review of procurement documents and contracts for studies and equipment (agreements to pay by credit card, centralized meters, parking study, etc.).
  - Extensive revisions to both Chapter 30 (paid private parking, conditional use, restaurant exemption program, procedure for manager to approve small deviations, in lieu fee, revision to shared and offsite parking regulations, etc.) and Chapter 19 (changes to fees and operational rules).
  - The valet parking pilot program.
  - Evaluation of status of parking requirements, approvals, and potential nonconformities for key private parking locations around the Pavilion.
  - License agreements for parking, such as with Benihana.
- LDRs: Increased activity on land development regulations other than parking, including drafting, revision of review of:
  - Continued implementation of parking and signs Notices of Intent from last year and development and implementation of additional Notice adopted in February
  - Revised business uses, including language to address pill mills
  - Creation of conditional uses and related procedure and review of flexibility unit regulations
  - Revisions to walls and fences and to generator fuel tanks
  - Policy changes to sign code, including signs in the right of way
  - Revisions to Notice of Intent process
  - Outdoor seating and sidewalk cafes

As always, litigation expenses cannot be easily projected, because they are dependent on the actions of courts and opposing parties, as well as client decisions affecting the strategy and conduct of the case. This year, litigation expenses included the labor items noted above, as well as the following:

- New litigation from Buena Vista regarding the solid waste hauling contract. Through May, the expense of this new litigation matter has been about \$15,000.
- Suing Commercial A1A (Wings) to obtain title to the dedicated parking lot, as directed by the Town Commission. This cost about \$6,000.
- Little activity on the Harris Act cases, primarily due to delays in getting court hearings. The hearing on our motions to dismiss the refiled complaints is scheduled for the fourth quarter.

There have been items where the Town received the benefit of lower fees because of our work as a municipal firm over time, or because of the Town's past investments in issues. The savings include:

- Comprehensive plan amendments, where very little time was incurred other than reviewing the proposed language, because of our existing knowledge about all of the state mandates to which these amendments related. Similarly, the permit extension issues benefitted from previous work.

- Charrette preparation on the Charter issues was quite low, because of the time spent in the last fiscal year analyzing this issue for the potential referenda on height.
- The County solid waste disposal ILA and amendment issues involved very little cost (less than \$2,000), because other cities took up the issue first and, when the Town needed services, many of the costs were shared across multiple cities.
- For the Broward County ethics regulations and the League's proposal for regulation of municipalities, the cost of meeting attendance, following and analyzing this issue since the election, and preparing summaries was divided among several cities, totaling less than \$4,000.
- An analysis of the First Amendment law on holiday displays requested by the Town Manager, which will aid in avoiding future conflict and litigation over this issue. This involved very significant and complicated analysis of a frequently litigated issue, but because of our experience with these issues, it cost the Town only about \$2,000.

There are also several items where the Town Manager has assisted by handling matters in order to minimize costs.

- Forms: We had proposed developing approved forms for purchasing related documents previously, and requested that staff use our forms rather than those provided by other parties. With the assistance of the Town Manager and her staff this year, we were able to develop and provide form RFP and form RFQ documents reflecting the Town's needs, which are an investment and have already significantly reduced the attorney time involved in the Town issuing procurement documents. We are also developing a form construction contract with staff.
- Public Safety: The BSO amendment and renewal matters were handled by the Town Manager with minimal attorney time. The revised VFD agreement was also handled by the Town Manager with minimal attorney time.
- Analysis of Code/Plan/Charter: The Town Manager had Cecelia Ward develop the analysis of charter, code and plan for the Town, and allowed us to be in a review and comment mode, which was helpful in providing expertise not on Town staff and reduced attorney time.
- Manuals: The Town Manager took the lead on drafting the revisions to the purchasing and personnel manuals, allowing us to be in review and comment mode and reducing our time. These manuals are not yet implemented, but will be a big help in reducing legal demands in the future.
- The Town Manager has worked with her staff to aid us in reducing the number of times that we need to see things and to assure that we promptly get all of the information needed to review items, and progress has been made in this regard.

This demonstrates that the Town Manager and I have followed through in our commitment to work together to contain legal costs for the Town. However, the Town has been extremely busy in the first three quarters, and legal services have been part of most of those activities. The Town is currently recruiting an experienced planner for the Development Services Department, and this should result in lower fees once that person is up to speed. However, until this change is made and other new members of staff are fully integrated, it is difficult to accurately project what the new normal may be for overall fees.

As always, we only do those tasks that the Town Commission or Town Manager assign us to do, so the legal expenses rise and fall in relation to the level of activity. As an example, our lightest month this year was half the cost of the heaviest month, due to the level of activity in Town. May was the lowest month for legal expenses to date this fiscal year, and it is possible that the final quarter will be, on average, lower in expense than the first three quarters due to the our continued efforts to contain costs.

The budget for legal fees this year, exclusive of litigation, is \$360,000. The budget for litigation this year was only \$40,000, for a grand total of \$400,000. The following chart summarizes the status, and projections for the remainder of the year:

<b>FY 2010-11 LEGAL EXPENSES</b>		
<b>ACTUAL (rounded)</b>		
<b>MATTERS</b>	<b>10/10 – 5/11 (8 mos)</b>	<b>NOTES</b>
General Work and Meeting Attendance	\$155,000	
Labor Advice and Public Safety	\$11,000	
Municipal Prosecutions, Code Enforcement, Lien Issues	\$34,000	Reimbursed for additional \$14,000 in legal cost recovery. Lien mitigations were paid, in the amounts approved by the Town Commission: 1937 Ocean Mist Dr. - \$24,000 1955 Blue Water Terr. S. - \$16,500 Ocean Medical (4001 Ocean Dr.) - \$153,000
Land Use and Zoning	\$76,000	
<b>TOTAL for 8 months</b>	<b>\$276,000*</b>	
Litigation (with labor litigation and claims)	\$24,000	Florida League of Cities is reimbursing Town for additional \$17,000 on labor matter
<b>GRAND TOTAL for 8 months</b>	<b>\$300,000*</b>	
*Projected total for FY 10-11 = \$405,000 general and \$40,000 litigation		

Certain items that could have significant legal involvement can be projected to be part of the next fiscal year’s activity. These include:

- Litigation: Continuation of pending litigation matters, until resolved by courts or settled by the Town.
- Election: The 2012 election, and any related transitional changes or issues. The boundaries study for the Town’s electoral districts.
- Comprehensive Plan: The 2012 deadline for the Town’s Evaluation and Appraisal Report, with related plan amendments to follow within one year. The Commission has indicated it wants to make changes to better fit the Town’s current vision, Cecelia Ward has identified issues that must be resolved, and that set of plan amendments must respond to the requirements of the new growth management statute.
- Solid Waste: The renewal or bidding of the solid waste hauling contract.
- Implementing Plans: Any actions the Town Commission may decide to take to implement the recommendations of the revised master plan, charrette and other recent planning activities. Implementation of the revisions to the land development regulations recommended by Cecelia Ward and the pending “to do” list.
- Charter Review: The Charter Review board process.

We have already agreed last year to forego any increase in the hourly rate in our agreement with the Town for the 2011-12 fiscal year. Based on current trends and after consultation with the Town Manager, we propose to budget for \$390,000 in legal expenses (with the understanding that all litigation may not necessarily be contained within that amount).