

# TOWN OF LAUDERDALE-BY-THE-SEA

## TOWN COMMISSION

### WORKSHOP MEETING

#### MINUTES

Jarvis Hall

*4505 Ocean Drive*

**Tuesday, November 29, 2011**

**5:30 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 Clotley, Commissioner Scot Sasser, Commissioner Chris Vincent, Town Attorney Susan L. Trevarthen, Town Manager Connie Hoffmann and Town Clerk June White.

#### 2. ITEMS FOR DISCUSSION

- a. Understanding the Broward County Ethics Ordinance as Applied to Municipal Elected Officials (Town Attorney Susan Trevarthen)

Attorney Trevarthen introduced Robert Meyers, a partner of the law firm Weiss Serota Helfman Pastoriza Cole & Boniske. Mr. Meyers was an expert on the subject matter. She reviewed the backup material with the aid of a PowerPoint presentation, reminding the Commission the Broward County Code of Ethics that was being discussed was applicable only to municipal elected officials. A new ordinance was soon to govern appointed officials and staff members of municipalities. There were three key points the Town Commission should remember, 1) for any questions/concerns related to the County's ethics ordinance, they should not to hesitate to consult her; 2) the Commissioners' only clear protection under the ethics ordinance was a "safe harbor opinion"; that is, a Commissioner must submit a written, signed request to the Town Attorney and she would, in turn, render a personal, written response. If the Commissioner subsequently followed the direction in her response, that was considered a safe harbor opinion. This opinion had to be given prior to any action transpiring on the Commissioner's part, and this would protect the Commissioner from enforcement for a violation under the County ethics code if the action was based on her direction; and 3) no Commissioner should walk away from the present workshop thinking the points discussed were all inclusive. The presentation was a condensed version, sufficient to get the Commissioners on the path of becoming familiar with the County's ethics code.

Commissioner Clotley noted the Town's Volunteer Fire Department (VFD) contacted some members of the Commission on placing smoke detectors in their homes; she declined the offer, as she had no wish to be given something special over anyone else.

Attorney Trevarthen replied details of such a situation should be reduced to writing and included in a request for specific legal advice. Conceptually, if the VFD offered the service to all Town residents, Commission members could accept it.

Commissioner Clotey asked if the number of smoke detectors being offered were limited, should residents receive them rather than the Town Commission.

Mr. Meyers stated if the Commission was being offered smoke detectors by the VFD before they offered them to the general community, this could be an issue.

Attorney Trevarthen said these were very fact-sensitive inquiries. At times it would depend on how broadly the benefit was being made available, so it was important to have a specific and clearly defined question with all the facts set out.

Mayor Minnet asked if Attorney Trevarthen preferred to make a full presentation rather than answer questions throughout the presentation.

Attorney Trevarthen preferred to do the presentation first, as the details of the presentation would likely address many questions. She resumed the presentation.

Commissioner Vincent asked how many times an elected official could accept gifts of under \$50 in any given period.

Mr. Meyers said he was unsure of the answer under the County's new ethics ordinance for municipal elected officials. In Miami-Dade County, it was cumulative per quarter; so a commissioner accepting three gifts in one quarter valued under \$50 might be in violation of the ordinance. He saw no attempt to address such a question by the Broward County Attorney, but he would investigate the matter further.

Attorney Trevarthen resumed her presentation, posing various scenarios that Mr. Meyers responded to in order to illustrate how to interpret the subject ordinance.

Mayor Minnet sought clarification on the rules if a municipal elected official accepted a gift, regardless of how small, from a registered lobbyist from another municipality.

Attorney Trevarthen noted the language of the ethics ordinance specified a registered lobbyist of the same town in which the elected official served.

Mayor Minnet stated vigilant recording keeping would be required.

Attorney Trevarthen concurred with the Mayor, stating Town Staff was devising a system that was in real time, so whenever a lobbyist registered with the Town, the information would be disseminated to the Town Commission.

Mr. Meyers commented on the matter of a lobbyist registered in another municipality, as the appearance of impropriety should be minimized, including the acceptance of gifts from an outside lobbyist. They discussed types of relatives not authorized to accept gifts.

Commissioner Sasser inquired as to whether lifelong friends fell into that category.

Mr. Meyers responded if the lifelong friend was identified as a contractor, vendor, potential supplier, and lobbyist for the Town, etc., the elected official nor his family could accept gifts from those individuals.

Attorney Trevarthen stated the relevance of a lifelong friend was the \$50 gift limitation; it applied if it was an official capacity gift, but there was no limit on value if it was a personal gift.

Mayor Minnet asked what would happen if a relative failed to alert the elected official.

Mr. Meyers replied they were working on a solution to this aspect of the ordinance. It was reasonable to believe such a situation might arise, and the defense would be based on the level of communication with the offending relative.

Vice Mayor Dodd questioned what the status would be if the elected official paid for a gift he/she received up to an amount that reduced the value of the gift to below \$50.

Attorney Trevarthen replied if the individual was not a contractor, vendor or lobbyist, it might be acceptable.

Commissioner Vincent stated many individuals had estranged family members. The ordinance's language could be misconstrued in so many ways.

Attorney Trevarthen commented the Mayor and Commissioners asked questions raised by many other elected officials. She reviewed examples of what the ordinance considered "close relatives." It might be necessary to have a family meeting to make relatives aware of the restriction imposed on them by the ordinance; this task could be more difficult for elected officials out of touch with qualifying "close relatives" for many years.

Commissioner Sasser asked what an elected official could do if they were notified by a relative of a potential violation, told the relative it could be a violation of the Ethics Code, and the latter chose to follow through with the action anyway. He asked, at what point was the situation out of the elected official's hands, and the type of recourse available if a relative refused to submit to the County's ethics ordinance?

Mr. Meyers thought the refusal of the relative to adhere to the ordinance would be a good defense for the elected official, providing they could present supporting evidence.

Commissioner Clotley asked what to do if the value of the gift was unknown.

Mr. Meyers replied the elected official had to ascertain the value of the gift; they had to undertake some due diligence when it came to the value of gifts.

Attorney Trevarthen mentioned some of the experiences at the County included County Commissioners walking around paying \$1.50 for a bottle of water at an intergovernmental meeting, as the two governments had contracts together. They were carrying bottles of water in their trunk and trading the warm bottles for cold ones. She believed there might be various ways to handle such situations, but it would be burdensome and required a certain amount of unavoidable bookkeeping.

Vice Mayor Dodd asked if domestic partner or significant other was included in the list mentioned by Town Attorney Trevarthen.

Attorney Trevarthen answered no, but under the definition of immediate family, spouse and domestic partner were listed. This was a drafting glitch.

Mr. Meyers concurred, as immediate family included domestic partner, but a relative's domestic partner was not included.

Town Attorney Trevarthen stated "registered domestic partner" was the phrase in the County's Code of Ethics, and they were construed as covered by that rule.

Mr. Meyers commented the spirit of the law would cover a domestic partner. They resumed the presentation of various scenarios. A commissioner's second cousin was not included in the definition of "relatives." He reiterated the zero tolerance rules with respect to certain classes of individuals interacting with the Town.

He discussed the issue of what constituted a potential vendor/supplier; they were trying to establish standards to say who or what company could technically do business with Lauderdale By-The-Sea. This was significant in deciding whether to accept a personal gift from an entity that was not currently doing business with the Town.

Attorney Trevarthen pointed out it was not just "who" were those people; it was "when" were those people vendors or potential suppliers, as there was a time dimension involved as well.

Commissioner Vincent noticed there was a reference made to a third party, asking if a Commissioner would be violating the ethics code if they were hired as a subcontractor by an engineer who also contracted to work for the Town.

Attorney Trevarthen reiterated this was the type of question that should be posed by a Commissioner to the Town Attorney, so the answer could be relied upon. She added when Commissioners attended the monthly dinner meeting at the Broward League of Cities (BLC), it was not considered a gift.

Vice Mayor Dodd asked how the County's ethics ordinance would affect campaign contributions. If a Commissioner/candidate threw a party and had invited guests who were residents, as well as a licensed contractor/vendor with the Town, would such a campaign contribution be illegal?

Mr. Meyers replied a campaign contribution was not considered a gift under the County's code of ethics. Assuming there were no other ordinances that prevented a candidate from accepting campaign contributions from vendors, a campaign contribution from a vendor was acceptable, as it was not considered a gift under the subject ordinance. If a registered Town lobbyist wished to host a fundraiser for a currently serving Commissioner, under the County's ethics ordinance, the cost to host the fundraiser would not be considered an impermissible gift, as it was connected to the campaign.

Mayor Minnet noted the Town currently had contracts with the Chamber of Commerce, the VFD and the Broward Sheriff's Office (BSO).

Town Attorney Trevarthen commented they were considered contractors and could not provide gifts.

Mayor Minnet asked about events the Town cosponsored with local restaurants/hotels.

Attorney Trevarthen replied a right-of-way agreement between the business and the Town was considered a contract. The definition was very broad.

Mr. Meyers stated if a business simply needed a permit or a license to operate in the Town, he felt this did not create the contractor relationship. On the issue of the Broward County School Board, the County said the School Board was contracting with the Town, and Commissioners could not accept gifts from the School Board and its employees.

Attorney Trevarthen concurred the Town had an Interlocal Agreement, a contract, with the School Board; thus, they were a contractor with the Town.

Mr. Meyers indicated Town Commissioners could not accept an offered bottle of water at a meeting held at the Pompano Beach City Hall, as the Town had a water use agreement with that city. Town Commissioners could not accept free admission to a Chamber event that all others had to pay to attend; there was zero tolerance of gifts from the Chamber, as they were contractors with the Town.

Mayor Minnet asked how a situation would be handled if a Commissioner purchased tickets to an event at which a raffle was held and all ticket holders were considered as participants, and the Commissioner won the raffle.

Attorney Trevarthen thought concerns might arise in such a situation; it was more of an appearance question than a technical violation. She reiterated the appearance of

impropriety was the legislative intent and was not necessarily an independent, enforceable offence; caution should be exercised in such situations.

Town Manager Hoffmann remarked sometimes the BLC dinner was sponsored by a private company that was a potential vendor, such as by Waste Management.

Attorney Trevarthen indicated they had numerous discussions on such an instance, and their working conclusion thus far was this represented a gift to the League and not the individual attendees.

Mr. Meyers felt no true conclusion had been reached on the subject matter.

Attorney Trevarthen was unaware of the BLC intending to change its practices in any way in response to the County's Ethics Ordinance. They would continue to investigate that issue.

Mr. Meyers stated a case in which a Commissioner contracted the services of a company providing similar services to the city in which he/she served. They would not be violating the County's ethics code if they accepted a dinner invitation from the contractor to discuss personal business even if the meal exceeded \$50. Under state law, salary, fees, gifts, etc. primarily associated with a Commissioner's employment, business or service as an officer or director of a corporation did not constitute a gift. However, the appearance of impropriety was a risk.

Town Manager Hoffmann asked if a Commissioner attending a dinner at a contractor's home and brought a gift such as a bottle of wine equivalent in value to the cost of the meal, would that negate the consideration of the meal as a gift.

Attorney Trevarthen responded no. She related anecdotes where elected officials wrote checks at events to offset the cost of anything they received that could be perceived as a gift.

Mayor Minnet noted many elected officials had numerous personal friendships with a wide variety of business people countywide.

Attorney Trevarthen next discussed outside concurrent employment.

Mr. Meyers stated Commissioners were not allowed to lobby council members of another city in private, but they could make a statement at a public hearing. The lobbying restrictions extended to their immediate family. He noted there were certain situations in which elected officials could refrain from reporting compensation, but they would have to state the reason for not divulging the compensation.

Attorney Trevarthen added the elected official's outside employer would have to submit a letter swearing they were contractually bound not to discuss salary.

b. Lobbyist Registration Ordinance and Other Issues in Implementing the  
New Ethics Requirements (Town Attorney Susan Trevarthen)

Mr. Meyers reviewed the ethics guidelines surrounding an elected official's communications with registered lobbyists and the record keeping guidelines contained in the County's ethics ordinance. The responsibility of keeping a record rested with the lobbyist if the meeting occurred at Town Hall. Outside of Town Hall, the burden of keeping a record of meetings rested with the elected official; the report had to be made prior to the vote on the issue of discussion and within ten days of the lobbying activity. He explained any communication with a lobbyist, whether in person, by phone, email, etc. could constitute a form of lobbying; it needed to be disclosed.

Attorney Trevarthen stated the Town's administration would create a log with places for all relevant information to be entered.

Commissioner Sasser asked if the rules extended to contractors as well as lobbyists.

Attorney Trevarthen answered no, the contact logs would be different, as contact logs were only required for communications with registered lobbyists.

Mr. Meyers mentioned elected officials should not meet with unregistered lobbyists; lobbyists needed to be registered with the Town prior to communicating with an elected official. Lobbyists had an obligation under the County's ethics ordinance to register with the municipality in which they intended to lobby.

Mayor Minnet sought direction on a situation where she might receive an emailed invitation sent out to numerous persons, one of whom was a registered lobbyist with the Town, and she failed to notice the lobbyist's name. Even if she did not attend the function, she wished to know where the burden of proof lay in such a scenario.

Mr. Meyers responded it seemed that the forum had to be related to some contact regarding municipal business; if not, it should not trigger the need to record the contact.

Attorney Trevarthen mentioned the Town's legal staff was looking at devising a set of agreed procedures that several municipalities would follow, illustrating a good faith group effort to enforce the County's ethics ordinance for municipal elected officials.

Vice Mayor Dodd asked about employment restrictions, as the VFD had a contract with the Town. Did this mean no member of the dais could serve with the VFD?

Mayor Minnet added the BSO and the Chamber should be included, as they were all vendors with the Town, and she recalled the County's ethics ordinance stated an elected official could not be a vendor or contractor of the Town.

Attorney Trevarthen affirmed this to be the case.

Mayor Minnet thought clarification was necessary, as she recalled in the past, there were two members of the VFD serving on the dais. She resigned from the Chamber as a member, as did Commissioner Vincent.

Attorney Trevarthen believed no such situations currently existed, but the answer was likely to be yes, it would constitute a violation of the County's ethics code.

Vice Mayor Dodd expressed concern when a member of the Commission was appointed to be liaison on the Town's main contracts, either on a selection committee or a request for proposal (RFP), etc.

Attorney Trevarthen responded that the Ethics Ordinance prohibited elected officials from serving on selection committees. She added that she would need to look at the liaison process and provide guidance on it.

Mr. Meyers continued, stating an elected official could lobby the County, for example, for a park in their city, as long as the elected official lobbied in their official capacity. There was also an exception for commissioners meeting with officers of homeowners associations (HOA), condominium associations and nonprofit entities. He explained a commissioner who sat on the board of a 501C (3) nonprofit organization could solicit a donation on behalf of the nonprofit organization; the commissioner would have to file a form that would be available for public inspection that included the name of the nonprofit organization, etc. Activities by commissioners to solicit contributions for a city-sponsored charity event did not need to be reported. Mr. Meyers commented, generally, municipal elected officials were not required to cease outside employment while they served; in the event they worked for a charity organization, their work was permitted as long as it was on their employer's behalf, and they did not have to report such activities. Commissioners were allowed to solicit contributions for candidates of other municipalities, but they needed to fill out the required form for public inspection; such solicitations could not be made from the Commissioner's government office. There was a prohibition under federal, state and county law pertaining to soliciting contributions in any government-owned building. On the matter of procurement, Mr. Meyers stated a commissioner could not serve on the selection committee for the procurement of a construction firm for a municipal building. He said if a Commissioner received legal advice from the Town Attorney via telephone, this was not sufficient to protect them in the event a violation of the County's ethics code resulted from subsequent actions taken due to that verbal legal advice. Along with a written, signed request for legal direction, the facts provided by the elected official had to be accurate and relevant.

Vice Mayor Dodd queried how the legal opinions rendered under the safe harbor option were being paid for; it seemed to qualify as an unfunded mandate.

Attorney Trevarthen responded there was a debate at the County Commission whether to allow the County Attorney to play such a role for both the County and the cities regulated by county ordinance. The County Commission decided against it, as they did

not want the economic impact of servicing such numerous needs. The Town, like all other Broward municipalities, would have to absorb the resource demands of compliance with the County's ethics ordinance. She affirmed it was an unfunded mandate.

Town Manager Hoffmann asked if an electronic signature in an email constituted an acceptable signature on a safe harbor request to a town attorney.

Attorney Trevarthen replied there was a statute stating electronic signatures could be relied upon. Their tentative opinion was electronic signatures were acceptable.

Town Manager Hoffmann questioned if her contract as Town Manager meant she was a contractor with the Town.

Attorney Trevarthen felt herself to be a contractor with the Town, and thought Town Manager Hoffmann was a contractor with the Town as well.

Mr. Meyers concurred; he saw little difference between contracting for the services of a Town Attorney and doing the same for a Town Manager.

Attorney Trevarthen commented the definition of a contractor was very broad. She mentioned forms had to be developed; they had to be posted on the Town's website and made available to the public among the practical procedures they would have to put in place. She restated the effective date of the new Ethics Ordinance from the County took effect January 2, 2012.

Mayor Minnet remarked the Town was expanding its use of Town-certified vendors; every Commissioner needed to be aware of this fact.

Attorney Trevarthen mentioned the lobbyist registration ordinance that the Commission passed on first reading; the second reading was on December 13, 2011.

### 3. ADJOURNMENT

Vice Mayor Dodd made a motion to adjourn. With no further business before the Commission, Mayor Minnet adjourned the meeting at 7:00 p.m.

---

Mayor Roseann Minnet

ATTEST:

---

Town Clerk, June White

---

Date