



Item No. 2P

AGENDA ITEM REQUEST FORM

Development Services

Department Submitting Request

J. Bauer
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

- Nov 9, 2010
- Dec 7, 2010
- Jan 25, 2011
- Feb 22, 2011
- Mar 22, 2011

- Oct 29 (5:00 pm)
- Nov 30 (5:00 pm)
- Jan 14 (5:00 pm)
- Feb 11 (5:00 pm)
- Mar 11 (5:00 pm)

- Nov 22, 2010
- Dec 14, 2010
- Jan 11, 2011
- Feb 8, 2011
- Mar 8, 2011

- Nov 12 (5:00 pm)
- Dec 3 (5:00 pm)
- Dec 30 (5:00 pm)
- Jan 28 (5:00 pm)
- Feb 25 (5:00 pm)

*Subject to Change

SUBJECT TITLE: Ordinance 2011-06 (Exhibit 1) Proposed Amendments to Chapter 30-313 (32), Generator Regulations.

EXPLANATION: The current code limits the size of generator fuel tanks to 250 gallons for all zoning districts. Florida Statute 553.509 requires multi-family dwellings 75 ft. or taller and containing a public elevator to provide an alternate power source for emergency lighting, fire alarms and elevator service over a five day period following a natural disaster. Staff has received information indicating that a 250 gallon tank is not sufficient for large multi-family buildings to be able to meet the requirements of the statute. A 250 gallon tank also may not be large enough to accommodate the emergency service needs of larger commercial establishments. Therefore, the Town's code needs to be amended to provide greater flexibility for larger buildings in order to meet emergency needs. Staff is recommending that the size of fuel storage tanks be increased for the business and muliti-family zoning district maintaining screening and shielding of the tanks.

PLANNING AND ZONING BOARD RECOMMENDATION: On February 16, 2011 the Planning and Zoning Board reviewed the proposed amendments and recommended approval

STAFF RECOMMENDATION: Staff recommends approval.

EXHIBITS: Exhibit 1- Ordinance
Exhibit 2- P&Z Minutes

FISCAL IMPACT AND APPROPRIATION OF FUNDS:

- Amount \$ _____ Acct # _____
- Transfer of funds required From Acct # _____

Reviewed by Town Attorney
 Yes No

Town Manager Initials CA

Exhibit 1

Ordinance 2011-06

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ORDINANCE 2011-06

AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, AMENDING ARTICLE V "ZONING" OF CHAPTER 30, UNIFIED LAND DEVELOPMENT REGULATIONS, OF THE CODE OF ORDINANCES, BY AMENDING SECTION 30-313 GENERAL PROVISIONS TO REVISE REQUIREMENTS FOR GENERATORS AND RELATED FUEL STORAGE TANKS; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION, AND AN EFFECTIVE DATE

14 **WHEREAS**, the Town Commission recognizes that changes to the adopted Code of
15 Ordinances are periodically necessary in order to ensure that the Town's land development
16 regulations are current and consistent with the Town's planning and regulatory needs; and

17 **WHEREAS**, the Town's land development regulations provide requirements and
18 guidelines related to the use and location of generators and related fuel storage tanks; and

19 **WHEREAS**, Florida Statutes require certain minimum operational capacity for
20 generators in certain multi-family structures following a natural disaster; and

21 **WHEREAS**, the Town Commission desires to revise the regulations for generators and
22 related fuel storage tanks to allow uses to comply with Florida Statutes and to better regulate
23 generators and related fuel storage tanks; and

24 **WHEREAS**, Section 30-531 of the Code requires issuance of a Notice of Intent prior to
25 the processing of any amendment to the land development regulations in Chapter 30 of the Code,
26 and such notice was given of this amendment on January 25, 2011; and

27 **WHEREAS**, the Planning and Zoning Board, sitting as the Local Planning Agency, has
28 reviewed this Ordinance at a duly noticed public hearing on February 16, 2011, and provided a
recommendation of approval of the Ordinance; and

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2. The generator shall not, at any time or for any purpose, exceed the maximum decibels allowed at the property line as set forth in Section 13-6 of the Code.
3. The highest point on the generator shall not exceed a maximum of seven feet above the neighboring property owner's grade.
4. The generator is completely screened from the neighboring property owners by a wing-wall (~~three-sided-wall~~), at least four feet high or the same height as the generator (including the height of the exhaust muffler), whichever is greater.
5. The generator's exhaust is, as much as practically feasible, vented upwards or directed away from neighboring properties.
6. The generator shall be used only during periods of power outages or for periodic testing and necessary maintenance operation and shall not be used to sell power back to a power company or for use by power customers during periods of peak demand.
7. The generator shall be operated for routine testing and maintenance purposes not more than one time in any seven-day period and no test shall exceed 30 minutes. Testing of emergency generators is permitted Monday through Thursday only (excluding holidays), between the hours of 11:00 a.m. and 12:00 p.m. or 2:00 pm. and 3:00 p.m.
8. Testing may be conducted when the unit is being repaired, provided that such testing period shall not exceed 30 minutes and shall be conducted only between the hours of 10:00 a.m. and 5:00 p.m. Monday through Saturday, excluding holidays.
9. Generators are not permitted on the roof of a building.

(b) Provided that a portable or permanent generator is permanently or temporarily placed on the ground, on a stand, or on a trailer and is not located within required side or rear yard setback areas, the following conditions shall apply:

1. If the generator's output capability is greater than 60KW, it shall be placed on the property only in conformance with the setback requirements applicable to a principal structure.

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2. The generator shall not, at any time or for any purpose, exceed the maximum decibels allowed at the property line as set forth in subsection (a) (2) of this section.
3. If the generator's output capacity is greater than 100 KW, it shall be subject to site plan review as defined in Section 30-121 of the Code of Ordinances and shall be housed in an enclosed building with landscaping as approved by the Planning and Zoning Board.
4. If the generator is greater than 60KW and is 100KW or less, and is visible from a street or public way, it shall be completely screened from the neighboring properties by a wing wall (~~three-sided wall~~), at least four feet high or the same height as the generator (including the height of the exhaust muffler), whichever is greater.
5. If the generator is 60KW or less and is visible from a street or public way, its location shall be subject to approval by the Planning and Zoning Board. Intervening landscape material shall not be considered when determining a generator's visibility.
6. The generator's exhaust is, as much as practically feasible, vented upwards or directed away from neighboring properties.
7. The generator shall be used only during periods of power outages, periods of power reductions resulting from the exercise of utility load control programs or for periodic testing and necessary maintenance operation and shall not be used to sell power back to a power company.
8. The generator shall be operated for routine testing and maintenance purposes not more than one time in any seven-day period and no test shall exceed 30 minutes. Testing of emergency generators is permitted Monday through Thursday only (excluding holidays), between the hours of 11:00 a.m. and 12:00 p.m. or 2:00 pm. and 3:00 p.m.
9. Testing may be conducted when the unit is being repaired, provided that such testing period shall not exceed 30 minutes and shall be conducted only between the hours of 10:00 a.m. and 5:00 p.m. Monday through Saturday, excluding holidays.
10. Generators are not permitted on the roof of a building.

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(c) Notwithstanding subsection (a), the Director of Development Services or designee may grant a setback waiver allowing a generator with an output capability in excess of 60KW to be located within a required side or rear yard setback, provided the applicant submits to the town a site plan and evidence or testimony substantiating each of the following conditions:

1. The output of a 60 KW or less generator is incapable of providing enough electricity for the basic necessity of occupying a building and/or protecting interiors or possessions in a building from the damaging effects of prolonged loss of power.
2. The proposed location is not merely for the convenience or preference of the applicant, but that there is no other location outside of the required setbacks that will provide for safe placement of the generator.
3. The proposed location represents the minimum intrusion into the required setback(s) necessary to safely accommodate the generator.

(d) The following requirements shall apply to fuel storage tanks for generators for single family and duplex structures:

1. Above ground fuel storage tanks shall be subject to the same setback and location regulations for generators provided in this subsection. One (1) above ground tank not to exceed six (6) feet in height and two hundred fifty (250) gallons shall be permitted. Up to two (2) above-ground tanks, not to exceed a total collective capacity of two-hundred- fifty (250) gallons, and subject to the requirements of this subsection, shall be allowed in lieu of one (1) two-hundred-fifty (250) gallon above-ground tank. Above ground fuel storage tanks shall be completely screened from the neighboring property owners by a ~~wing~~-wall (~~three-sided-wall~~) at least four feet (4) high or the same height as the tank itself.
2. In lieu of an above ground fuel storage tank, one (1) underground fuel storage tank, not to exceed five hundred (500) ~~two-hundred-fifty (250)~~ gallons, shall be permitted subject to the same setback and location regulations for generators provided in this subsection. However, underground fuel storage tanks may be located within the required front yard setback provided it is not located within five (5) feet of any public right of way or utility easement.

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~~3. All fuel storage tanks shall be properly permitted in accordance with all applicable county, state, and federal regulations.~~

(e) The following requirements shall apply to fuel storage tanks for generators for all other structures (excluding single family and duplex):

1. All tanks shall be subject to the same setback and regulations for generators provided in this subsection. Fuel storage tanks shall comply with the Florida Building Code (FBC) and the Florida Fire Prevention Code (FFPC).

2. Any tank over 1,000 gallons, not located within an enclosed building or underground, shall be subject to site plan review as defined in Section 30-121 of the Code of Ordinances.

3. Underground fuel storage tanks may be located within the required front yard setback provided they are not located within five (5) feet of any public right of way or utility easement.

4. All tanks shall be completely screened from the right-of-way and neighboring properties by a ~~wing~~ wall ~~(three-sided wall)~~. If the wall exceeds the maximum height of walls within the zoning district, but it is the minimum height necessary to adequately screen the tank, then this section shall prevail over any other wall height restrictions.

(f) All fuel storage tanks shall be properly permitted in accordance with all applicable county, state, and federal regulations.

(eg) If an administrative waiver is not granted pursuant to subsection (c) the applicant may appeal the administrative decision to the Board of Adjustment pursuant to Section 30-7 of the Code.

SECTION 3. Severability. If any section, sentence, clause or phrase of this Ordinance is

held to be invalid or unconditional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

262 **SECTION 4. Conflicts.** All ordinances or parts of Ordinances and all Resolutions or
263 parts of Resolutions in conflict with the provisions of this Ordinance are hereby repealed.

264 **SECTION 5. Codification.** This Ordinance shall be codified.

265 **SECTION 6. Effective Date.** This Ordinance shall become effective immediately upon
266 adoption on second reading.

267 **SECTION 7. Adoption.** Passed on the first reading, this __ day of _____, 2011.

268 Passed and adopted on the second reading, this __ day of _____, 2011.

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Mayor Roseann Minnet

278 Mayor Minnet
279 Vice-Mayor Dodd
280 Commissioner Clotney
281 Commissioner Sasser
282 Commissioner Vincent

First Reading

Second Reading

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_____	_____

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284 Attest:

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287 _____
288 Town Clerk, June White

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290 (CORPORATE SEAL)

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292 Approved as to form:

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295 _____
296 Susan L. Trevarthen, Town Attorney
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Exhibit 2

P&Z Minutes of February 16, 2011

February 16, 2011 P&Z Minutes

Item #3: Proposed Amendments to the Unified Land Development Code (Generators)

Mr. Bowman indicated the current Code on generators limited the size of fuel tanks for generators to 250 gallons, which staff discovered was not large enough to meet the demands of highrise buildings. State Statute said if the building was 15 or more stories with an elevator, it must be possible to run the elevator's emergency equipment and fire suppression systems in the event of a disaster for five days. On a tank of 250 gallons, this would be impossible. Staff recommended revising this portion of the Code; specifically, the language in section d for single family and duplex structures that were recently added also applied. Under number two, the size of underground tanks was increased from 250 to 500 gallons but kept 250-gallon size to aboveground tanks. Section e dealt with all other districts, including commercial and multi residential buildings. The language basically said if the building owner was in compliance with the Florida Fire Prevention Code, they were permitted to install a tank with a capacity greater than 250 gallons. He noted that if the tank exceeded 1,000 gallons and was not located underground or in a garage, they had to go through site plan review. He proceeded to provide a slide presentation for further illustration of tank sizes and their location.

Mr. Wick questioned if the proposed changes regarding tank size was relatively standard for other Broward municipalities.

Mr. Bowman affirmed this to be the case, noting staff checked with other districts.

Mr. Wick sought confirmation such practices appeared not to have led to any adverse outcomes.

Mr. Bowman answered, no, they had not.

Mr. Yankwitt asked, from a safety standpoint, why the tanks were being allowed above ground at all; it seemed such tanks would be safer underground.

Mr. Bowman replied to the negative as to 250-gallon tanks being placed above ground posing a safety issue.

Vice Chair Brandt queried as to section d for the aboveground tanks for single family and duplexes, whether they had setback requirements. He was viewing the situation from a perspective of functionality.

Mr. Bowman affirmed there were setback requirements, referring to the last sentence of subsection one pertaining to the enclosure and screening requirements of the tank from neighboring properties.

Town Attorney Mehaffey commented, under section a(1), if the generator was less than 60 Kilowatts, the required setback was five feet from the property line; if the generator was over 60 kilowatts, the generator and the tank would have to be setback according to the setback requirements for the principal structure under section b(1). Under section d, the first sentence said single family and duplex tanks were subject to the same setbacks and location requirements for generators; that is, the requirements set forth in a1 and b1.

Vice Chair Brandt observed some tanks were round in nature and wondered if it were possible for most single family homes to put a tank next to their home and still meet the setback requirements, or would the tanks have to go below ground in the front or backyard; it was a matter of functionality.

Mr. Bowman believed most tanks found at single-family homes and duplexes would be under 60 kilowatts.

Vice Chair Brandt indicated his neighbors had them both below and aboveground, and most of those sat in the front yard, while others had them to the side of their homes. He wondered if he had to install a generator on his property, would he have to pull up his entire driveway to place it in the front yard. It appeared to be more of a safety matter for many residents having quick and easy access to their generators. If there had to be a fence around the generator, blocking its view from the neighbors, what was the goal of the setback requirement; as the surrounding wall had to be at least four feet high?

Mr. Wick responded it was for aesthetic purposes, as with most setbacks; the neighbor would likely oppose having a generator and/or tank too close to their property.

Mr. Bowman explained a setback for generators was specified but he was unaware of a specified setback for tanks.

Town Attorney Mehaffey repeated her earlier statement regarding setback for tanks at single family homes and duplexes being the same as for generators, as indicated on the first line of section d1 and e1.

Vice Chair Brandt felt section e1 had much more opportune space. He wished to devise a way to make it possible for more residents to have the tanks/generators, as the southern portion of the Town did not have ready access to natural gas or propane, and tanks were necessary if they wanted to install a generator. Most homes to the south of the Town would have to put the tank below ground due to their inability to meet setback requirements. Thus, residents would find the situation cost prohibitive with regard to installing a generator/tank.

Mr. Yankwitt wanted to know if there were any facts and figures available as to the value of a property with a belowground tank versus above ground, and whether an aboveground tank reduced property value.

Mr. Bowman said he was unaware of such data, and an above ground tank would be hidden from view by a wing wall.

Mr. Yankwitt stated he felt wary of the disadvantages of having an above ground tank, including possible vandalism, effects of lightening, etc.

Mr. Wick made a motion, seconded by Mr. Yankwitt with a request for further discussion, to pass Item #3 to amend Section 30-313 to increase the allowable size of fuel storage tanks for generators within the Multi-family and Business Districts to the Town Commission for approval as presented by staff.

Mr. Yankwitt wished to amend the language, changing the wording from aboveground to placing all tanks belowground; even if the setback and wall requirements could be satisfied, an aboveground tank was an eyesore.

Town Attorney Mehaffey sought clarification the motion was for all tanks to be placed below the ground for single family, duplexes and commercial properties.

Mr. Yankwitt responded only for single family homes.

Vice Chair Brandt questioned if Mr. Yankwitt desired single family properties to be separated from duplexes as to how the amendment should be applied.

Mr. Yankwitt affirmed this to be the case.

Mr. Hunsaker inquired if the entire ordinance was before the Board for consideration or was it just the amendment.

Vice Chair Brandt answered the entire ordinance was before the Board.

Mr. Yankwitt felt there were safety and aesthetic issues and made a motion to add an amendment to the main motion to change section d. (1) requiring all single family homes to place fuel tanks underground. The motion died due to lack of a second.

There being no further amendments to the main motion, a roll call vote was taken to pass Item #3 to amend Section 30-313 to increase the allowable size of fuel storage tanks for generators within the Multi-family and Business Districts to the Town Commission for approval as presented by staff. The motion carried 3 – 1. Mr. Yankwitt voted in the negative.