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Memo

To: Charter Review Board, Town of Lauderdale-By-The-Sea

From: Susan L. Trevarthen, Town Attorney

Cc: Connie Hoffmann, Town Manager

Date: June 13, 2012

Re: **History of Height Restrictions**

Following is a chronology history of the height restrictions in the Town of Lauderdale-By-The-Sea.

- 1973** Voters approve ordinance with first height limits in what is now the RM-25 district - 3 stories or 33' above normal grade, excepting elevator shafts and stairways. Minimum 8' finished floor elevation. Normal grade not defined.
- 1998** Charter amendment creates 3 over 1: limit of 4 stories/44' if grade level used for parking, lobby and service uses. Otherwise, 3 stories/33'. Reconstruction allowed following disaster or plan to rebuild if within time limit, to prior height and square footage, or that height and square footage needed to obtain same number of habitable stories. Shall not apply to property annexed after 1998. Lower zoning height requirements retained. Citizen standing created. Specifically authorizes Town Commission the power to raise the height limit in zoning districts to charter height limits, without voter approval.
- 2003 & 2006** Overlay districts enacted by Town Commission. If follow overlay district, can have 4 stories above normal grade (or 44'). If build to 4 stories, must comply with applicable charter restrictions. Exceptions for elevator shafts, mechanical equipment and enclosures, stairways, and for rooftop parapet walls, safety railings and chimneys not more than 4' tall, all not exceeding 10% of horizontal roof area.

Normal grade defined as minimum finished floor elevation or 18" above crown of roadway, whichever is greater, unless parking on ground level. For parking levels, grade is lowest nonhabitable floor elevation. For fences and privacy walls, actual elevation adjacent to fence or wall applies.

In order to be eligible for height under overlays:

- At least 2 contiguous lots
- Removal of back out parking/reduce paved swale

Article VII of Charter – History of Height Restrictions

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- Eliminate nonconformity or increase quality of development
- Minimum lot width = 100'
- If on Bougainvillea, only if combined with lots facing A1A

2004 Charter amended as provided by Charter Review process

2006 Charter amended by resident petition – height limits applied to north, other changes.
(This is the current charter – no later amendments. See 2009 Report that summaries the current charter provisions.)

Key dates:

- May 2005 Notice of Intent, declaration of zoning in progress and referendum on new buildings
- November 2005 Residents file height petition
- March 2006 Resident Charter Amendment re height limit passes
- May 2006 Notices regarding Harris Act claims on moratoria and zoning in progress
- July 2006 AGO determining that citizen initiative is government action for purposes of Harris Act
- Nov 2006 Town 180 day letter: Harris Act claims not ripe
- March 2007 Harris Act claim notices re ordinances limiting height
- August 2007 Town 180 day letter: Harris Act claims not ripe
- 2009: Harris Act claims filed in court
- June 2010: Court dismisses Harris Act claims as not ripe; does not dismiss equitable claims

2008 Overlay districts repealed by Town Commission

2009 Competing proposals for 2010 charter amendments on height considered. Both proposed 44' limit Townwide. One proposed 33' for the south end of Town (dividing line was Pine Avenue); the other proposed 44' in specified areas of the south end. Both clarified the measurement of height, so that it was from a point 18" above the crown of the adjacent roadway. Ordinances failed on first reading, and were not placed on ballot.

2012 Charter Review Board examines Article VII.

It seems whenever height restrictions are discussed, there are various recollections about what happened when. To assist the Board, we have included two packets of historical documents; the first packet includes documents related to the Charter and the second packet related to the Town's Land Development Regulations.

TOWN CHARTER

1. Current Article VII of the Charter, Planning and Zoning (1-4)
2. Ordinances 2009-33 and 2009-34 (alternative ordinances to place amendments to the charter height restrictions on the 2010 ballot)
 - Ordinances (5-30)
 - Minutes of Town Commission meeting, December 1, 2009: first reading of Ordinances (failed) (31-33)
 - Memo from Town Attorney, November 24, 2009 re Ordinances (34-35)
 - Minutes of Town Commission workshop, October 26, 2009: direction to draft Ordinances (36-38)
 - Town Commission meeting October 13, 2009: (39-61)
 - Minutes of discussion
 - Agenda Items re potential height referendum
 - Power point from Town attorney
 - Memo from Town Manager with Town Attorney's draft referendum questions, November 12, 2009 (62-83)
 - Minutes of Town Commission workshop, May 13, 2009, re potential height referendum (84-86)
3. Resolution 2006-08 (2006 height referendum) (87-97)
 - Excerpt of revised charter reflecting passage of referendum on Section 7.1
 - Minutes of Town Commission meeting, April 11, 2006
4. 2004 Charter – Article VII (98-105)
5. 1998 Ordinance #399 charter amendment re height (106-113)
 - Minutes of Town Commission meeting, January 27, 1998: third reading of Ordinance (114-116)

Sec. 7.1. - Maximum height for buildings established; referendum vote required for increases in zoned residential-district height limits.

- (1) No building within the jurisdictional boundaries of the Town, as they existed on March 20, 2006, shall have more than four (4) stories above grade, and the maximum height of buildings within the Town that have four (4) stories above grade shall be forty-four (44) feet above grade, as defined in the Florida Building Code, or above a horizontal plane eighteen inches above the crown of the roadway at the highest point adjoining the property on which the building is located, whichever of those two levels is higher. The maximum height for all other buildings within the Town shall be thirty-three (33) feet
 - (a) Above grade, as defined in the Florida Building Code, or
 - (b) Above a horizontal plane eighteen inches above the crown of the roadway at the highest point adjoining the property on which the building is located, or
 - (c) Above the minimum elevation for a habitable, finished floor permitted under applicable federal or Florida state regulations,

Whichever of those three levels is highest. Height shall be measured from the applicable base level specified above to the highest point on a flat roof, or to the median elevation between the peak of a sloped roof and the lowest edge of the sloped roof. In accordance with the Florida Building Code, bulkheads and penthouses used solely to enclose stairways, tanks, elevator machinery or shafts or ventilation or air conditioning apparatus shall not be included in determining building height; all other roof structures, including parapet walls, shall not exceed four feet in height above the maximum allowed building height.

- (2) In any building within the Town that has more than three (3) stories above grade, the first story shall be at grade level and shall be used for parking, either with or without toll collection booths. The first story may also be used for storage, refuse, security, registration, maintenance, and/or access, either with or without a lobby, provided that at least one-half ($\frac{1}{2}$) of the square footage of the first story is used for parking. Only within districts of the Town zoned for business ("B") use, the first story of buildings having more than three (3) stories above grade may also be devoted to non-residential commercial uses, provided that dedicated parking required by Town ordinance or code for the proposed buildings is provided off-street at a location on or adjacent to the property on which the buildings are situated, and designed so as to enable the parked vehicles to egress the parking space without having to back out into traffic. In any building within the Town that has more than three (3) stories above grade, the first story shall be restricted to the above enumerated uses, and may be used for no other purpose whatsoever. For the purposes of this provision of the Charter, a story is at grade level if its floor is at or below grade and its ceiling is above grade; a story that is at grade level is also above grade. Nothing in this paragraph shall be construed so as to prohibit any building within the Town that has more than three (3) stories above grade from also having one (1) or more subterranean stories below grade, provided, however, that in any building within the Town that has more than three (3) stories above grade, all subterranean stories shall be subject to the same restrictions on use as are established in this paragraph for the first story.
- (3) Buildings which exceed thirty three (33) feet above grade, and which exceed thirty three (33) feet above the horizontal plane eighteen inches above the crown of the roadway at the highest point adjoining the property on which the building is located, but which are nevertheless allowed under subparagraph (1)(c) of this Section, and which do not include a

- non-habitable first floor with ample parking as required by Town ordinance or code, in accordance with the number and type of units in those buildings, must have dedicated off-street parking at a location on or adjacent to the property on which the buildings are situated. Parking for buildings in this category must be designed so as to enable the parked vehicles to egress the parking space without having to back out into traffic.
- (4) All existing buildings within the Town that were legally in compliance with existing height and use restrictions on March 20, 2006, or were grandfathered on that date, but that either exceed the maximum building height limit established in paragraph (1), above, of this section of the Charter, or that fail to comply, where applicable, with the restrictions on use established in paragraph (2), above, of this section of the Charter, (hereinafter referred to as "Non-conforming Buildings") shall be considered legal, but non-conforming.
- (5) Notwithstanding the maximum building height limit established in paragraph (1), above, of this section of the Charter, an existing non-conforming building may be replaced by a new nonconforming building when, and only when:
- (a) The existing non-conforming building has:
- (i) Been destroyed by fire, natural disaster, or other act of God; and
 - (ii) The property owner has submitted and received Town approval of a site plan depicting the replacement building; and
 - (iii) Construction of the replacement building is commenced within twelve (12) months of the date of destruction; or
- (b) The existing non-conforming building is:
- (i) Demolished as part of a Town approved redevelopment of the property; and
 - (ii) Prior to demolition, the property owner has submitted and received Town approval of a site plan depicting the replacement building; and
 - (iii) Construction of the replacement building is commenced within six (6) months of the date of site plan approval.
- (c) The Town Commission may grant one (1) or more six (6) month extensions to the time periods for commencement of construction established in paragraphs (5)(a)(iii) and (5)(b)(iii), above, provided a written request for extension is filed with the Town Clerk prior to (in the case of a first request for extension) the expiration of the initial applicable time period for commencement of construction or prior to (in the case of a subsequent request for extension) the expiration of the most recent extension of the applicable time period for commencement of construction.
- (d) All new non-conforming buildings constructed pursuant to the provisions of either paragraph (5)(a) or (5)(b), above, shall comply, where applicable, with the restrictions on use established in paragraph (2), above, and the provisions for parking availability established in paragraph (3), above, of this section of the Charter.
- (e) The maximum allowable height of any new non-conforming building constructed pursuant to the provisions of either paragraph (5)(a) or (5)(b), above, shall not exceed the original height of the non-conforming building which it replaces, plus any additional height which (because of the requirements of state or federal law, or because of the restrictions on use established in paragraph (2), above, of this section of the charter) may be necessary to obtain the same number of habitable stories as was contained in the original non-conforming building. Nothing in this section of the Charter shall be construed to prevent a new non-conforming building from being constructed to a lesser height or from containing fewer habitable stories than that of the original non-conforming building which it replaces. For the purposes of this provision of the

- Charter, the term "habitable story" means any story or part thereof that is used as a home or place of abode, either permanent or temporary, by one (1) or more persons.
- (f) The maximum allowable square footage of any new nonconforming building constructed pursuant to the provisions of either paragraph (5)(a) or (5)(b), above, shall not exceed the original square footage of the non-conforming building which it replaces, plus any additional square footage which (because of the requirements of state or federal law, or because of the restrictions on use established in paragraph (2), above, of this section of the Charter) may be necessary to obtain the same number of habitable square feet as was contained in the original non-conforming building. Nothing in this section of the Charter shall be construed to prevent a new nonconforming building from being constructed either with less total square footage or with less habitable square footage than that of the original non-conforming building which it replaces. For the purposes of this section of the Charter, the term "habitable square footage" means the square footage of that portion of a building that is used as a home or place of abode, either permanent or temporary, by one (1) or more persons.
- (6) The maximum building height limits, the restrictions on use and the maximum allowable square footage, and the provisions governing parking established in paragraphs (1), (2), (3) and (5), above, of this section of the Charter, shall be applicable to all real property located within the boundaries of the Town as the boundaries exist on March 20, 2006.
- (7) Every resident of the Town shall have the standing to enforce the maximum building height limits and the maximum allowable square footage established in paragraphs (1), (2) and (5), above, of this section of the Charter, by means of a suit in equity seeking either mandamus; prohibition; or any combination thereof, but nothing in this provision of the Charter shall be construed to either create a cause of action at law for money damages, or to authorize a court of equity to award money damages as an incident to equitable relief, or to authorize an award of attorney's fees to the prevailing party or to any other party.
- (8) The maximum building height limit established in paragraph (1), above, of this section of the Charter, supersedes any existing zoning ordinance or land development regulation to the extent that said zoning ordinance or land development regulation establishes anywhere within the Town a maximum building height limit greater than that established in paragraph (1), above, of this section of the Charter, but nothing in this section of the Charter shall be construed to supersede, modify or repeal any existing zoning ordinance or land development regulation that establishes anywhere within the Town a maximum building height limit lower than that established in paragraph (1), above, of this section of the Charter.
- (9) The Town Commission may not increase, by ordinance or by variance, the maximum building height limits established in paragraphs (1) and (5), above, of this section of the Charter, nor may the Town Commission modify, amend or repeal, by ordinance or by variance, the restrictions on use established in paragraph (2), above, or the provisions for parking availability established in paragraphs (2), (3) or (5), above, of this section of the Charter, nor may the Town Commission increase, by ordinance or by variance, the maximum allowable square footage established in paragraph (5), above, of this section of the Charter. The maximum height limits established for residential zoning districts including, but not limited to, R-5, RS-4, RS-5, RD-10, RM-15, RM-16, RM-25 and PUD in the Town's land development code as of March 20, 2006, may be increased, or such districts re-zoned for any other use whatsoever, only by a referendum vote of the registered voters of the Town in the manner established in Article IV, Section 4.7 [50] of this Charter for the repeal or amendment of initiated ordinances. The Town may not create new categories of zoning

- without approval of such categories by a similar referendum vote; and all provisions of such new categories of zoning must be submitted to the voters for approval.
- (10) The maximum building height limits established in paragraphs (1) and (5), above, of this section of the Charter, may be increased only by an amendment to or by repeal of this section of the Charter. The restrictions on use established in paragraph (2), above, and the provisions governing parking availability established in paragraphs (2), (3) and (5), above, of this section of the Charter, may be modified, amended or repealed only by an amendment to or by repeal of this section of the Charter. The maximum allowable square footage established in paragraph (5), above, of this provision of the Charter, may be increased only by an amendment to, or by repeal of this section of the Charter. Except as expressly provided below, this section of the Charter may be amended or repealed only by means of a majority vote of the registered voters of the Town at a referendum election held either on the same day as a regularly scheduled November general election or on the same day as a regularly scheduled March municipal general election. The amendment or repeal of this section of the Charter at a special election held on a day other than a regularly scheduled November general election or on a day other than a regularly scheduled March municipal general election is expressly prohibited, except that a special election or special election by mail may be held to correct, to the minimum practicable extent, a provision adjudged by a court of competent jurisdiction to violate the State or Federal Constitution or any valid state or federal law, but only after such adjudication is affirmed on appeal. Amendments approved at a special election may include no elements not directly related to such court adjudication.
- (11) These provisions of the Charter shall be effective immediately upon adoption by a majority of the registered voters of the Town voting in a referendum to amend the Charter so as to include these provisions. Upon adoption, the maximum building height limits, the restrictions on use, the maximum allowable square footage and the provisions governing parking availability established in paragraphs (1), (2), (3) and (5), above, of this section of the Charter, shall immediately apply to all real property located within the boundaries of the entire Town. Upon adoption of these provisions, and pending amendment of any portion or portions of the Town's Code of Ordinances inconsistent with this section of the Charter, the more stringent provisions of this section shall apply.

ORDINANCE 2009-33

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AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, APPROVING AN AMENDMENT TO SECTION 7.1 OF THE TOWN CHARTER PENDING THE RESULTS OF A REFERENDUM ELECTION PROVIDING FOR A MAXIMUM BUILDING HEIGHT OF FORTY-FOUR (44) FEET FOR ALL BUILDINGS WITHIN THE TOWN LOCATED NORTH OF PINE AVENUE; PROVIDING FOR A MAXIMUM BUILDING HEIGHT OF THIRTY-THREE (33) FEET FOR ALL BUILDINGS LOCATED SOUTH OF PINE AVENUE; PROVIDING FOR A MODIFICATION IN THE CALCULATION USED TO DETERMINE MAXIMUM BUILDING HEIGHT; FURTHER PROVIDING FOR CLARIFICATION ON THE RESTRICTIONS ON THE CREATION OF NEW ZONING CATEGORIES AND AMENDMENTS TO RESIDENTIAL ZONING DISTRICT REGULATIONS; CALLING A REFERENDUM ELECTION ON THE PROPOSED AMENDMENT TO THE TOWN CHARTER TO BE HELD ON TUESDAY, MARCH 9, 2010; PROVIDING FOR SUBMISSION TO THE ELECTORS FOR APPROVAL OR DISAPPROVAL OF THE PROPOSED CHARTER AMENDMENT; PROVIDING FOR REQUISITE BALLOT LANGUAGE; PROVIDING FOR PROCEDURE FOR BALLOTING; PROVIDING FOR NOTICE; PROVIDING FOR RELATED MATTERS; PROVIDING FOR CONFLICTS, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, Chapter 166, Florida Statutes, provides a methodology for charter amendments supplementary to and not in conflict with the Charter of the Town of Lauderdale-By-The-Sea (the "Town"); and

WHEREAS, pursuant to Section 166.031, Florida Statutes, charter amendments may be submitted to a referendum vote by the Town Commission through the adoption of an Ordinance calling for such a referendum election; and

ORDINANCE 2009-33

39 WHEREAS, the Town Commission has determined that is in the best interest of
40 the citizens of the Town to submit the Charter Amendment herein, which if passed would
41 have the effect of modifying the maximum height of buildings within the Town, the
42 related calculation of measurement for determining maximum height and clarifying the
43 restrictions imposed on the creation of new zoning categories, overlay districts and
44 amendments to residential zoning district regulations.

45 NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION
46 OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, THAT:

47 SECTION 1. Legislative Intent. The foregoing "WHEREAS" clauses are hereby
48 ratified and confirmed as being true, correct and reflective of the legislative intent
49 underlying this Ordinance and are hereby made a specific part of this Ordinance.

50 SECTION 2. Charter Amendment. Section 7.1 of the Town Charter is amended
51 to read as follows:¹

52 **Sec. 7.1. Maximum height for buildings established; referendum vote required for**
53 **increases in zoned residential-district height limits.**

54
55 (1) No building within the jurisdictional boundaries of the Town as they existed on
56 March 20, 2006, located north of Pine Avenue, shall have more than four (4) stories
57 above grade, and the maximum height of such buildings within the Town that have four
58 ~~(4) stories above grade~~ shall be forty-four (44) feet above grade, which shall be measured
59 from as defined in the Florida Building Code, or above a horizontal plane eighteen inches
60 above the crown of the roadway at the highest point adjoining the property on which the
61 building is located, whichever of these two levels is higher.

62
63 (2) No building within the jurisdictional boundaries of the Town as they existed on
64 March 20, 2006, located south of Pine Avenue, shall exceed a The maximum height for
65 all other buildings within the Town shall be of thirty-three (33) feet, which shall be
66 measured from

67 ~~(a) Above grade, as defined in the Florida Building Code, or~~

¹ Proposed additions to existing Charter text are shown by underlining, proposed deletions from existing Charter text are shown by ~~strike through~~.



ORDINANCE 2009-33

68 ~~(b) Above a horizontal plane eighteen inches above the crown of the roadway at~~
69 ~~the highest point adjoining the property on which the building is located, or~~
70 ~~(c) Above the minimum elevation for a habitable, finished floor permitted under~~
71 ~~applicable federal or Florida state regulations, whichever of these three levels is~~
72 ~~highest.~~

73
74 Height shall be measured from the applicable base level specified above to the highest
75 point on a flat roof, or to the median elevation between the peak of a sloped roof and the
76 lowest edge of the sloped roof. ~~In accordance with the Florida Building Code,~~
77 Notwithstanding any other provision of this Charter or the Town Code of Ordinances, all
78 bulkheads and penthouses used solely to enclose stairways, tanks, elevator machinery or
79 shafts or ventilation or air conditioning apparatus shall not be included in determining
80 building height; all other roofs structures, including parapet walls, shall not exceed four
81 feet in height above the maximum allowed building height.

82
83 (23) In any building within the Town that has more than three (3) stories above grade,
84 the first story shall be at grade level and shall be used for parking, either with or without
85 toll collection booths. The first story may also be used for storage, refuse, security,
86 registration, maintenance, and/or access, either with or without a lobby, provided that at
87 least one-half (1/2) of the square footage of the first story is used for parking. Only
88 within districts of the Town zoned for business ("B") use, the first story of buildings
89 having more than three (3) stories above grade may also be devoted to non-residential
90 commercial uses, provided that dedicated parking required by Town ordinance or code
91 for the proposed buildings is provided off-street at a location on or adjacent to the
92 property on which the buildings are situated, and designed so as to enable the parked
93 vehicles to egress the parking space without having to back out into traffic. In any
94 building within the Town that has more than three (3) stories above grade, the first story
95 shall be restricted to the above enumerated uses, and may be used for no other purpose
96 whatsoever. For the purposes of this provision of the Charter, a story is at grade level if
97 its floor is at or below grade and its ceiling is above grade; a story that is at grade level is
98 also above grade. Nothing in this paragraph shall be construed so as to prohibit any
99 building within the Town that has more than three (3) stories above grade from also
100 having one (1) or more subterranean stories below grade, provided, however, that in any
101 building within the Town that has more than three (3) stories above grade, all
102 subterranean stories shall be subject to the same restrictions on use as are established in
103 this paragraph for the first story.

104
105 ~~(3) Buildings which exceed thirty three (33) feet above grade, and which exceed thirty~~
106 ~~three (33) feet above the horizontal plane eighteen inches above the crown of the~~
107 ~~roadway at the highest point adjoining the property on which the building is located, but~~
108 ~~which are nevertheless allowed under subparagraph (1)(c) of this Section, and which do~~
109 ~~not include a non-habitable first floor with ample parking as required by Town ordinance~~
110 ~~or code, in accordance with the number and type of units in these buildings, must have~~
111 ~~dedicated off street parking at a location on or adjacent to the property on which the~~
112 ~~buildings are situate. Parking for buildings in this category must be designed so as to~~

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ORDINANCE 2009-33

113 ~~enable the parked vehicles to egress the parking space without having to back out into~~
114 ~~traffic.~~

115
116 (4) All existing buildings within the Town that were legally in compliance with existing
117 height and use restrictions on March 20, 2006, or were grandfathered on that date, but
118 that either exceed the maximum building height limit established in paragraphs (1) or (2),
119 as applicable, above, of this section of the Charter, or that fail to comply, where
120 applicable, with the restrictions on use established in paragraph (23), above, of this
121 section of the Charter, (hereinafter referred to as "Non-conforming Buildings") shall be
122 considered legal, but non-conforming.

123
124 (5) Notwithstanding the maximum building height limit established in paragraphs (1)
125 and (2), above, of this section of the Charter, an existing non-conforming building may
126 be replaced by a new nonconforming building when, and only when:

127
128 (a) The existing non-conforming building has:
129 (i) Been destroyed by fire, natural disaster, or other act of God; and
130 (ii) The property owner has submitted and received Town approval of a
131 site plan depicting the replacement building; and
132 (iii) Construction of the replacement building is commenced within
133 twelve (12) months of the date of destruction; or

134
135 (b) The existing non-conforming building is:
136 (i) Demolished as part of a Town approved redevelopment of the
137 property; and
138 (ii) Prior to demolition, the property owner has submitted and received
139 Town approval of a site plan depicting the replacement building; and
140 (iii) Construction of the replacement building is commenced within six
141 (6) months of the date of site plan approval.

142
143 (c) The Town Commission may grant one (1) or more six (6) month extensions
144 to the time periods for commencement of construction established in paragraphs
145 (5) (a)(iii) and (5) (b)(iii), above, provided a written request for extension is filed
146 with the Town Clerk prior to (in the case of a first request for extension) the
147 expiration of the initial applicable time period for commencement of construction
148 or prior to (in the case of a subsequent request for extension) the expiration of the
149 most recent extension of the applicable time period for commencement of
150 construction.

151
152 (d) All new non-conforming buildings constructed pursuant to the provisions of
153 either paragraph (5) (a) or (5) (b), above, shall comply, where applicable, with the
154 restrictions on use established in paragraph (23), above, ~~and the provisions for~~
155 ~~parking availability established in paragraph (3), above,~~ of this section of the
156 Charter.
157



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158 (e) The maximum allowable height of any new non-conforming building
159 constructed pursuant to the provisions of either paragraph (5) (a) or (5) (b), above,
160 shall not exceed the original height of the non-conforming building which it
161 replaces, plus any additional height which (because of the requirements of state or
162 federal law, or because of the restrictions on use established in paragraph (23),
163 above, of this section of the charter) may be necessary to obtain the same number
164 of habitable stories as was contained in the original non-conforming building.
165 Nothing in this section of the Charter shall be construed to prevent a new non-
166 conforming building from being constructed to a lesser height or from containing
167 fewer habitable stories than that of the original non-conforming building which it
168 replaces. For the purposes of this provision of the Charter, the term "habitable
169 story" means any story or part thereof that is used as a home or place of abode,
170 either permanent or temporary, by one (1) or more persons.
171

172 (f) The maximum allowable square footage of any new nonconforming building
173 constructed pursuant to the provisions of either paragraph (5) (a) or (5) (b), above,
174 shall not exceed the original square footage of the non-conforming building which
175 it replaces, plus any additional square footage which (because of the requirements
176 of state or federal law, or because of the restrictions on use established in
177 paragraph (23), above, of this section of the Charter) may be necessary to obtain
178 the same number of habitable square feet as was contained in the original non-
179 conforming building. Nothing in this section of the Charter shall be construed to
180 prevent a new nonconforming building from being constructed either with less
181 total square footage or with less habitable square footage than that of the original
182 non-conforming building which it replaces. For the purposes of this section of the
183 Charter, the term "habitable square footage" means the square footage of that
184 portion of a building that is used as a home or place of abode, either permanent or
185 temporary, by one (1) or more persons.
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187 (6) The maximum building height limits, the restrictions on use and the maximum
188 allowable square footage, and the provisions governing parking established in paragraphs
189 (1), (2), (3) and (5), above, of this section of the Charter, shall be applicable to all real
190 property located within the boundaries of the Town as the boundaries exist on March 20,
191 2006.
192

193 (7) Every resident of the Town shall have the standing to enforce the maximum building
194 height limits and the maximum allowable square footage established in paragraphs (1),
195 (2), (3) and (5), above, of this section of the Charter, by means of a suit in equity seeking
196 either mandamus; prohibition; or any combination thereof, but nothing in this provision
197 of the Charter shall be construed to either create a cause of action at law for money
198 damages, or to authorize a court of equity to award money damages as an incident to
199 equitable relief, or to authorize an award of attorney's fees to the prevailing party or to
200 any other party.
201

202 (8) The maximum building height limit established in paragraphs (1) and (2), above, of
203 this section of the Charter, supersedes any existing zoning ordinance or land development

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204 regulation to the extent that said zoning ordinance or land development regulation
205 establishes anywhere within the Town a maximum building height limit greater than that
206 established in paragraphs (1) and (2), above, of this section of the Charter, but nothing in
207 this section of the Charter shall be construed to supersede, modify or repeal any existing
208 zoning ordinance or land development regulation that establishes anywhere within the
209 Town a maximum building height limit lower than that established in paragraphs (1) and
210 (2), above, of this section of the Charter.

211
212 (9) The Town Commission may not increase, by ordinance or by variance, the
213 maximum building height limits established in paragraphs (1), (2) and (5), above, of this
214 section of the Charter, nor may the Town Commission modify, amend or repeal, by
215 ordinance or by variance, the restrictions on use established in paragraph (23), above, or
216 the provisions for parking availability established in paragraphs (2), (3) or (5), above, of
217 this section of the Charter, nor may the Town Commission increase, by ordinance or by
218 variance, the maximum allowable square footage established in paragraph (5), above, of
219 this section of the Charter. The maximum height limits established for residential zoning
220 districts including, but not limited to, R-5, RS-4, RS-5, RD-10, RM-15, RM-16, RM-25,
221 RM-50 and PUD in the text of the Town's land development code as of March 20, 2006,
222 may be increased, or such districts re-zoned for any other use whatsoever, only by a
223 referendum vote of the registered voters of the Town in the manner established in Article
224 IV, Section 4.7 [50] of this Charter for the repeal or amendment of initiated ordinances.
225 The Town may not rezone property that was zoned in one of these residential zoning
226 districts as of March 20, 2006 to a different zoning district, and The Town may not revise
227 any of the regulations applicable to these residential zoning districts to allow additional
228 uses without approval by a similar referendum vote. The Town may not create new
229 categories of zoning or overlay districts without approval of such categories by a similar
230 referendum vote; and all provisions of such new categories of zoning or overlay districts
231 must be submitted to the voters for approval.

232
233 (10) The maximum building height limits established in paragraphs (1), (2) and (5),
234 above, of this section of the Charter, may be increased only by an amendment to or by
235 repeal of this section of the Charter. The restrictions on use established in paragraph (23),
236 above, and the provisions governing parking availability established in paragraphs (2),
237 (3) and (5), above, of this section of the Charter, may be modified, amended or repealed
238 only by an amendment to or by repeal of this section of the Charter. The maximum
239 allowable square footage established in paragraph (5), above, of this provision of the
240 Charter, may be increased only by an amendment to, or by repeal of this section of the
241 Charter. Except as expressly provided below, this section of the Charter may be amended
242 or repealed only by means of a majority vote of the registered voters of the Town at a
243 referendum election held either on the same day as a regularly scheduled November
244 general election or on the same day as a regularly scheduled March municipal general
245 election. The amendment or repeal of this section of the Charter at a special election held
246 on a day other than a regularly scheduled November general election or on a day other
247 than a regularly scheduled March municipal general election is expressly prohibited,
248 except that a special election or special election by mail may be held to correct, to the
249 minimum practicable extent, a provision adjudged by a court of competent jurisdiction to

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250 violate the State or Federal Constitution or any valid state or federal law, but only after
251 such adjudication is affirmed on appeal. Amendments approved at a special election may
252 include no elements not directly related to such court adjudication.
253

254 (11) These provisions of the Charter shall be effective immediately upon adoption by a
255 majority of the registered voters of the Town voting in a referendum to amend the
256 Charter so as to include these provisions. Upon adoption, the maximum building height
257 limits, the restrictions on use, the maximum allowable square footage and the provisions
258 governing parking availability established in paragraphs (1), (2), (3) and (5), above, of
259 this section of the Charter, shall immediately apply to all real property located within the
260 boundaries of the entire Town. Upon adoption of these provisions, and pending
261 amendment of any portion or portions of the Town's Code of Ordinances inconsistent
262 with this section of the Charter, the more stringent provisions of this section shall apply.
263

264 **SECTION 3. Election Called.** A referendum election is called, to be held on
265 Tuesday, the 9th day of March, 2010 in conjunction with the Town-wide general
266 municipal election, to present to the qualified electors of the Town of Lauderdale-by-the-
267 Sea, the ballot question provided in Section 4 of this Ordinance.

268 **SECTION 4. Form of Ballot.** The form of ballot setting forth the ballot title and
269 chief purpose of the substance of the proposed Charter Amendment provided for in Section
270 2 of this Ordinance shall read substantially as follows:

271 **MODIFYING MAXIMUM BUILDING HEIGHT; MEASUREMENT**
272 **CALCULATION; AND CLARIFYING REFERENDUM REQUIREMENT**
273 **FOR RESIDENTIAL ZONING DISTRICT CHANGES**
274

275 This Amendment: (1) establishes a maximum building height of 44 ft. for all
276 buildings located north of Pine Avenue and 33 ft. for all buildings located south of
277 Pine Avenue, (2) revises the measurement used to determine maximum building
278 height, and (3) clarifies referendum requirements for certain changes to the Town's
279 residential zoning districts.

280 Shall the above-described Charter Amendment be adopted?
281

11

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282 Yes []

283 No []

284 **SECTION 5. Effect of Future Case Law.** If Section 70.001, Florida Statutes,
285 (which specifically addresses “a new law, rule, regulation, or ordinance of the state or a
286 political entity in the state” but is completely silent with regard to new amendments to the
287 Florida Constitution or to municipal charters) shall be held by any court of competent
288 jurisdiction, and affirmed on appeal, nevertheless also to apply to new amendments to
289 municipal charters, then any building height limits, restrictions on use, maximum
290 allowable square footage, and provisions governing parking availability imposed under
291 paragraphs (1), (2), (3) and (5), above, of Section 7.1 of the Charter, as amended, and
292 which are more stringent than limits, restrictions or provisions existing prior to the
293 enactment of the present amendment, shall cease to apply to any property concerning
294 which a claim has been properly filed, or shall subsequently be properly filed with the
295 Town in compliance with the provisions of Section 70.001, F.S. In that event, any and all
296 conditional building permits, conditional site-plan approvals or conditional settlements
297 under Section 70.001, F.S., tentatively issued or approved by the Town in anticipation of
298 and contingent upon such a finding by the courts shall immediately enter into full force
299 and effect.

300 **SECTION 6. Balloting.** Balloting shall be conducted between the hours of 7:00
301 a.m. to 7:00 p.m. on the date of the election. Absentee ballots shall be available. Early
302 voting shall be provided in conjunction with the general election. All qualified Town
303 electors who are timely registered in accordance with law shall be entitled to vote. The
304 Town Clerk is authorized to obtain any necessary election administration services from

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305 the Broward County (the "County") Supervisor of Elections. The County registration
306 books shall remain open at the Office of the County Supervisor of Elections until the date
307 at which the registration books shall close in accordance with the provisions of the
308 general election laws. The Town Clerk and the County Supervisor of Elections are
309 hereby authorized to take all appropriate action necessary to carry into effect and
310 accomplish the provisions of this resolution. Pursuant to Section 102.141, Florida
311 Statutes, this election shall be canvassed by the Town Clerk with assistance from the
312 County Supervisor of Elections or as required by law.

313 **SECTION 7. Notice of Election.** Notice of said election shall be published in
314 accordance with Section 100.342, Fla. Stat., in a newspaper of general circulation within
315 the Town at least 30 days prior to said election, the first publication to be in the fifth
316 week prior to the election, and the second publication to be in the third week prior to the
317 election, and shall be in substantially the following form:

318

"NOTICE OF SPECIAL ELECTION

319

**PUBLIC NOTICE IS HEREBY GIVEN THAT PURSUANT TO
ORDINANCE NO. _____ ADOPTED BY THE TOWN
COMMISSION OF THE TOWN OF LAUDERDALE-BY-THE-SEA,
FLORIDA, AN ELECTION HAS BEEN CALLED AND ORDERED
TO BE HELD WITHIN THE TOWN ON TUESDAY, THE 9TH
DAY OF MARCH, 2010, BETWEEN THE HOURS OF 7:00 A.M.
AND 7:00 P.M., AT WHICH TIME THE FOLLOWING CHARTER
AMENDMENT PROPOSAL SHALL BE SUBMITTED TO THE
QUALIFIED ELECTORS OF THE TOWN.**

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Ballot Question:

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334

**MODIFYING MAXIMUM BUILDING HEIGHT; MEASUREMENT
CALCULATION; AND CLARIFYING REFERENDUM REQUIREMENT
FOR RESIDENTIAL ZONING DISTRICT CHANGES**

ORDINANCE 2009-33

335 This Amendment: (1) establishes a maximum building height of 44 ft. for all
336 buildings located north of Pine Avenue and 33 ft. for all buildings located south of
337 Pine Avenue, (2) revises the measurement used to determine maximum building
338 height, and (3) clarifies referendum requirements for certain changes to the Town's
339 residential zoning districts.

340 Shall the above-described Charter Amendment be adopted?

341 Yes []

342 No []

343 **Polling place information and the full text of the proposed Charter Amendment as**
344 **set forth in the enabling Ordinance are available at the office of the Town Clerk**
345 **located at Town Hall, 4501 Ocean Drive, Lauderdale-By-The-Sea, FL 33308.**

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349

Town Clerk

350 The Town Clerk is authorized to combine this notice with the notice of election for other
351 Charter Amendment referendum elections that will be presented to the Town electors for
352 a vote at the March 9, 2010 general election.

353 **SECTION 8. Copies.** Copies of this Ordinance concerning the Charter
354 Amendments are on file at the office of the Town Clerk located at Town Hall, 4501
355 Ocean Drive, Lauderdale-By-The-Sea, FL 33308.

356 **SECTION 9. Effectiveness.**

357 A. The Charter amendment provided for in Section 2 above shall become
358 effective only if the majority of the qualified electors voting on the ballot question in
359 Section 4 vote for its adoption, and it shall be considered adopted and effective upon
360 certification of election results.

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B61 B. The Town Attorney is authorized to revise the Charter to the extent necessary
362 to assure that any amendments adopted conform to one another and are properly included
363 in the publication of the revised Town Charter. Further, in the event that some, but not
364 all, of the Charter amendments are approved by the electors, conforming amendments
365 shall be deemed to be adopted and the Town Attorney is authorized to reflect and
366 implement such revisions of the Charter to the extent necessary to assure that all
367 amendments adopted conform to one another and to all remaining Charter provisions. If
368 conflicting Charter amendments are adopted at the same election, the one receiving the
369 greatest number of affirmative votes shall prevail to the extent of such conflict.

B70 C. Following the adoption of the Charter amendments, the Town Clerk shall file
371 the adopted Charter amendments with the Clerk of the Circuit Court of Broward County,
372 Florida.

373 **SECTION 10. Inclusion in the Charter.** Subject to the requirements of Section
374 9 above, it is the intent of the Town Commission and it is hereby provided that the
375 Charter Amendments shall become and be made a part of the Charter of the Town of
376 Lauderdale-by-the-Sea, Florida, and that the sections of this Ordinance may be
377 renumbered or re-lettered to accomplish such intention.

378 **SECTION 11. Conflicts.** All Ordinances or parts of Ordinances, Resolutions or
379 parts of Resolutions in conflict herewith shall and the same are hereby repealed to the extent
380 of such conflict only upon the approval of the majority of the electors voting for the
381 adoption of the Charter Amendment submitted to the referendum.

382 **SECTION 12. Severability.** If any section, sentence, clause or phrase of this
383 Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction,

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384 then said holding shall in no way affect the validity of the remaining portions of this
385 Ordinance.

386 **SECTION 13. Effective Date.** This Ordinance shall become effective immediately
387 upon passage on second reading. The amendment to the Town Charter, provided herein,
388 shall not take effect unless and until the proposed amendment is submitted to the vote of the
389 electors of the Town of Lauderdale-By-The-Sea at a referendum election to be held in
390 conjunction with the Town-wide municipal general election on March 9, 2010, by separate
391 ballot question, and is approved by the majority of the electors voting thereon as described
392 in Section 9 above.

393 **SECTION 14. Adoption.**

394 Passed on the first reading, this ____ day of December, 2009.

395 Passed and adopted on the second reading, this ____ day of December, 2009.

396
397
398
399
400

Mayor Roseann Minnet

401

402

First Reading

Second Reading

403

Mayor Minnet

404

Vice-Mayor McIntee

405

Commissioner Clotey

406

Commissioner Silverstone

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Commissioner Dodd

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"

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409 Attest:

410 _____
411 Town Clerk, June White

412 (CORPORATE SEAL)

413 Approved as to form:

414 _____
415 Town Attorney, Susan L. Trevarthen

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AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, APPROVING AN AMENDMENT TO SECTION 7.1 OF THE TOWN CHARTER PENDING THE RESULTS OF A REFERENDUM ELECTION PROVIDING FOR A MAXIMUM BUILDING HEIGHT OF FORTY-FOUR (44) FEET FOR ALL BUILDINGS WITHIN THE TOWN LOCATED NORTH OF PINE AVENUE; PROVIDING FOR A MAXIMUM BUILDING HEIGHT OF THIRTY-THREE (33) FEET FOR BUILDINGS LOCATED SOUTH OF PINE AVENUE IN SPECIFIED AREAS; PROVIDING FOR A MODIFICATION IN THE CALCULATION USED TO DETERMINE MAXIMUM BUILDING HEIGHT; FURTHER PROVIDING FOR CLARIFICATION ON THE RESTRICTIONS ON THE CREATION OF NEW ZONING CATEGORIES AND AMENDMENTS TO RESIDENTIAL ZONING DISTRICT REGULATIONS; CALLING A REFERENDUM ELECTION ON THE PROPOSED AMENDMENT TO THE TOWN CHARTER TO BE HELD ON TUESDAY, MARCH 9, 2010; PROVIDING FOR SUBMISSION TO THE ELECTORS FOR APPROVAL OR DISAPPROVAL OF THE PROPOSED CHARTER AMENDMENT; PROVIDING FOR REQUISITE BALLOT LANGUAGE; PROVIDING FOR PROCEDURE FOR BALLOTING; PROVIDING FOR NOTICE; PROVIDING FOR RELATED MATTERS; PROVIDING FOR CONFLICTS, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, Chapter 166, Florida Statutes, provides a methodology for charter amendments supplementary to and not in conflict with the Charter of the Town of Lauderdale-By-The-Sea (the "Town"); and

WHEREAS, pursuant to Section 166.031, Florida Statutes, charter amendments may be submitted to a referendum vote by the Town Commission through the adoption of an Ordinance calling for such a referendum election; and

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40 WHEREAS, the Town Commission has determined that is in the best interest of
41 the citizens of the Town to submit the Charter Amendment herein, which if passed would
42 have the effect of modifying the maximum height of buildings within the Town, the
43 related calculation of measurement for determining maximum height and clarifying the
44 restrictions imposed on the creation of new zoning categories, overlay districts and
45 amendments to residential zoning district regulations.

46 NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION
47 OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, THAT:

48 SECTION 1. Legislative Intent. The foregoing "WHEREAS" clauses are hereby
49 ratified and confirmed as being true, correct and reflective of the legislative intent
50 underlying this Ordinance and are hereby made a specific part of this Ordinance.

51 SECTION 2. Charter Amendment. Section 7.1 of the Town Charter is amended
52 to read as follows:¹

53 **Sec. 7.1. Maximum height for buildings established; referendum vote required for**
54 **increases in zoned residential-district height limits.**

55
56 (1) No building within the jurisdictional boundaries of the Town as they existed on
57 March 20, 2006, located north of Pine Avenue, shall have more than four (4) stories
58 above grade, and the maximum height of such buildings within the Town that have four
59 (4) stories above grade shall be forty-four (44) feet above grade, which shall be measured
60 from as defined in the Florida Building Code, or above a horizontal plane eighteen inches
61 above the crown of the roadway at the highest point adjoining the property on which the
62 building is located, whichever of these two levels is higher.

63
64 The maximum building height established above shall also apply to the following areas
65 within the Town located south of Pine Avenue:

66
67 (1) South of Basin Drive and north of Hibiscus Avenue, south or east of Silver
68 Shores Waterway and west of the mid-block line between Seagrave Drive and
69 Bougainvilla Drive

¹ Proposed additions to existing Charter text are shown by underlining; proposed deletions from existing Charter text are shown by ~~strike-through~~.

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(2) South of Pine Avenue, east of Bougainville Drive, and north of Palm Avenue;
and

(3) Frontage along Commercial Boulevard east of the Intracoastal Waterway.

(2) Except as provided in (1) above, no building within the jurisdictional boundaries of the Town as they existed on March 20, 2006, located south of Pine Avenue, shall exceed a The maximum height for all other buildings within the Town shall be of thirty-three (33) feet, which shall be measured from (a) Above grade, as defined in the Florida Building Code, or (b) Above a horizontal plane eighteen inches above the crown of the roadway at the highest point adjoining the property on which the building is located, or (c) Above the minimum elevation for a habitable, finished floor permitted under applicable federal or Florida state regulations, whichever of those three levels is highest.

Height shall be measured from the applicable base level specified above to the highest point on a flat roof, or to the median elevation between the peak of a sloped roof and the lowest edge of the sloped roof. ~~In accordance with the Florida Building Code,~~ Notwithstanding any other provision of this Charter or the Town Code of Ordinances, all bulkheads and penthouses used solely to enclose stairways, tanks, elevator machinery or shafts or ventilation or air conditioning apparatus shall not be included in determining building height; all other roofs structures, including parapet walls, shall not exceed four feet in height above the maximum allowed building height.

(23) In any building within the Town that has more than three (3) stories above grade, the first story shall be at grade level and shall be used for parking, either with or without toll collection booths. The first story may also be used for storage, refuse, security, registration, maintenance, and/or access, either with or without a lobby, provided that at least one-half (1/2) of the square footage of the first story is used for parking. Only within districts of the Town zoned for business ("B") use, the first story of buildings having more than three (3) stories above grade may also be devoted to non-residential commercial uses, provided that dedicated parking required by Town ordinance or code for the proposed buildings is provided off-street at a location on or adjacent to the property on which the buildings are situated, and designed so as to enable the parked vehicles to egress the parking space without having to back out into traffic. In any building within the Town that has more than three (3) stories above grade, the first story shall be restricted to the above enumerated uses, and may be used for no other purpose whatsoever. For the purposes of this provision of the Charter, a story is at grade level if its floor is at or below grade and its ceiling is above grade; a story that is at grade level is also above grade. Nothing in this paragraph shall be construed so as to prohibit any building within the Town that has more than three (3) stories above grade from also having one (1) or more subterranean stories below grade, provided, however, that in any building within the Town that has more than three (3) stories above grade, all subterranean stories shall be subject to the same restrictions on use as are established in this paragraph for the first story.



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116 ~~(3) Buildings which exceed thirty three (33) feet above grade, and which exceed thirty~~
117 ~~three (33) feet above the horizontal plane eighteen inches above the crown of the~~
118 ~~roadway at the highest point adjoining the property on which the building is located, but~~
119 ~~which are nevertheless allowed under subparagraph (1)(c) of this Section, and which do~~
120 ~~not include a non-habitable first floor with ample parking as required by Town ordinance~~
121 ~~or code, in accordance with the number and type of units in those buildings, must have~~
122 ~~dedicated off-street parking at a location on or adjacent to the property on which the~~
123 ~~buildings are situate. Parking for buildings in this category must be designed so as to~~
124 ~~enable the parked vehicles to egress the parking space without having to back out into~~
125 ~~traffic.~~

126
127 (4) All existing buildings within the Town that were legally in compliance with existing
128 height and use restrictions on March 20, 2006, or were grandfathered on that date, but
129 that either exceed the maximum building height limit established in paragraphs (1) or (2),
130 as applicable, above, of this section of the Charter, or that fail to comply, where
131 applicable, with the restrictions on use established in paragraph (23), above, of this
132 section of the Charter, (hereinafter referred to as "Non-conforming Buildings") shall be
133 considered legal, but non-conforming.

134
135 (5) Notwithstanding the maximum building height limit established in paragraphs (1)
136 and (2), above, of this section of the Charter, an existing non-conforming building may
137 be replaced by a new nonconforming building when, and only when:

138
139 (a) The existing non-conforming building has:
140 (i) Been destroyed by fire, natural disaster, or other act of God; and
141 (ii) The property owner has submitted and received Town approval of a
142 site plan depicting the replacement building; and
143 (iii) Construction of the replacement building is commenced within
144 twelve (12) months of the date of destruction; or

145
146 (b) The existing non-conforming building is:
147 (i) Demolished as part of a Town approved redevelopment of the
148 property; and
149 (ii) Prior to demolition, the property owner has submitted and received
150 Town approval of a site plan depicting the replacement building; and
151 (iii) Construction of the replacement building is commenced within six
152 (6) months of the date of site plan approval.

153
154 (c) The Town Commission may grant one (1) or more six (6) month extensions
155 to the time periods for commencement of construction established in paragraphs
156 (5) (a)(iii) and (5) (b)(iii), above, provided a written request for extension is filed
157 with the Town Clerk prior to (in the case of a first request for extension) the
158 expiration of the initial applicable time period for commencement of construction
159 or prior to (in the case of a subsequent request for extension) the expiration of the
160 most recent extension of the applicable time period for commencement of
161 construction.

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(d) All new non-conforming buildings constructed pursuant to the provisions of either paragraph (5) (a) or (5) (b), above, shall comply, where applicable, with the restrictions on use established in paragraph (23), above, and the provisions for parking availability established in paragraph (3), above, of this section of the Charter.

(e) The maximum allowable height of any new non-conforming building constructed pursuant to the provisions of either paragraph (5) (a) or (5) (b), above, shall not exceed the original height of the non-conforming building which it replaces, plus any additional height which (because of the requirements of state or federal law, or because of the restrictions on use established in paragraph (23), above, of this section of the charter) may be necessary to obtain the same number of habitable stories as was contained in the original non-conforming building. Nothing in this section of the Charter shall be construed to prevent a new non-conforming building from being constructed to a lesser height or from containing fewer habitable stories than that of the original non-conforming building which it replaces. For the purposes of this provision of the Charter, the term "habitable story" means any story or part thereof that is used as a home or place of abode, either permanent or temporary, by one (1) or more persons.

(f) The maximum allowable square footage of any new nonconforming building constructed pursuant to the provisions of either paragraph (5) (a) or (5) (b), above, shall not exceed the original square footage of the non-conforming building which it replaces, plus any additional square footage which (because of the requirements of state or federal law, or because of the restrictions on use established in paragraph (23), above, of this section of the Charter) may be necessary to obtain the same number of habitable square feet as was contained in the original non-conforming building. Nothing in this section of the Charter shall be construed to prevent a new nonconforming building from being constructed either with less total square footage or with less habitable square footage than that of the original non-conforming building which it replaces. For the purposes of this section of the Charter, the term "habitable square footage" means the square footage of that portion of a building that is used as a home or place of abode, either permanent or temporary, by one (1) or more persons.

(6) The maximum building height limits, the restrictions on use and the maximum allowable square footage, and the provisions governing parking established in paragraphs (1), (2), (3) and (5), above, of this section of the Charter, shall be applicable to all real property located within the boundaries of the Town as the boundaries exist on March 20, 2006.

(7) Every resident of the Town shall have the standing to enforce the maximum building height limits and the maximum allowable square footage established in paragraphs (1), (2), (3) and (5), above, of this section of the Charter, by means of a suit in equity seeking either mandamus; prohibition; or any combination thereof, but nothing in this provision

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208 of the Charter shall be construed to either create a cause of action at law for money
209 damages, or to authorize a court of equity to award money damages as an incident to
210 equitable relief, or to authorize an award of attorney's fees to the prevailing party or to
211 any other party.
212

213 (8) The maximum building height limit established in paragraphs (1) and (2), above, of
214 this section of the Charter, supersedes any existing zoning ordinance or land development
215 regulation to the extent that said zoning ordinance or land development regulation
216 establishes anywhere within the Town a maximum building height limit greater or less
217 than that established in paragraphs (1) and (2), above, of this section of the Charter, but
218 nothing in this section of the Charter shall be construed to supersede, modify or repeal
219 any existing zoning ordinance or land development regulation that establishes anywhere
220 within the Town a maximum building height limit lower than that established in
221 paragraph (1), above, of this section of the Charter.
222

223 (9) The Town Commission may not increase, by ordinance or by variance, the
224 maximum building height limits established in paragraphs (1), (2) and (5), above, of this
225 section of the Charter, nor may the Town Commission modify, amend or repeal, by
226 ordinance or by variance, the restrictions on use established in paragraph (2), above, or
227 the provisions for parking availability established in paragraphs (2), (3) or (5), above, of
228 this section of the Charter, nor may the Town Commission increase, by ordinance or by
229 variance, the maximum allowable square footage established in paragraph (5), above, of
230 this section of the Charter. The maximum height limits established for residential zoning
231 districts including, but not limited to, R-5, RS-4, RS-5, RD-10, RM-15, RM-16, RM-25,
232 RM-50 and PUD in the text of the Town's land development code as of March 20, 2006,
233 may be increased, or such districts re-zoned for any other use whatsoever, only by a
234 referendum vote of the registered voters of the Town in the manner established in Article
235 IV, Section 4.7 {50} of this Charter for the repeal or amendment of initiated ordinances.
236 The Town may not rezone property that was zoned in one of these residential zoning
237 districts as of March 20, 2006 to a different zoning district, and may not revise any of the
238 regulations applicable to these residential zoning districts to allow additional uses or
239 increase the intensity or density of development in the RM-25 zoning district south of
240 Pine Avenue without approval by a similar referendum vote. The Town may not create
241 new categories of zoning or overlay districts without approval of such categories by a
242 similar referendum vote; and all provisions of such new categories of zoning or overlay
243 districts must be submitted to the voters for approval.
244

245 (10) The maximum building height limits established in paragraphs (1), (2) and (5),
246 above, of this section of the Charter, may be increased only by an amendment to or by
247 repeal of this section of the Charter. The restrictions on use established in paragraph (2),
248 above, and the provisions governing parking availability established in paragraphs (2),
249 (3) and (5), above, of this section of the Charter, may be modified, amended or repealed
250 only by an amendment to or by repeal of this section of the Charter. The maximum
251 allowable square footage established in paragraph (5), above, of this provision of the
252 Charter, may be increased only by an amendment to, or by repeal of this section of the
253 Charter. Except as expressly provided below, this section of the Charter may be amended

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254 or repealed only by means of a majority vote of the registered voters of the Town at a
255 referendum election held either on the same day as a regularly scheduled November
256 general election or on the same day as a regularly scheduled March municipal general
257 election. The amendment or repeal of this section of the Charter at a special election held
258 on a day other than a regularly scheduled November general election or on a day other
259 than a regularly scheduled March municipal general election is expressly prohibited,
260 except that a special election or special election by mail may be held to correct, to the
261 minimum practicable extent, a provision adjudged by a court of competent jurisdiction to
262 violate the State or Federal Constitution or any valid state or federal law, but only after
263 such adjudication is affirmed on appeal. Amendments approved at a special election may
264 include no elements not directly related to such court adjudication.
265

266 (11) These provisions of the Charter shall be effective immediately upon adoption by a
267 majority of the registered voters of the Town voting in a referendum to amend the
268 Charter so as to include these provisions. Upon adoption, the maximum building height
269 limits, the restrictions on use, the maximum allowable square footage and the provisions
270 governing parking availability established in paragraphs (1), (2), (3) and (5), above, of
271 this section of the Charter, shall immediately apply to all real property located within the
272 boundaries of the entire Town. Upon adoption of these provisions, and pending
273 amendment of any portion or portions of the Town's Code of Ordinances inconsistent
274 with this section of the Charter, the more stringent provisions of this section shall apply.
275

276 **SECTION 3. Election Called.** A referendum election is called, to be held on
277 Tuesday, the 9th day of March, 2010 in conjunction with the Town-wide general
278 municipal election, to present to the qualified electors of the Town of Lauderdale-by-the-
279 Sea, the ballot question provided in Section 4 of this Ordinance.

280 **SECTION 4. Form of Ballot.** The form of ballot setting forth the ballot title and
281 chief purpose of the substance of the proposed Charter Amendment provided for in Section
282 2 of this Ordinance shall read substantially as follows:

283 **MODIFYING MAXIMUM BUILDING HEIGHT; MEASUREMENT**
284 **CALCULATION; AND CLARIFYING REFERENDUM REQUIREMENT**
285 **FOR RESIDENTIAL ZONING DISTRICT CHANGES**

286 This Amendment: (1) establishes a maximum building height of 44 feet north of
287 Pine Avenue, 44 feet in specified areas south of Pine Avenue, and 33 feet for all
288 other areas south of Pine Avenue, (2) revises the measurement of maximum building
289

ORDINANCE 2009-34

290 height, and (3) clarifies referendum requirements for changes to the residential
291 zoning districts that create overlay districts, or increase density and intensity.

292 Shall the above-described Charter Amendment be adopted?

293 Yes []

294 No []

295

296 **SECTION 5. Effect of Future Case Law.** If Section 70.001, Florida Statutes,
297 (which specifically addresses “a new law, rule, regulation, or ordinance of the state or a
298 political entity in the state” but is completely silent with regard to new amendments to the
299 Florida Constitution or to municipal charters) shall be held by any court of competent
300 jurisdiction, and affirmed on appeal, nevertheless also to apply to new amendments to
301 municipal charters, then any building height limits, restrictions on use, maximum
302 allowable square footage, and provisions governing parking availability imposed under
303 paragraphs (1), (2), (3) and (5), above, of Section 7.1 of the Charter, as amended, and
304 which are more stringent than limits, restrictions or provisions existing prior to the
305 enactment of the present amendment, shall cease to apply to any property concerning
306 which a claim has been properly filed, or shall subsequently be properly filed with the
307 Town in compliance with the provisions of Section 70.001, F.S. In that event, any and all
308 conditional building permits, conditional site-plan approvals or conditional settlements
309 under Section 70.001, F.S., tentatively issued or approved by the Town in anticipation of
310 and contingent upon such a finding by the courts shall immediately enter into full force
311 and effect.

ORDINANCE 2009-34

312 **SECTION 6. Balloting.** Balloting shall be conducted between the hours of 7:00
313 a.m. to 7:00 p.m. on the date of the election. Absentee ballots shall be available. Early
314 voting shall be provided in conjunction with the general election. All qualified Town
315 electors who are timely registered in accordance with law shall be entitled to vote. The
316 Town Clerk is authorized to obtain any necessary election administration services from
317 the Broward County (the "County") Supervisor of Elections. The County registration
318 books shall remain open at the Office of the County Supervisor of Elections until the date
319 at which the registration books shall close in accordance with the provisions of the
320 general election laws. The Town Clerk and the County Supervisor of Elections are
321 hereby authorized to take all appropriate action necessary to carry into effect and
322 accomplish the provisions of this resolution. Pursuant to Section 102.141, Florida
323 Statutes, this election shall be canvassed by the Town Clerk with assistance from the
324 County Supervisor of Elections or as required by law.

325 **SECTION 7. Notice of Election.** Notice of said election shall be published in
326 accordance with Section 100.342, Fla. Stat., in a newspaper of general circulation within
327 the Town at least 30 days prior to said election, the first publication to be in the fifth
328 week prior to the election, and the second publication to be in the third week prior to the
329 election, and shall be in substantially the following form:

330

"NOTICE OF SPECIAL ELECTION

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PUBLIC NOTICE IS HEREBY GIVEN THAT PURSUANT TO
ORDINANCE NO. _____ ADOPTED BY THE TOWN
COMMISSION OF THE TOWN OF LAUDERDALE-BY-THE-SEA,
FLORIDA, AN ELECTION HAS BEEN CALLED AND ORDERED
TO BE HELD WITHIN THE TOWN ON TUESDAY, THE 9TH DAY
OF MARCH, 2010, BETWEEN THE HOURS OF 7:00 A.M. AND
7:00 P.M., AT WHICH TIME THE FOLLOWING CHARTER

ORDINANCE 2009-34

338 AMENDMENT PROPOSAL SHALL BE SUBMITTED TO THE
339 QUALIFIED ELECTORS OF THE TOWN.

340

341 Ballot Question:

342

343 **MODIFYING MAXIMUM BUILDING HEIGHT; MEASUREMENT**
344 **CALCULATION; AND CLARIFYING REFERENDUM REQUIREMENT**
345 **FOR RESIDENTIAL ZONING DISTRICT CHANGES**

346

347 This Amendment: (1) establishes a maximum building height of 44 feet north of

348

Pine Avenue, 44 feet in specified areas south of Pine Avenue, and 33 feet for all

349

other areas south of Pine Avenue, (2) revises the measurement of maximum building

350

height, and (3) clarifies referendum requirements for changes to the residential

351

zoning districts that create overlay districts, or increase density and intensity.

352

Shall the above-described Charter Amendment be adopted?

353

Yes []

354

No []

355 Polling place information and the full text of the proposed Charter Amendment as
356 set forth in the enabling Ordinance are available at the office of the Town Clerk
357 located at Town Hall, 4501 Ocean Drive, Lauderdale-By-The-Sea, FL 33308.

358

359

360

Town Clerk

361

362

The Town Clerk is authorized to combine this notice with the notice of election for other

363

Charter Amendment referendum elections that will be presented to the Town electors for

364

a vote at the March 9, 2010 general election.

365

SECTION 8. Copies. Copies of this Ordinance concerning the Charter

366

Amendments are on file at the office of the Town Clerk located at Town Hall, 4501

367

Ocean Drive, Lauderdale-By-The-Sea, FL 33308.

368

ORDINANCE 2009-34

369 **SECTION 9. Effectiveness.**

370 A. The Charter amendment provided for in Section 2 above shall become effective only
371 if the majority of the qualified electors voting on the ballot question in Section 4 vote for
372 its adoption, and it shall be considered adopted and effective upon certification of
373 election results.

374 B. The Town Attorney is authorized to revise the Charter to the extent necessary to
375 assure that any amendments adopted conform to one another and are properly included in
376 the publication of the revised Town Charter. Further, in the event that some, but not all,
377 of the Charter amendments are approved by the electors, conforming amendments shall
378 be deemed to be adopted and the Town Attorney is authorized to reflect and implement
379 such revisions of the Charter to the extent necessary to assure that all amendments
380 adopted conform to one another and to all remaining Charter provisions. If conflicting
381 Charter amendments are adopted at the same election, the one receiving the greatest
382 number of affirmative votes shall prevail to the extent of such conflict.

383 C. Following the adoption of the Charter amendments, the Town Clerk shall file the
384 adopted Charter amendments with the Clerk of the Circuit Court of Broward County,
385 Florida.

386 **SECTION 10. Inclusion in the Charter.** Subject to the requirements of Section
387 8 above, it is the intent of the Town Commission and it is hereby provided that the
388 Charter amendments shall become and be made a part of the Charter of the Town of
389 Lauderdale-by-the-Sea, Florida, and that the sections of this Ordinance may be
390 renumbered or re-lettered to accomplish such intention.

391

ORDINANCE 2009-34

392 **SECTION 11. Conflicts.** All Ordinances or parts of Ordinances, Resolutions or
393 parts of Resolutions in conflict herewith shall and the same are hereby repealed as to the
394 extent of such conflict only upon the approval of the majority of the electors voting for the
395 adoption of the Charter amendment submitted to the referendum.

396 **SECTION 12. Severability.** If any section, sentence, clause or phrase of this
397 Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction,
398 then said holding shall in no way affect the validity of the remaining portions of this
399 Ordinance.

400 **SECTION 13. Effective Date.** This Ordinance shall become effective immediately
401 upon passage on second reading. The amendment to the Town Charter, provided herein,
402 shall not take effect unless and until the proposed amendment is submitted to the vote of the
403 electors of the Town of Lauderdale-By-The-Sea at a referendum election to be held in
404 conjunction with the Town-wide municipal general election on March 9, 2010, by separate
405 ballot question, and is approved by the majority of the electors voting thereon as described
406 in Section 9 above.

407 **SECTION 14. Adoption.**

408 Passed on the first reading, this ____ day of December, 2009.

409 Passed and adopted on the second reading, this ____ day of December, 2009.

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Mayor Roseann Minnet

ORDINANCE 2009-34

	First Reading	Second Reading
417		
418	Mayor Minnet	
419	Vice-Mayor McIntee	
420	Commissioner Clotey	
421	Commissioner Silverstone	
422	Commissioner Dodd	

423

424 **Attest:**

425 _____
426 **Town Clerk, June White**

427 **(CORPORATE SEAL)**

428

429 **Approved as to form:**

430 _____
431 **Town Attorney, Susan L. Trevarthen**

Town Commission Regular Meeting Minutes
December 1, 2009

Commissioner Clotey made a motion to adopt Ordinance 2009-32 on 1st reading.
Commissioner Dodd seconded the motion.

The motion failed 1 - 3. Mayor Minnet, Commissioner Silverstone and Commissioner
Dodd voted no.

- * b. Ordinance 2009-33: AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY-
THE-SEA, FLORIDA, APPROVING AN AMENDMENT TO SECTION 7.1 OF THE
TOWN CHARTER PENDING THE RESULTS OF A REFERENDUM ELECTION
PROVIDING FOR A MAXIMUM BUILDING HEIGHT OF FORTY-FOUR (44)
FEET FOR ALL BUILDINGS WITHIN THE TOWN LOCATED NORTH OF PINE
AVENUE; PROVIDING FOR A MAXIMUM BUILDING HEIGHT OF THIRTY-
THREE (33) FEET FOR ALL BUILDINGS LOCATED SOUTH OF PINE AVENUE;
PROVIDING FOR A MODIFICATION IN THE CALCULATION USED TO
DETERMINE MAXIMUM BUILDING HEIGHT; FURTHER PROVIDING FOR
CLARIFICATION ON THE RESTRICTIONS ON THE CREATION OF NEW
ZONING CATEGORIES AND AMENDMENTS TO RESIDENTIAL ZONING
DISTRICT REGULATIONS; CALLING A REFERENDUM ELECTION ON THE
PROPOSED AMENDMENT TO THE TOWN CHARTER TO BE HELD ON
TUESDAY, MARCH 9, 2010; PROVIDING FOR SUBMISSION TO THE
ELECTORS FOR APPROVAL OR DISAPPROVAL OF THE PROPOSED
CHARTER AMENDMENT; PROVIDING FOR REQUISITE BALLOT LANGUAGE;
PROVIDING FOR PROCEDURE FOR BALLOTING; PROVIDING FOR NOTICE;
PROVIDING FOR RELATED MATTERS; PROVIDING FOR CONFLICTS,
SEVERABILITY AND AN EFFECTIVE DATE.

Faded
on 1st
Reading

Attorney Trevarthen read Ordinance 2009-33 by title.

Mayor Minnet opened the meeting for public comments.

Scott Sasser was against the Ordinance as written and believed it should be placed on
hold until the current litigation was completed.

Diane Boutin was not in favor of the Ordinance as written.

Cristi Furth did not want to go forward with the referendum.

Mark Brown was against another referendum to lower height limits that may bring forth
future lawsuits.

Barbara Cole was against the Ordinance.

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

Town Commission Regular Meeting Minutes
December 1, 2009

Commissioner Silverstone maintained that the height limitations needed to be clarified so people could understand.

Commissioner Dodd stated that the problem facing the Town was to limit development on El Mar Drive. He was against lowering the height limit to 33 feet.

Commissioner Clotley stated that the main goal of the referendum was that the dais could not overturn the long term development plans devised by the people previously.

Mayor Minnet questioned the meaning of the referendum in March 20, 2006 and whether it was written correctly and inserted into the Charter at that time. Attorney James White explained that in 2006 it was codified into the Charter except for the provision referenced in this Ordinance. Mayor Minnet believed clarification could be made by Ordinance and not through another referendum. She believed the public should be more involved.

Commissioner Clotley believed people had the right to vote.

Commissioner Clotley made a motion to defer Ordinance 2009-33 to the December 8, 2009 Commission meeting. Attorney Trevarthen reminded the Commission that the deadline to get the Ordinance to the Supervisor of Elections was January 11, 2010 and a 2nd reading of the Ordinance would be required before that time.

Commissioner Silverstone seconded the motion. The motion failed 2 - 2. Mayor Minnet voted no. Commissioner Dodd voted no.

Commissioner Dodd made a motion to adopt Ordinance 2009-33 on 1st reading. Commissioner Clotley seconded the motion. The motion failed 2 - 2. Commissioner Dodd and Commissioner Clotley voted no.

Commissioners Clotley and Dodd changed their vote to yes. Mayor Minnet changed her vote to no. Attorney Trevarthen stated that it was the consensus of the Commission that the final vote was 2-2. The motion failed.

Mayor Minnet recessed the meeting at 9:05 p.m. and reconvened at 9:15 p.m.

- *
Failed on 1st Reading
- c. Ordinance 2009-34: AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, APPROVING AN AMENDMENT TO SECTION 7.1 OF THE TOWN CHARTER PENDING THE RESULTS OF A REFERENDUM ELECTION PROVIDING FOR A MAXIMUM BUILDING HEIGHT OF FORTY-FOUR (44) FEET FOR ALL BUILDINGS WITHIN THE TOWN LOCATED NORTH OF PINE AVENUE; PROVIDING FOR A MAXIMUM BUILDING HEIGHT OF THIRTY-THREE (33) FEET FOR BUILDINGS LOCATED SOUTH OF PINE AVENUE IN SPECIFIED AREAS; PROVIDING FOR A MODIFICATION IN THE CALCULATION USED TO DETERMINE MAXIMUM BUILDING HEIGHT; FURTHER PROVIDING FOR CLARIFICATION ON THE RESTRICTIONS ON

THE CREATION OF NEW ZONING CATEGORIES AND AMENDMENTS TO RESIDENTIAL ZONING DISTRICT REGULATIONS; CALLING A REFERENDUM ELECTION ON THE PROPOSED AMENDMENT TO THE TOWN CHARTER TO BE HELD ON TUESDAY, MARCH 9, 2010; PROVIDING FOR SUBMISSION TO THE ELECTORS FOR APPROVAL OR DISAPPROVAL OF THE PROPOSED CHARTER AMENDMENT; PROVIDING FOR REQUISITE BALLOT LANGUAGE; PROVIDING FOR PROCEDURE FOR BALLOTING; PROVIDING FOR NOTICE; PROVIDING FOR RELATED MATTERS; PROVIDING FOR CONFLICTS, SEVERABILITY AND AN EFFECTIVE DATE.

Attorney Trevarthen read Ordinance 2009-34 by title.

Mayor Minnet opened the meeting for public comment.

Edmund Malkoon urged the Commission not to go forward with the Ordinance.

Barbara Cole concurred with Mr. Malkoon.

Rosalie Malkoon believed the height limits should be the same throughout Town.

Vito Chiarello did not favor a 44 foot height limit.

Diane Boutin believed it was not the time to rush into the Ordinance.

Cristi Furth believed the people should decide where 44 foot height limitations should be implemented.

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

Commissioner Dodd made a motion to adopt Ordinance 2009-34 on 1st reading. Commissioner Silverstone seconded the motion. The motion failed 1 - 3. Mayor Minnet, Commissioner Dodd and Commissioner Clotey voted no.

Mayor Minnet noted that during the break representatives for the Census 2010 asked to be moved forward on the agenda. She granted the request and pulled item 13a, Resolution 2009-30 for discussion.

13a. Resolution 2009-30: A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA AFFIRMING SUPPORT OF AND PARTNERSHIP WITH THE 2010 CENSUS

Attorney Trevarthen read Resolution 2009-30 by title.

Memo

To: Mayor and Town Commission, Town of Lauderdale-by-the-Sea

Cc: Esther Colon, Town Manager

From: Susan L. Trevarthen, Town Attorney

Date: November 24, 2009

Re: Proposed Height Referenda

Background

Commissioners placed multiple height issues on the agenda of the October 26, 2009 workshop. Vice Mayor McIntee's proposal stated "Implementation of referendum to clarify 33 foot height limit in Town." Commissioner Dodd had two proposals. He withdrew the first, which stated "Should the 15 story height limit be restored in the north end of Town?" His second asked "Should the Town change the zoning to allow the 44 foot height limit that was passed at three previous referenda for development within the boundaries of the Old Marina Overlay, Beach Overlay and Hospitality Districts? The setbacks, green space and density to be calculated from the 1973 original charter provisions and not the more recent overlay district parameters."

After discussion, the Commission directed me to develop two alternatives for consideration on first reading, one that allowed 35 feet south of Pine Avenue and 44 feet north of Pine Avenue, and the other that would allow 44 feet in specified areas south of Pine Avenue as well as north of Pine Avenue. In both alternatives, the references to measuring height from the minimum finished floor elevation would be removed, and the height measurement would instead be from a point 18 inches above the crown of the adjacent roadway. The Commission also raised questions about the ability of a future Commission to reinstate the overlay districts. At the November 10 meeting, the Commission clarified its direction that the height south of Pine Avenue should be 33 feet rather than 35 feet.

The Height Proposals

Both proposals remove the reference to the finished floor elevation as the baseline for height measurements under the Charter. Both proposals measure height from 18 inches above the crown of the adjacent roadway. Both also specify a maximum height of 44 feet north of Pine Avenue.¹

Subsection 9 of the Charter requires referendum approval of changes to the heights and uses in the residential zoning districts, and prohibits the creation of new zoning categories. This subsection is clarified in both proposals, to make clear that the creation of new "overlay districts" requires a referendum.

A key difference between the two proposals lies in the treatment of height south of Pine Avenue. In Option A, the height limit south of Pine Avenue is uniformly 33 feet. In Option B, 44 feet is allowed in the B-1, B-1A, RM-25 and RD-10 areas generally along Commercial Boulevard, east of Bougainvillea Drive and east of Silver Shores Waterway, while the remaining areas have a height limit of 33 feet.

The proposals also differ in how they address the interrelationship between the Charter height limits and the heights in the zoning districts in Subsection 9. Under Option B, a referendum would also be required in order to increase the intensity or density of development under the RM-25 residential zoning district regulations in the area south of Pine Avenue. The key 1973 development standards for this district are still contained in the Town's RM-25 zoning category. The Charter already restricts the Commission's ability to increase the height in the residential zoning categories, including RM-25. This additional change will restrict the Commission's future ability to modify the setbacks and other development standards in the residential zoning districts to increase the intensity or density of development.

All other aspects of the existing Charter Section 7.1 are maintained without change.

¹ Pursuant to the nonconforming provisions of existing Charter Section 7.1(5), a property that was already developed with a building taller than the Charter height limits will be able to be rebuilt with the additional height.

TOWN OF LAUDERDALE-BY-THE-SEA

TOWN COMMISSION

Referendum Workshop

AGENDA MINUTES

Jarvis Hall

4505 Ocean Drive

Monday, October 26, 2009

6:01 P.M.

1. CALL TO ORDER, MAYOR ROSEANN MINNET

2. PLEDGE OF ALLEGIANCE TO THE FLAG

The Commission agreed to take Public Comments at the end of the meeting.

3. ITEMS OF DISCUSSION:

a. Discussion and/or action on a "two hats" referendum item (Commissioner Dodd)

The Commission discussed sample versions of a referendum question in relation to conflicts of interest. There was clarification on what exactly was considered a conflict of interest. The Commission agreed that it was any sitting elected official that voted on a topic that would result in personal financial gain. It was later added that any elected official conducting work with a business or resident in Town would be considered a conflict of interest.

Some Commissioners were only in favor of creating this referendum if it was worded correctly. The Town Attorney confirmed all of the provisions that the Commission wanted in the referendum ordinance. Commissioner Dodd extended the voting restrictions to elected officials who were also board members of businesses and volunteer organizations contracted with the Town.

b. Discussion and/or action regarding the height limit:

1. Implementation of referendum to clarify 33 foot height limit in Town (Vice Mayor McIntee)

The Commission and Town Attorney discussed whether or not to talk about this topic while litigation was still pending. Attorney Trevarthen did not recommend discussing the topic.

2. "Should the 15 story height be restored in the North end of Town" (Commissioner Dodd)

The Commission discussed the current height restrictions in the Charter and clarified the provisions and definition of grade with the Town Attorney. Discussion followed regarding the width of buildings and whether that was something that could be restricted without causing litigation. Direction was given to the Town attorney to create a referendum ordinance that eliminated the clause to build above the flood zone height of 8 feet, to restrict the north end of Town to 44 feet, to restrict the south end of Town to 33 feet, and to protect the current provisions for non-conforming buildings.

3. Should the Town change the zoning to allow the 44 foot height limit that was passed at three previous referenda for development within the boundaries of the Old Marina Overlay, Beach Overlay and Hospitality Districts? The setbacks, green space and density to be calculated from the 1973 original charter provisions and not the more recent overlay districts parameters (Commissioner Dodd)

This item was discussed with item 3.b.2.

- c. Discussion and/or action concerning a referendum question for lifeguards (Commissioner Dodd)

The Commission discussed the cost for lifeguard services and locations along the beach. It was the consensus of the Commission that it was not necessary to place lifeguards along the entire beach; only near the areas with public access. Direction was given to the Town Attorney to create a referendum ordinance that clearly gave the cost to have lifeguards along the entire beach, the cost to only have lifeguards between the portals, and the cost to have the same coverage time as the City of Ft. Lauderdale in both scenarios.

- d. Discussion and/or action regarding referendum items for the March 2010 ballot (Mayor Minnet)

This item was discussed during item 3A

Public Comments

Cristi Furth clarified that the residents did not vote for an exact 44 foot height limit, only a maximum of 44 feet that could be implemented through zoning regulations.

Frank Herrmann recalled that many of the early Mayors and Commissioners were also members of the Volunteer Fire Department and it was never a problem. He did not feel there was a need for lifeguards.

George Crossman reviewed the Coastal Construction application specifications.

Lawrence Wick reviewed the height limit specifications and felt it was best to remove the Coastal Construction Control Line provision.

Rosa Michaliuk disagreed with having a "two hat" referendum and did not want the height limit any higher.

Louis Marchelos, John Oughton, Mark Brown, Yann Brandt, Ben Freeny, and Edmund Malkoon were in favor of an Ethics referendum.

Spiro Marchelos wanted to see the will of the people protected.

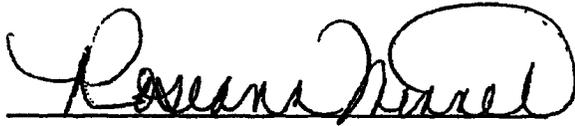
Barbara Cole was no longer in favor of any referendums.

Chris Vincent was in favor of a height referendum to finally clear up the confusion.

Paul Novak felt the height restrictions made a negative economic impact on the Town. He felt that a 44 foot height limit allowed for development and turnover in the Town.

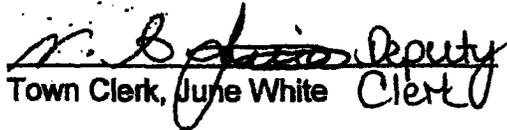
4. ADJOURNMENT

Vice Mayor McIntee made a motion to adjourn. With no further business before the Commission, Mayor Minnet adjourned the meeting at 8:45 p.m.



Mayor Roseann Minnet

ATTEST:



Town Clerk, June White Deputy Clerk

11/10/09
Date

TOWN OF LAUDERDALE-BY-THE-SEA

TOWN COMMISSION

REGULAR MEETING

MINUTES

Jarvis Hall

4501 Ocean Drive

Tuesday, October 13, 2009

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 Jerry McIntee, Commissioner Jim Silverstone, Commissioner Stuart Dodd, Commissioner Birute Ann Clotey, Town Attorney Susan L. Trevarthen, Town Manager Esther Colon, and Human Resource/Risk Manager Kathy O'Brien.

2. PLEDGE OF ALLEGIANCE TO THE FLAG

3. INVOCATION - Reverend George Hunsaker

Mayor Minnet consolidated similar items such as New Business items 16d, 16f and 16g and New Business items 16h, 16i, 16j and 16k which dealt with referendum issues. There were no objections.

Vice Mayor McIntee wanted to add free parking for the Halloween Event from 5:00 p.m. to 11:00 p.m. Mayor Minnet added the item as Consent item 12f.

Commissioner Dodd requested that the Environmental Sustainability Committee be placed back on the agenda as a future agenda item for November 24, 2009. There were no other changes, additions or deletions to the agenda.

4. PRESENTATIONS

a. Presentation by Cry of the Water - Establishment of a Marine Park (Commissioner Silverstone)

Commissioner Silverstone compared the Marine Park in Key West to an aquarium. He explained that the idea was to create a Marine Park as part of the beaches.

Stephanie Clark explained that the Key West Marine Park was a public underwater coral reef park that was created with hard and soft corals, sponges and sea grasses that enhanced protection for the ecosystem and would be valuable to the Artificial Reef

Town Commission Regular Meeting Minutes
October 13, 2009

Mr. Bartolome gave an overview of the Green Hopper. He stated that a place to charge the electric vehicles (about 4) would be needed along with a safe place to keep the vehicles.

Mr. George said that as the driver of the Green Hopper, he found the service to be rewarding as it provided a great deal to the community to help them get around and prevented drinking and driving.

Mayor Minnet thanked everyone for their support of the idea.

Commissioner Clotey made a motion to pursue discussion in regards to having the service within the Town. Commissioner Dodd seconded the motion. The motion carried 5-0.

5. PUBLIC COMMENTS

John Thompson spoke on the height limitation.

Cristi Furth questioned whether there was concern with the Sunshine law when the Commission discussed the height limit as there was pending litigation.

Vito Chiarello did not like personal attacks. He believed in freedom of speech.

Dennis Ritchie wanted to know if certification was required for boat training.

Jerry Sehl had a website where people could fill out public and/or private polls. He added that the service was not a blog.

Patrick Potts was concerned with fishing on the beach.

Linda Ritchie requested people become members of the Property Owners Association.

Spiro Marchelos thought the Marine Park was a good idea but the Town should concentrate on downtown first.

Sal Coniglio was upset that a meeting was held on a Jewish Holiday.

Louis Marchelos stated that a member of the dais threatened to sue at the previous meeting.

Daniel Harpert believed the people developed a loss of confidence.

Frank Herrmann believed the agendas were packed with items that had been commented on many times before.

Town Commission Regular Meeting Minutes
October 13, 2009

Chris Vincent believed that there should be common ground and understanding of the grey areas.

Rosalie Malkoon said the Town Manager's job description did not include obtaining a police report.

Bob Fleishman did not believe Vice Mayor McIntee had the right to enter a crime scene.

Michael Millstone, security guard at the Hampton Beach Club confirmed that at 10:20 p.m. the fire alarm went off and explained the procedure that followed and stated that VFD showed up to silence the alarm at about 10:40 p.m. Vice Mayor McIntee pointed out that the VFD responded when they received the call.

Beverly Kennedy believed the issue of bicycle riders needed to be addressed.

John Oughton announced his intention to run for Commissioner.

Ben Freeney offered his thoughts on a manager review process.

Ken Brenner proposed a mixed use classification for garbage pick up.

Ron Piersante believed that leaving the bags on the parking meters cost the Town approximately \$90,000 in lost revenue.

Lawrence Wick believed it was time to get on with Town business.

Yann Brandt stated that the Town Manager could only manage what the Commission decided to put into the budget.

There were no more comments.

Mayor Minnet recessed the meeting at 9:11 p.m. and reconvened at 9:29 p.m.

6. REPORTS

a. Finance and Budget Monthly Report - August 2009 (Manager Colon)

Commissioner Silverstone made a motion to approve the report. Commissioner Clottey seconded the motion. The motion carried 5 - 0.

b. VFD Fire Monthly Report - August 2009 (Chief Perkins)

Mayor Minnet inquired of the number of hours for driver training. Chief Perkins said it would be on the next monthly report. Mayor Minnet asked whether the roster was updated. He said it bounced as people took leave. Manager Colon asked that he would note anyone on administrative leave. Chief Perkins agreed.

TOWN OF LAUDERDALE-BY-THE-SEA

TOWN COMMISSION

continued from October 13, 2009

MINUTES

Jarvis Hall

4501 Ocean Drive

Tuesday, October 20, 2009

6:00 P.M.

1. CALL TO ORDER, MAYOR ROSEANN MINNET

Mayor Roseann Minnet called the meeting to order at 6:00 p.m. Vice Mayor Jerry McIntee, Commissioner Jim Silverstone, Commissioner Stuart Dodd, and Commissioner Birute Clotey were present. Also present were Town Attorney Susan L. Trevarthen, Town Manager Esther Colon, Town Clerk June White, and Deputy Clerk Nekisha Smith.

2. PLEDGE OF ALLEGIANCE TO THE FLAG

3. COMMISSIONER COMMENTS

Commissioner Clotey apologized on her own behalf for having a meeting on Yom Kipper. Commissioner Clotey spoke with Oliver Parker regarding Oriana and she was told there were no restraints and no time limit on the money and the money could be used anywhere on El Mar Drive including the pathway along the beach. She requested that either the Town Manager or Town Attorney look into it. She was glad the money was approved for the Marine Park as she believed it would be good for the Town. Commissioner Clotey believed the Green Hopper would be good for the Town also. She appreciated the presentation from Mr. Simmons regarding the Town Manager's review. Commissioner Clotey talked about referendums on the ballot; one that would make the VFD the fire provider for the Town and not be removed without a referendum vote and the other whether someone on the Dias should be a member or an officer of a vendor. She believed VFD was a vendor. Commissioner Clotey said that if the Commission put it on the ballot it would be the same as saying the Commission supported it. She believed the people should get the signatures and place it on the ballot.

Commissioner Silverstone wanted to do something to recognize previous Vice Mayor John Yanni for his 12 years of service. He stated that he will put it on the agenda for an upcoming meeting for a group of volunteers to clean & polish the Pelican Monument which was something John Yanni was proud to accomplish. Commissioner Silverstone thanked Mrs. Ritchie for putting together the POA meeting. Commissioner Silverstone remembered flooding on the street by the fishing pier where people would come and surf. He liked Ms. Mohler's idea that suggested an engineer come up with a fair payment schedule for the businesses of the Town to pay for drainage in and around that

area. Commissioner Silverstone agreed that the Parking fees for hardship had been raised by more than half and will suggest lowering it when the item comes up. Commissioner Silverstone addressed the oversight regarding Yom Kippur. He added that by the time it was noticed it was too late to change it. Commissioner Silverstone agreed that people should only speak on agenda items. Commissioner Silverstone pointed out that in a public entity there were no grey areas; private businesses had guidelines and were allowed to have grey areas. He added that a public entity had no guidelines; they had to follow the law or they would break the law. Commissioner Silverstone stated that the end of year numbers will be available when completed. He advised that anytime people had questions to please call him or the Town to get their answers rather than come to the podium and wait for their answers. He thanked Mr. Wick for the Christmas-By-The-Sea event and advised Mr. Brown the Supervisor of Elections had certified that the taxes were lowered in Lauderdale-By-The-Sea. Commissioner Silverstone said the Youth League Basketball was starting up again and signups were Saturday November 7, 2009 and also there will be Karate classes for children between the ages of 6 through 12.

Commissioner Dodd commented on the rolls of the Commission. He said he had to place items on the agenda that needed representation and was tired of being accused of attacking when he asked for information. He believed he was being attacked as the Vice Mayor had placed a second request for his emails. Vice Mayor McIntee made a point of order and stated that he did not. Attorney Trevarthen stated she did not receive another request. Commissioner Dodd apologized and stated he had printed 1875 emails.

Vice Mayor McIntee talked about the height in Old Town and New Town. He proposed a referendum 33 feet in Old Town 44 feet in New Town. Vice Mayor McIntee stated he received another call from the wife of the suicide victim who said that Mark Brown from By-The-Sea-Future came to her home and she told Mr. Brown that Vice Mayor McIntee did not bring the child into the room a second time to view the victim. Vice Mayor McIntee asked for a retraction and Mr. Brown did not retract; instead Mr. Brown printed the lie again. Vice Mayor McIntee said the Town was going in the right direction. Houses were being sold and remodeled because the Town was stable.

Mayor Minnet read an internal memo from the Broward County Sheriff's office whereby they reopened the investigation on the suicide. Mayor Minnet passed out an article regarding "Make a Difference Day" on October 24, 2009 and hoped everyone would try to make a difference. She reminded everyone that Census 2010 was here. Mayor Minnet thanked the Chamber and everyone that participated in the Beach Clean Up that began October 3, 2009. She said there was a presentation at the next meeting regarding single stream recycling. Mayor Minnet thanked the POA for the Octoberfest. She said it was a wonderful evening. Mayor Minnet said she put the boat enclosure issue back on the agenda because the people of Bel Air were asking for clarification. She pointed out that the agenda item stated "clarification" and thanked Mr. Wick for asking. Mayor Minnet was glad the Planning and Zoning Board were in favor of the

theater district as an allowable use. She explained that the Flag was at half mast because it was National Firefighters Week.

4. RESOLUTION - "Public Comments"

- a. Resolution 2009-26: A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA RECOGNIZING CITY GOVERNMENT WEEK, OCTOBER 18-24, 2009 AND ENCOURAGING ALL CITIZENS TO SUPPORT THE CELEBRATION AND CORRESPONDING ACTIVITIES

Attorney Trevarthen read resolution 2009-26 by title.

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

Commissioner Clotey made a motion to adopt Resolution 2009-26. Commission Dodd seconded the motion.

Commissioner Silverstone thought it was a great idea for promoting citizen involvement. The motion carried 5-0.

5. QUASI JUDICIAL PUBLIC HEARINGS

6. OLD BUSINESS

- a. Commission selection of contractor and award of RFP 09-07-01 - Commercial Blvd Drainage Improvements (Assistant Town Manager) This item was deferred at the September 10, 2009 Commission Meeting by Vice Mayor McIntee.

Vice Mayor McIntee believed that a board or a group of people were to be set up to highlight the worst areas in town in order to do those first. Mayor Minnet believed an Engineer was needed to do a Town wide study.

Vice Mayor McIntee made a motion to direct the Town Manager to implement the \$98,000 Town wide Stormwater Plan by Chen and Associates and do the most serious ones first. Manager Colon stated that the Town Engineer submitted the quote at \$98,000 to do a Master Stormwater Plan Town wide study. Commissioner Silverstone seconded the motion for discussion. Commissioner Dodd believed the Commission already agreed to go with the study and not do piece meal repairs. Commissioner Silverstone agreed that was the direction the Commission had taken. Commissioner Silverstone seconded the motion. The motion carried 5-0.

- b. Discussion and/or action regarding Citizen Contact Forms for drainage project (Assistant Town Manager Olinzock) This item was deferred at the September 10, 2009 Commission Meeting by Vice Mayor McIntee.

This item was considered with Old Business item 6a and approved.

Town Commission Regular Meeting
October 20, 2009 continued from October 13, 2009

Mayor Minnet stated that the Commission will schedule a workshop to include items 7h, 7i, 7j and 7k for discussion regarding a two hats referendum, a height referendum, a lifeguard referendum and a Budget Oversight Committee referendum.

Vice Mayor McIntee wanted to briefly discuss the height provisions in item 16i, 1, 2, and 3. He asked Attorney Trevarthen if she had looked into the 33 foot height limitation.

Attorney Trevarthen gave a PowerPoint presentation on Section 7.1(2) and hereto attached to these minutes.

Vice Mayor McIntee questioned whether after 2006 an overlay district could not be created. Attorney Trevarthen stated that they could not create a new zoning category.

Vice Mayor McIntee questioned whether a 44 ft building could be built in the north end of Town on a vacant lot. Attorney Trevarthen stated that would fall under "all other buildings" Section 7.1(1) and the 33 foot limitation applied to anyone that did not have a current building. Vice Mayor McIntee wanted a referendum of 33 feet in the south end of Town and 44 feet in the north end of Town.

Commissioner Silverstone asked whether the overlay districts could be put back without going to referendum. Attorney Trevarthen stated they would need to determine whether it was a zoning category which was prohibited by the Charter.

Commissioner Clotey asked what a new zoning category was. Attorney Trevarthen explained it would be a new zoning category that would show up on the zoning map.

Mayor Minnet inquired of uninhabitable space on the 1st floor. Attorney Trevarthen indicated that the flood zone indicated what as habitable. She said there could be a choice as to what was habitable based on the minimum requirement.

Commissioner Dodd asked whether the overlay districts were legal. Attorney Trevarthen said as far as she knew it was as they were adopted prior to the 2006 Charter. Commissioner Dodd believed that 44 feet was previously voted on by the voters.

Attorney Trevarthen stated that 33 feet only applied to properties that as of March 20, 2006, were vacant or lacked a building.

Vice Mayor McIntee asked whether it must go to referendum. Attorney Trevarthen indicated that 44 feet conformed to the Charter and zoning could be altered within the Charter. She said that the Charter contained 2 categories: those properties in Town that already have a building since March 20, 2006 are within the 44 foot height category; and the all other buildings category at 33 feet.

Town Commission Regular Meeting
October 20, 2009 continued from October 13, 2009

Commissioner Clotey asked whether it was possible to write a referendum giving the voters a choice between 33 and 44 feet. Attorney Trevarthen said she could work on it for proper language.

Vice Mayor McIntee believed the voters should have the decision. He wanted to know whether they could incorporate 33 feet in the south end of Town and 44 feet in the north. Attorney Trevarthen stated that once the Commission gave consensus as to where they want to go she could draft language.

Mayor Minnet stated that there was consensus to have stronger definitions for the referendum and suggested they move forward and schedule a workshop.

Commissioner Silverstone made a motion to schedule a referendum workshop for Monday October 26, 2009 at 6:00 p.m. Commissioner Dodd seconded the motion. The motion carried 5-0.

- i. Discussion and/or action regarding the height limit:
 - 1. Implementation of referendum to clarify 33 foot height limit Town (Vice Mayor McIntee)
 - 2. "Should the 15 story height limit be restored in the North end of Town" (Commissioner Dodd)
 - 3. Should the Town change the zoning to allow the 44 foot height limit that was passed at three previous referenda for development within the boundaries of the Old Marina Overlay, Beach Overlay and Hospitality Districts? The setbacks, green space and density to be calculated from the 1973 original charter provisions and not the more recent overlay districts parameters (Commissioner Dodd)

This item was scheduled for a referendum workshop on October 26, 2009 along with item 7h, 7j, and 7k.

- j. Discussion and/or action concerning a referendum question for lifeguards (Commissioner Dodd)

This item was scheduled for a referendum workshop on October 26, 2009 along with item 7h, 7i, and 7k.

- k. Discussion and/ or action referendum items for the March 2010 ballot (Mayor Minnet)

This item was scheduled for a referendum workshop on October 26, 2009 along with item 7h, 7i, and 7j.



Item No. 36

TOWN OF LAUDERDALE-BY-THE-SEA

AGENDA ITEM REQUEST FORM

Department Submitting Request _____

Dept Head's Signature _____

<u>Commission Meeting Dates</u>	<u>Last date to turn in to Town Clerk's Office</u>	<u>Commission Meeting Dates</u>	<u>Last date to turn in to Town Clerk's Office</u>	<u>Commission Meeting Dates</u>	<u>Last date to turn in to Town Clerk's Office</u>
<input type="checkbox"/> April 28, 2009	April 17 (5:00 p.m.)	<input type="checkbox"/> June 23, 2009	June 12 (5:00 p.m.)	<input type="checkbox"/> Sept 9, 2009	Aug 28 (5:00 p.m.)
<input type="checkbox"/> May 12, 2009	May 1 (5:00 p.m.)	<input type="checkbox"/> July 14, 2009	July 2 (5:00 p.m.)	<input type="checkbox"/> Sept 22, 2009	Sept 11 (5:00 p.m.)
<input type="checkbox"/> May 26, 2009	May 15 (5:00 p.m.)	<input type="checkbox"/> July 28, 2009	July 17 (5:00 p.m.)	<input checked="" type="checkbox"/> Oct 13, 2009	Oct 2 (5:00 p.m.)
<input type="checkbox"/> June 9, 2009	May 29 (5:00 p.m.)	<input type="checkbox"/> August 2009	Commission Recess	<input type="checkbox"/> Oct 27, 2009	Oct 16 (5:00 p.m.)

NATURE OF AGENDA ITEM

- Presentation
- Report
- Consent Agenda
- Bids
- Resolution
- Ordinance
- Public Hearing
- Old Business
- New Business
- Manager's Report
- Attorney's Report
- Other

EXPLANATION: Discussion and/or action regarding implementation of referendum to clarify 33 foot height limit in Town.

STAFF RECOMMENDATION: N/A

BOARD/COMMITTEE RECOMMENDATION: N/A

FISCAL IMPACT AND APPROPRIATION OF FUNDS: N/A

- Amount \$ _____
- Transfer of funds required
- Bid
- Acct # _____
- From Acct # _____
- Grant
- Amount represents matching funds

Town Attorney review required

- Yes
- No

Town Manager's Initials: _____



Item No. 16.1.2

TOWN OF LAUDERDALE-BY-THE-SEA

AGENDA ITEM REQUEST FORM

Stuart Dodd

Department Submitting Request

Dept Head's Signature

<u>Commission Meeting Dates</u>	<u>Last date to turn in to Town Clerk's Office</u>	<u>Commission Meeting Dates</u>	<u>Last date to turn in to Town Clerk's Office</u>	<u>Commission Meeting Dates</u>	<u>Last date to turn in to Town Clerk's Office</u>
<input type="checkbox"/> April 28, 2009	April 17 (5:00 p.m.)	<input type="checkbox"/> June 23, 2009	June 12 (5:00 p.m.)	<input type="checkbox"/> Sept 9, 2009	Aug 28 (5:00 p.m.)
<input type="checkbox"/> May 12, 2009	May 1 (5:00 p.m.)	<input type="checkbox"/> July 14, 2009	July 2 (5:00 p.m.)	<input type="checkbox"/> Sept 22, 2009	Sept 11 (5:00 p.m.)
<input type="checkbox"/> May 26, 2009	May 15 (5:00 p.m.)	<input type="checkbox"/> July 28, 2009	July 17 (5:00 p.m.)	<input checked="" type="checkbox"/> Oct 13, 2009	Oct 2 (5:00 p.m.)
<input type="checkbox"/> June 9, 2009	May 29 (5:00 p.m.)	<input type="checkbox"/> August 2009	Commission Recess	<input type="checkbox"/> Oct 27, 2009	Oct 16 (5:00 p.m.)

NATURE OF AGENDA ITEM

- | | | |
|---|---|--|
| <input type="checkbox"/> Presentation | <input type="checkbox"/> Resolution | <input checked="" type="checkbox"/> New Business |
| <input type="checkbox"/> Report | <input type="checkbox"/> Ordinance | <input type="checkbox"/> Manager's Report |
| <input type="checkbox"/> Consent Agenda | <input type="checkbox"/> Public Hearing | <input type="checkbox"/> Attorney's Report |
| <input type="checkbox"/> Bids | <input type="checkbox"/> Old Business | <input type="checkbox"/> Other |

EXPLANATION: Discussion and /or action on a referendum issue
"Should the 15 storey height limit be restored in the North end of town?"

STAFF RECOMMENDATION: N/A

BOARD/COMMITTEE RECOMMENDATION: N/A

FISCAL IMPACT AND APPROPRIATION OF FUNDS: N/A

- | | |
|---|--|
| <input type="checkbox"/> Amount \$ _____ | <input type="checkbox"/> Acct # _____ |
| <input type="checkbox"/> Transfer of funds required | <input type="checkbox"/> From Acct # _____ |
| <input type="checkbox"/> Bid | <input type="checkbox"/> Grant <input type="checkbox"/> Amount represents matching funds |

____ See attachment

Town Attorney review required
 Yes No

Town Manager's Initials: _____

Explanation

Should the 15 story height limit be restored in the North end of town

At the last election the voters supported a 44 foot town wide height limit in support of the North end residents who did not want to see any more high rise buildings. This gave rise to exaggerated Bert J Harris claims that would bankrupt the town. The legal action is continuing and continues to cost the town money to fight the claim. Because of the recession many prospective builders are lucky they were not breaking ground on high rise buildings but that doesn't mean the claims will go away. This issue could cost the town a considerable sum and should be put to the voters -- continue to fight or allow 15 stories and tighten up the code requirements, green space and setbacks to reflect tasteful development.



Item No. 16213

TOWN OF LAUDERDALE-BY-THE-SEA

AGENDA ITEM REQUEST FORM

Department Submitting Request

Stuart Dodd
Dept Head's Signature

<u>Commission Meeting Dates</u>	<u>Last date to turn in to Town Clerk's Office</u>	<u>Commission Meeting Dates</u>	<u>Last date to turn in to Town Clerk's Office</u>	<u>Commission Meeting Dates</u>	<u>Last date to turn in to Town Clerk's Office</u>
<input type="checkbox"/> April 28, 2009	April 17 (5:00 p.m.)	<input type="checkbox"/> June 23, 2009	June 12 (5:00 p.m.)	<input type="checkbox"/> Sept 9, 2009	Aug 28 (5:00 p.m.)
<input type="checkbox"/> May 12, 2009	May 1 (5:00 p.m.)	<input type="checkbox"/> July 14, 2009	July 2 (5:00 p.m.)	<input type="checkbox"/> Sept 22, 2009	Sept 11 (5:00 p.m.)
<input type="checkbox"/> May 26, 2009	May 15 (5:00 p.m.)	<input type="checkbox"/> July 28, 2009	July 17 (5:00 p.m.)	<input checked="" type="checkbox"/> Oct 13, 2009	Oct 2 (5:00 p.m.)
<input type="checkbox"/> June 9, 2009	May 29 (5:00 p.m.)	<input type="checkbox"/> August 2009	Commission Recess	<input type="checkbox"/> Oct 27, 2009	Oct 16 (5:00 p.m.)

- NATURE OF AGENDA ITEM
- | | | |
|---|---|--|
| <input type="checkbox"/> Presentation | <input type="checkbox"/> Resolution | <input checked="" type="checkbox"/> New Business |
| <input type="checkbox"/> Report | <input type="checkbox"/> Ordinance | <input type="checkbox"/> Manager's Report |
| <input type="checkbox"/> Consent Agenda | <input type="checkbox"/> Public Hearing | <input type="checkbox"/> Attorney's Report |
| <input type="checkbox"/> Bids | <input type="checkbox"/> Old Business | <input type="checkbox"/> Other |

EXPLANATION: Discussion and/or action on a referendum question - Zoning

Should the town change the zoning to allow the 44 foot height limit that was passed at three previous referenda for redevelopment within the boundaries of the Old Marina Overlay, Beach Overlay and Hospitality Districts. The setbacks, green space and density to be calculated from the 1973 original charter provisions and not the more recent overlay district parameters.

STAFF RECOMMENDATION: N/A

BOARD/COMMITTEE RECOMMENDATION: N/A

FISCAL IMPACT AND APPROPRIATION OF FUNDS: N/A

- | | |
|---|--|
| <input type="checkbox"/> Amount \$ _____ | <input type="checkbox"/> Acct # _____ |
| <input type="checkbox"/> Transfer of funds required | <input type="checkbox"/> From Acct # _____ |
| <input type="checkbox"/> Bid | <input type="checkbox"/> Grant <input type="checkbox"/> Amount represents matching funds |

See attachment

Town Attorney review required
 Yes No

Town Manager's Initials: _____

Back-up

I placed this as a zoning change rather than a height change issue.

Historically this town has already gone to the polls three times over the issue of 33 feet or 44 feet. The voters firmly reaffirmed 44 feet on every occasion. When the present commission took office they repealed the overlay districts which were the only areas in town where a developer could legally establish 3 over 1 or 44 feet for a development. The problem with the overlay districts was that the setback, green space and density calculations were too liberal and allowed for the Orianna and Sea grape drive developments. This referendum question reaffirms 44 feet and the 1973 provisions of the charter to allow redevelopment while maintaining the views of the ocean from El Mar drive.

Height Regulations in 2006 Lauderdale-By-The-Sea Charter

October 13, 2009
Town Commission Meeting

52
52

All Buildings in Town Section 7.1(2)

- If more than 3 stories above grade:
 - First floor must be parking or other supporting uses (storage, lobby, etc.)
 - If in B district, first floor may also be used for commercial uses if specific parking requirements are met (offstreet parking provided or no backing onto the street from the parking)
 - Can have one or more stories below grade
- Height measurement rules specified:
 - Stairway enclosures, tanks and elevator/HVAC equipment do not count
 - Parapet wall not to exceed four feet

Two Classes of Height Regulations

Section 7.1(1)

- **"Existing Buildings"** located within the Town's March 20, 2006 boundaries
 - Buildings that are less than or equal to the 44 foot standard for "existing buildings"
 - Special rules apply to replacement of nonconforming "existing buildings"
 - **"All Other Buildings"**: Any building constructed after March 20, 2006. Affects:
 - Undeveloped property
 - Property developed for parking or other uses of land without a building
-

54

"Existing Buildings" Section 7.1(1)

- Height standard is four stories above grade
 - 44 feet above grade per Building Code
 - Alternatively, can define grade at a point 18 inches above the crown of the adjoining road
-

55

Reconstruction of "Existing Buildings" That Are Nonconforming As To Height Section 7.1(5)(a),(b) & (c)

- Existing height can be replaced in event of:
 - Disaster, with an approved plan, if you commence construction within 1 year of disaster
 - Voluntary demolition, with an approved plan, if you commence construction within 6 months of plan approval
 - Extensions available from Town Commission upon written request before expiration
-

Reconstruction of "Existing Buildings" That Are Nonconforming As To Height Section 7.1(5)(e)

- Must not exceed original height (or square footage). Entitled to additional height (or square footage) if:
 - Necessary to meet flood regulations (applicable east of El Mar at this time)
 - Necessary to meet the use regulations in order to obtain the same number of habitable stories
-

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"All Other Buildings"

Section 7.1(1)

- Height standard is 33 feet
 - Three options for measurement - whichever is highest applies:
 - 33 feet above grade per Building Code
 - 33 feet above a point 18 inches above the crown of the adjoining road; or
 - 33 feet above the minimum finished floor elevation for habitable space
-

Changing Charter Height Regulations

Section 7.1(9) & (10)

- Town Commission may not, by ordinance or variance, increase the Charter height and square footage or remove the parking and use restrictions
 - By referendum, Town voters may increase or modify the height regulations by voting to repeal or amend the Charter at a regular election
 - Special election only allowed to respond to an appellate court finding that these provisions are invalid
-

Land Development/Zoning Regulations Section 7.1(8) & (9)

- Per statute and charter, zoning regulations cannot exceed or conflict with Charter height regulations
 - If zoning has a lower effective height limit, it remains effective even though the Charter allows more height
 - New zoning categories not permitted without voter approval
-

2003 Overlay Districts

- Building height
 - 3 stories or 33 feet above grade
 - If 1998 charter parking and use restrictions met for grade level, three over one or 44 feet above grade
- Predate the 2006 Charter prohibition on adopting new zoning categories

Town of Lauderdale-by-the-Sea

OFFICE OF THE TOWN MANAGER

Memorandum

Date: November 12, 2009

To: Mayor Roseann Minnet
Vice Mayor Jerry McIntee
Commissioner Stuart Dodd
Commissioner Birute Clotey
Commissioner Jim Silverstone

From: Esther Colon, Town Manager *EC*

Subject: REFERENDUMS

Attached please find the recommended referendum questions in draft form from the Town Attorney as directed by the Commission at the October 26th, 2009 Town Commission workshop.

Thank you.

EC/mi

Cc: John Olinzock, Assistant Town Manager
June White, Town Clerk ✓

**MODIFYING THE MAXIMUM BUILDING
HEIGHT & MEASUREMENT CALCULATION
FOR ALL BUILDINGS LOCATED SOUTH OF PINE AVENUE**

DRAFT

**MODIFYING THE MAXIMUM BUILDING HEIGHT AND MEASUREMENT
CALCULATION.**

This Amendment: (1) establishes a maximum building height of forty-four (44 ft) for all buildings located north of Pine Avenue and thirty-five (35 ft) for all buildings located south of Pine Avenue, and (2) revises the calculation used to determine maximum building height.

Shall the above-described Charter Amendment be adopted?

Yes []

No []

DRAFT

- (1) No building within the jurisdictional boundaries of the Town as they existed on _____, 2010 ~~March 20, 2006~~, located north of Pine Avenue, shall have more than four (4) stories above grade, and the maximum height of such buildings within the Town that have four (4) stories above grade shall be forty-four (44) feet above grade, which shall be measured as the higher of:
- (a) Above grade, as defined in the Florida Building Code, or
 - (b) Above a horizontal plane eighteen inches above the crown of the roadway at the highest point adjoining the property on which the building is located, whichever of those two levels is higher.

- (2) No building within the jurisdictional boundaries of the Town as they existed on _____, 2010, located south of Pine Avenue, shall exceed a The maximum height for all other buildings within the Town shall be of thirty-three five (335) feet, which shall be measured as the higher of:
- (a) Above grade, as defined in the Florida Building Code, or
 - (b) Above a horizontal plane eighteen inches above the crown ~~of~~ the roadway at the highest point adjoining the property on which the building is located, ~~or~~
 - ~~(c) Above the minimum elevation for a habitable, finished floor permitted under applicable federal or Florida state regulations, whichever of those three levels is highest.~~

Height shall be measured from the applicable base level specified above to the highest point on a flat roof, or to the median elevation between the peak of a sloped roof and the lowest edge of the sloped roof. ~~In accordance with the Florida Building Code, All~~ bulkheads and penthouses used solely to enclose stairways, tanks, elevator machinery or shafts or ventilation or air conditioning apparatus shall ~~not~~ be included in determining building height; all other roofs structures, including parapet walls, shall not exceed ~~four feet in height above~~ the maximum allowed building height.

- (23) In any building within the Town that has more than three (3) stories above grade, the first story shall be at grade level and shall be used for parking, either with or without toll collection booths. The first story may also be used for storage, refuse, security, registration, maintenance, and/or access, either with or without a lobby, provided that at least one-half (1/2) of the square footage of the first story is used for parking. Only within districts of the Town zoned for business ("B") use, the first story of buildings having more than three (3) stories above grade may also be devoted to non-residential commercial uses, provided that dedicated parking required by Town ordinance or code for the proposed buildings is provided off-street at a location on or adjacent to the property on which the buildings are situated, and designed so as to enable the parked vehicles to egress the parking space without having to back out into traffic. In any building within the Town that has more than three (3) stories above grade, the first story shall be restricted to the above enumerated uses, and may be used for no other purpose whatsoever. For the purposes of this provision of the Charter, a story is at grade level if its floor is at or below grade and its ceiling is above grade; a story that is at grade level is also above grade. Nothing in this paragraph shall be construed so as to prohibit any building within the Town that has more than three (3) stories above grade from also having one (1) or more subterranean stories below grade, provided, however, that in any building within the Town that has more than three (3) stories above grade, all subterranean stories shall be subject to the same restrictions on use as are established in this paragraph for the first story.

DRAFT

~~(3) Buildings which exceed thirty three (33) feet above grade, and which exceed thirty three (33) feet above the horizontal plane eighteen inches above the crown of the roadway at the highest point adjoining the property on which the building is located, but which are nevertheless allowed under subparagraph (1)(e) of this Section, and which do not include a non-habitable first floor with ample parking as required by Town ordinance or code, in accordance with the number and type of units in these buildings, must have dedicated off street parking at a location on or adjacent to the property on which the buildings are situate. Parking for buildings in this category must be designed so as to enable the parked vehicles to egress the parking space without having to back out into traffic.~~

(4) All existing buildings within the Town that were legally in compliance with existing height and use restrictions on _____, 2010, March 20, 2006, or were grandfathered on that date, but that either exceed the maximum building height limit established in paragraphs (1) or (2), as applicable, above, of this section of the Charter, or that fail to comply, where applicable, with the restrictions on use established in paragraph (23), above, of this section of the Charter, (hereinafter referred to as "Non-conforming Buildings") shall be considered legal, but non-conforming.

(5) Notwithstanding the maximum building height limit established in paragraphs (1) and (2), above, of this section of the Charter, an existing non-conforming building may be replaced by a new nonconforming building when, and only when:

(a) The existing non-conforming building has:

- (i) Been destroyed by fire, natural disaster, or other act of God; and
- (ii) The property owner has submitted and received Town approval of a site plan depicting the replacement building; and
- (iii) Construction of the replacement building is commenced within twelve (12) months of the date of destruction; or

(b) The existing non-conforming building is:

- (i) Demolished as part of a Town approved redevelopment of the property; and
- (ii) Prior to demolition, the property owner has submitted and received Town approval of a site plan depicting the replacement building; and
- (iii) Construction of the replacement building is commenced within six (6) months of the date of site plan approval.

(c) The Town Commission may grant one (1) or more six (6) month extensions to the time periods for commencement of construction established in paragraphs (5) (a)(iii) and (5) (b)(iii), above, provided a written request for extension is filed with the Town Clerk prior to (in the case of a first request for extension) the expiration of the initial applicable time period for commencement of construction or prior to (in the case of a subsequent request for extension) the expiration of the most recent extension of the applicable time period for commencement of construction.

(d) All new non-conforming buildings constructed pursuant to the provisions of either paragraph (5) (a) or (5) (b), above, shall comply, where applicable, with the restrictions

DRAFT

on use established in paragraph (23), above, and the provisions for parking availability established in paragraph (3), above, of this section of the Charter.

(e) The maximum allowable height of any new non-conforming building constructed pursuant to the provisions of either paragraph (5) (a) or (5) (b), above, shall not exceed the original height of the non-conforming building which it replaces, plus any additional height which (because of the requirements of state or federal law, or because of the restrictions on use established in paragraph (2), above, of this section of the charter) may be necessary to obtain the same number of habitable stories as was contained in the original non-conforming building. Nothing in this section of the Charter shall be construed to prevent a new non-conforming building from being constructed to a lesser height or from containing fewer habitable stories than that of the original non-conforming building which it replaces. For the purposes of this provision of the Charter, the term "habitable story" means any story or part thereof that is used as a home or place of abode, either permanent or temporary, by one (1) or more persons.

(f) The maximum allowable square footage of any new nonconforming building constructed pursuant to the provisions of either paragraph (5) (a) or (5) (b), above, shall not exceed the original square footage of the non-conforming building which it replaces, plus any additional square footage which (because of the requirements of state or federal law, or because of the restrictions on use established in paragraph (23), above, of this section of the Charter) may be necessary to obtain the same number of habitable square feet as was contained in the original non-conforming building. Nothing in this section of the Charter shall be construed to prevent a new nonconforming building from being constructed either with less total square footage or with less habitable square footage than that of the original non-conforming building which it replaces. For the purposes of this section of the Charter, the term "habitable square footage" means the square footage of that portion of a building that is used as a home or place of abode, either permanent or temporary, by one (1) or more persons.

(6) The maximum building height limits, the restrictions on use and the maximum allowable square footage, and the provisions governing parking established in paragraphs (1), (2), (3) and (5), above, of this section of the Charter, shall be applicable to all real property located within the boundaries of the Town as the boundaries exist on _____, 2010, ~~March 20, 2006~~.

(7) Every resident of the Town shall have the standing to enforce the maximum building height limits and the maximum allowable square footage established in paragraphs (1), (2), (3) and (5), above, of this section of the Charter, by means of a suit in equity seeking either mandamus; prohibition; or any combination thereof, but nothing in this provision of the Charter shall be construed to either create a cause of action at law for money damages, or to authorize a court of equity to award money damages as an incident to equitable relief, or to authorize an award of attorney's fees to the prevailing party or to any other party.

(8) The maximum building height limit established in paragraphs (1) and (2), above, of this section of the Charter, supersedes any existing zoning ordinance or land development regulation

to the extent that said zoning ordinance or land development regulation establishes anywhere within the Town a maximum building height limit greater than that established in paragraphs (1) and (2), above, of this section of the Charter, but nothing in this section of the Charter shall be construed to supersede, modify or repeal any existing zoning ordinance or land development regulation that establishes anywhere within the Town a maximum building height limit lower than that established in paragraphs (1) and (2), above, of this section of the Charter.

(9) The Town Commission may not increase, by ordinance or by variance, the maximum building height limits established in paragraphs (1), (2) and (5), above, of this section of the Charter, nor may the Town Commission modify, amend or repeal, by ordinance or by variance, the restrictions on use established in paragraph (23), above, or the provisions for parking availability established in paragraphs (2), (3) or (5), above, of this section of the Charter, nor may the Town Commission increase, by ordinance or by variance, the maximum allowable square footage established in paragraph (5), above, of this section of the Charter. The maximum height limits established for residential zoning districts including, but not limited to, R-5, RS-4, RS-5, RD-10, RM-15, RM-16, RM-25 and PUD in the Town's land development code as of _____, 2010 March 20, 2006, may be increased, or such districts re-zoned for any other use whatsoever, only by a referendum vote of the registered voters of the Town in the manner established in Article IV, Section 4.7 [50] of this Charter for the repeal or amendment of initiated ordinances. The Town may not create new categories of zoning without approval of such categories by a similar referendum vote; and all provisions of such new categories of zoning must be submitted to the voters for approval.

(10) The maximum building height limits established in paragraphs (1), (2) and (5), above, of this section of the Charter, may be increased only by an amendment to or by repeal of this section of the Charter. The restrictions on use established in paragraph (23), above, and the provisions governing parking availability established in paragraphs (2), (3) and (5), above, of this section of the Charter, may be modified, amended or repealed only by an amendment to or by repeal of this section of the Charter. The maximum allowable square footage established in paragraph (5), above, of this provision of the Charter, may be increased only by an amendment to, or by repeal of this section of the Charter. Except as expressly provided below, this section of the Charter may be amended or repealed only by means of a majority vote of the registered voters of the Town at a referendum election held either on the same day as a regularly scheduled November general election or on the same day as a regularly scheduled March municipal general election. The amendment or repeal of this section of the Charter at a special election held on a day other than a regularly scheduled November general election or on a day other than a regularly scheduled March municipal general election is expressly prohibited, except that a special election or special election by mail may be held to correct, to the minimum practicable extent, a provision adjudged by a court of competent jurisdiction to violate the State or Federal Constitution or any valid state or federal law, but only after such adjudication is affirmed on appeal. Amendments approved at a special election may include no elements not directly related to such court adjudication.

(11) These provisions of the Charter shall be effective immediately upon adoption by a majority of the registered voters of the Town voting in a referendum to amend the Charter so as to include these provisions. Upon adoption, the maximum building height limits, the restrictions on use, the

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maximum allowable square footage and the provisions governing parking availability established in paragraphs (1), (2), (3) and (5), above, of this section of the Charter, shall immediately apply to all real property located within the boundaries of the entire Town. Upon adoption of these provisions, and pending amendment of any portion or portions of the Town's Code of Ordinances inconsistent with this section of the Charter, the more stringent provisions of this section shall apply.

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"NOTICE OF SPECIAL ELECTION

PUBLIC NOTICE IS HEREBY GIVEN THAT PURSUANT TO ORDINANCE NO. _____ ADOPTED BY THE TOWN COMMISSION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, AN ELECTION HAS BEEN CALLED AND ORDERED TO BE HELD WITHIN THE TOWN ON TUESDAY, THE 9TH DAY OF MARCH, 2010, BETWEEN THE HOURS OF 7:00 A.M. AND 7:00 P.M., AT WHICH TIME THE FOLLOWING CHARTER AMENDMENT PROPOSAL SHALL BE SUBMITTED TO THE QUALIFIED ELECTORS OF THE TOWN.

Ballot Question:

MODIFYING THE MAXIMUM BUILDING HEIGHT AND MEASUREMENT CALCULATION.

This Amendment: (1) establishes a maximum building height of forty-four (44 ft) for all buildings located north of Pine Avenue and thirty-five (35 ft) for all buildings located south of Pine Avenue, and (2) revises the calculation used to determine maximum building height.

Shall the above-described Charter Amendment be adopted?

Yes []

No []

Polling place information and the full text of the proposed Charter Amendment as set forth in the enabling Ordinance are available at the office of the Town Clerk located at Town Hall, 4501 Ocean Drive, Lauderdale-By-The-Sea, FL 33308.

Town Clerk

CHAPTER 5

GENERAL BUILDING HEIGHTS AND AREAS

SECTION 501
GENERAL

501.1 Scope. The provisions of this chapter control the height and area of structures hereafter erected and additions to existing structures.

[F] 501.2 Address numbers. Buildings shall have approved address numbers, building numbers or approved building identification placed in a position that is plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Address numbers shall be Arabic numerals or alphabetical letters. Numbers shall be a minimum of 4 inches (102 mm) high with a minimum stroke width of 0.5 inch (12.7 mm).

SECTION 502
DEFINITIONS

502.1 Definitions. The following words and terms shall, for the purposes of this chapter and as used elsewhere in this code, have the meanings shown herein.

AREA, BUILDING. The area included within surrounding exterior walls (or exterior walls and fire walls) exclusive of vent shafts and courts. Areas of the building not provided with surrounding walls shall be included in the building area if such areas are included within the horizontal projection of the roof or floor above.

BASEMENT. That portion of a building that is partly or completely below grade plane (see "Story above grade plane" in Section 202). A basement shall be considered as a story above grade plane where the finished surface of the floor above the basement is:

1. More than 6 feet (1829 mm) above grade plane; or
2. More than 12 feet (3658 mm) above the finished ground level at any point.

EQUIPMENT PLATFORM. An unoccupied, elevated platform used exclusively for mechanical systems or industrial process equipment, including the associated elevated walkways, stairs and ladders necessary to access the platform (see Section 505.5).

GRADE PLANE. A reference plane representing the average of finished ground level adjoining the building at exterior walls. Where the finished ground level slopes away from the exterior walls, the reference plane shall be established by the lowest points within the area between the building and the lot line or, where the lot line is more than 6 feet (1829 mm) from the building, between the building and a point 6 feet (1829 mm) from the building.

HEIGHT, BUILDING. The vertical distance from grade plane to the average height of the highest roof surface.

HEIGHT, STORY. The vertical distance from top to top of two successive finished floor surfaces; and, for the topmost story, from the top of the floor finish to the top of the ceiling joists or, where there is not a ceiling, to the top of the roof rafters.

MEZZANINE. An intermediate level or levels between the floor and ceiling of any story and in accordance with Section 505.

SECTION 503
GENERAL HEIGHT AND AREA LIMITATIONS

503.1 General. The height and area for buildings of different construction types shall be governed by the intended use of the building and shall not exceed the limits in Table 503 except as modified hereafter. Each part of a building included within the exterior walls or the exterior walls and fire walls where provided shall be permitted to be a separate building.

503.1.1 Special industrial occupancies. Buildings and structures designed to house special industrial processes that require large areas and unusual heights to accommodate cranes or special machinery and equipment, including, among others, rolling mills; structural metal fabrication shops and foundries; or the production and distribution of electric, gas or steam power, shall be exempt from the height and area limitations of Table 503.

503.1.2 Buildings on same lot. Two or more buildings on the same lot shall be regulated as separate buildings or shall be considered as portions of one building if the height of each building and the aggregate area of buildings are within the limitations of Table 503 as modified by Sections 504 and 506. The provisions of this code applicable to the aggregate building shall be applicable to each building.

503.1.3 Type I construction. Buildings of Type I construction permitted to be of unlimited tabular heights and areas are not subject to the special requirements that allow unlimited area buildings in Section 507 or unlimited height in Sections 503.1.1 and 504.3 or increased height and areas for other types of construction.

503.1.4 Basements. A basement of a building shall not count as a story when applying Table 503 for allowable building height.

503.1.5 Group A and E basements. Group A and E basements used as classrooms or assembly rooms shall be counted as a story.

SECTION 504
HEIGHT

504.1 Special unlimited height. The height of Group B, M and R occupancies of Type I-B construction shall not be limited, provided the fire resistance of all columns shall be not less

UNIFIED LAND DEVELOPMENT REGULATIONS

§ 30-20

Dwelling, efficiency. A furnished dwelling unit partitioned or separated into one bathroom, one living area, inclusive of sleeping area dwelling which contains a cooking area, but no stove or oven.

Dwelling, multi-family. A dwelling unit within a residential building containing or designed to contain three or more dwelling units. The term multi-family dwelling includes, but is not limited to, townhouse, apartment or condominium.

Dwelling, single family. A building comprised of a completely detached residential dwelling unit, designed for and occupied by one family only.

Dwelling, timeshare. An accommodation of a timeshare plan, as defined in Chapter 721, Florida Statutes, which is divided into timeshare periods. Any timeshare dwelling unit in which a door or doors connecting two or more separate rooms capable of being locked to create two or more separate dwelling units may only constitute one timeshare unit for purposes of Chapter 721, Florida Statutes, but shall count as two or more dwelling units for purposes of density calculations.

Dwelling, townhouse. A dwelling unit within the whole of a residential building that is divided vertically into three or more dwelling units, each unit having direct and individual access to the outside.

Easement. A right of use acquired to use or control property of another for a designated purpose.

Essential services. The erection, construction, alteration or maintenance by public utilities or municipal or other governmental agencies, of underground or overhead gas, electrical, steam or water transmission or distribution systems, including poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants, transformer substations and other similar equipment and accessories in connection therewith, reasonably necessary for the furnishing of adequate service by such public utilities or municipal or other government agencies or for the public health or safety or general welfare.

Family. One or more persons occupying a dwelling and living as a single house-keeping unit.

Floor area. This term shall mean the total gross floor area contained within the external perimeter of the exterior enclosing walls.

Grade. For the purpose of calculating building height or structure, grade level shall mean 24 inches above the crown of the highest adjoining road. For the purpose of calculating the height of fences and privacy walls, grade shall mean the actual elevation of the ground adjacent to the exterior face of such fence or privacy wall.

Grade level, established. The lowest habitable first floor elevation permitted by the regulations of all local, county, state and federal government agencies having jurisdiction over the subject property.

Hedge. Any grouping of plants or bushes placed so close together so as to obscure visibility.

**MODIFYING THE MAXIMUM BUILDING
HEIGHT & MEASUREMENT CALCULATION
FOR ALL BUILDINGS LOCATED NORTH OF PINE AVENUE**

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MODIFYING THE MAXIMUM BUILDING HEIGHT AND MEASUREMENT CALCULATION.

This Amendment: (1) establishes a maximum building height of 44 feet for all buildings north of Pine Avenue, 44 feet south of Pine Avenue in areas generally located along Commercial Boulevard, east of Bougainvillea Drive, and east of Silver Shores Waterway, and 35 feet for all other buildings located south of Pine Avenue, and (2) revises the calculation used to determine maximum building height.

Shall the above-described Charter Amendment be adopted?

Yes []

No []

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Sec. 7.1. Maximum height for buildings established; referendum vote required for increases in zoned residential-district height limits.

(1) No building within the jurisdictional boundaries of the Town as they existed on _____, 2010 ~~March 20, 2006~~, located north of Pine Avenue, shall have more than four (4) stories above grade, and the maximum height of such buildings within the Town that have four (4) stories above grade shall be forty-four (44) feet above grade, which shall be measured as the higher of:

- (a) Above grade, as defined in the Florida Building Code, or
- (b) Above a horizontal plane eighteen inches above the crown of the roadway at the highest point adjoining the property on which the building is located, ~~whichever of these two levels is higher.~~

The maximum building height established above shall also apply to the following areas within the Town located south of Pine Avenue:

- (1) South of Basin Drive and north of Hibiscus Avenue, south or east of Silver Shores Waterway and west of the mid-block line between Seagrape Drive and Bougainville Drive
- (2) South of Pine Avenue, east of Bougainville Drive, and north of Palm Avenue; and
- (3) Frontage along Commercial Boulevard east of the Intracoastal Waterway.

(2) Except as provided in (1) above, no building within the jurisdictional boundaries of the Town as they existed on _____, 2010, located south of Pine Avenue, shall exceed a The maximum height for all other buildings within the Town shall be of thirty-three five (335) feet, which shall be measured as the higher of:

- (a) Above grade, as defined in the Florida Building Code, or
- (b) Above a horizontal plane eighteen inches above the crown of the roadway at the highest point adjoining the property on which the building is located, ~~or~~
- (c) ~~Above the minimum elevation for a habitable, finished floor permitted under applicable federal or Florida state regulations, whichever of these three levels is highest.~~

Height shall be measured from the applicable base level specified above to the highest point on a flat roof, or to the median elevation between the peak of a sloped roof and the lowest edge of the sloped roof. ~~In accordance with the Florida Building Code, All~~ bulkheads and penthouses used solely to enclose stairways, tanks, elevator machinery or shafts or ventilation or air conditioning apparatus shall ~~not~~ be included in determining building height; all other roofs structures, including parapet walls, shall not exceed ~~four feet in height above~~ the maximum allowed building height.

(23) In any building within the Town that has more than three (3) stories above grade, the first story shall be at grade level and shall be used for parking, either with or without toll collection booths. The first story may also be used for storage, refuse, security, registration, maintenance, and/or access, either with or without a lobby, provided that at least one-half (1/2) of the square footage of the first story is used for parking. Only within districts of the Town zoned for business

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("B") use, the first story of buildings having more than three (3) stories above grade may also be devoted to non-residential commercial uses, provided that dedicated parking required by Town ordinance or code for the proposed buildings is provided off-street at a location on or adjacent to the property on which the buildings are situated, and designed so as to enable the parked vehicles to egress the parking space without having to back out into traffic. In any building within the Town that has more than three (3) stories above grade, the first story shall be restricted to the above enumerated uses, and may be used for no other purpose whatsoever. For the purposes of this provision of the Charter, a story is at grade level if its floor is at or below grade and its ceiling is above grade; a story that is at grade level is also above grade. Nothing in this paragraph shall be construed so as to prohibit any building within the Town that has more than three (3) stories above grade from also having one (1) or more subterranean stories below grade, provided, however, that in any building within the Town that has more than three (3) stories above grade, all subterranean stories shall be subject to the same restrictions on use as are established in this paragraph for the first story.

~~(3) Buildings which exceed thirty three (33) feet above grade, and which exceed thirty three (33) feet above the horizontal plane eighteen inches above the crown of the roadway at the highest point adjoining the property on which the building is located, but which are nevertheless allowed under subparagraph (1)(c) of this Section, and which do not include a non-habitable first floor with ample parking as required by Town ordinance or code, in accordance with the number and type of units in those buildings, must have dedicated off-street parking at a location on or adjacent to the property on which the buildings are situated. Parking for buildings in this category must be designed so as to enable the parked vehicles to egress the parking space without having to back out into traffic.~~

(4) All existing buildings within the Town that were legally in compliance with existing height and use restrictions on _____, 2010, March 20, 2006, or were grandfathered on that date, but that either exceed the maximum building height limit established in paragraphs (1) or (2), as applicable, above, of this section of the Charter, or that fail to comply, where applicable, with the restrictions on use established in paragraph (23), above, of this section of the Charter, (hereinafter referred to as "Non-conforming Buildings") shall be considered legal, but non-conforming.

(5) Notwithstanding the maximum building height limit established in paragraphs (1) and (2), above, of this section of the Charter, an existing non-conforming building may be replaced by a new nonconforming building when, and only when:

- (a) The existing non-conforming building has:
 - (i) Been destroyed by fire, natural disaster, or other act of God; and
 - (ii) The property owner has submitted and received Town approval of a site plan depicting the replacement building; and
 - (iii) Construction of the replacement building is commenced within twelve (12) months of the date of destruction; or
- (b) The existing non-conforming building is:
 - (i) Demolished as part of a Town approved redevelopment of the property; and

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- (ii) Prior to demolition, the property owner has submitted and received Town approval of a site plan depicting the replacement building; and
- (iii) Construction of the replacement building is commenced within six (6) months of the date of site plan approval.

(c) The Town Commission may grant one (1) or more six (6) month extensions to the time periods for commencement of construction established in paragraphs (5) (a)(iii) and (5) (b)(iii), above, provided a written request for extension is filed with the Town Clerk prior to (in the case of a first request for extension) the expiration of the initial applicable time period for commencement of construction or prior to (in the case of a subsequent request for extension) the expiration of the most recent extension of the applicable time period for commencement of construction.

(d) All new non-conforming buildings constructed pursuant to the provisions of either paragraph (5) (a) or (5) (b), above, shall comply, where applicable, with the restrictions on use established in paragraph (23), above, and ~~the provisions for parking availability established in paragraph (3), above,~~ of this section of the Charter.

(e) The maximum allowable height of any new non-conforming building constructed pursuant to the provisions of either paragraph (5) (a) or (5) (b), above, shall not exceed the original height of the non-conforming building which it replaces, plus any additional height which (because of the requirements of state or federal law, or because of the restrictions on use established in paragraph (2), above, of this section of the charter) may be necessary to obtain the same number of habitable stories as was contained in the original non-conforming building. Nothing in this section of the Charter shall be construed to prevent a new non-conforming building from being constructed to a lesser height or from containing fewer habitable stories than that of the original non-conforming building which it replaces. For the purposes of this provision of the Charter, the term "habitable story" means any story or part thereof that is used as a home or place of abode, either permanent or temporary, by one (1) or more persons.

(f) The maximum allowable square footage of any new nonconforming building constructed pursuant to the provisions of either paragraph (5) (a) or (5) (b), above, shall not exceed the original square footage of the non-conforming building which it replaces, plus any additional square footage which (because of the requirements of state or federal law, or because of the restrictions on use established in paragraph (23), above, of this section of the Charter) may be necessary to obtain the same number of habitable square feet as was contained in the original non-conforming building. Nothing in this section of the Charter shall be construed to prevent a new nonconforming building from being constructed either with less total square footage or with less habitable square footage than that of the original non-conforming building which it replaces. For the purposes of this section of the Charter, the term "habitable square footage" means the square footage of that portion of a building that is used as a home or place of abode, either permanent or temporary, by one (1) or more persons.

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(6) The maximum building height limits, the restrictions on use and the maximum allowable square footage, and the provisions governing parking established in paragraphs (1), (2), (3) and (5), above, of this section of the Charter, shall be applicable to all real property located within the boundaries of the Town as the boundaries exist on _____, 2010, ~~March 20, 2006~~.

(7) Every resident of the Town shall have the standing to enforce the maximum building height limits and the maximum allowable square footage established in paragraphs (1), (2), (3) and (5), above, of this section of the Charter, by means of a suit in equity seeking either mandamus; prohibition; or any combination thereof, but nothing in this provision of the Charter shall be construed to either create a cause of action at law for money damages, or to authorize a court of equity to award money damages as an incident to equitable relief, or to authorize an award of attorney's fees to the prevailing party or to any other party.

(8) The maximum building height limit established in paragraphs (1) and (2), above, of this section of the Charter, supersedes any existing zoning ordinance or land development regulation to the extent that said zoning ordinance or land development regulation establishes anywhere within the Town a maximum building height limit greater than that established in paragraphs (1) and (2), above, of this section of the Charter, but nothing in this section of the Charter shall be construed to supersede, modify or repeal any existing zoning ordinance or land development regulation that establishes anywhere within the Town a maximum building height limit lower than that established in paragraphs (1) and (2), above, of this section of the Charter.

(9) The Town Commission may not increase, by ordinance or by variance, the maximum building height limits established in paragraphs (1), (2) and (5), above, of this section of the Charter, nor may the Town Commission modify, amend or repeal, by ordinance or by variance, the restrictions on use established in paragraph (23), above, or the provisions for parking availability established in paragraphs (2), (3) or (5), above, of this section of the Charter, nor may the Town Commission increase, by ordinance or by variance, the maximum allowable square footage established in paragraph (5), above, of this section of the Charter. The maximum height limits established for residential zoning districts including, but not limited to, R-5, RS-4, RS-5, RD-10, RM-15, RM-16, RM-25 and PUD in the Town's land development code as of _____, 2010 ~~March 20, 2006~~, may be increased, or such districts re-zoned for any other use whatsoever, only by a referendum vote of the registered voters of the Town in the manner established in Article IV, Section 4.7 [50] of this Charter for the repeal or amendment of initiated ordinances. The Town may not create new categories of zoning without approval of such categories by a similar referendum vote; and all provisions of such new categories of zoning must be submitted to the voters for approval.

(10) The maximum building height limits established in paragraphs (1), (2) and (5), above, of this section of the Charter, may be increased only by an amendment to or by repeal of this section of the Charter. The restrictions on use established in paragraph (23), above, and the provisions governing parking availability established in paragraphs (2), (3) and (5), above, of this section of the Charter, may be modified, amended or repealed only by an amendment to or by repeal of this section of the Charter. The maximum allowable square footage established in paragraph (5), above, of this provision of the Charter, may be increased only by an amendment to, or by repeal of this section of the Charter. Except as expressly provided below, this section of

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the Charter may be amended or repealed only by means of a majority vote of the registered voters of the Town at a referendum election held either on the same day as a regularly scheduled November general election or on the same day as a regularly scheduled March municipal general election. The amendment or repeal of this section of the Charter at a special election held on a day other than a regularly scheduled November general election or on a day other than a regularly scheduled March municipal general election is expressly prohibited, except that a special election or special election by mail may be held to correct, to the minimum practicable extent, a provision adjudged by a court of competent jurisdiction to violate the State or Federal Constitution or any valid state or federal law, but only after such adjudication is affirmed on appeal. Amendments approved at a special election may include no elements not directly related to such court adjudication.

(11) These provisions of the Charter shall be effective immediately upon adoption by a majority of the registered voters of the Town voting in a referendum to amend the Charter so as to include these provisions. Upon adoption, the maximum building height limits, the restrictions on use, the maximum allowable square footage and the provisions governing parking availability established in paragraphs (1), (2), (3) and (5), above, of this section of the Charter, shall immediately apply to all real property located within the boundaries of the entire Town. Upon adoption of these provisions, and pending amendment of any portion or portions of the Town's Code of Ordinances inconsistent with this section of the Charter, the more stringent provisions of this section shall apply.

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PUBLIC NOTICE IS HEREBY GIVEN THAT PURSUANT TO ORDINANCE NO. _____ ADOPTED BY THE TOWN COMMISSION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, AN ELECTION HAS BEEN CALLED AND ORDERED TO BE HELD WITHIN THE TOWN ON TUESDAY, THE 9TH DAY OF MARCH, 2010, BETWEEN THE HOURS OF 7:00 A.M. AND 7:00 P.M., AT WHICH TIME THE FOLLOWING CHARTER AMENDMENT PROPOSAL SHALL BE SUBMITTED TO THE QUALIFIED ELECTORS OF THE TOWN.

Ballot Question:

MODIFYING THE MAXIMUM BUILDING HEIGHT AND MEASUREMENT CALCULATION.

This Amendment: (1) establishes a maximum building height of 44 feet for all buildings north of Pine Avenue, 44 feet south of Pine Avenue in areas generally located along Commercial Boulevard, east of Bougainvillea Drive, and east of Silver Shores Waterway, and 35 feet for all other buildings located south of Pine Avenue, and (2) revises the calculation used to determine maximum building height.

Shall the above-described Charter Amendment be adopted?

Yes []

No []

Polling place information and the full text of the proposed Charter Amendment as set forth in the enabling Ordinance are available at the office of the Town Clerk located at Town Hall, 4501 Ocean Drive, Lauderdale-By-The-Sea, FL 33308.

Town Clerk

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Town Clerk

AGGREGATE #1

CHAPTER 5

GENERAL BUILDING HEIGHTS AND AREAS

SECTION 501 GENERAL

501.1 Scope. The provisions of this chapter control the height and area of structures hereafter erected and additions to existing structures.

[F] **501.2 Address numbers.** Buildings shall have approved address numbers, building numbers or approved building identification placed in a position that is plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Address numbers shall be Arabic numerals or alphabetical letters. Numbers shall be a minimum of 4 inches (102 mm) high with a minimum stroke width of 0.5 inch (12.7 mm).

SECTION 502 DEFINITIONS

502.1 Definitions. The following words and terms shall, for the purposes of this chapter and as used elsewhere in this code, have the meanings shown herein.

AREA, BUILDING. The area included within surrounding exterior walls (or exterior walls and fire walls) exclusive of vent shafts and courts. Areas of the building not provided with surrounding walls shall be included in the building area if such areas are included within the horizontal projection of the roof or floor above.

BASEMENT. That portion of a building that is partly or completely below grade plane (see "Story above grade plane" in Section 202). A basement shall be considered as a story above grade plane where the finished surface of the floor above the basement is:

1. More than 6 feet (1829 mm) above grade plane; or
2. More than 12 feet (3658 mm) above the finished ground level at any point.

EQUIPMENT PLATFORM. An unoccupied, elevated platform used exclusively for mechanical systems or industrial process equipment, including the associated elevated walkways, stairs and ladders necessary to access the platform (see Section 505.5).

GRADE PLANE. A reference plane representing the average of finished ground level adjoining the building at exterior walls. Where the finished ground level slopes away from the exterior walls, the reference plane shall be established by the lowest points within the area between the building and the lot line or, where the lot line is more than 6 feet (1829 mm) from the building, between the building and a point 6 feet (1829 mm) from the building.

HEIGHT, BUILDING. The vertical distance from grade plane to the average height of the highest roof surface.

HEIGHT, STORY. The vertical distance from top to top of two successive finished floor surfaces; and, for the topmost story, from the top of the floor finish to the top of the ceiling joists or, where there is not a ceiling, to the top of the roof rafters.

MEZZANINE. An intermediate level or levels between the floor and ceiling of any story and in accordance with Section 505.

SECTION 503 GENERAL HEIGHT AND AREA LIMITATIONS

503.1 General. The height and area for buildings of different construction types shall be governed by the intended use of the building and shall not exceed the limits in Table 503 except as modified hereafter. Each part of a building included within the exterior walls or the exterior walls and fire walls where provided shall be permitted to be a separate building.

503.1.1 Special industrial occupancies. Buildings and structures designed to house special industrial processes that require large areas and unusual heights to accommodate craneways or special machinery and equipment, including, among others, rolling mills; structural metal fabrication shops and foundries; or the production and distribution of electric, gas or steam power, shall be exempt from the height and area limitations of Table 503.

503.1.2 Buildings on same lot. Two or more buildings on the same lot shall be regulated as separate buildings or shall be considered as portions of one building if the height of each building and the aggregate area of buildings are within the limitations of Table 503 as modified by Sections 504 and 506. The provisions of this code applicable to the aggregate building shall be applicable to each building.

503.1.3 Type I construction. Buildings of Type I construction permitted to be of unlimited tabular heights and areas are not subject to the special requirements that allow unlimited area buildings in Section 507 or unlimited height in Sections 503.1.1 and 504.3 or increased height and areas for other types of construction.

503.1.4 Basements. A basement of a building shall not count as a story when applying Table 503 for allowable building height.

503.1.5 Group A and E basements. Group A and E basements used as classrooms or assembly rooms shall be counted as a story.

SECTION 504 HEIGHT

504.1 Special unlimited height. The height of Group B, M and R occupancies of Type I-B construction shall not be limited, provided the fire resistance of all columns shall be not less

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REVISION #2

UNIFIED LAND DEVELOPMENT REGULATIONS

§ 30-20

Dwelling, efficiency. A furnished dwelling unit partitioned or separated into one bathroom, one living area, inclusive of sleeping area dwelling which contains a cooking area, but no stove or oven.

Dwelling, multi-family. A dwelling unit within a residential building containing or designed to contain three or more dwelling units. The term multi-family dwelling includes, but is not limited to, townhouse, apartment or condominium.

Dwelling, single family. A building comprised of a completely detached residential dwelling unit, designed for and occupied by one family only.

Dwelling, timeshare. An accommodation of a timeshare plan, as defined in Chapter 721, Florida Statutes, which is divided into timeshare periods. Any timeshare dwelling unit in which a door or doors connecting two or more separate rooms capable of being locked to create two or more separate dwelling units may only constitute one timeshare unit for purposes of Chapter 721, Florida Statutes, but shall count as two or more dwelling units for purposes of density calculations.

Dwelling, townhouse. A dwelling unit within the whole of a residential building that is divided vertically into three or more dwelling units, each unit having direct and individual access to the outside.

Easement. A right of use acquired to use or control property of another for a designated purpose.

Essential services. The erection, construction, alteration or maintenance by public utilities or municipal or other governmental agencies, of underground or overhead gas, electrical, steam or water transmission or distribution systems, including poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants, transformer substations and other similar equipment and accessories in connection therewith, reasonably necessary for the furnishing of adequate service by such public utilities or municipal or other government agencies or for the public health or safety or general welfare.

Family. One or more persons occupying a dwelling and living as a single house-keeping unit.

Floor area. This term shall mean the total gross floor area contained within the external perimeter of the exterior enclosing walls.

Grade. For the purpose of calculating building height or structure, grade level shall mean 24 inches above the crown of the highest adjoining road. For the purpose of calculating the height of fences and privacy walls, grade shall mean the actual elevation of the ground adjacent to the exterior face of such fence or privacy wall.

Grade level, established. The lowest habitable first floor elevation permitted by the regulations of all local, county, state and federal government agencies having jurisdiction over the subject property.

Hedge. Any grouping of plants or bushes placed so close together so as to obscure visibility.

Town Commission Workshop
May 13, 2009

Cristi Furth asked for a summary of what Cape Canaveral or Deerfield Beach referendums were about.

Barbara Cole explained that the difference between the Cape Canaveral fire department and the Lauderdale-By-The-Sea fire department was that Cape Canaveral was larger.

Bob Fleishman said the VFD had a five year contract.

Bill Patola said the VFD was doing a great job. He did not believe that anyone was going to kick them out.

Diane Boutin believed the Town should preserve the integrity of RFP's.

Ben Freeny could not come up with any reason why the VFD should become a permanent provider.

Louis Marchelos said the VFD had shown their professionalism.

There were no more speakers.

Vice Mayor McIntee said the VFD had worked hard to bring up their status and professionalism and the previous Commission replaced them. He said the VFD wanted some protection that their service would not be a political decision. Vice Mayor McIntee thought the people should decide.

Commissioner Silverstone stated that a super majority should vote for dismissal of a public safety provider. He said the VFD was a non-profit organization and he did not understand why lies and accusations were made against them.

Commissioner Dodd said he was against any ordinance of this nature. He said that by the time the VFD contract was up in 2013 the VFD should have proven they were worthy. Commissioner Dodd said he would do his best to help the fire department with any training they would need.

Mayor Minnet said she was against a referendum. She said if any referendum should be written it should be to prohibit a member of the VFD to be a Commissioner.

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- * b. Height
i. Minutes
ii. Previous Referendum
iii. Additional Documents

**Town Commission Workshop
May 13, 2009**

Mayor Minnet stated that this was placed on the workshop to determine whether there should be a referendum regarding height limits.

Mayor Minnet opened the item for public comments.

Barbara Cole said to go to 33 feet was unfair to the residents and believed the height should remain at 44 feet.

Cristi Furth said 44 feet turned out to be Oriana that people did not want. She said Old Town had a maximum of 33 feet and should remain at that height. Ms. Furth said if people wanted to go back to 44 feet the people should go out and start a petition.

Diane Boutin said that the Windjammer Resort was over density and should something happen they could not rebuild. She added that under the current code they would need to add 10,000 square feet to rebuild. She believed density was the issue and zoning needed to be revamped.

Mark Furth believed that should the Town take the direction of 3 over 1, the hotels would not survive. Mr. Furth hoped there would be positive support for the hotels. He wanted to know whether 3 of the Commissioners could put the Overlay District back in place.

Joe Couriel said that the people wanted the Commissioners to keep from flip flopping on their decisions. He said the people did not want the Downtown District to be gone. Mr. Couriel stated that the people will run the Town the way they want to run it, one way or another.

Louis Marchelos believed a 33 foot height limit was ridiculous and 44 feet was needed.

Bill Vitello believed 44 feet should be allowed on the beach and on A1A the back-out parking should be stopped. He suggested a two story with parking underneath. He said 44 foot hotels should be allowed as it would not be affordable to keep the hotels alive at 33 feet.

Lawrence Wick, Planning and Zoning explained that the big change was the setback for the green space.

Paul Novak wanted to modify 44 feet so that there would not be another Oriana. Mr. Novak said if you wanted to keep the Hospitality District it should be maintained at 44 feet.

Dan Brenner said without a Hospitality District taxes would have to be increased.

Commissioner Silverstone believed that whatever was decided, whether it was 33 or 44 feet, it would have to be set in concrete.

Town Commission Workshop
May 13, 2009

Commissioner Clotey believed a referendum was needed. She said 3 Commissioners put in an Overlay District and 3 Commissioners took it away. Commissioner Clotey felt that the people should decide what they want for their Town. She suggested that support and help should be provided to the hotels.

Commissioner Dodd believed that 3 over 1 was a way to increase the height limit to 44 feet. He said that the people voted 3 times for 3 over 1. Commissioner Dodd believed in 3 over 1 and thought it was the right height for the Town. He felt that the setbacks were the issue and not the height.

Vice Mayor McIntee agreed that the people voted 3 times for 44 feet. He pointed out that the previous Commission changed the rules and created an Overlay District where developers could build higher and that resulted in Oriana. Vice Mayor McIntee said let the people decide with a referendum.

Mayor Minnet said it should go to the people but it wasn't all about height. She said density was an issue that needed to be addressed. Mayor Minnet said there were other areas in Town that needed to be identified, hospitality and commercial areas. She said no one wanted a bedroom town but they did want a balance in the community.

Vice Mayor McIntee said he would support the 1973 guidelines that the Town had set up and if the people wanted to keep the Town as a bedroom community, they should have it. He felt that if a building went down it should come back up.

Commissioner Clotey asked the Town Attorney if the majority of the Commission could remove an Overlay District, could they bring it back. Commissioner Silverstone asked whether this Commission could pass a rule to build 44 feet east of A1A. Attorney Trevarthen she would have to look closer at the Charter. Commissioner Clotey directed the Attorney to research and come back with clarification on both issues.

Commissioner Dodd believed the density and/or the footprint caused the problem. He felt they needed to find a way to protect their beach property and keep the business district alive and stop the Town from turning into a residential town.

Vice Mayor McIntee directed the Town Attorney for an opinion as to who made the overlay district and whether it was illegal. Commissioner Clotey asked whether the request to determine legality would be costly. Attorney Trevarthen said she did not believe it would as it appeared to be interwoven. Commissioner Dodd thought it was an interesting concept as to whether it was legal and could be brought back.

Mayor Minnet believed it was the density that controlled the size of a building. She pointed out that a bedroom community would have higher taxes and a balance of commercial and hospitality was needed.

Mayor Minnet recessed the meeting at 8:40 p.m. and reconvened at 8:50 p.m.

RESOLUTION NO. 2006-08

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, DIRECTING THE TOWN CLERK TO DELIVER TO THE FLORIDA SECRETARY OF STATE A COPY OF THE TOWN'S REVISED CHARTER INCORPORATING THE AMENDMENTS TO SECTION 7.1 (FORMERLY) WHICH WERE APPROVED BY A MAJORITY OF THE ELECTORS IN THE MARCH 2006 BIENNIAL ELECTION AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 166.031(2) Florida Statutes requires that the Town Commission incorporate revisions to the Town Charter that are approved by a majority of electors by referendum vote; and

WHEREAS, a majority of the electors voting in the March 14, 2006 election approved amendments to Section 7.1(formerly Section 2.77) of the Town Charter; and

WHEREAS, the Town Attorney has prepared a Revised Charter which incorporates the amendments to Section 7.1 which were approved by a majority of the electors in the March 14, 2006 election.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA:

Section 1: The foregoing whereas clauses are true and correct and incorporated herein by reference.

Section 2: The Town Commission of the Town of Lauderdale-By-The-Sea hereby directs the Town Clerk to file with the Secretary of State the Revised Town Charter, a copy of which is attached hereto as Exhibit "A".

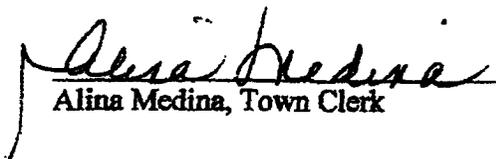
Section 3: This Resolution will take effect immediately.

PASSED AND ADOPTED by the Town Commission of the Town of Lauderdale-by-the-Sea, Florida this 11th day of April, 2006.

TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA


MAYOR OLIVER PARKER

ATTEST:


Alina Medina, Town Clerk

CHARTER OF THE TOWN OF LAUDERDALE-BY-THE-SEA
Revise March 2006

ARTICLE I. TRANSITION FROM ABOLISHED TOWN

Sec. 1.1 Abolishing existing municipality.

That the existing municipal government of the Town of Lauderdale-By-The-Sea, in the County of Broward and State of Florida, be and the same is hereby abolished. All of the provisions of Chapter 14184, Laws of Florida of 1929, Chapter 24658, Laws of Florida of 1947, and all other laws pertaining to the creation of the Town of Lauderdale-By-The-Sea be and the same are hereby repealed.

Sec. 1.2 Title to property reserved.

That the title, rights and ownership of all property, both real and personal, uncollected taxes, dues, claims, judgments, decrees, choses in action and all property and property rights held or owned by the municipalities named "Town of Lauderdale-By-The-Sea," abolished by this act, shall pass to and be vested in the municipal corporation organized under this Charter to succeed the municipality abolished.

Sec. 1.3 Obligations unimpaired.

That no obligations or contracts of the said municipality hereby abolished, including bonds heretofore issued or any proceeding heretofore begun for any improvement, or for borrowing of money, or issuing of bonds, shall be impaired or avoided by this Charter, but such debts, obligations, contracts and bonds shall pass to and be binding upon the new municipality hereby created and organized, and all such proceedings heretofore begun for the construction of any improvements or for the borrowing of money or issuing of bonds may be continued and completed and binding upon the said new municipality; and likewise all debts of and claims against the abolished municipality shall be valid against the new municipality created.

Sec. 1.4 Officers held over.

All officers and employees heretofore elected or appointed and holding office under the said municipality hereby abolished, shall continue to hold their respective offices and discharge the respective duties thereof under the new municipality hereby created until their successors are elected and qualified under the provisions of this Charter.

Sec. 1.5 Ordinances not impaired.

All existing ordinances and resolutions of said abolished municipality, including the printed Code of Ordinances of the Town of Lauderdale-By-The-Sea, as amended, not in conflict

the Mayor-Commissioner, shall, by majority vote, appoint a successor within thirty (30) days of the occurrence of the vacancy from among all qualified applicants. The person or persons so appointed must possess all of the required qualifications to be a member of the Town Commission. The Commissioner or Mayor-Commissioner appointed by the Town Commission to fill the vacancy as specified herein shall serve only until the next federal, state, county, or Town election. Further, the Commissioner or Mayor-Commissioner elected at such election shall serve only the unexpired term of the Commissioner or Mayor-Commissioner whose position became vacant.

- (2) If there are more than one hundred eighty (180) days remaining on an unexpired term, or if there are more than one hundred eighty (180) days before the next federal, state, county, or Town election, the Town Commission shall schedule a special election to be held no sooner than ninety (90) days nor more than one hundred twenty (120) days following the occurrence of the vacancy. The Commissioner or Mayor-Commissioner elected to fill the vacancy at any special election shall serve only the unexpired term of the Commissioner or Mayor-Commissioner whose position became vacant.
- (3) In the event of the death, resignation, or removal of the Mayor-Commissioner, the Vice-Mayor shall forthwith commence to serve as interim Mayor-Commissioner until the position of Mayor-Commissioner is filled by election or appointment. When the Vice-Mayor becomes interim Mayor-Commissioner, the Town Commission, by majority vote shall appoint one of the remaining Commissioners to become interim Vice-Mayor. The Commissioner serving as Mayor-Commissioner, or the Vice-Mayor, shall serve as Commission-Mayor, or Vice-Mayor, until the newly elected or appointed Commissioner-Mayor, or Vice-Mayor, is sworn into office. The interim Mayor-Commissioner, and interim Vice-Mayor shall then return to the positions of Vice-Mayor and Commissioner which he/she previously held to serve the remainder of his or her unexpired term.
- (4) In the event of the death, resignation, or removal of the Vice-Mayor, the Town Commission shall, by majority vote, elect one of the Commissioners to serve as Vice-Mayor.

Sec. 6.9 Extraordinary vacancies.

In the event that all members of the Town Commission are removed by death, disability, or forfeiture of office, the Governor of the State of Florida shall appoint an interim Town Commission that shall call a special election as provided above to fill the vacancies.

ARTICLE VII. PLANNING AND ZONING

Sec. 7.1 Maximum height for buildings established; referendum vote required for increases in zoned residential -district height limits.

(1) No building within the jurisdictional boundaries of the Town, as they existed on March 20, 2006, shall have more than four (4) stories above grade, and the maximum height of buildings within the Town that have four (4) stories above grade shall be forty-four (44) feet above grade, as defined in the Florida Building Code, or above a horizontal plane eighteen inches above the crown of the roadway at the highest point adjoining the property on which the building is located, whichever of those two levels is higher. The maximum height for all other buildings within the Town shall be thirty-three (33) feet

(a) above grade, as defined in the Florida Building Code, or

(b) above a horizontal plane eighteen inches above the crown if the roadway at the highest point adjoining the property on which the building is located, or

(c) above the minimum elevation for a habitable, finished floor permitted under applicable federal or Florida state regulations,

whichever of those three levels is highest. Height shall be measured from the applicable base level specified above to the highest point on a flat roof, or to the median elevation between the peak of a sloped roof and the lowest edge of the sloped roof. In accordance with the Florida Building Code, bulkheads and penthouses used solely to enclose stairways, tanks, elevator machinery or shafts or ventilation or air conditioning apparatus shall not be included in determining building height; all other roofs structures, including parapet walls, shall not exceed four feet in height above the maximum allowed building height.

(2) In any building within the Town that has more than three (3) stories above grade, the first story shall be at grade level and shall be used for parking, either with or without toll collection booths. The first story may also be used for storage, refuse, security, registration, maintenance, and/or access, either with or without a lobby, provided that at least one-half (1/2) of the square footage of the first story is used for parking. Only within districts of the Town zoned for business ("B") use, the first story of buildings having more than three (3) stories above grade may also be devoted to non-residential commercial uses, provided that dedicated parking required by Town ordinance or code for the proposed buildings is provided off-street at a location on or adjacent to the property on which the buildings are situate, and designed so as to enable the parked vehicles to egress the parking space without having to back out into traffic. In any building within the Town that has more than three (3) stories above grade, the first story shall be restricted to the above enumerated uses, and may be used for no other purpose whatsoever. For the purposes of this provision of the Charter, a story is at grade level if its floor is at or below grade and its ceiling is above grade; a story that is at grade level is also above grade. Nothing in this paragraph shall be construed so as to prohibit any building within the Town that has more than three (3) stories above grade from also having one (1) or more subterranean stories below grade, provided,

however, that in any building within the Town that has more than three (3) stories above grade, all subterranean stories shall be subject to the same restrictions on use as are established in this paragraph for the first story.

- (3) Buildings which exceed thirty three (33) feet above grade, and which exceed thirty three (33) feet above the horizontal plane eighteen inches above the crown of the roadway at the highest point adjoining the property on which the building is located, but which are nevertheless allowed under subparagraph (1)(c) of this Section, and which do not include a non-habitable first floor with ample parking as required by Town ordinance or code, in accordance with the number and type of units in those buildings, must have dedicated off-street parking at a location on or adjacent to the property on which the buildings are situate. Parking for buildings in this category must be designed so as to enable the parked vehicles to egress the parking space without having to back out into traffic.
- (4) All existing buildings within the Town that were legally in compliance with existing height and use restrictions on March 20, 2006, or were grandfathered on that date, but that either exceed the maximum building height limit established in paragraph (1), above, of this section of the Charter, or that fail to comply, where applicable, with the restrictions on use established in paragraph (2), above, of this section of the Charter, (hereinafter referred to as "Non-conforming Buildings") shall be considered legal, but non-conforming.
- (5) Notwithstanding the maximum building height limit established in paragraph (1), above, of this section of the Charter, an existing non-conforming building may be replaced by a new nonconforming building when, and only when:
 - (a) The existing non-conforming building has:
 - (i) Been destroyed by fire, natural disaster, or other act of God; and
 - (ii) The property owner has submitted and received Town approval of a site plan depicting the replacement building; and
 - (iii) Construction of the replacement building is commenced within twelve (12) months of the date of destruction; or
 - (b) The existing non-conforming building is:
 - (i) Demolished as part of a Town approved redevelopment of the property; and
 - (ii) Prior to demolition, the property owner has submitted and received Town approval of a site plan depicting the replacement building; and

- (iii) Construction of the replacement building is commenced within six (6) months of the date of site plan approval.
- (c) The Town Commission may grant one (1) or more six (6) month extensions to the time periods for commencement of construction established in paragraphs (5)(a)(iii) and (5)(b)(iii), above, provided a written request for extension is filed with the Town Clerk prior to (in the case of a first request for extension) the expiration of the initial applicable time period for commencement of construction or prior to (in the case of a subsequent request for extension) the expiration of the most recent extension of the applicable time period for commencement of construction.
- (d) All new non-conforming buildings constructed pursuant to the provisions of either paragraph (5)(a) or (5)(b), above, shall comply, where applicable, with the restrictions on use established in paragraph (2), above, and the provisions for parking availability established in paragraph (3), above, of this section of the Charter.
- (e) The maximum allowable height of any new a non-conforming building constructed pursuant to the provisions of either paragraph (5)(a) or (5)(b), above, shall not exceed the original height of the non-conforming building which it replaces, plus any additional height which (because of the requirements of state or federal law, or because of the restrictions on use established in paragraph (2), above, of this section of the charter) may be necessary to obtain the same number of habitable stories as was contained in the original non-conforming building. Nothing in this section of the Charter shall be construed to prevent a new non-conforming building from being constructed to a lesser height or from containing fewer habitable stories than that of the original non-conforming building which it replaces. For the purposes of this provision of the Charter, the term "habitable story" means any story or part thereof that is used as a home or place of abode, either permanent or temporary, by one (1) or more persons.
- (f) The maximum allowable square footage of any new nonconforming building constructed pursuant to the provisions of either paragraph (5)(a) or (5)(b), above, shall not exceed the original square footage of the non-conforming building which it replaces, plus any additional square footage which (because of the requirements of state or federal law, or because of the restrictions on use established in paragraph (2), above, of this section of the Charter) may be necessary to obtain the same number of habitable square feet as was contained in the original non-conforming building. Nothing in this section of the Charter shall be construed to prevent a new nonconforming building from being constructed either with less total square footage or with less habitable square footage than that of the original non-conforming building which it replaces. For the purposes of

this section of the Charter, the term "habitable square footage" means the square footage of that portion of a building that is used as a home or place of abode, either permanent or temporary, by one (1) or more persons.

- (6) The maximum building height limits, the restrictions on use and the maximum allowable square footage, and the provisions governing parking established in paragraphs (1), (2) (3) and (5), above, of this section of the Charter, shall be applicable to all real property located within the boundaries of the Town as the boundaries exist on March 20, 2006.
- (7) Every resident of the Town shall have the standing to enforce the maximum building height limits and the maximum allowable square footage established in paragraphs (1), (2) and (5), above, of this section of the Charter, by means of a suit in equity seeking either mandamus; prohibition; or any combination thereof, but nothing in this provision of the Charter shall be construed to either create a cause of action at law for money damages, or to authorize a court of equity to award money damages as an incident to equitable relief, or to authorize an award of attorney's fees to the prevailing party or to any other party.
- (8) The maximum building height limit established in paragraph (1), above, of this section of the Charter, supersedes any existing zoning ordinance or land development regulation to the extent that said zoning ordinance or land development regulation establishes anywhere within the Town a maximum building height limit greater than that established in paragraph (1), above, of this section of the Charter, but nothing in this section of the Charter shall be construed to supersede, modify or repeal any existing zoning ordinance or land development regulation that establishes anywhere within the Town a maximum building height limit lower than that established in paragraph (1), above, of this section of the Charter.
- (9) The Town Commission may not increase, by ordinance or by variance, the maximum building height limits established in paragraphs (1) and (5), above, of this section of the Charter, nor may the Town Commission modify, amend or repeal, by ordinance or by variance, the restrictions on use established in paragraph (2), above, or the provisions for parking availability established in paragraphs (2), (3) or (5), above, of this section of the Charter, nor may the Town Commission increase, by ordinance or by variance, the maximum allowable square footage established in paragraph (5), above, of this section of the Charter. The maximum height limits established for residential zoning districts including, but not limited to, R-5, RS-4, RS-5, RD-10, RM-15, RM-16, RM-25 and PUD in the Town's land development code as of march 20, 2006, may be increased, or such districts re-zoned for any other use whatsoever, only by a referendum vote of the registered voters of the Town in the manner established in Article IV, Section 4.7 [50] of this Charter for the repeal or amendment of initiated ordinances. The Town may not create new categories of zoning without approval of such

categories by a similar referendum vote; and all provisions of such new categories of zoning must be submitted to the voters for approval.

- (10) The maximum building height limits established in paragraphs (1) and (5), above, of this section of the Charter, may be increased only by an amendment to or by repeal of this section of the Charter. The restrictions on use established in paragraph (2), above, and the provisions governing parking availability established in paragraphs (2), (3) and (5), above, of this section of the Charter, may be modified, amended or repealed only by an amendment to or by repeal of this section of the Charter. The maximum allowable square footage established in paragraph (5), above, of this provision of the Charter, may be increased only by an amendment to, or by repeal of this section of the Charter. Except as expressly provided below, this section of the Charter may be amended or repealed only by means of a majority vote of the registered voters of the Town at a referendum election held either on the same day as a regularly scheduled November general election or on the same day as a regularly scheduled March municipal general election. The amendment or repeal of this section of the Charter at a special election held on a day other than a regularly scheduled November general election or on a day other than a regularly scheduled March municipal general election is expressly prohibited, except that a special election or special election by mail may be held to correct, to the minimum practicable extent, a provision adjudged by a court of competent jurisdiction to violate the State or Federal Constitution or any valid state or federal law, but only after such adjudication is affirmed on appeal. Amendments approved at a special election may include no elements not directly related to such court adjudication.
- (11) These provisions of the Charter shall be effective immediately upon adoption by a majority of the registered voters of the Town voting in a referendum to amend the Charter so as to include these provisions. Upon adoption, the maximum building height limits, the restrictions on use, the maximum allowable square footage and the provisions governing parking availability established in paragraphs (1), (2), (3) and (5), above, of this section of the Charter, shall immediately apply to all real property located within the boundaries of the entire Town. Upon adoption of these provisions, and pending amendment of any portion or portions of the Town's Code of Ordinances inconsistent with this section of the Charter, the more stringent provisions of this section shall apply.

Sec. 7.2 Restrictions on the vacating, abandonment, lease, sale, transfer of possession or transfer of ownership of the El Prado Property.

- (1) As used in this section of the Charter, the term "the El Prado Property" shall refer to the following described real property situate, lying and being in the Town of Lauderdale-By-The-Sea, Florida:

13. RESOLUTION

- A. **RESOLUTION NO. 2006-07:** A Resolution of the Town Commission of the Town of Lauderdale-By-The-Sea, Florida, urging Florida Power & Light to expedite tree trimming in areas adjacent to power transmission lines; providing for an effective date.

Attorney Cherof read Resolution 2006-07 by title only.

Vice Mayor Yanni made a motion, seconded by Commissioner McIntee, to approve Resolution 2006-07. In a roll call vote, all voted in favor. The motion carried 5-0.

- B. **RESOLUTION NO. 2006-08:** A Resolution of the Town Commission of the Town of Lauderdale-By-The-Sea, Florida, directing the Town Clerk to deliver to the Florida Secretary of State a copy of the Town's revised Charter incorporating the amendments to Section 7.1 (formerly) which were approved by a majority of the electors in the March 2006 Biennial Election and providing an effective date.

Attorney Cherof read Resolution 2006-08 by title only.

Mayor Pro Tem Clark made a motion, seconded by Commissioner Silverstone, to approve Resolution 2006-08.

Commissioner Silverstone asked whether it would be advantageous to add Section 4. Attorney Cherof said, in his opinion, that Section 4 was not part of the amendment of previous Section 277 and should not be submitted. He believed the revised Charter should be submitted as was provided by him at the last meeting.

Commissioner Silverstone asked whether there was sufficient protection to address possible problems in the future that Section 4 itself may prevent. Attorney Cherof thought that the intent and the language of Section 4 could be implemented by the Town Commission. He added that what Section 4 provided was a mechanism for the court addressing the viability of Section 70.001 as it applied to the Charter as amended. Commissioner Silverstone asked whether it would be wise to put Section 4 in the form of an Ordinance as protection. Attorney Cherof indicated that was an option available to the Commission.

Commissioner McIntee said multiple people indicated to him that Section 4 gave the Town protection, and wanted to know if the Town was to lose anything if they sent it to the State. Attorney Cherof said it could be submitted or not, and repeated his reason for not sending it was because it was not pertinent.

Attorney Cherof indicated that if the Commission wished to go in the direction of implementing the intent of Section 4 by Ordinance he felt improvements could be made as they work upon that process.

Town Commission Regular Meeting Agenda
April 11, 2006

In a roll call vote, all voted in favor. The motion carried 5-0.

14. OLD BUSINESS

- A. Discussion and/or action concerning the proposed contract with Siemon & Larsen to conduct the finding of necessity study for the Community Redevelopment Agency (*David Nixon*)

Mayor Pro Tem Clark made a motion, seconded by Commissioner Silverstone, to approve the contract with Siemon & Larsen.

Commissioner Silverstone requested an amount prior to casting his vote. Attorney Cherof said Section 4.01 of the contract provided an amount based upon hourly rates set forth in 4.03 and that it was not to exceed \$20,000.

In a roll call vote, all voted in favor. The motion carried 5-0.

- B. Report on beach easements as public beach access in the northern sections of Town (*Development Services Director Harry Diehl*) (*tabled from March 28, 2006*) (**staff requesting a tabling to April 25, 2006**)

This item was tabled to April 25, 2006. There were no objections.

- C. Schedule Workshops for discussion of Unified Land Development Code (*tabled from March 28, 2006*)

This item was tabled to May 23, 2006. There were no objections.

- D. Review of the amended plan proposed by Minto Communities, Inc. for improvements to be provided at "El Prado Park" as part of the project known as Villas By The Sea, located on the north and south sides of El Prado, between State Road A1A and the Atlantic Ocean (*continued from May 10, 2005*)

Mr. Craig Unger, of Minto Communities, Inc., gave a PowerPoint presentation showing landscaping improvements. Commissioner McIntee requested the addition of a second fire hydrant on the south side of El Mar Drive and the addition of bicycle rack. Mr. Unger agreed to the additions.

The Commission discussed the number of parking spaces and the possibility of building a parking garage instead of a parking lot. Mr. Unger said the Town could build a garage if itso desired, but it would not cost less simply because Minto Communities was already there.

GOREN, CHEROF, DOODY & EZROL, P.A.

ATTORNEYS AT LAW
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3099 EAST COMMERCIAL BOULEVARD
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JULIE F. KLAHR
LINDSEY A. PAYNE
DAVID N. TOLCES
MICHAEL J. PAWELCZYK
STEVEN L. JOSIAS, Of Counsel

JULY 26, 2004

VIA FedEx 8481 5158 9970

Glenda E. Hood
Secretary of State
Florida Department of State
R. A. Gray Building
500 S. Bronough
Tallahassee, FL 32399-0250

Re: Charter of the Town of Lauderdale-By-The-Sea

Dear Ms. Hood:

Enclosed, for filing, please find the original *Charter of the Town of Lauderdale-By-The-Sea* as approved by the Town's Electors at the March 9, 2004, municipal general election.

Should you have any questions, please contact the undersigned.

Sincerely,



DAVID N. TOLCES
Charter Review Board Counsel

DNT:aw

Enclosure(s)

cc: Mayor Oliver Parker
Mayor Pro Tem Chuck Clark
Vice Mayor Ed Kennedy
Town Commission
Bob Baldwin, Town Manager
Alina Medina, Town Clerk (with diskette)

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sec

election shall serve only the unexpired term of the Commissioner or Mayor-Commissioner whose position became vacant.

- (2) If there are more than one hundred eighty (180) days remaining on an unexpired term, or if there are more than one hundred eighty (180) days before the next federal, state, county, or Town election, the Town Commission shall schedule a special election to be held no sooner than ninety (90) days nor more than one hundred twenty (120) days following the occurrence of the vacancy. The Commissioner or Mayor-Commissioner elected to fill the vacancy at any special election shall serve only the unexpired term of the Commissioner or Mayor-Commissioner whose position became vacant.
- (3) In the event of the death, resignation, or removal of the Mayor-Commissioner, the Vice-Mayor shall forthwith commence to serve as interim Mayor-Commissioner until the position of Mayor-Commissioner is filled by election or appointment. When the Vice-Mayor becomes interim Mayor-Commissioner, the Town Commission, by majority vote shall appoint one of the remaining Commissioners to become interim Vice-Mayor. The Commissioner serving as Mayor-Commissioner, or the Vice-Mayor, shall serve as Commission-Mayor, or Vice-Mayor, until the newly elected or appointed Commissioner-Mayor, or Vice-Mayor, is sworn into office. The interim Mayor-Commissioner, and interim Vice-Mayor shall then return to the positions of Vice-Mayor and Commissioner which he/she previously held to serve the remainder of his or her unexpired term.
- (4) In the event of the death, resignation, or removal of the Vice-Mayor, the Town Commission shall, by majority vote, elect one of the Commissioners to serve as Vice-Mayor.

Sec. 6.9 Extraordinary vacancies.

In the event that all members of the Town Commission are removed by death, disability, or forfeiture of office, the Governor of the State of Florida shall appoint an interim Town Commission that shall call a special election as provided above to fill the vacancies.

ARTICLE VII. PLANNING AND ZONING

Sec. 7.1 Maximum height for buildings established.

- (1) No building within the Town shall have more than four (4) stories above grade, and the maximum height of buildings within the Town that have four (4) stories above grade shall be forty-four (44) feet above grade, excluding elevator shafts and/or stairways. The maximum height for all other buildings within the Town shall be thirty-three (33) feet above grade, excluding elevator shafts and/or stairways. For the purposes of this provision of the Charter, a story is above grade if its ceiling is above grade.

(2) In any building within the Town that has more than three (3) stories above grade, the first story shall be at grade level and shall be used for parking, either with or without toll collection booths. The first story may also be used for storage, refuse, security, registration, maintenance, and/or access, either with or without a lobby, provided that at least one-half (1/2) of the square footage of the first story is used for parking. In any building within the Town that has more than three (3) stories above grade, the first story shall be restricted to the above enumerated uses, and may be used for no other purpose whatsoever. For the purposes of this provision of the Charter, a story is at grade level if its floor is at or below grade and its ceiling is above grade; a story that is at grade level is also above grade. Nothing in this paragraph shall be construed so as to prohibit any building within the Town that has more than three (3) stories above grade from also having one (1) or more subterranean stories below grade, provided, however, that in any building within the Town that has more than three (3) stories above grade, all subterranean stories shall be subject to the same restrictions on use as are established in this paragraph for the first story.

(3) All existing buildings within the Town that either exceed the maximum building height limit established in paragraph (1), above, of this provision of the Charter, or that fail to comply with the restrictions on use established in paragraph (2), above, of this provision of the Charter, on the effective date of this Charter amendment (hereinafter referred to as "Non-conforming Buildings") shall be considered legal, but non-conforming.

(4) Notwithstanding the maximum building height limit established in paragraph (1), above, of this provision of the Charter, an existing non-conforming building may be replaced by a new nonconforming building when, and only when:

(a) The existing non-conforming building has:

- (i) Been destroyed by fire, natural disaster, or other act of God; and
- (ii) The property owner has submitted and received Town approval of a site plan depicting the replacement building; and
- (iii) Construction of the replacement building is commenced within twelve (12) months of the date of destruction; or

(b) The existing non-conforming building is:

- (i) Demolished as part of a Town approved redevelopment of the property; and
- (ii) Prior to demolition, the property owner has submitted and received Town approval of a site plan depicting the replacement building; and

- (iii) Construction of the replacement building is commenced within six (5) months of the date of site plan approval.
- (c) The Town Commission may grant one (1) or more six (6) month extensions to the time periods for commencement of construction established in paragraphs (4)(a)(iii) and (4)(b)(iii), above, provided a written request for extension is filed with the Town Clerk prior to (in the case of a first request for extension) the expiration of the initial applicable time period for commencement of construction or prior to (in the case of a subsequent request for extension) the expiration of the most recent extension of the applicable time period for commencement of construction.
- (d) All new non-conforming buildings constructed pursuant to the provisions of either paragraph (4)(a) or (4)(b), above, shall comply with the restrictions on use established in paragraph (2), above, of this provision of the Charter.
- (e) The maximum allowable height of any new a non-conforming building constructed pursuant to the provisions of either paragraph (4)(a) or (4)(b), above, shall not exceed the original height of the non-conforming building which it replaces, plus any additional height which (because of the requirements of state or federal law, or because of the restrictions on use established in paragraph (2), above, of this provision of the charter) may be necessary to obtain the same number of habitable stories as was contained in the original non-conforming building. Nothing in this provision of the Charter shall be construed to prevent a new non-conforming building from being constructed to a lesser height or from containing fewer habitable stories than that of the original non-conforming building which it replaces. For the purposes of this provision of the Charter, the term "habitable story" means any story or part thereof that is used as a home or place of abode, either permanent or temporary, by one (1) or more persons.
- (f) The maximum allowable square footage of any new nonconforming building constructed pursuant to the provisions of either paragraph (4)(a) or (4)(b), above, shall not exceed the original square footage of the non-conforming building which it replaces, plus any additional square footage which (because of the requirements of state or federal law, or because of the restrictions on use established in paragraph (2), above, of this provision of the Charter) may be necessary to obtain the same number of habitable square feet as was contained in the original non-conforming building. Nothing in this provision of the Charter shall be construed to prevent a new nonconforming building from being constructed with either less total square footage or with less habitable square footage than that of

the original non-conforming building which it replaces. For the purposes of this provision of the Charter, the term "habitable square footage" means the square footage of that portion of a building that is used as a home or place of abode, either permanent or temporary, by one (1) or more persons.

- (5) The maximum building height limits, the restrictions on use and the maximum allowable square footage established in paragraphs (1), (2) and (4), above, of this provision of the Charter, shall be applicable to all real property located within the boundaries of the Town as the boundaries exist on March 10, 1998. However, the maximum building height limits, the restrictions on use and the maximum allowable square footage established in paragraphs (1), (2) and (4), above, of this provision of the Charter, shall not be applicable to any real property annexed into the Town after March 10, 1998.
- (6) Every resident of the Town shall have standing to enforce the maximum building height limits the restrictions on use and the maximum allowable square footage established in paragraphs (1), (2) and (4), above, of this provision of the Charter, by means of a suit in equity seeking either mandamus; prohibition; or injunction, or any combination thereof, but nothing in this provision of the Charter shall be construed to either create a cause of action at law for money damages, or to authorize a court of equity to award money damages as an incident to equitable relief, or to authorize an award of attorney's fees to the prevailing party or to any other party.
- (7) The maximum building height limit established in paragraph (1), above, of this provision of the Charter, supersedes any existing zoning ordinance or land development regulation to the extent that said zoning ordinance or land development regulation establishes anywhere within the Town a maximum building height limit greater than that established in paragraph (1), above, of this provision of the Charter, but nothing in this provision of the Charter shall be construed to supersede, modify or repeal any existing zoning ordinance or land development regulation that establishes anywhere within the Town a maximum building height limit lower than that established in paragraph (1), above, of this provision of the Charter.
- (8) Nothing in this provision of the charter shall be construed to limit the power of the Town Commission (and the Town Commission is hereby specifically authorized) to amend the Town's existing zoning ordinances and/or land development regulations to establish anywhere within the Town maximum building height limits equal to or lower than that established in paragraph (1), above, of this provision of the Charter. However, the Town Commission may not increase, by ordinance or by variance, the maximum building height limits established in paragraphs (1) and (4), above, of this provision of the Charter, nor may the Town Commission modify, amend or repeal, by ordinance or by variance, the restrictions on use established in paragraph (2), above, of this

provision of the Charter, nor may the Town Commission increase, by ordinance or by variance, the maximum allowable square footage established in paragraph (4), above, of this provision of the Charter.

- (9) The maximum building height limits established in paragraphs (1) and (4), above, of this provision of the Charter, may only be increased by an amendment or repeal of this provision of the Charter. The restrictions on use established in paragraph (2), above, of this provision of the Charter, may only be modified, amended or repealed by an amendment or repeal of this provision of the Charter. The maximum allowable square footage established in paragraph (4), above, of this provision of the Charter, may only be increased by an amendment or repeal of this provision of the Charter. This provision of the Charter may only be amended or repealed by means of a majority vote of the Town's electors at a referendum election held either on the same day as a regularly scheduled November general election or on the same day as a regularly scheduled March municipal election. The amendment or repeal of this provision of the Charter at a special election held on a day other than a regularly scheduled November general election or on a day other than a regularly scheduled March municipal election is expressly prohibited.
- (10) This provision of the Charter shall be effective immediately upon adoption by a majority of the electors voting in a referendum to amend the Charter so as to include this provision. Upon adoption, the maximum building height limits, the restrictions on use and the maximum allowable square footage established in paragraphs (1), (2) and (4), above, of this provision of the Charter, shall immediately apply to all real property located within the boundaries of the town as those boundaries exist on March 10, 1998.

Sec. 7.2 Restrictions on the vacating, abandonment, lease, sale, transfer of possession or transfer of ownership of the El Prado Property.

- (1) As used in this section of the Charter, the term "the El Prado Property" shall refer to the following described real property situate, lying and being in the Town of Lauderdale-By-The-Sea, Florida:

The real property bounded on the west by the eastern boundary line of the Ocean Drive (also known as State Road A1A right-of-way, bounded on the east by the western boundary line of the El Mar Drive right-of-way, bounded on the north by the south boundary line of Lots 1, 2, 3, 4 and 5 of Block 11, and bounded on the south by the north boundary line of Lots 11, 12, 13, 14 and 15 of Block 12, all said Lots, Blocks and rights-of-way as set forth in the Plat of the Lauderdale-By-The-Sea Subdivision as recorded in Plat Book 6, at Page 2 of the Public Records of Broward County, Florida;

and

The real property bounded on the west by the eastern boundary line of the El Mar Drive right-of-way, bounded on the east by the western shore of the Atlantic Ocean, bounded on the north by the southern boundary line of Lot 1, Block 8, and bounded on the south by the north boundary line of Lot 13, Block 7, all said Lots, Blocks and rights-of-way as set forth in the Plat of the Lauderdale By-The-Sea Subdivision as recorded in Plat Book 6, at Page 2 of the Public Records of Broward County, Florida.

- (2) The Town may not vacate, abandon, lease, sell, transfer possession or transfer ownership of the El Prado Property without first obtaining a majority vote of the Town's electors at a referendum election held for the specific purpose of authorizing said vacating, abandonment, lease, sale, transfer of possession or transfer of ownership of the El Prado Property.
- (3) Any referendum election called for the purpose of authorizing the vacating, abandonment, lease, sale, transfer of possession or transfer of ownership of the El Prado Property shall be held either on the same day as a regularly scheduled November general election or on the same day as a regularly scheduled March municipal election. The holding of a referendum election called for the purpose of authorizing said vacating, abandonment, lease, sale, transfer of possession or transfer of ownership of the El Prado Property on a day other than a regularly scheduled November general election or on a day other than a regularly scheduled March municipal election is expressly prohibited.
- (4) Every resident of the Town shall have standing to enforce the restrictions on the vacating, abandonment, lease, sale, transfer of possession or transfer of ownership of the El Prado Property established in paragraphs (2) and (3), above, of this provision of the Charter, by means of a suit in equity seeking either mandamus, prohibition, or injunction, or any combination thereof, but nothing in this provision of the Charter shall be construed to either create a cause of action at law for money damages, or to authorize a court of equity to award money damages as an incident to equitable relief, or to authorize an award of attorney's fees to the prevailing party or to any other party.

Sec. 7.3 Advisory boards; how constituted.

The Town Commission may at any time by resolution appoint advisory boards, composed of residents of the Town of Lauderdale-By-The-Sea, qualified to act in an advisory capacity to the Town Commission, the Town Manager, or to any department of the Town. The members of such boards shall serve without compensation at the pleasure of the Commission, and their duties shall be to consult and advise with such municipal officers and make written recommendations which shall become part of the records of the Town.

1998 Height Limit Referendum

- Ordinance #399
- Minutes approving Ordinance #399

ORDINANCE # 399

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AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY-THE SEA, FLORIDA, SUBMITTING TO REFERENDUM AN AMENDMENT TO THE TOWN CHARTER; PROVIDING A MAXIMUM BUILDING HEIGHT OF FORTY-FOUR (44) FEET FOR ALL BUILDINGS WITHIN THE TOWN; PROVIDING THAT ALL BUILDINGS WITHIN THE TOWN SHALL BE LIMITED TO NO MORE THAN FOUR (4) STORIES; PROVIDING THAT IN ANY BUILDING OVER THREE (3) STORIES, THE FIRST STORY SHALL BE USED FOR PARKING; PROVIDING FOR GRANDFATHERING OF EXISTING BUILDINGS; PROVIDING FOR RECONSTRUCTION OF GRANDFATHERED BUILDINGS IN THE EVENT OF DESTRUCTION OR REDEVELOPMENT; PROVIDING THAT RESIDENTS MAY SUE TO ENFORCE THIS BUILDING HEIGHT LIMIT; PROVIDING FOR LIMITATIONS ON FUTURE CHARTER AMENDMENTS; PROVIDING AN EFFECTIVE DATE FOR THE CHARTER AMENDMENT; PROVIDING FOR FORM OF QUESTION TO BE PRESENTED AT THE REFERENDUM ELECTION; PROVIDING FOR TITLE LANGUAGE AND EXPLANATORY LANGUAGE FOR THE BALLOT; PROVIDING FOR NOTICE OF ADVERTISEMENT OF SAID REFERENDUM ELECTION TO BE PUBLISHED IN ACCORDANCE WITH THE CODE OF ORDINANCES, THE CHARTER OF THE TOWN AND THE STATE OF FLORIDA ELECTION CODE; PROVIDING FOR SUBMISSION OF AMENDMENTS TO THE DEPARTMENT OF STATE; PROVIDING FOR CONFLICTS, SEVERABILITY AND AN EFFECTIVE DATE OF THIS ORDINANCE.

WHEREAS, the Town Commission of the Town of Lauderdale-By-The-Sea has determined that it is in the best interest of the citizens of the Town to submit to the electorate a referendum question, which if passed, would have the effect of establishing a maximum height for buildings within the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, THAT:

SECTION 1. The foregoing whereas clause is true and correct and is now ratified and confirmed by the Town Commission.

SECTION 2. There is hereby created a new section 277 of the Town Charter to read as follows:

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ORDINANCE NO. 399

Section 277 MAXIMUM HEIGHT FOR BUILDINGS ESTABLISHED.

1. No building within the Town shall have more than four (4) stories above grade, and the maximum height of buildings within the Town that have four (4) stories above grade shall be forty-four (44) feet above grade, excluding elevator shafts and/or stairways. The maximum height for all other buildings within the Town shall be thirty-three (33) feet above grade, excluding elevator shafts and/or stairways. For the purposes of this provision of the Charter, a story is above grade if its ceiling is above grade.

2. In any building within the Town that has more than three (3) stories above grade, the first story shall be at grade level and shall be used for parking, either with or without toll collection booths. The first story may also be used for storage, refuse, security, registration, maintenance, and/or access, either with or without a lobby, provided that at least one-half (1/2) of the square footage of the first story is used for parking. In any building within the Town that has more than three (3) stories above grade, the first story shall be restricted to the above enumerated uses, and may be used for no other purpose whatsoever. For the purposes of this provision of the Charter, a story is at grade level if its floor is at or below grade and its ceiling is above grade; a story that is at grade level is also above grade. Nothing in this paragraph shall be construed so as to prohibit any building within the Town that has more than three (3) stories above grade from also having one or more subterranean stories below grade, provided, however, that in any building within the Town that has more than three (3) stories above grade, all subterranean stories shall be subject to the same restrictions on use as are established in this paragraph for the first story.

3. All existing buildings within the Town that either exceed the maximum building height limit established in paragraph 1, above, of this provision of the Charter, or that fail to comply with the restrictions on use established in paragraph 2, above, of this provision of the Charter, on the effective date of this Charter amendment (hereinafter referred to as "Non-conforming Buildings"), shall be considered legal, but non-conforming.

4. Notwithstanding the maximum building height limit established in paragraph 1, above, of this provision of the Charter, an existing Non-conforming Building may be replaced by a new Non-conforming Building when, and only when:

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ORDINANCE NO. 399

- A. The existing Non-conforming Building has:
- (i) been destroyed by fire, natural disaster, or other act of God, and
 - (ii) the property owner has submitted and received Town approval of a site plan depicting the replacement building, and
 - (iii) construction of the replacement building is commenced within twelve (12) months of the date of destruction, or
- B. The existing Non-conforming Building is:
- (i) demolished as part of a Town approved redevelopment of the property, and
 - (ii) prior to demolition, the property owner has submitted and received Town approval of a site plan depicting the replacement building, and
 - (iii) construction of the replacement building is commenced within six (6) months of the date of site plan approval.
- C. The Town Commission may grant one (1) or more six (6) month extensions to the time periods for commencement of construction established in paragraphs 4(A)(iii) and 4(B)(iii), above, provided a written request for extension is filed with the Town Clerk prior to (in the case of a first request for extension) the expiration of the initial applicable time period for commencement of construction or prior to (in the case of a subsequent request for extension) the expiration of the most recent extension of the applicable time period for commencement of construction.
- D. All new Non-conforming Buildings constructed pursuant to the provisions of either paragraph 4(A) or 4(B), above, shall comply with the restrictions on use established in paragraph 2, above, of this provision of the Charter.

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ORDINANCE NO. 399

E. The maximum allowable height of any new Non-conforming Building constructed pursuant to the provisions of either paragraph 4(A) or 4(B), above, shall not exceed the original height of the Non-conforming Building which it replaces, plus any additional height which (because of the requirements of State or Federal law, or because of the restrictions on use established in paragraph 2, above, of this provision of the Charter) may be necessary to obtain the same number of habitable stories as was contained in the original Non-conforming Building. Nothing in this provision of the Charter shall be construed to prevent a new Non-conforming Building from being constructed to a lesser height or from containing fewer habitable stories than that of the original Non-conforming Building which it replaces. For the purposes of this provision of the Charter, the term "habitable story" means any story or part thereof that is used as a home or place of abode, either permanent or temporary, by one or more persons.

F. The maximum allowable square footage of any new Non-conforming Building constructed pursuant to the provisions of either paragraph 4(A) or 4(B), above, shall not exceed the original square footage of the Non-conforming Building which it replaces, plus any additional square footage which (because of the requirements of State or Federal law, or because of the restrictions on use established in paragraph 2, above, of this provision of the Charter) may be necessary to obtain the same number of habitable square feet as was contained in the original Non-conforming Building. Nothing in this provision of the Charter shall be construed to prevent a new Non-conforming Building from being constructed with either less total square footage or with less habitable square footage than that of the original Non-conforming Building which it replaces. For the purposes of this provision of the Charter, the term "habitable square footage" means the square footage of that portion of a building that is used as a home or place of abode, either permanent or temporary, by one or more persons.

5. The maximum building height limits, the restrictions on use and the maximum allowable square footage established in paragraphs 1, 2 and 4, above, of this provision of the Charter, shall be applicable to all real property located within the boundaries of the Town as those boundaries exist on March 10, 1998. However, the maximum building height limits, the restrictions on use and the maximum

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ORDINANCE NO. 399

allowable square footage established in paragraphs 1, 2 and 4, above, of this provision of the Charter, shall not be applicable to any real property annexed into the Town after March 10, 1998.

6. Every resident of the Town shall have standing to enforce the maximum building height limits, the restrictions on use and the maximum allowable square footage established in paragraphs 1, 2 and 4, above, of this provision of the Charter, by means of a suit in equity seeking either mandamus, prohibition, or injunction, or any combination thereof, but nothing in this provision of the Charter shall be construed to either create a cause of action at law for money damages, or to authorize a court of equity to award money damages as an incident to equitable relief, or to authorize an award of attorney's fees to the prevailing party or to any other party.

7. The maximum building height limit established in paragraph 1, above, of this provision of the Charter, supersedes any existing Zoning Ordinance or Land Development Regulation to the extent that said Zoning Ordinance or Land Development Regulation establishes anywhere within the Town a maximum building height limit greater than that established in paragraph 1, above, of this provision of the Charter, but nothing in this provision of the Charter shall be construed to supersede, modify or repeal any existing Zoning Ordinance or Land Development Regulation that establishes anywhere within the Town a maximum building height limit lower than that established in paragraph 1, above, of this provision of the Charter.

8. Nothing in this provision of the Charter shall be construed to limit the power of the Town Commission (and the Town Commission is hereby specifically authorized) to amend the Town's existing Zoning Ordinances and/or Land Development Regulations to establish anywhere within the Town maximum building height limits equal to or lower than that established in paragraph 1, above, of this provision of the Charter. However, the Town Commission may not increase, by ordinance or by variance, the maximum building height limits established in paragraphs 1 and 4, above, of this provision of the Charter, nor may the Town Commission modify, amend or repeal, by ordinance or by variance, the restrictions on use established in paragraph 2, above, of this provision of the Charter, nor may the Town Commission increase, by ordinance or by variance, the maximum allowable square footage established in paragraph 4, above, of this provision of the Charter.

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ORDINANCE NO. 399

9. The maximum building height limits established in paragraphs 1 and 4, above, of this provision of the Charter, may only be increased by an amendment or repeal of this provision of the Charter. The restrictions on use established in paragraph 2, above, of this provision of the Charter, may only be modified, amended or repealed by an amendment or repeal of this provision of the Charter. The maximum allowable square footage established in paragraph 4, above, of this provision of the Charter, may only be increased by an amendment or repeal of this provision of the Charter. This provision of the Charter may only be amended or repealed by means of a majority vote of the Town's electors at a referendum election held either on the same day as a regularly scheduled November general election or on the same day as a regularly scheduled March municipal election. The amendment or repeal of this provision of the Charter at a special election held on a day other than a regularly scheduled November general election or on a day other than a regularly scheduled March municipal election is expressly prohibited.

10. This provision of the Charter shall be effective immediately upon adoption by a majority of the electors voting in a referendum to amend the Charter so as to include this provision. Upon adoption, the maximum building height limits, the restrictions on use and the maximum allowable square footage established in paragraphs 1, 2 and 4, above, of this provision of the Charter, shall immediately apply to all real property located within the boundaries of the Town as those boundaries exist on March 10, 1998

SECTION 3. The title of the ballot and explanatory statement setting forth the substance of the proposed Charter Amendment shall appear on the ballot and shall read as follows:

AN AMENDMENT TO THE TOWN CHARTER ESTABLISHING
A MAXIMUM BUILDING HEIGHT.

THIS AMENDMENT ESTABLISHES A MAXIMUM BUILDING HEIGHT OF 44 FEET AND LIMITS BUILDINGS TO NO MORE THAN FOUR STORIES. IN FOUR STORY BUILDINGS, THE FIRST STORY MUST BE USED FOR PARKING. EXISTING BUILDINGS WHICH EXCEED 44 FEET ARE GRANDFATHERED IN AND MAY BE RECONSTRUCTED SUBJECT TO CONDITIONS. RESIDENTS MAY SUE TO ENFORCE THIS MAXIMUM BUILDING HEIGHT LIMIT. IF ADOPTED, THIS MAXIMUM BUILDING HEIGHT LIMIT MAY ONLY BE INCREASED BY REFERENDUM.

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ORDINANCE NO. 399

SHOULD THE CHARTER BE AMENDED?

YES _____

NO _____

SECTION 4. The Town Clerk of the Town of Lauderdale-By-The-Sea, Florida is hereby authorized and directed to advertise the referendum election contemplated herein in accordance with the Code of Ordinances of the Town of Lauderdale-By-The-Sea, the Town Charter, and the State of Florida Election Code.

SECTION 5. All Ordinances or parts of Ordinances, Resolutions or parts of Resolutions in conflict herewith shall and the same are hereby repealed to the extent of such conflict only upon the passage of the referendum.

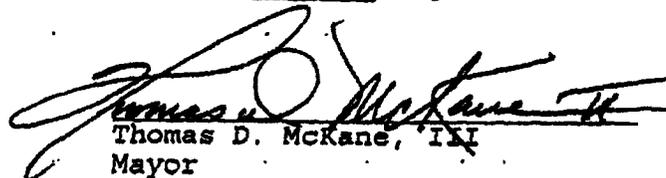
SECTION 6. If any clause, section or other part of this Ordinance shall be held by any court of competent jurisdiction to be unconstitutional or invalid, such unconstitutional or invalid part shall be considered as eliminated and not effecting the validity of the remaining portions of the Ordinance and its application shall remain in full force and effect.

SECTION 7. This Ordinance shall take effect on passage. The amendment of the Town Charter of the Town of Lauderdale-By-The-Sea, provided herein, shall not take effect unless and until the proposed amendment provided herein is submitted to the vote of the electors of the Town of Lauderdale-By-The-Sea at a referendum election to be held in conjunction with the March 10, 1998 municipal election, by separate ballot question.

FIRST READING this 30 day of December, 1997

SECOND READING this 13 day of January, 1998

THIRD, FINAL READING and PASSAGE this 27 day of January, 1998


Thomas D. McKane, III
Mayor

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ORDINANCE NO. 399

	First Reading	Second Reading	Third Reading
Vice-Mayor Parker	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>
Commissioner Pollock	<u>No</u>	<u>Yes</u>	<u>Yes</u>
Commissioner Fontaine	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>
Commissioner Yanni	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>
Mayor Thomas D. McKane, III	<u>No</u>	<u>Yes</u>	<u>Yes</u>

Attest:

David P. Poyet
Town Clerk

CODING: Words in strike through type are deletions from existing law;
Words in underscored type are additions.

MINUTES APPROVING ORDINANCE # 399

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Mr. Baldwin said indicated they did not.

Mayor McKane asked if we have checked it out.

Chief Patten said this is a unit right across the street on the west side of Bougainvillea. They have six parking places, and have six apartments. If you get someone who has two cars, they are in trouble. Chief Patten said the request was made on that basis. Chief Patten said these meters produce very little revenue.

Mayor McKane said he would like to see what they do produce, and we should have statistical data. Mayor McKane said this is becoming a snowball, it keeps rolling along. Mayor McKane said no one is able to count the money when they go out there. We do not know what we have until the whole city fund is counted. Mayor McKane asked how do we come up with our estimates.

Town Manager Baldwin responded he is not sure how Mr. Mason arrived at the estimate.

Vice Mayor Parker made a motion to table this item until the next Commission Meeting when Mr. Mason is present. Seconded by Commissioner Pollock, the motion carried unanimously.

VIII. ORDINANCES (1ST READING)

IX. ORDINANCES (Public Hearing - 2nd Reading)

X. ORDINANCES (Public Hearing - 3rd and Final Reading)

A. An Ordinance of the Town of Lauderdale-By-The-Sea, Florida, submitting to referendum an amendment to the Town Charter; providing a maximum building height of forty-four (44) feet for all buildings within the Town; providing that all buildings within the Town shall be limited to no more than four (4) stories; providing that in any building over three (3) stories, the first story shall be used for parking; providing for grandfathering of existing buildings; providing for reconstruction of grandfathered buildings in the event of destruction or redevelopment; providing that residents may sue to enforce this building height limit; providing for limitations on future charter amendments; providing an effective date for the Charter Amendment; providing for form of question to be presented at the referendum election; providing for title language and explanatory language for the ballot; providing for notice of advertisement of said referendum election to be published in accordance with the Code of Ordinances, the Charter of the Town and the State of Florida Election Code; providing for submission of amendments to the Department of State; providing for conflicts, severability and an effective date of this ordinance.

Town Attorney Cherof read the ordinance on third and final reading by title only.

Mayor McKane declared the public hearing open and asked anyone wishing to speak to approach the microphone.

Mayor McKane closed the public hearing with no one wishing to speak.

Vice Mayor Parker made a motion to pass the ordinance on third and final reading. Seconded by Commissioner Pollock, the motion carried unanimously.

IX. RESOLUTIONS

- A. A Resolution of the Town Commission of the Town of Lauderdale-By-The-Sea, Florida, vacating a portion of a public right-of-way commonly known as south El Prado and more particularly described in the body of this resolution; setting forth the public benefit of the vacation and providing for an effective date.

Town Attorney Cherof read the resolution by title only.

Vice Mayor Parker asked Town Attorney Cherof if he had the attached legal description because he did not see it in his agenda package.

Town Attorney Cherof responded he did not receive it. It was to be provided by Walter Keller to the Clerk's office.

Commissioner Fontaine made a motion to table this item until the legal description is received. Seconded by Vice Mayor Parker, the motion passed unanimously.

- B. A Resolution of the Town Commission of the Town of Lauderdale-By-The-Sea, Florida, expressing support for the continued sovereign status of the Village of Sea Ranch Lakes; providing an effective date.

Town Attorney Cherof read the resolution by title only.

Vice Mayor Parker made a motion to pass the resolution. Seconded by Commissioner Fontaine, the motion carried unanimously.

XI. TOWN MANAGER REPORT

Town Manager Baldwin said he would like to report on the Broward Legislative Delegation Meeting that he attended last night. Mr. Baldwin said there were two bills addressed by the delegation of interest to the Town. Mr. Baldwin stated it was his understanding that the leadership of both groups were requested to withdraw their bills prior to the meeting because they would not receive the full support of the delegation. The South Beach bill which called for a referendum between Lauderdale-By-The-Sea, Fort Lauderdale, and Pompano was withdrawn. The second bill, the Sea Villas Bill, the leadership refused to withdraw the bill, and it was voted down unanimously. For this year, the annexation of South Beach and that area is over. There will not be anything else going on this year as far as the Delegation or

TOWN LAND DEVELOPMENT REGULATIONS

1. Ordinance 2009-10 (in part, this Ordinance revised the land development regulations so that they mirror the Charter nonconforming provisions). (1-7)
 - Minutes of Town Commission, July 28, 2009: second reading of Ordinance
 - Code nonconforming provisions created by Ordinance 2009-10
2. Memo from Town Attorney to Town Manager, November 25, 2008 re ability to amend land development regulations (8-9)
3. Ordinance 03-529: The Beach Overlay District (one of three overlays) (10-18)
4. 1990 Zoning Code (19-29)
5. 1973 Electoral Ordinance (30-31)

the Commission because Lauderdale By-The-Sea needed to comply with those City Ordinances and was also a requirement of the Comprehensive Plan. Mayor Minnet opened the meeting for public comments. With no one wishing to speak, Mayor Minnet closed the public comment portion of the meeting.

Commissioner Silverstone made a motion to approve on 1st reading. Commissioner Clotey seconded the motion.

Commissioner Dodd thanked Municipal Services for the Florida friendly landscaping and cutting down on water usage by 1/3rd. He asked why there was no penalty in the Ordinance. Attorney Trevarthen stated that the ordinance mirrored the City of Ft. Lauderdale Code and the City of Pompano Beach Code. Commissioner Dodd asked whether there were penalties in place if the ordinance was not obeyed. Assistant Town Manager Olinzock said there was an Ordinance in place that currently enforced water conservations and had not been a major issue with Code Enforcement.

Commissioner Silverstone was not comfortable and wanted to include penalties. Attorney Trevarthen stated that it could be placed and pointed out that there was a current ordinance in place for compliance. Commissioner Silverstone wanted to show the existing code in the ordinance. Attorney Trevarthen said she would add it.

The motion carried 5-0.

2. Ordinances 2nd Reading - "PUBLIC HEARING"

- a. Ordinance 2009-10: AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY THE SEA, FLORIDA, AMENDING CHAPTER 30 "UNIFIED LAND DEVELOPMENT REGULATIONS," ARTICLE I "IN GENERAL," SECTION 30-21 "NON-CONFORMING USES AND STRUCTURES" TO AMEND REQUIREMENTS FOR CONTINUATION OF NON-CONFORMING USES AND STRUCTURES; AMENDING ARTICLE IV "SITE PLAN PROCEDURES AND REQUIREMENTS," SECTION 30-123 "APPLICATION FOR FINAL SITE PLAN APPROVAL" TO CLARIFY THE REQUIREMENTS FOR AN APPROVED SITE PLAN TO REMAIN EFFECTIVE; AMENDING ARTICLE V "ZONING," DIVISION 2 "DISTRICTS," SECTION 30-211 "RS-5 DISTRICT--RESIDENCE" TO AMEND ROOF OVERHANG SETBACK REQUIREMENTS IN THE RS-5 DISTRICT; AMENDING ARTICLE V "ZONING," DIVISION 2 "DISTRICTS," SECTION 30-261 "B-1-A DISTRICT-BUSINESS" IN ORDER TO PROVIDE THAT BEAUTY SCHOOLS AND HAIR SALONS ARE PERMITTED USES IN THE B-1-A DISTRICT; AMENDING ARTICLE V "ZONING," DIVISION 2 "DISTRICTS," SECTION 30-271 "B-1 DISTRICT- BUSINESS" IN ORDER TO PROVIDE THAT COOKING SCHOOLS, CATERING BUSINESSES, MOTORIZED SCOOTER OR MOPED SALES AND RENTALS, AND BEAUTY SCHOOLS AND HAIR SALONS ARE PERMITTED USES IN THE B-1 DISTRICT; AMENDING ARTICLE V "ZONING," DIVISION 2 "DISTRICTS," SECTION 30-313 "GENERAL PROVISIONS" IN ORDER TO AMEND THE REQUIREMENTS FOR FENCES.

WALLS, AND HEDGES AND TO PROVIDE DEVELOPMENT STANDARDS FOR DRIVEWAYS, SWALES, AND GENERATORS; FURTHER AMENDING ARTICLE VIII "SIGN REGULATIONS," SECTION 30-507 "DEFINITIONS AND RESTRICTIONS BY SIGN TYPE," TO AMEND THE DEFINITIONS OF "SIGN," "INFORMATIONAL, DIRECTIONAL OR TRAFFIC CONTROL SIGN," AND "REAL ESTATE SIGN"; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE Approved 1st reading April 14, 2009

Attorney Trevarthen read Ordinance 2009-10 by title.

Attorney Trevarthen pointed out that on page 8 between lines 247 & line 322 the language should have been underlined in the packet as it was a new addition. Mayor Minnet opened the meeting for public comments.

* Attorney James White reviewed the changes to the ordinance since the last reading, beginning on lines 241 through 322, that showed new language that provided the ability for a residential property owner that was non-conforming with regards to [REDACTED] setbacks and density to rebuild. He added that on page 15, lines 576 through 578, provided that zero scape plantings were allowed to be planted in the swale area. Attorney White explained further that on page 16, lines 590 through 599, provided that any plantings or removals of landscape materials within the swale area by the abutting property owner, would be required to obtain a permit as well as a hold harmless agreement.

Barbara Cole wanted to know what was required to rebuild to existing structure.

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

Commissioner Dodd asked for clarification that a non-conforming building would be allowed to build back to the same footprint even though they may need to go higher. He also questioned the issue of responsibility for watering the grass and maintaining the grass between sidewalk and roadway. Commissioner Dodd believed that if the responsibility was that of the homeowner then the homeowner should have the right to put in zeros cape rather than grass.

Attorney White stated that the language allowed for non-conforming residential properties that were non-conforming to [REDACTED] density or setbacks, to be re-built and had to comply with the conditions listed on top of on page 8 (a) and (b). He added that that language was the same language that currently existed in the Charter. Attorney White explained that current code required the abutting property owner to maintain the swale area. He said the Commission requested to allow zero scape plantings or materials to be allowed in the swale to avoid daily watering. Attorney White said language on the bottom of page 15, at line 576, allowed zero scape plantings or materials in the swale area. He added that on page 16 line 586, the sentence before

the requirement for a permit stated that in those instances where an abutting property owner planted trees or other landscaping materials within the swale area, they would be responsible for damage caused by the roots of that material.

Commissioner Clotley believed the issue of the Town putting in the trees on Seagrape and installing irrigation was unfortunate but she did not believe the Town could afford to do the same in every swale in Town.

Vice Mayor McIntee made a motion to approve Ordinance 2009-10 on second reading. Commissioner Silverstone seconded the motion. The motion carried 5-0.

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- b. Ordinance 2009-12: AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY THE SEA, FLORIDA, AMENDING CHAPTER 17 "STREETS, SIDEWALKS, AND OTHER PUBLIC PLACES," ARTICLE VI "SIDEWALK CAFÉS," SECTION 17-89 "REQUIREMENTS OF A SIDEWALK CAFÉ PERMIT;" PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE Approved 1st reading July 14, 2009

Attorney Trevarthen read Ordinance 2009-12 by title.

Attorney Trevarthen pointed out that the word "removable" was removed. She added that the word "removable" should have been struck through.

Mayor Minnet questioned whether sidewalk cafe applied to anyone's sidewalk whether it was a private building on private land or public. Attorney White said there was no distinction in the Code between a public or privately owned sidewalk.

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

Commissioner Clotley made a motion to adopt Ordinance 2009-12 on second reading. Commissioner Dodd seconded the motion. The motion carried 5-0.

- c. Ordinance 2009-14: AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY THE SEA, FLORIDA, AMENDING CHAPTER 13 "NOISE" OF THE CODE OF ORDINANCES TO PROVIDE FOR AMENDED NOISE REGULATIONS; AMENDING CHAPTER 17 "STREETS, SIDEWALKS AND OTHER PUBLIC PLACES," ARTICLE VIII "SPECIAL EVENTS" TO AMEND THE REGULATIONS OF SPECIAL EVENT PERMITS TO PROVIDE GROUNDS FOR DENIAL OF A SPECIAL EVENT PERMIT FOR VIOLATION OF NOISE AND OTHER TOWN STANDARDS; PROVIDING FOR SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE Approved 1st reading April 14, 2009 Deferred at the June 9, 2009 Commission meeting by Vice Mayor McIntee

Attorney Trevarthen read Ordinance 2009-14 by title. Mayor Minnet opened the meeting for public comments.

Sec. 30-21. - Nonconforming uses and structures.

- (a) *Existing uses and structures.* Any lawful use or structure, excluding signs, existing on the effective date of this chapter and which by the terms thereof has become a nonconforming use or structure is hereby declared not to be in violation at this chapter's effective date. Such a nonconforming use or structure shall be subject to all of the provisions of this section pertaining to its continuance, change and discontinuance and Section 7.1 of the Town Charter.
- (b) *Nonconforming use; extensions.* The nonconforming use of a building may be extended throughout any part of a building clearly designed for such use but not so used at the effective date of this chapter. Any nonconforming use which occupied a portion of a building not originally designed or intended for such use shall not be extended to any other part of the building. No nonconforming use shall be extended to occupy any land outside the building on the same plot not used for such nonconforming use of land at the effective date of this chapter. The nonconforming use of land shall not be extended to any additional land not so used at the effective date of this chapter.
- (c) *Nonconforming use, repair, alteration, enlargement.* No structure utilized for a nonconforming use shall be enlarged, extended, reconstructed or structurally altered unless the use is changed to one which complies with the provisions of this chapter; provided that repairs, maintenance and improvement may be carried out in any 12-month period in an amount not to exceed 25 percent of the assessed value of the structure for that year, and provided that such work does not increase the cubical content of the building nor the floor area devoted to the nonconforming use or increase the number of dwelling units. Nothing in this article shall prevent or excuse compliance with applicable laws or resolutions relative to the safety and sanitation of a building occupied by a nonconforming use.
- (d) *Reconstruction after catastrophe.* If any nonconforming structure or if any building in which there is a nonconforming use is damaged by fire, flood, explosion, collapse, wind, war or other catastrophe to such an extent that surpasses 50 percent of the replacement cost of the building or structure, it shall not be again used or reconstructed except in full conformance with all applicable land development regulations and Section 7.1 of the Town Charter.
- (e) *Change of nonconforming use.*
- (1) In any residential district, any change of a nonconforming use in a conforming building shall be to a conforming use.
 - (2) In a residential district, a nonconforming use and a nonconforming building shall be changed only to a use permitted in the particular residential district involved except as provided in subsection (e)(4) below.
 - (3) Any change of a nonconforming use of land shall be to a conforming use except as provided in subsection (e)(4) below.
 - (4) There may be a change of tenancy, ownership or management of a nonconforming use, provided that there is no change in the specific character of such nonconforming use except as may be permitted by this chapter. For example, a nonconforming professional office may continue as a nonconforming professional office after a change in tenancy, ownership or management but may not continue as another commercial or business use. Likewise, a retail store may continue as another type of retail store but not as a laundromat or other type of service establishment.
- (f) *Discontinuance or abandonment of a nonconforming use.*

- (1) If for any reason a nonconforming use of land ceases or is discontinued for a period of more than 60 days, the land shall not thereafter be used for the same or any other nonconforming use.
 - (2) If for any reason the nonconforming use of a building ceases or is discontinued for a period of 60 days or more (not including periods when restoration is in progress), the building shall not thereafter be used for the same or any other nonconforming use.
 - (3) Any part of a building, structure or land occupied by a nonconforming use which is abandoned shall not again be occupied or used for a nonconforming use.
 - (4) Any part of a building, structure or land occupied by a nonconforming use which is changed to or occupied by a conforming use shall not thereafter be used or occupied by a nonconforming use.
- (g) *Continuance of nonconforming uses and structures.* Any legal nonconforming use or structure may be continued in accordance with the requirements of this section and Section 7.1 of the Town Charter.
- (h) *Unlawful use not authorized.* Nothing in this chapter shall be interpreted as authorization for or approval of the continuation of the use of a structure or premises in violation of any ordinance in effect at the effective date of this chapter.
- (i) *District or regulation change.* The foregoing provisions of this article shall also apply to buildings, structures, land, premises or uses which hereafter become nonconforming due to a change or a reclassification of district or become nonconforming due to a change in district regulations. When a period of time is specified in this article for the removal or discontinuance of nonconforming buildings, structures or uses, said period shall be computed from the effective date of such reclassification or change of regulations.
- (j) *Illegal use.* The casual, temporary or illegal use of land or a building shall not be sufficient to establish the existence of a nonconforming use or to create any rights in the continuance of such a use.
- (k) The lawful existence of a structure or building at the effective date of adoption of these regulations, although such structure or building does not conform to the land development regulations for minimum lot area and dimension, minimum yard setback requirements, maximum building height, total floor area, lot coverage and minimum floor area requirements or other characteristics of the structure, or its location on the lot, may be continued so long as it remains otherwise lawful, subject to the following provisions:
- (1) No such building or structure shall be enlarged upon or altered in any way that increases its nonconformity. Such building or structure or portion thereof may be altered to decrease its nonconformity except as may be hereafter provided. Such nonconforming buildings or structures shall not be used as a basis for adding other structures or uses prohibited elsewhere in the same district.
 - (2) Should such structure or building be destroyed by any means to an extent that surpasses 50 percent of the replacement cost of the building or structure, it shall not be reconstructed except in conformity with the provisions of this section and any other applicable land development regulations including, but not limited to, Section 7.1 of the Town Charter.
 - (3) Should such structure or building be destroyed by any means to an extent less than 50 percent of its replacement cost, it may be restored only upon application to the Building and Zoning Department.
 - (4) Should such structure or building be moved for any reason for any distance whatever, it shall thereafter conform to the land development regulations for the zoning district in which it is located after it is moved.

- (5) Notwithstanding the foregoing, an existing residential building that is nonconforming to either height, setbacks or density may be replaced by a new nonconforming building when, and only when:
- (a) The existing nonconforming building has:
 - (i) Been destroyed by fire, natural disaster, or other act of God; and
 - (ii) The property owner has submitted and received Town approval of a site plan depicting the replacement building; and
 - (iii) Construction of the replacement building is commenced within 12 months of the date of destruction; or
 - (b) The existing nonconforming building is:
 - (i) Demolished as part of a Town-approved redevelopment of the property; and
 - (ii) Prior to demolition, the property owner has submitted and received Town approval of a site plan depicting the replacement building; and
 - (iii) Construction of the replacement building is commenced within six months of the date of site plan approval.
 - (c) The Town Commission may grant one or more six-month extensions to the time periods for commencement of construction established in paragraphs (5)(a)(iii) and (5)(b)(iii), above, provided a written request for extension is filed with the Town Clerk prior to (in the case of a first request for extension) the expiration of the initial applicable time period for commencement of construction or prior to (in the case of a subsequent request for extension) the expiration of the most recent extension of the applicable time period for commencement of construction.
 - (d) All new nonconforming buildings constructed pursuant to the provisions of either paragraph (5)(a) or (5)(b), above, shall comply, where applicable, with the restrictions on use and parking availability established in Section 7.1 of the Town Charter.
 - (e) The maximum allowable height of any new nonconforming building constructed pursuant to the provisions of either paragraph (5)(a) or (5)(b), above, shall not exceed the original height of the nonconforming building which it replaces, plus any additional height which (because of the requirements of State or Federal law, or because of the restrictions on use established in Section 7.1 of the Town Charter) may be necessary to obtain the same number of habitable stories as was contained in the original nonconforming building. Nothing in this section shall be construed to prevent a new nonconforming building from being constructed to a lesser height or from containing fewer habitable stories than that of the original nonconforming building which it replaces. For the purposes of this section, the term "habitable story" means any story or part thereof that is used as a home or place of abode, either permanent or temporary, by one or more persons.
 - (f) The maximum allowable square footage of any new nonconforming building constructed pursuant to the provisions of either paragraph (5)(a) or (5)(b), above, shall not exceed the original square footage of the nonconforming building which it replaces, plus any additional square footage which (because of the requirements of State or Federal law, or because of the restrictions on use established in Section 7.1 of the Town Charter) may be necessary to obtain the same number of habitable square feet as was contained in the

original nonconforming building. Nothing in this section shall be construed to prevent a new nonconforming building from being constructed either with less total square footage or with less habitable square footage than that of the original nonconforming building which it replaces. For the purposes of this section, the term "habitable square footage" means the square footage of that portion of a building that is used as a home or place of abode, either permanent or temporary, by one or more persons.

- (6) The maximum building height limits, the restrictions on use and the maximum allowable square footage, and the provisions governing parking established in Section 7.1 of the Town Charter, shall be applicable to all real property located within the boundaries of the Town as the boundaries exist on March 20, 2006.
- (l) *Alterations, construction, repairs, and maintenance and change.*
- (1) A nonconforming structure or building may be maintained and repairs and alterations may be made, except that in a building which is nonconforming as to use regulations, no structural alterations shall be made except those required by law. Repairs as plumbing or the changing of partitions or other interior alterations are permitted.
 - (2) Construction. These regulations shall not be deemed to require a change in the plans, construction or designated use of any building on which actual construction was lawfully begun prior to the effective date of the passage of or amendment to these regulations and upon which actual building construction has been diligently carried on. In no event shall the time of such construction exceed a period of one year except upon approval of the Town Commission.
 - (3) Repairs and maintenance. On any building devoted in whole or in part to any nonconforming use, work may be done in any period of 12 consecutive months on ordinary repairs or on repair or replacement of nonbearing walls, fixtures, wiring or plumbing to an extent not to exceed 25 percent of the current assessed value of the building; provided, that the cubic volume of the building, as it existed at the time of passage of or amendment to these regulations shall not be increased.

(Ord. No. 2007-14, § 2(Exh. A), 9-25-07; Ord. No. 2009-10, § 2, 7-28-09)

Memo

To: Esther Colon, Town Manager
From: Daniel L. Abbott, Town Attorney
Date: November 25, 2008
Re: Regulations Regarding Building Height

I have recently been asked whether certain proposed amendments to the Town's land development regulations pertaining to building height would require approval in a referendum election.

Article VII, sec. 1 of the Town Charter establishes certain height limits for new buildings proposed to be constructed in the Town. These limits may not be exceeded unless the Charter is amended. The Charter may be amended only by referendum approval or by act of the Florida Legislature.

The Charter only imposes a maximum height for buildings. It does not guarantee a proposed developer the right to build up to that height. If the land development regulations call for a height less than that allowed by the Charter, a proposed developer could only build to a height allowed by the land development regulations. Similarly, with one exception to be discussed below, the Charter does not generally prohibit amendments of the land development regulations to allow construction of buildings up to the maximum height contained in the Charter. As with other land development regulations, amendment to the Code is effected by an Ordinance adopted by the Commission.

The Charter does, in one instance, however, prohibit the Commission from adopting land development regulations which allow construction up to the height limits imposed by the Charter. Section 7.1(9) of the Charter provides that

The maximum height limits established for residential zoning districts including, but not limited to, R-5, RS-4, RS-5, RD-10, RM-15, RM-16, RM-25 and PUD in the Town's land development code as of March 20, 2006, may be increased, or such districts re-zoned for any other use whatsoever, only by a referendum vote of the registered voters of the Town....

COPY

Accordingly, in residential districts, land development regulations may not be adopted which would allow a building height in excess of (a) the maximum height limits contained in the Charter, or (b) the maximum height limits for buildings which were in effect in the subject zoning district on March 20, 2006. Subject to these restrictions, the Commission could adopt land development regulations pertaining to heights of buildings without the need for ratification in a referendum election.

If you have any questions or comments regarding this issue, please do not hesitate to contact me.

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ORDINANCE NO. 03-529

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AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, AMENDING THE CODE OF ORDINANCES, CHAPTER 24 THE LAND DEVELOPMENT CODE, ARTICLE V ZONING, DIVISION 2 DISTRICTS, CREATING A NEW SUBDIVISION M, BEACH VILLAGE OVERLAY DISTRICT; PROVIDING FOR PURPOSE AND INTENT, DEFINITIONS, BOUNDARY, TRANSITION AREAS, ELIGIBILITY CRITERIA, REQUIREMENTS, OVERLAY DISTRICT MODIFICATIONS, AND APPROVAL PROCESS; PROVIDING FOR CODIFICATION, CONFLICTS, SEVERABILITY; AND AN EFFECTIVE DATE.

WHEREAS, The Town Commission has directed a study to review redevelopment criteria for properties with RM-25 zoning in the area of Town described as ; and

WHEREAS, the Town's Consulting Planner has made recommendations for redevelopment criteria which, if adopted, will provide greater flexibility for site design thereby encouraging quality redevelopment through provisions of regulatory incentive; and

WHEREAS, the Town Commission has reviewed the overlay regulations hereinafter set forth and finds that they are in the best interest of the Town, its citizens, property owners, and guests.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA:

SECTION 1. The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and incorporated herein by this reference.

SECTION 2. Chapter 24 the Land Development Code, Article V Zoning, Division 2 Districts, creating a new Subdivision M, Beach Village Overlay District of the Town of Lauderdale-By-The-Sea Code of Ordinances, as follows:

SUBDIVISION M. TOWN VILLAGE OVERLAY DISTRICT

24-5. Purpose and Intent

The Beach Village Zoning Overlay is created to permit quality redevelopment in the Beach Village District to be planned and developed for residential purposes with a

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1 greater amount of site design flexibility. To achieve this purpose, specific variations or
2 modifications to the underlying development regulations of the applicable zoning district
3 are provided to encourage quality redevelopment through provision of regulatory
4 incentives.

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6 **Definitions**

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8 **Front Setback Area:** The area bounded by the required front property line and the front
9 and side setback lines. When more than one building is on a parcel, the front setback
10 shall only be required between the perimeter of the buildings on the parcel which are
11 closest to the property line.

12
13 **Beach Village:** A beach side residential village of the Town that is developed around a
14 common Town style with uses oriented to coastal, resort, pedestrian amenities with an
15 emphasis on design features that increase the walking and livability opportunities for
16 residents, tourists and visitors.

17
18 **Redevelopment:** Any increase in building height, floor area or number of units, any
19 reconstruction or remodeling exceeding twenty-five (25) percent of the assessed
20 valuation of a building.

21
22 **Height Measurement:** The height of a building is measured from normal grade level or
23 normal established grade level to the highest point of a flat roof or to the average
24 median level between the fascia and peak of a normal gable or hip roof.

25
26 **Building Height:** No building shall be erected or altered to exceed three (3) stories
27 above grade or thirty-three (33) feet above normal grade level, except when provided
28 for in this ordinance. In these cases, no building shall be erected or altered to exceed
29 four (4) stories above grade or forty-four (44) feet above normal grade level. Any
30 building that has more than three (3) stories above grade shall comply with the
31 requirements and limitations of Section 277 of the Lauderdale-By-The-Sea Charter.
32 Rooftop parapet walls, safety railings and chimneys not exceeding four (4) feet in height
33 above the roof, and elevator shafts, stairways, mechanical equipment and their
34 enclosures, not exceeding ten percent (10%) of the horizontal roof area, shall not be
35 subject to this height limit.

36
37 **Normal Grade or Normal Established Grade Level:** For the purpose of calculating
38 building height, normal grade or normal established grade level shall mean the minimum
39 lowest finished floor elevation for buildings required by Chapter 9 of the Code, or
40 applicable agencies having regulatory jurisdiction ~~State of Florida Department of~~
41 ~~Environmental Protection Coastal Construction requirements~~, or eighteen (18) inches

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1 above the crown of the adjoining roadway, whichever is greater except in the instances
2 where parking is provided below a habitable floor. In these instances, normal grade
3 level or established grade level is measured from the lowest non-habitable floor
4 required. For the purpose of calculating the height of fences and privacy walls, normal
5 grade or normal established grade level shall mean the actual elevation of the ground
6 adjacent to the exterior face of such fence or privacy wall.
7
8

9 **Boundary**

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11 The Beach Village Zoning Overlay District includes properties with RM-25 Zoning in
12 the area of the Town described as south of Pine Avenue, east of Bougainville Drive,
13 east of SR A1A south of the northern most portion of Hibiscus Avenue and north of
14 Palm Avenue.
15

16 **Transition Areas**

17
18 Buildings extending from street to street shall have two building fronts.

19
20 When a development site extends from street to street, and multiple units are proposed,
21 the development shall be designed to address both streets.
22

23 **Eligibility Criteria**

24
25 The development is eligible for the application of provisions of the Beach Village
26 Zoning Overlay if all of the following conditions exists:
27

- 28 1. The proposed development must consist of at least two (2) contiguous lots.
29 2. The development must include the removal of existing backout parking and/or
30 reduce the paved swale area.
31 3. Elimination of a legal non-conformity and/or an improvement in existing quality of
32 development.
33

34 The development is eligible for additional height considerations provided in the Beach
35 Village Overlay Zoning District if all of the following conditions exists:
36

- 37 1. The minimum lot width for the development is 100 feet.
38 2. Lots located on Bougainville Drive shall also include an equal number of aligned lots
39 fronting on SR A1A.
40
41

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ORDINANCE NO. 03-529

1
2 **Requirements**
3

- 4 1. ~~The development as proposed contributes to the design and community character of~~
5 the Beach Village District. Contributing projects are ones which add to or enhance
6 the coastal, resort or Beach theme of Beach Village.
7
8 2. Residential units are required to consist of a minimum of eighteen hundred (1,800)
9 square feet of living area (under AC).
10
11 3. Back out parking from offstreet parking spaces directly onto the street is prohibited.
12
13 4. The development must include enhanced landscaping (amount and maturity) on each
14 street frontage(s), which improves the development site's contribution to the overall
15 streetscape. The landscape plan must be prepared by a registered landscape
16 architect, dated, signed and sealed. All plants shall exceed the minimum standards
17 for Florida Number 1 as provided in the most current edition of "Grades and
18 Standards for Nursery Plants, Parts I and II," prepared by the State of Florida
19 Department of Agriculture and Consumer Services. The proposed development
20 should contribute to swale streetscape improvements by providing shade trees in the
21 swale area.
22
23 5. The development must include enhanced architectural features. Enhanced
24 architectural features include: terracing; variation in rooflines; cantilevering; angling;
25 balconies; arcades; uniform cornice heights; color and material banding; building
26 mass changes; courtyards; plazas and landscaped areas which encourage pedestrian
27 interaction between the development site and a public street.
28
29 6. When more than four (4) units are proposed, the development must include
30 variation in the architectural features.
31
32 7. Roof material must be of high quality. Asphalt shingles are prohibited.
33
34 8. Chain link fences are prohibited.
35
36 9. Driveways must be stamped concrete, brick, pavers or other upgraded treatments,
37 as approved by Town Commission.
38
39
40
41

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1
2 **Overlay District Modifications**
3

4 The applicant may seek the following Overlay District Modifications:
5

6 1. **Setback Encroachment**
7

8 All areas which utilize any of the following setback encroachment provisions are
9 required to provide enhanced landscaping (greater amount and maturity) within
10 the modified setback area.
11

12 a. **Front setback**
13

14 1. Encroachment into the required front setback area shall be allowed,
15 consistent with the following maximum standards based on the amount of lots
16 in the development site:
17

18 (a) On a site with two (2) lots, the building may encroach to within fifteen
19 (15) feet of the front property line, provided that the total area of
20 encroachment does not exceed twenty percent (20%) of the front
21 setback area.
22

23 (b) On a site with three (3) lots, the building may encroach to within fifteen
24 (15) feet of the front property line, provided that the total area of
25 encroachment does not exceed twenty-five percent (25%) of the front
26 yard setback area.
27

28 (c) On a site with four (4) lots or more, the building may encroach to within
29 fifteen (15) feet of the front property line, provided that the total area of
30 encroachment does not exceed thirty percent (30%) of the front setback
31 area.
32

33 2. Balconies and roof overhangs may be located in the front setback up to
34 fifteen (15) feet from the front of the property line. This encroachment is
35 allowed in addition to the maximum percentage provided in Item 1 above.
36

37 3. For purposes of this section, fences walls and hedges consistent with the
38 requirements of Section 24-5.148 a. and b., may be located within the front
39 setback up to ten (10) feet, as measured from the front property line. This
40 encroachment is allowed in addition to the maximum percentage provided in
41 Item 1 above.

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b. Side setback

~~Side setback requirements are reduced to eight (8) feet for one and two story buildings, to ten (10) feet for three story buildings and to twelve (12) feet for buildings with three (3) residential levels over ground level parking. Balconies are allowed to encroach into the required side setback to within five (5) feet of the property line.~~

c. Side setback for corner lots

When side setbacks of fifteen (15) feet are provided (voluntary or required) on corner lots, balconies are allowed to encroach into the side setback to within ten (10) feet of the property line.

d. Oceanside setbacks

For structures located on the east side of El Mar Drive, oceanside setbacks shall be consistent with the Section 24-5.66 (j)(2).

2. Reduction in required pervious area

The area covered by structures and impervious surface may be increased above the seventy-five percent (75%) limitation; but shall not exceed eighty percent (80%). On site french drains are required for drainage in projects when the impervious area is increased consistent with this provision.

This increase in impervious area will be allowed when one or more of the following conditions exist:

When the development enhances the village streetscape through design features which enhance the pedestrian environment; or

When the development provides, public courtyards, plazas and landscaped areas which encourage pedestrian interaction between the development site and the street.

3. Reduction in required building separation

The minimum building separation limitation of twenty (20) feet provided in Section 24-5.66(f) for buildings or structures that are grouped together may be reduced to

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1 no less than fifteen (15) feet. Reductions in this minimum are allowed when the
2 building design is staggered or varied such that only portions of the buildings are
3 less than the required twenty (20) foot separation (non-linear building), subject to
4 approval of the Fire Marshall regarding public safety/emergency accessibility.

5
6 This reduction in building separation will be allowed when one or more of the
7 following conditions exist:

8
9 When the development enhances the village streetscape through design features
10 which enhance the pedestrian environment; or

11
12 When the development provides, public courtyards, plazas and landscaped areas
13 which encourage pedestrian interaction between the development site and the street.

14
15 4. Increased Building Height

16
17 Applications which comply with the eligibility requirements of the Beach Village
18 Overlay District including the eligibility provisions for increased height considerations,
19 can develop three (3) residential floors over ground level parking with a maximum
20 building height of forty-four (44) feet above grade consistent with the provisions
21 provided in Section 277 of the Town Charter.

22
23 **Approval Process**

24
25 The standards and conditions of this zoning overlay are voluntary and approval is
26 discretionary. These provisions may be granted through the site plan review and
27 approval process.

28
29 The applicant is required to demonstrate through architectural and landscape renderings,
30 such as architectural perspective, landscape displays, models etc., that the architectural
31 characteristics and landscaping provided in the proposed development comply with the
32 required conditions and are of sufficient quality to justify the variation in standards
33 sought through the application of this overlay.

34
35 Consistent with site plan review requirements, the color and materials of the proposed
36 project must be provided for site plan approval.

37
38 The Town Commission is not bound to grant the maximum amount of modification for
39 any element provided in this ordinance, if it is found that the development is not
40 consistent with the intent of this ordinance. The amount of modification granted must
41 be based on the extent to which the application provides the enhanced site design and

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ORDINANCE NO. 03-529

1 development enhancements required by this ordinance.
2

3 Final Approval by the Town Commission is discretionary and when granted final
4 approval ~~must be based on a finding that the site plan is consistent with all of the~~
5 requirements of the Beach Village Zoning Overlay and that the development as
6 proposed contributes to the design and community character of the Beach Village
7 District.
8

9 **SECTION 4. INCLUSION IN THE CODE OF ORDINANCES.** It is the
10 intention of the Town Commission that the provisions of this Ordinance shall become and be
11 made a part of the Town of Lauderdale-By-The-Sea Code of Ordinances upon its adoption
12 by the Town Commission; and that the sections of this ordinance may be renumbered or
13 relettered and the word "ordinance" may be changed to "section," "article," or such other
14 appropriate word or phrase in order to accomplish such intentions.
15

16 **SECTION 5. REPEAL OF CONFLICTING ORDINANCES.** All prior
17 ordinances or resolutions or parts thereof in conflict herewith are hereby repealed to the
18 extent of such conflict.
19

20 **SECTION 6. SEVERABILITY.** If any clause, section, other part or application
21 of this Subchapter is held by any court of competent jurisdiction to be unconstitutional or
22 invalid, in part or application, it shall not affect the validity of the remaining portions or
23 applications of this Ordinance.
24

25 **SECTION 7. EFFECTIVE DATE.** The effective date of this Ordinance shall be
26 immediately following final passage and adoption by the Town Commission.
27

28 **SECTION 8. ADOPTION.**

29
30 Passed on the first reading, this 25 day of November, 2003.

31
32 Passed on the second reading, this ___ day of _____, 2003.
33

MAYOR OLIVER PARKER

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ORDINANCE NO. 03-529

	First Reading	Second Reading
Mayor Oliver Parker	yes	
Vice-Mayor Yanni	absent	
Commissioner Furth	no	
Commissioner Kennedy	yes	
Commissioner Wessels	yes	

Attest:

Jonda K. Joseph, Town Clerk

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ARTICLE V. ZONING*

DIVISION 1. GENERALLY

Sec. 24-5.1 Purpose.

For the purpose of promoting health, safety, morals or the general welfare of the community, the town commission of Lauderdale-By-The-Sea deems it necessary to accomplish the aforementioned purposes, to regulate and restrict the general design, height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, residence, or other purposes. (Ord. No. 316, § 1, 1-9-90)

Sec. 24-5.2 Intent.

(a) Such regulations shall be made in accordance with a comprehensive plan, and designed to lessen congestion in the streets; to secure safety from fire, panic, and other damages; to promote health and general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provisions of transporta-

*Editor's note—For former derivation of this article, see the editor's footnote to Ch. 23 and the Code Comparative Tables beginning on pages 3011 and 3015.

Cross references—Distance required between alcoholic beverage establishments, § 3-2; distance required between alcoholic beverage establishments and any church or school, § 3-3; building restrictions for alcoholic beverage establishments, § 3-5; animals, Ch. 4; limitation on the number of animals in residential areas of the town, § 4-1; keeping of certain fowl prohibited, § 4-3; reptile farms prohibited, § 4-4; use of boats for residential purposes prohibited, § 5-54; use of watercraft as place of business prohibited in the town, § 5-58; buildings and building regulations, Ch. 6; numbering of buildings, § 6-6; fire prevention and protection, Ch. 8; flood prevention and control, Ch. 9; garbage and refuse, Ch. 10; noise, Ch. 13; streets, sidewalks and other public places, Ch. 17; official street map of the town, § 17-46; traffic and motor vehicles, Ch. 19; parking restricted in certain zones, § 19-21; parking of commercial vehicles prohibited in all R-1, R-2 and R-3 zones, § 19-24; utilities, Ch. 20; vegetation, Ch. 21.

State law references—Procedure for adopting zoning ordinances, F.S. §§ 163.3184, 166.041; Local Government Comprehensive Planning Act, F.S. § 163.3181 et seq.

tion, water, sewerage, schools, parks and other public requirements.

(b) Such regulations shall be made with reasonable consideration, among other things, to the character of the district, and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality. (Ord. No. 316, § 1, 1-9-90)

Sec. 24-5.3 Public hearings; notice.

(a) The town commission shall provide for the manner in which such regulations and the restrictions and the boundaries of such districts shall be determined, established and enforced, and from time to time amended, supplemented or changed.

(b) However, no such regulation, restriction, or boundary shall become effective until after a public hearing in relation thereto, at which time parties in interest and citizens shall have an opportunity to be heard.

(c) At least fifteen (15) days' notice of the time and place of such hearing shall be published in an official paper, or a paper of general circulation, in such municipality. (Ord. No. 316, § 1, 1-9-90)

Sec. 24-5.4 Zoning changes; protest.

(a) Such regulations, restrictions, and boundaries may from time to time be amended, supplemented, changed, modified, or repealed. In case, however, if a protest against such change, signed by the owners of twenty (20) percent or more, either of the area of the lots, included in such proposed change, or of those immediately adjacent to the side or rear thereof extending one hundred fifty (150) feet therefrom, or of those directly opposite thereto extending one hundred fifty (150) feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of a majority of the members of the town commission.

(b) The provision of the previous section relative to public hearings and official notice shall apply equally to all changes or amendments. (Ord. No. 316, § 1, 1-9-90)

Yard, side. A yard between the building or attached structure and adjacent side lot line of the lot and extending from the front yard to the rear yard. (Ord. No. 316, § 1, 1-9-90)

Sec. 24-5.6 Enforcement.

The town building inspector and all persons working under the supervision of the town building inspector shall enforce the provisions of this article. (Ord. No. 316, § 1, 1-9-90)

Secs. 24-5.7–24-5.20 Reserved.

DIVISION 2. DISTRICTS

Subdivision A. Generally

Sec. 24-5.21 Established.

The Town of Lauderdale-By-The-Sea is hereby divided into the following classes of districts known as:

RS-5 District: Residence—Single-family dwellings;

RD-10 District: Residence—Two-family dwellings (duplex);

RM-25 District: Residence—Apartments, hotels, etc. (multiple dwellings);

RM-50 District: Hotel, motel, apartment hotel, apartments (high-rise);

B-1-A District: Business—Retail business;

B-1 District: Business—Retail business;

B-2 District: Business, commercial, manufacturing, filling stations, parking lots, etc.

CF District: Community facilities

SP District: Recreation and open space
(Ord. No. 316, § 1, 1-9-90)

the full provisions of this chapter and are hereby declared applicable for regulation under this article. (Ord. No. 316, § 1, 1-9-90)

Sec. 24-5.53 Silver Shores; zoning regulations, exceptions.

The entire platted area of Units "A" and "B" of the inclusive subdivision known as Silver Shores is zoned residence RS-5 district except the parts specifically zoned under other types of districts as hereinafter provided. (Ord. No. 316, § 1, 1-9-90)

Sec. 24-5.54 In general; size of buildings.

In the platted areas of Units "A" and "B" of the inclusive subdivision known as Silver Shores as well as in the entire area of the inclusive subdivision known as Beverly Shores, as well as all other sections of Lauderdale-By-The-Sea, no building shall be erected on any RS-5, RD-10, RM-25, B-1 lot, not a waterfront lot, which does not comprise at least twelve hundred (1200) ground floor square feet of floor space, exclusive of utility rooms, porches, garages and/or carports; and no building shall be erected on any RS-5, RD-10, RM-25, B-1 waterfront lot, the main structure of which does not comprise at least thirteen hundred (1,300) ground floor square feet of floor space, exclusive of utility rooms, porches, garages, and/or carports. (Ord. No. 316, § 1, 1-9-90)

Secs. 24-5.55–24-5.65 Reserved.

Subdivision D. RM-25 District Regulations

Sec. 24-5.66 RM-25 district—Apartments.

The following part of the platted area of Unit "A" of the inclusive subdivision known as Silver Shores is zoned as RM-25 district: All of Block 1; Lots 2, 3 and 4 of Block 2; Lots 5 and 6 of Block 3; Lots 5 and 6 of Block 4; Lots 5 and 6 of Block 5; and Lot 1 of Block 6. All other parts of the Town of Lauderdale-by-The-Sea, except Units "A" and "B" of the inclusive subdivision known as Silver Shores, the inclusive subdivision known as Beverly Shores (zoning for which is provided in this article) and Lots 21 and 22, Block 1, of the subdivision known as Lauderdale Surf and

Yacht Estates, not specifically set out in the preceding sections, is zoned as RM-25 district.

(a) *Use.*

No building or premises shall be used and no building with the usual accessories shall be erected or altered other than a building or premises arranged, intended or designed for any one (1) or more of the following uses: Single-family residence, duplex, apartment house, hotel, group or foster homes (as defined in the town's land use plan as special residential facilities category 1 and 2), church or parish building, office or professional person residing on premises, such as architect, real estate broker, physician, dentist, engineer, lawyer, and customary home occupations when conducted on the premises, such as dressmaker, millinery and sewing, provided there is no display of goods or advertising other than a small name plate, and that area for such occupation shall not constitute more than one-third of the area of such residential building. Construction limited to one (1) building on lots of eighty (80) feet or less in width.

(b) *Special accessory uses.*

Hotels, motels and apartment hotels with a minimum of one hundred (100) dwelling units or more may provide restaurants, gift shops, and beach equipment rental uses when the uses are an ancillary use to the primary hotels or residential use. The maximum size of floor area of said uses, either individually or in total, shall not exceed four thousand (4,000) square feet or five (5) percent of the total building floor area. Off-street parking for said uses shall be provided according to requirements of the town's Code. Parking shall be permitted as an accessory use.

(c) *Site plans to be approved.*

Any development in the RM-25 district shall be permitted only upon review and approval of plans for such development by the procedures provided in Article IV of this chapter. In reviewing development plans, the board shall consider the effect of the proposed development on existing and future buildings in the vicinity and may impose conditions and restrictions upon the construction, location and operation of any development, including but not limited to lighting, building, setbacks, off-street parking

and loading, vehicular accessway and landscaping, as may be deemed necessary to promote the general objective of this subdivision and to minimize any injury to the value of the property in the neighborhood. All building or structures shall be of C.B.S. or reinforced concrete construction and shall be designed with every practical consideration for appearance, safety, fire protection, health, light and air. All final plans and specifications of any building or structure shall be approved by the town building inspector. Failure to maintain such conditions and restrictions as may have been imposed shall constitute a violation of this subdivision.

(d) *Height.*

No building shall be erected or altered exceeding three (3) stories which shall not be higher than thirty-three (33) feet above normal grade level. Elevator shafts or stairways shall not be subject to this height limit. Ground floor elevation required to be not less than eight (8) feet above the mean sea level in the oceanfront. Federal department of housing and urban development, federal insurance administration, designations of special hazard areas show base flood elevations above mean sea level as six (6) feet for Zone A-1 and eight (8) feet for Zones V-1 and V-2. All new buildings or additions to existing buildings shall conform to these minimum standards.

(e) *Seawalls.*

Approval shall be given for the construction of seawalls or barriers for the protection of property situated east of El Mar Drive of projection thereof against erosion, riptide or other hazards, such as windstorms and hurricanes, provided that the same shall be of the retaining type waterfront construction erected in accordance with standard structural practices and design. No physical part of said seawall shall extend eastward from the front lot line a distance greater than the distance specifically shown for the respective lots in the tabulation herein, and shall not exceed in height of over three (3) feet, six (6) inches as measured from the contour or crown of El Mar Drive at a point directly in front of the lot upon which erected. Plans and specifications for all such seawalls or barriers shall be submitted to the building inspection

department for approval before starting any construction, renovation or removal of same.

(f) *Intra lot placement.*

All buildings or structures which are grouped together shall be separated by a minimum distance equal to twenty (20) lineal feet including roof overhangs, cornices, and eaves. If the walls of adjacent buildings or structures are not parallel, the distance measured on a straight line connecting the midpoints of the two (2) oblique walls shall be considered as the line along which the building separation requirement shall be measured, but in no instance shall the minimum distance between buildings or structures be less than twenty (20) lineal feet at any point. Air conditioning units and other mechanical structures may not be installed on either adjacent wall less than twenty (20) feet apart.

(g) *Foundations.*

Foundations of all hotel buildings must conform with specifications of the state hotel commission and building inspector of Lauderdale-By-The-Sea.

(h) *Size of buildings.*

Minimum ground floor area, twelve hundred (1,200) square feet on inland lots, thirteen hundred (1,300) square feet on waterfront lots.

(i) *Buildings facing two streets.*

Any building extending from street to street shall have two (2) building fronts, and observe applicable setbacks on both streets with the exception of Block 30 between Datura Avenue and Hibiscus Avenue where the setback on Bougainvillea Drive shall be a minimum of twenty (20) feet.

(j) *Apartment setbacks.*

- (1) **Front setbacks.** No building, or part of building, shall be set closer than twenty-five (25) feet to the street line upon which the front of said building shall face, provided that each building shall be considered as having one (1) front, and provided that in no event shall the setback from the front line be greater than thirty-five (35) feet unless ap-

proval is given by the board of adjustment. In the case of a building being erected on a lot where there is a building each on the adjacent lot, the setback need not be greater than that of the building set farthest back from the street line. In the case of a building being erected on a lot where there is a building on one (1) adjacent lot, the setback need not be greater than ten (10) feet more than the setback of the adjacent building.

- (2) Structures east of El Mar Drive. No part of any building or seawall on the east side of El Mar Drive shall extent eastward from El Mar Drive to a distance greater than the distance specifically shown for the respective lots in the tabulation set out this subsection:

<i>Block</i>	<i>Lot</i>	<i>Feet</i>
1(A)	1	137
	2	137
	3	137
	4	137
	5	137
	6	137
	7	137
	8	138
	9	139
	10	140
	11	141
2	1	146
	2	146
	3	146
	4	146
	5	146
	6	146
	7	146
	8	146
	9	147
	10	148
	11	149
	12	150

<i>Block</i>	<i>Lot</i>	<i>Feet</i>
	17	144

- (3) Corner setback. For a corner lot, the setback from the side street line shall be not less than ten (10) feet, provided that if the height of the building exceeds twenty-two (22) feet the setback shall be fifteen (15) feet.
- (4) Side setbacks. Side setbacks shall not be less than ten (10) feet, with the proviso that if the height of the building exceeds twenty-two (22) feet, the ten-foot setback shall be increased by one (1) foot for every two (2) feet by which the height of the building exceeds twenty-two (22) feet. Lots on the intracoastal or inland waterways, where the side of said lot abuts the waterway, shall have a setback of not less than twelve (12) feet from the seawall.
- (5) Side roof overhangs. Side roof overhangs, cornices or eaves shall not extend closer than five (5) feet to the side line.
- (6) Length of building. No building shall be erected or altered to a length exceeding two hundred (200) lineal feet.
- (7) Rear roof overhangs. Rear roof overhangs, cornices or eaves shall not extend closer than two (2) feet to the rear line.
- (k) *Rear setback requirements.*

No building or any part thereof shall be erected on any lot closer than ten (10) feet from the rear lot line, provided that where the height of the building exceeds twenty-two (22) feet, the ten-foot minimum setback shall be increased by one (1) foot for each four (4) feet by which the height of the building exceeds twenty-two (22) feet.

Notwithstanding the setback requirements hereinbefore specified, all new buildings or additions to existing buildings shall be located not less than fifty (50) feet from the mean high waterline of the Atlantic Ocean, as required by the Florida State Department of Natural Resources.

Where a plot for development consists of two (2) or more platted lots abutting or adjoining each other on their rear lot lines, there shall be a rear setback of not less than twelve (12) feet in depth

immediately adjacent to the rear lot line of each such abutting or adjoining platted lot.

- (l) *Open area.* Every plot used for multifamily or hotel structures shall have not less than twenty-five (25) percent of the total setback area required by the zoning code to be open and not occupied by any roofed structure. This twenty-five (25) percent of the required setback shall be landscaped with trees, shrubs, hedges and flower beds and grass. Hedges shall not be over three (3) feet in height. Trees and shrubs shall not obscure vision of traffic.

The remaining seventy-five (75) percent of the required setback area may be used for pools, aprons, recreation, parking and other open uses. This seventy-five (75) percent shall be suitably landscaped. All landscaping shall be properly watered and maintained in a clean, properly trimmed and healthy condition.

- (m) *Density.*

Required lot area shall be at least one thousand seven hundred forty-two (1,742) feet per kitchen dwelling unit and at least eight hundred seventy-one (871) square feet per hotel room, (one thousand seven hundred forty-two (1,742) square feet for condominium). Net density of development shall not exceed twenty-five (25) kitchen dwellings units or fifty (50) hotel rooms per acre of site (twenty-five (25) units per acre for condominiums and apartments). In computing the permissible number of units for a given site, one-half or more of a unit shall be counted and permitted as a full unit in meeting density limits.

The square footage defined herein is intended to prohibit the flexibility of rental units constructed in RM-25 zoned areas contrary to the intent of the zoning code. Each unit or room with an attached bath and separate door leading to the outside or to a corridor, alley, or other outside exit shall be considered one (1) rental accommodation unit.

- (n) *Off-street parking.*

Notwithstanding any other provision of this section or of section 23-148 in conflict with this paragraph, any multiple dwelling

and/or hotel building hereafter erected or altered shall provide off-street parking as hereinafter specified:

- (1) Condominium buildings or projects shall provide at least two (2) parking spaces per dwelling unit.
- (2) Transient occupancy and rental buildings shall provide at least one and one-half (1½) parking spaces per kitchen dwelling unit and shall provide at least one and one-quarter (1¼) parking spaces per hotel room.
- (3) Parking spaces hereinbefore required shall be not less than nine (9) feet in width and eighteen (18) feet in depth.
- (4) Except as modified by the provisions of this subparagraph, all of the requirements of section 24-5.148 shall remain in effect.
- (5) In the event transient or rental unit apartments are converted to condominium use, the parking space requirements for condominium use must be provided before such change of use is permitted or approved.
- (6) Where the ground floor of any structure is planned for parking, all sides of the area allocated to parking shall be enclosed with decorative block or other approved construction to conceal the parking area. Ingress and egress driveways are permitted to provide access to this parking area.

(e) *Storm drainage.*

All construction shall include provision for drainage or catch basins and adequate drainfields, properly located in all areas where stormwater is sealed out by paving or otherwise, or where water is drained from the roof of a structure. Where the roadside swale is paved as an approach to a driveway or parking areas for the construction, owner may use the swale area for installation of the catch basins and drainfields prior to paving. Owner will be responsible for maintenances of these drainage facilities constructed for the benefit of his property. All such construction shall be subject to the approval of the town inspector. (Ord. No. 316, § 1, 1-9-90)

OFFICE OF REFERENDUM ELECTION
 The Town Commission of the Town of Lauderdale-By-The-Sea, Fla., will conduct of Referendum Election at Jarvis Hall, 2505 Ocean Dr., Lauderdale-By-The-Sea on Tuesday, July 12, 1973 from 7:00 A.M. to 7:00 P.M., on the subject of the following proposed petition amending Ordinance governing Chapter 24-17, Re Zoning, Apartments, of the Municipal Code of Lauderdale-By-The-Sea, which proposed amending Ordinance reads as follows:

PROPOSED AMENDING ZONING ORDINANCE, SECTION 24-17-R-3 DISTRICT APARTMENTS, OF THE MUNICIPAL CODE OF THE TOWN OF LAUDERDALE-BY-THE-SEA

Section 1: Amend paragraph (c) Height, to read as follows:

(c) Height:
 No building shall be erected or altered exceeding three stories which shall not be higher than thirty three feet above normal grade level. Elevator shafts or stairways shall not be subject to this height limit.
 Ground floor elevation required to be not less than 3 feet above the mean sea level on the ocean front.

Federal Department of Housing and Urban Development, Federal Insurance Administration, designations of special hazard areas show base flood elevations above mean sea levels as 6 feet for zone A-1 and 8 feet for zones V-1 and V-2. All new buildings or additions to existing buildings shall conform to these minimum standards.

Section 2: Amend paragraph (e), Intra Lot Placement to read as follows:

(e) Intra Lot Placement:
 No group of buildings shall be spaced closer than 20 feet, one to another at the grade line dimension, in order to provide a sufficient maximum of air, light and ventilation, and roof connection and ventilation shall be so designed as to accomplish these purposes.

Section 3: Amend paragraph (1), apartment setbacks, subparagraph (2) to read as follows:

(2) Structures east of El Mar Drive. No part of any building or seawall on the east side of El Mar Drive shall extend eastward from El Mar Drive to a distance greater than the distance specifically shown for the respective lots in the tabulation set out in this subparagraph:

Block No. (A)	Lot No.	Feet	Block No.	Lot No.	Feet	Block No.	Lot No.	Feet
1	1	137	4	1	179		7	121
	2	137		2	184		8	117
	3	137		3	189		9	113
	4	137		4	194		10	109
	5	137		5	199		11	105
	6	137		6	200		12	101
	7	137		7	200		13	106
	8	138		8	200		14	111
	9	132		9	201		15	117
	10	140		10	201		16	122
	11	141		11	201		17	127
				12	201			
2	1	146					1	136
	2	146		2	201		2	136
	3	146		3			3	136
	4	146		4	201		4	136
	5	146		5			5	136
	6	146		6	210		6	136
	7	146		7	203		7	136
	8	146		8	196		8	136
	9	147		9	192		9	136
	10	148		10	188		10	137
	11	149		11	184		11	138
	12	150		12	179		12	137
				13	173		13	140
	1	152		14	167		14	141
	2	153		15	161		15	142
	3	154		16	155		16	143
	4	155		17	149		17	144
	5	158		18	143			
	6	161						
	7	164		1	138			
	8	167		2	131			
	9	170		3	125			
	10	173		4	125			
	11	177		5	125			
	12	178		6	125			

Section 4: Amend paragraph (1), apartment setbacks, subparagraph (3) to read as follows:

(3) Corner Setback:
 For a corner lot, the setback from the side street line shall be not less than 10 feet; provided that if the height of building exceeds 22 feet the setback shall be 15 feet.

Section 5: Amend paragraph (1), apartment setbacks, subparagraph (4), to read as follows:

(4) Side Setback:
 Side setbacks shall not be less than 10 feet, with the proviso that if the height of the building exceeds 22 feet the 10 foot setback shall be increased by one foot for every 2 feet by which the height of building exceeds 22 feet. Lots on the intracoastal or inland waterways, where the side of said lots abut the waterway, shall have a setback of not less than 12 feet from the seawall.

Section 6: Amend paragraph (1), apartment setbacks, subparagraph (4) to read as follows:

(6) Length of Building:
 No building shall be hereafter erected or altered to a length exceeding 200 feet in any dimension.

Section 7: Delete paragraph (1), subparagraph (3), special setbacks.

Section 7: Delete paragraph (1), subparagraph (8), special setbacks.
Section 8: Amend paragraph (1), rear setback requirements to read as follows:

(1) Rear Setback Requirements:

No building or any part thereof shall be erected on any lot closer than 10 feet from the rear lot line, provided that where the height of the building exceeds 22 feet, the 10 foot minimum setback shall be increased by one foot for each 4 feet by which the height of the building exceeds 22 feet.

Notwithstanding the setback requirements hereinbefore specified, all new building or additions to existing buildings shall be located not less than 50 feet from the mean high water line of the Atlantic Ocean, as required by the Florida State Department of Natural Resources.

Section 9: Amend paragraph (k), open area, to read as follows:

(k) Open Area:

Every plot used for multi-family or hotel structures shall have not less than 25 per cent of the total setback area required by the zoning code to be open and not occupied by any roofed structure. This 25% of the required setback area shall be landscaped with trees, shrubs, hedges and flower beds and grass. Hedges shall not over 3 feet in height. Trees and shrubs shall not obscure vision of traffic.

The remaining 75% of the required setback area may be used for pools, aprons, recreation, parking and other open uses. This 75% shall be suitably landscaped. All landscaping shall be properly watered and maintained in a clean, properly trimmed and healthy condition.

Section 10: Add a new paragraph (1) to read as follows:

(1) Density:

Required lot area shall be at least 1009 feet per kitchen dwelling unit and at least 871 square feet per hotel room. Density of development shall not exceed 40 kitchen dwelling units or 50 hotel rooms per acre of site. In computing the permissible number of units for a given site, one half or more of a unit shall be counted and permitted as a full unit in meeting density limits.

The square footage defined herein is intended to prohibit the flexibility of rental units constructed in R-3 zoned areas contrary to the intent of the zoning code. Each unit or room with an attached bath and separate door leading to the outside or to a corridor, alley, or other outside exit shall be considered one rental accommodation unit.

Section 11: Add a new paragraph (m) to read as follows:

(m) Offstreet Parking:

Notwithstanding any other provision of Section 24-17 or of Section 24-21 in conflict with this paragraph, any multiple dwelling and/or hotel building hereafter erected or altered shall provide offstreet parking as hereinafter specified.

(1) Condominium buildings or projects shall provide at least two parking spaces per dwelling unit.

(2) Transient occupancy and rental buildings shall provide at least one and one-half parking spaces per kitchen dwelling unit and shall provide at least one and one quarter parking spaces per hotel room.

(3) Parking spaces hereinafter required shall be not less than 7 feet in width and 20 feet in depth.

(4) Except as modified by the provisions of this paragraph (m), all of the requirements of Section 24-21 shall remain in effect.

(5) In the event transient or rental unit apartments are converted to condominium use, the parking space requirements for condominium use must be provided before such change of use is permitted or approved.

(6) Where the ground floor of any structure is planned for parking, all sides of the area allocated to parking shall be enclosed with decorative block or other approved construction to conceal the parking area. Ingress and egress driveways are permitted to provide access to this parking area.

Section 12: Add a new paragraph (n) to read as follows:

(n) Storm Drainage:

All construction shall include provision for drainage or catch basins and adequate drainfields, properly located in all areas where storm water is sealed out by paving or otherwise, or where water is drained from the roof of a structure. Where the roadside swale is paved as an approach to a driveway or parking areas for the construction, owner may use the swale area for installation of the catch basins and drainfields prior to paving. Owner will be responsible for maintenance of these drainage facilities constructed for the benefit of his property. All such construction shall be subject to the approval of the Town Inspector.

TOWN OF LAUDERDALE-BY-THE-SEA
By: (Mrs.) Juanita Pendlebury
Town Clerk-Auditor

JULY 6, 1973

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