



TOWN OF LAUDERDALE-BY-THE-SEA

ROUNDTABLE ITEM REQUEST FORM

Town Commission

Department Submitting Request

Stuart Dodd

Mayor/Commissioner Name

<input type="checkbox"/>	Roundtable Meeting Dates	Last date to turn in to Town Clerk's Office	<input type="checkbox"/>	Roundtable Meeting Dates	Last date to turn in to Town Clerk's Office	<input type="checkbox"/>	Roundtable Meeting Dates	Last date to turn in to Town Clerk's Office
<input type="checkbox"/>	****, 2010	***** (**** p.m.)	<input type="checkbox"/>	****, 2010	***** (**** p.m.)	<input type="checkbox"/>	****, 2010	***** (**** p.m.)
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ITEM DESCRIPTION:

Discussion and or action to move forward on Code of ethics Ordinance

SPECIAL NOTES:

Back-up to be the draft ordinance that reflected the conflict between an affiliation with a business and the conflict of voting – the simple version that the Mayor and I supported last year.

Town Attorney review required
 Yes No

Sent via Email
MAY 25 2010
4:02 PM
[Signature]

Town Manager's Initials: _____



- a. Ordinance 2009-32: AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, APPROVING AN AMENDMENT TO SECTION 3.4 OF THE TOWN CHARTER PENDING THE RESULTS OF A REFERENDUM ELECTION REGARDING CONDUCT AND ETHICS REQUIREMENTS FOR THE MAYOR AND TOWN COMMISSIONERS; 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 2009-32 by title.

Mayor Minnet opened the meeting for public comments.

Barbara Cole urged the Commission to reconsider the Ordinance and not pass it. She believed further discussion was necessary in the future as the way the Ordinance was written no one could do business in the Town.

Mark Brown believed an ethics Ordinance was necessary as 2 Commissioners were affiliated with a vendor of the Town and voted on issues related to that vendor. He believed the Ordinance was not written correctly and urged the Commission not to vote in favor of it.

Scott Sasser did not believe the Ordinance was written correctly and needed further discussion.

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

Commissioner Silverstone stated that he did not work for the VFD; he was an officer of the VFD. He also stated that he was not in favor of this Ordinance as a referendum.

Commissioner Dodd stated that his request was that any Commissioner or Mayor could not vote on any issues relating to a company that had a contract with the Town. He said he would vote against the Ordinance.

Commissioner Clotey believed the change in tradition should start with the people. She was disappointed that the referendum that everyone criticized and wanted was not put together and was placed in the hands of the Commission.

Mayor Minnet stated that the way the Ordinance was written was not the way it was intended it to be. She believed further discussion on ethics was necessary.

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.

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.

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AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, APPROVING AN AMENDMENT TO SECTION 3.4 OF THE TOWN CHARTER PENDING THE RESULTS OF A REFERENDUM ELECTION REGARDING CONDUCT AND ETHICS REQUIREMENTS FOR THE MAYOR AND TOWN COMMISSIONERS; 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

WHEREAS, the Town Commission has determined that is in the best interest of the citizens of the Town to submit the Charter Amendment herein, which if passed would enact additional restrictions of ethics and conduct applicable to the Town Commission, to the electors of the Town for approval or rejection.

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

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33 **SECTION 1. Legislative Intent.** The foregoing “WHEREAS” clauses are hereby
34 ratified and confirmed as being true, correct and reflective of the legislative intent
35 underlying this Ordinance and are hereby made a specific part of this Ordinance.

36 **SECTION 2. Charter Amendment.** Section 3.4 of the Town Charter is amended
37 to read as follows:¹

38 **Sec. 3.4. Standards of conduct; code of ethics.**

39

40 **(1) Regulation by ordinance authorized.** In addition to the ethical standards of conduct
41 established by general law for elected officials, appointed officials, and employees, the
42 Town Commission may, by ordinance, establish ethical conduct standards for elected
43 officials, appointed officials, and employees of the Town.

44

45 **(2) Standards of conduct.** The Mayor and each Commissioner shall comply with the
46 standards of conduct set forth in Part III of Chapter 112, Florida Statutes, including but
47 not limited to the regulations and prohibitions therein for solicitation or acceptance of
48 gifts, doing business with or appearing before the Town, unauthorized compensation,
49 misuse of public position, conflicting employment or contractual relationships, disclosure
50 or use of certain information, and lobbying.

51

52 **(3) Effect of conflicts of interest under this section on obligation to vote.** Section
53 286.012, Florida Statutes, prohibits a Commissioner or Mayor from abstaining from
54 voting unless there is, or appears to be, a possible conflict of interest under Florida
55 Statutes. In any situation where a Commissioner or Mayor abstains from voting pursuant
56 to this section, the Commissioner or Mayor shall be deemed to be able to abstain because
57 of the existence or appearance of a possible conflict of interest under the statute.

58

59 **(4) Requirement to refrain from voting.** Neither the Mayor nor any Commissioner shall
60 vote on any matter where the decision will directly affect them in a manner, financially or
61 otherwise, distinct from the manner in which the vote will impact a substantial portion of
62 Town residents, businesses or property owners, or where the Mayor or Commissioner
63 knows that the decision will have a similar direct effect on any principal by whom he or
64 she is retained, or the parent organization or subsidiary of a corporate principal by which
65 he or she is retained, or his or her relative or business associate.

66

67 **(5) Disclosure of business relationships and option to refrain from voting.** Except as
68 prohibited by law or regulatory standards, the Mayor and each Commissioner shall
69 disclose the existence of any business relationship that he/she is aware that he/she has, or
70 has had at any time within the prior 24-month period, with any applicant, representative

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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71 or interested person that appears before the Town Commission. The disclosure may be
72 given in writing to the Town Clerk or orally at the Commission meeting, and shall be
73 made at or before the time of the appearance. If the Mayor or Commissioner learns of
74 such a relationship after the appearance of such applicant, representative or interested
75 person before the Town Commission, or enters into such a relationship with an applicant,
76 representative or interested person within the 12 months following that person's
77 appearance, the Mayor or Commissioner shall disclose the relationship in writing to the
78 Town Clerk within 30 days of discovering or entering into the relationship. Where the
79 requirement to disclose pursuant to this subsection exists prior to any vote related to the
80 appearance of the applicant, representative or interested person, a Mayor or
81 Commissioner may choose to refrain from voting on the matter.

82
83 (6) Definitions. For purposes of this section:

84
85 (a) "Business relationship." A Commissioner or Mayor has a business
86 relationship with a person or an entity if any of the following exist:

87
88 1. The Commissioner or Mayor is an officer or director of the entity, or has any
89 ownership interest, directly or indirectly, in excess of 1% in the entity.

90 2. The Commissioner or Mayor is a partner, co-shareholder or joint venturer
91 with the person in any business venture;

92 3. The entity or person is a client of the Commissioner or Mayor, or a client of
93 another professional working from the same office and for the same employer as
94 the Commissioner or Mayor;

95 4. The Commissioner or Mayor is a client of the entity or the person;

96 5. The entity or person is a customer of the Commissioner or Mayor (or his/her
97 employer) and transacts more than 5% of the business in a given calendar year of
98 the Commissioner or Mayor (or his/her employer) or more than \$25,000 of
99 business in a given calendar year; or

100 6. The Commissioner or Mayor is a customer of the entity or the person and
101 transacts more than 5% of the business in a given calendar year of the entity or
102 person or more than \$25,000 of business in a given calendar year.

103
104 However, a business relationship shall not be construed to exist where a Commissioner or
105 Mayor executed or authorized a contract with an applicant, representative or interested
106 person solely in their capacity as an officer or director of a homeowners, condominium,
107 cooperative or master association.

108
109 (b) "Directly affect" or "direct effect" shall not include effects that are common to
110 a substantial portion of Town residents, businesses or property owners.

111
112 (c) "Interested person" shall mean any person who speaks for or against any
113 resolution or ordinance before the City Commission and who has a direct financial
114 interest in the action (including, but not limited to, vendors, bidders and proposers),
115 except that owner occupied residential property owners shall not be deemed to have a
116 direct financial interest in land use or zoning decisions that may affect the value of their

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117 property, and accordingly shall not be within the definition of the term "interested
118 person," as used herein.
119

120 (d) "Substantial portion" shall mean more than 1% of Town residents, businesses
121 or property owners, as appropriate to the circumstances.
122

123 (e) Where terms used in Part III of Chapter 112, Florida Statutes, other than those
124 defined herein, are used in this section, they shall be defined and interpreted in a manner
125 similar to how they have been used in that statute.
126

127 (7) Applicability to firms, business entities, and business associates. The restrictions and
128 prohibitions which are imposed by this section upon any Commissioner or Mayor, by
129 virtue of that person's service (or former service) as a Commissioner or Mayor, shall also
130 be applicable to any firm or business entity in which such Commissioner or Mayor has an
131 employment, independent contractor or material interest and to any business relationship
132 of such Commissioner or Mayor as defined herein. The term "material interest" shall
133 have the meaning indicated by Section 112.312, Florida Statutes.
134

135 (8) Majority of Town Commission unable to vote. If the application of this provision
136 results in a majority of the Commission being unable to vote on a matter, then the
137 remaining members of the Commission may approve the matter by unanimous vote.
138 Alternatively, by unanimous vote of those present, the Commission may waive the
139 requirements of this section so that a quorum will be available to vote, if it finds that such
140 waiver will be consistent with the purposes of this section and will not create or tend to
141 create an appearance of impropriety.
142

143 (9) Procedures for abstention from voting. Where a Commissioner or Mayor is
144 prohibited from, or otherwise chooses to refrain from voting, for any reason, he or she
145 shall, prior to the vote being taken, publicly state at the Commission meeting the nature
146 of his or her interest in the matter on which he or she is not voting, leave the room, and
147 refrain from participating in any discussion of the matter. Where a Commissioner or
148 Mayor is prohibited from or refrains from voting, within 15 days after the vote occurs, he
149 or she shall file a written disclosure of the nature of his or her interest with the Town
150 Clerk, who shall incorporate the written disclosure into the minutes.
151

152 (10) Stricter provisions prevail. Nothing in this section shall be construed to impair or
153 diminish any stricter ethical standards in Part III of Chapter 112, Florida Statutes, this
154 Charter, the Code of Ordinances or any applicable federal law.
155

156 **SECTION 3. Election Called.** A referendum election is called, to be held on
157

158 Tuesday, the 9th day of March, 2010 in conjunction with the Town-wide general

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159 municipal election, to present to the qualified electors of the Town of Lauderdale-by-the-
160 Sea, the ballot question provided in Section 4 of this Ordinance.

161 **SECTION 4. Form of Ballot.** The form of ballot setting forth the ballot title and
162 chief purpose of the substance of the proposed Charter Amendment provided for in Section
163 2 of this Ordinance shall read substantially as follows:

164 **CONDUCT AND ETHICS REQUIREMENTS FOR THE MAYOR AND**
165 **TOWN COMMISSIONERS.**
166

167 This Amendment adopts standards of conduct for the Mayor and Town
168 Commissioners, specifies conflicts of interest that either mandate or allow a
169 Commissioner or Mayor to abstain from voting, establishes procedures for
170 disclosure and conduct related to such an abstention from voting, and authorizes
171 the Commission to waive the requirements of this Amendment by unanimous vote
172 if a majority of the Commission is unable to vote.

173 Shall the above-described Charter Amendment be adopted?

174 Yes []

175 No []

176 **SECTION 5. Balloting.** Balloting shall be conducted between the hours of 7:00
177 a.m. to 7:00 p.m. on the date of the election. Absentee ballots shall be available. Early
178 voting shall be provided in conjunction with the general election. All qualified Town
179 electors who are timely registered in accordance with law shall be entitled to vote. The
180 Town Clerk is authorized to obtain any necessary election administration services from
181 the Broward County (the "County") Supervisor of Elections. The County registration
182 books shall remain open at the Office of the County Supervisor of Elections until the date
183 at which the registration books shall close in accordance with the provisions of the

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184 general election laws. The Town Clerk and the County Supervisor of Elections are
185 hereby authorized to take all appropriate action necessary to carry into effect and
186 accomplish the provisions of this resolution. Pursuant to Section 102.141, Florida
187 Statutes, this election shall be canvassed by the Town Clerk with assistance from the
188 County Supervisor of Elections or as required by law.

189 **SECTION 6. Notice of Election.** Notice of said election shall be published in
190 accordance with Section 100.342, Fla. Stat., in a newspaper of general circulation within
191 the Town at least 30 days prior to said election, the first publication to be in the fifth
192 week prior to the election, and the second publication to be in the third week prior to the
193 election, and shall be in substantially the following form:

194 "NOTICE OF SPECIAL ELECTION

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

204
205 Ballot Question:

206
207 **CONDUCT AND ETHICS REQUIREMENTS FOR THE MAYOR AND**
208 **TOWN COMMISSIONERS.**

209
210 This Amendment adopts standards of conduct for the Mayor and Town
211 Commissioners, specifies conflicts of interest that either mandate or allow a
212 Commissioner or Mayor to abstain from voting, establishes procedures for
213 disclosure and conduct related to such an abstention from voting, and authorizes

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214 the Commission to waive the requirements of this Amendment by unanimous vote
215 if a majority of the Commission is unable to vote.

216 Shall the above-described Charter Amendment be adopted?

217 Yes []

218 No []

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

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Town Clerk

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

230 **SECTION 7. Copies.** Copies of this Ordinance concerning the Charter
231 Amendments are on file at the office of the Town Clerk located at Town Hall, 4501
232 Ocean Drive, Lauderdale-By-The-Sea, FL 33308.

233 **SECTION 8. Effectiveness.**

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

238 B. The Town Attorney is authorized to revise the Charter to the extent
239 necessary to assure that any amendments adopted conform to one another and are
240 properly included in the publication of the revised Town Charter. If conflicting Charter

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241 amendments are adopted at the same election, the one receiving the greatest number of
242 affirmative votes shall prevail to the extent of such conflict.

243 C. Following the adoption of the Charter amendments, the Town Clerk shall
244 file the adopted Charter amendments with the Florida Department of State.

245 **SECTION 9. Inclusion in the Charter.** Subject to the requirements of Section 8
246 above, it is the intent of the Town Commission and it is hereby provided that the Charter
247 amendments shall become and be made a part of the Charter of the Town of Lauderdale-
248 by-the-Sea, Florida, and that the sections of this Ordinance may be renumbered or re-
249 lettered to accomplish such intention.

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

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

258 **SECTION 13. Effective Date.** This Ordinance shall become effective immediately
259 upon passage on second reading. The amendment to the Town Charter, provided herein,
260 shall not take effect unless and until the proposed amendment is submitted to the vote of the
261 electors of the Town of Lauderdale-By-The-Sea at a referendum election to be held in
262 conjunction with the Town-wide municipal general election on March 9, 2010, by separate

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263 ballot question, and is approved by the majority of the electors voting thereon as described
264 in Section 8 above.

265 **SECTION 14. Adoption.**

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

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

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Mayor Roseann Minnet

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First Reading Second Reading

Mayor Minnet

Vice-Mayor McIntee

Commissioner Clotey

Commissioner Silverstone

Commissioner Dodd

Attest:

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Town Clerk, June White

283

(CORPORATE SEAL)

284

Approved as to form:

285
286

Town Attorney, Susan L. Trevarthen

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 Referenda and Straw Ballot

At the October 26, 2009, workshop on potential referenda, the Town Commission instructed me to draft ordinances to place questions on the March 2010 ballot that would revise the Charter to (a) create requirements for the Commission and Mayor to recuse themselves from voting that would be more strict than state law; and (b) amend the Charter height provisions. A third issue, lifeguards on the beach, was also identified but, at the November 10 meeting during comments, the Commission consensus was to make that set of questions a straw ballot only. Because we did not complete the meeting on November 10, I did not have a chance to consult with you during the Town Attorney's report for further direction on the other referenda, so I have consulted with the Commissioners and the Mayor individually to learn more about your policy preferences. Based on my understanding of the direction received, and with changes intended to make the proposal legally defensible, I have prepared the ordinances for first reading and resolution.

These items will be heard on December 1, 2009. Changes that may be directed by the Town Commission at first reading will need to be incorporated into a revised version of the ordinances for second reading. These ordinances must be adopted by the December 8 Commission meeting in order to make the January deadline for the March 2010 ballot, as the Town Clerk has previously advised, so there will be a short window of time to prepare any revisions authorized at first reading. Because these Commission meetings are scheduled only a week apart, the Town Clerk will begin producing the agenda packet on the day following first reading (December 2). As such, any changes approved at first reading will need to be as specific as possible. As always, I am available to discuss any potential motions with you and provide suggestions as to specific language if desired.

**Memo Regarding
Proposed Ethics Referendum**

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 Ethics Referendum

Background

Commissioner Dodd placed on the agenda for the October 26, 2009, workshop a question stating "Should Commissioners or the Mayor be disqualified from voting because of an ethics conflict on any issues regarding any town contractor where he or she has any connection whether in a voluntary or paid capacity?" The Commission discussed this question at the workshop, and expressed interest in having the phrase "any connection" further refined. Suggestions for refinement included the concept of "working for" the contractor or vendor.

The Commission also directed that the question be broadened to address conflicts related to a broad range of business relationships between a Commissioner or Mayor and residents, businesses or property owners located within the Town.

The Ability to Enact Stricter Local Procedures for or Definitions of Voting Conflicts

It is unclear whether local regulations to create stricter requirements for a Commissioner or Mayor to abstain from voting for a conflict of interest are in conflict with state law. Arguably, they are not, and some local governments have adopted such regulations without challenge. As discussed below, the Town's Ordinance borrows concepts from some of these regulations, and attempts to capture the policy direction received from the Town Commission to date.

As I have previously advised you, Section 112.3143, F.S.,¹ addresses voting conflicts of interests,² and requires written disclosure and recusal from voting where the matter “would inure to . . . [the] special private gain or loss” of the Commissioner or Mayor, or those in specified relationships to the Commissioner or Mayor. Opinions from the Florida Commission on Ethics and court decisions have interpreted this statute primarily to apply to financial gain.³ Cases have specifically rejected ideological⁴ and political⁵ interests as bases for abstention under state law.

The state ethics law specifically preserves the right of local governments to enact additional or stricter regulations of ethics that do not conflict with this statute.⁶ To avoid conflict, such stricter regulations should acknowledge the balancing act that the statute is intended to accomplish, by protecting the integrity of government while not erecting unnecessary barriers to public service.⁷

¹ Section (3)(a) provides that “No county, municipal, or other local public officer shall vote in an official capacity upon any measure **which would inure to his or her special private gain or loss**; which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312(2); or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer’s interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.”

² Section 112.312, F.S., provides definitions, and at subsection (8) defines “conflict” or “conflict of interest” to mean “a situation in which **regard for a private interest tends to lead to disregard of a public duty or interest.**”

³ See, e.g., *George v. City of Cocoa*, 78 F.3d 494, 496-98 (11th Cir. 1996) (“It is clear that, when adopting the Code of Ethics, the Legislature was concerned primarily with the effect of a public official’s economic interests and relationships upon the performance of his public duties, rather than the effect of his personal preferences or animosities.”) and *Izaak Walton League of America v. Monroe County*, 448 So. 2d 1170 (Fla. 3rd DCA 1984).

⁴ For example, the candidate campaigns in support of a legislative policy, and then votes on it when elected.

⁵ For example, the elected official votes to support the creation of single member districts, and then runs for one of the seats created by the vote.

⁶ Section 112.326: “*Additional requirements by political subdivisions and agencies not prohibited.*—Nothing in this act shall prohibit the governing body of any political subdivision, by ordinance, or agency, by rule, from imposing upon its own officers and employees **additional or more stringent standards of conduct and disclosure requirements** than those specified in this part, **provided that those standards of conduct and disclosure requirements do not otherwise conflict** with the provisions of this part.”

⁷ Section 112.311(4): “It is the intent of this act to implement these objectives of **protecting the integrity of government and of facilitating the recruitment and retention of qualified personnel** by prescribing restrictions against conflicts of interest **without creating unnecessary barriers to public service.**” See also AGO 88-62 (local regulations on abstention from voting must comply with Section 286.012, and allow abstention only where a conflict of interest exists or appears to exist).

A separate statute, Section 286.012, F.S.⁸ requires Commissioners and the Mayor to vote on all matters, and does **not** have a similar provision explicitly preserving the right to stricter or additional local regulation. It allows abstention only where “there is or **appears to be a possible conflict of interest**” under the statutory conflicts provisions. Some have argued that Section 286.012, F.S. preempts stricter regulation of conflicts of interest by local law, or that stricter local regulations are in conflict with it. Others have argued that stricter local regulations can justify abstention from voting, because they address the appearance or possibility of conflict under state law, and because they are explicitly contemplated by the state ethics law.

This potential conflict appears to be the reason why relatively few Florida local governments have enacted tougher ethics standards for voting disqualification based on conflicts of interest. The statutes can arguably be harmonized to allow abstention pursuant to stricter local regulation even when there is not a definitive showing of conflict under the statute, but no court cases have clearly determined the issue.⁹ Section 112.3143(3)(a), F.S., is mandatory, with significant penalties for violation enforced by the Florida Commission of Ethics. In comparison, Section 286.012, F.S., is less definite (“is or *appears to be a possible conflict of interest*”), has no penalty, and is outside of the jurisdiction of the Florida Commission on Ethics.

The Florida Commission on Ethics has approved of abstention where circumstances gave the appearance that a local elected official was not totally independent and impartial, even though there was **no** technical conflict under state law. See CEO 83-49 (councilwoman could choose to abstain from voting on matters involving hospital where her husband was a physician, was vice-president of the hospital staff and served on the hospital executive committee, even though it did not appear that such votes would inure to the councilwoman’s or her husband’s “special private gain,” as opposed to the hospital’s gain). However, the Attorney General has rejected abstention from voting for a mere “appearance of impropriety.” See AGO 87-17.

Examples of Stricter Local Regulation

You are already aware of the Miami-Dade County conflict of interests ordinance, which applies within the municipalities of that County. As a reminder, it provides abstention from voting if a Commissioner is related to an entity that might be directly or indirectly affected by the Commission’s actions in a manner distinct from the manner in which it would affect the public generally, and requires the Commissioner to leave the room when the matter is under consideration.¹⁰

⁸ Section 286.012: “*Voting requirement at meetings of governmental bodies.*--**No member** of any . . . municipal governmental board . . . who is present at any meeting of any such body at which an official decision, ruling, or other official act is to be taken or adopted **may abstain** from voting in regard to any such decision, ruling, or act; and a vote shall be recorded or counted for each such member present, **except when**, with respect to any such member, **there is, or appears to be, a possible conflict of interest under the provisions of s. 112.311, s. 112.313, or s. 112.3143.** In such cases, said member shall comply with the disclosure requirements of s. 112.3143.”

⁹ Compare AGO 88-62 (local regulations on abstention from voting must comply with Section 286.012, and allow abstention only where a conflict of interest exists or appears to exist).

¹⁰ It also contains extensive regulations of procurement, gifts and lobbying that are not related to the matters the Commission has identified for the Ordinance.

The City of Weston's and City of Aventura's ordinances are also stricter in defining the situations that allow or require abstention from voting. Both are part of the City's Codes of Ordinances, and were not included in those cities' Charters.

Weston's ordinance requires that members of the City Commission disclose the existence of any known business relationship with an applicant or other interested person in the 24 months prior to that person appearing before the Commission. If such a business relationship is formed within the 12 months following that person's appearance, the Commissioners are required to disclose the relationship in writing to the City Clerk. In either of these situations, the ordinance deems the business relationship to be the "appearance of a possible conflict of interest" that allows the Commissioner or Mayor to choose to abstain from voting under Section 286.012, F.S.

In the event of a required abstention pursuant to statute, the ordinance also requires the Commissioner or Mayor not to participate in the proceedings. (In contrast, Section 112.3143, F.S., requires abstention, but allows Commissioner participation in the discussion of the matter). These requirements also apply to the City's advisory boards.

The ordinance contains a procedure whereby one Commissioner or advisory board member can accuse another of failing to disclose relationships as required. It establishes a procedure for the City Commission to consider the charge and any evidence supporting or refuting it and, if a willful violation is found, censure a Commissioner or remove a board member.

Aventura is subject to the Miami-Dade County ordinance, and also has its own stricter regulations of business relationships similar to Weston's, but with changes in scope. It also has other stricter ethics requirements for Commissioners' lobbying or other specified activities on behalf of those who seek discretionary approvals from or do business with the City while in office and for two years following their time in office. It allows a majority of the Commission to waive some of these requirements on a finding that such waiver will be consistent with the purpose of the ethics regulation and will not lead to the appearance of an impropriety.

These jurisdictions have all indicated that their stricter local regulations have not yet been challenged as being in conflict with Section 286.012's requirement to vote, and copies of the relevant portions of all of these regulations are attached for your reference.

Other local governments are currently considering regulations related to voting conflicts. The City of Hollywood is considering adding ethics restrictions to its charter, but the proposed language does not create new kinds of conflicts; it simply provides additional consequences when a statutory conflict may exist. It requires the Commissioner or Mayor to provide advance written notice of any conflict that they see is coming, not communicate with the Commission or staff about the matter, and not participate in the discussion and leave the room when the matter is being discussed at the Commission meeting.

Broward County's recently created Ethics Commission is currently considering an ethics ordinance that would apply to the County Commission, but the early rough draft focuses on procurements procedures, gifts, lobbying by commissioners, and financial disclosures, and does not address recusal for voting conflicts.¹¹

Palm Beach County's proposed ethics ordinances create an Inspector General, an Ethics Commission, and a new Code of Ethics. The Code regulates gifts, lobbying, nepotism, procurement and other matters more stringently than state law. It also requires Commissioners to refrain from participating in the discussion of items from which they abstain, and requires them to submit their voting conflict forms to the new County Commission on Ethics. It creates a presumption that there has not been a misuse of office where there has been disclosure, and where the Commissioner also does not act in a manner that he or she should reasonably know will result in receiving a financial benefit that is not shared with similarly situated members of the public.

The Town's Ordinance

The Ordinance amends Section 3.4 of the Town Charter, entitled "Standards of conduct; code of ethics." It adopts the standards for conduct in Section 112.313 and other sections of Part III of Chapter 112, Florida Statutes, governing matters such as solicitation or acceptance of gifts, doing business with or appearing before the Town, unauthorized compensation, misuse of public position, conflicting employment or contractual relationships, disclosure or use of certain information, and lobbying.

It also adopts more stringent requirements than state law for abstaining from voting because of conflicts of interest. It creates a presumption that the additional conflicts identified in the Charter shall be deemed to create the existence or appearance of a possible conflict of interest under Section 286.012, Florida Statutes.

Subsection 3.4(4) requires a Commissioner or the Mayor to abstain from voting "where the decision will directly affect them in a manner, financially or otherwise, distinct from the manner in which the vote will impact a substantial portion of Town residents, businesses or property owners" or where it will have a similar impact on a principal, relative or business associate of the Commissioner or Mayor. As proposed in Commissioner Dodd's agenda item, this language allows the finding of a conflict even where there is no financial or "special private gain" as required by the statutes. "Substantial portion" is defined as more than 1%, in accordance with the ethics opinions interpreting the statutory conflict of interest language.

Subsection 3.4(5) requires the disclosure of business relationships, as defined in subsection (6), that a Commissioner or Mayor may have with an applicant, representative or interested person who appears before the Town Commission. Relationships in the two years prior to the appearance must be disclosed orally at the meeting or in writing to the Town Clerk,

¹¹ Broward's county-wide authority under its Charter does not extend to ethics matters, so this ordinance will not be applicable within municipalities.

and such disclosure allows the affected Commissioner or Mayor to choose to abstain from voting on the affected item. Relationships that are discovered after, or that are entered into within one year following, the appearance must be also be disclosed in writing. Exceptions are provided for relationships entered into as an officer or director of a residents' association, and for relationships with persons appearing in their capacity as homeowners affected by land use and zoning decisions in the Town.

Subsection 3.4(7) extends the requirements of this Ordinance to cover firms, business entities and business associates related to the Commissioner or Mayor.

In the event that a majority of the Commission is unable to vote pursuant to these requirements, Subsection 3.4(8) allows action to be taken by a unanimous vote of the remaining Commissioners. Alternatively, the Commission can choose to waive these requirements by unanimous vote so that a quorum will be available, upon a finding that such waiver is consistent with the intent of this section and would not create the appearance of an impropriety.

Subsection 3.4(9) requires that, where a Commissioner or Mayor abstains from voting for any reason, he or she shall leave the room and not participate in the discussion of the matter, after stating the nature of the conflict and filing the written disclosure required by state law. Finally, Subsection 3.4(10) requires that the stricter of any applicable ethical requirement shall always apply.

Examples of Stricter Local Ethics Regulations

Examples of Stricter Local Regulation

A. Miami-Dade County Excerpt

Sec. 2-11.1. Conflict of Interest and Code of Ethics Ordinance.

* * *

(d) *Further prohibition on transacting business with the County.* No . . . [Commissioner, Mayor, board member or staff member] . . . shall enter into any contract or transact any business through a firm, corporation, partnership or business entity in which he or any member of his immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, and any such contract, agreement or business engagement entered in violation of this Subsection shall render the transaction voidable. The remaining provisions of Subsection (c) will also be applicable to this Subsection as though incorporated herein by recitation.

Additionally, no . . . [Commissioner or Mayor] . . . shall vote on or participate in any way in any matter presented to the Board of County Commissioners if said person has any of the following relationships with any of the persons or entities which would be or might be directly or indirectly affected by any action of the Board of County Commissioners:

- (i) officer, director, partner, of counsel, consultant, employee, Fiduciary or beneficiary; or
- (ii) stockholder, bondholder, debtor, or creditor,

if in any instance the transaction or matter would affect the . . . [Commissioner or Mayor] . . . in a manner distinct from the manner in which it would affect the public generally. Any . . . [Commissioner or Mayor] . . . who has any of the above relationships or who would or might, directly or indirectly, profit or be enhanced by the action of the Board of County Commissioners shall absent himself or herself from the commission meeting during the discussion of the subject item and shall not vote on or participate in any way in said matter.

Examples of Stricter Local Regulation

B. City of Weston

§ 11.10 DISCLOSURE OF BUSINESS RELATIONSHIPS.

(A) Except as prohibited by law or regulatory standards, each member of the City Commission or any City Advisory Board **shall disclose the existence of any business relationship** of which he/she is aware that he/she has, or has had **within the prior 24 month period, with any applicant or interested person, at the time that the applicant or interested person appears** before the City Commission or City Advisory Board.

(B) Except as prohibited by law or regulatory standards, if a member of the City Commission or any City Advisory Board **learns, within 30 days after an action is taken** by the City Commission or the City Advisory Board, **that he/she had a business relationship** with any applicant or interested person who appeared before the City Commission or the City Advisory Board, he/she **shall disclose** any such business relationship in writing to the City Clerk that was not disclosed at the initial meeting.

(C) Except as prohibited by law or regulatory standards, if a member of the City Commission or any City Advisory Board **establishes a business relationship with any applicant or interested person within 12 months after the applicant or interested person appears** before the City Commission or the City Advisory Board, the member of the City Commission or the City Advisory Board **shall disclose** any such business relationship in writing to the City Clerk.

(D) Florida Statutes § 112.3143 establishes specific situations under which City Commissioners and members of a City Advisory Board are prohibited from voting. In those situations where a member of the City Commission or a City Advisory Board is **prohibited from voting, that person shall also be prohibited from participating in any discussion** regarding the matter.

(E) Florida Statutes § 286.012 prohibits a member of the City Commission or any City Advisory Board from abstaining from voting unless there is, or appears to be, a possible conflict of interest under Florida Statutes. In any situation where a member of the City Commission or a City Advisory Board **discloses a business relationship** under this section, the member may **abstain** because of the **appearance of a possible conflict of interest**.

(F) If any member of the City Commission or City Advisory Board believes that another member has willfully failed to make a disclosure required under this section, he/she may submit evidence supporting the alleged failure to disclose to the City Manager who shall place the item on the next available City Commission Agenda. The allegation and supporting evidence shall be presented by the member of the City Commission or City Advisory Board who raised the issue for consideration by the City Commission. The member of the City Commission or City Advisory Board against whom the allegation is made may present evidence refuting the allegations. If three or more members of the City Commission determine that an accused City Commissioner willfully failed to make a required disclosure, the accused City Commissioner shall be deemed to be censured. If three or more members of the City Commission determine

Examples of Stricter Local Regulation

that an accused member of a City Advisory Board has willfully failed to make a required disclosure, the accused board member shall be removed from the Advisory Board.

§ 12.01 DEFINITIONS.

BUSINESS RELATIONSHIP. A member of the City Commission or a City Advisory Board has a business relationship with a person or an entity if any of the following exist:

(1) The member of the City Commission or City Advisory Board has any ownership interest, directly or indirectly, in excess of 1% in the entity,

(2) The member of the City Commission or City Advisory Board is a partner, co-shareholder or joint venturer with the person in any business venture;

(3) The entity or person is a client of the member of the City Commission or City Advisory Board, or a client of another professional working from the same office and for the same employer as the member of the City Commission or City Advisory Board;

(4) The member of the City Commission or City Advisory Board is a client of the entity or the person;

(5) The entity or person is a customer of the member of the City Commission or City Advisory Board (or his/her employer) and transacts more than 5% of the business in a given calendar year of the member of the City Commission or City Advisory Board (or his/her employer) or more than \$25,000 of business in a given calendar year; or

(6) The member of the City Commission or City Advisory Board is a customer of the entity or the person and transacts more than 5% of the business in a given calendar year of the entity or person or more than \$25,000 of business in a given calendar year.

Examples of Stricter Local Regulation

C. City of Aventura

ARTICLE VII. CODE OF ETHICS

Sec. 2-391. Legislative intent.

(a) It is essential to the proper conduct and operation of government that public officials be independent and impartial and that public office not be used for private gain other than the remuneration provided by law. The public interest, therefore, requires that the law protect against any conflict of interest and establish standards for the conduct of elected officials and government employees in situations where conflicts may exist.

(b) It is the policy of the City that no officer or employee of the City, shall have any interest, financial or otherwise, direct or indirect; engage in any business transaction or professional activity; or incur any obligation of any nature which is in substantial conflict with the proper discharge of his or her duties in the public interest. To implement this policy and strengthen the faith and confidence of the City's residents in their government, the City will enact a Code of Ethics setting forth standards of conduct required of the City's public officers and employees, in the performance of their official duties. It is the intent of the City that this code shall serve as a guide for the official conduct of the public officers and employees of the City.

Sec. 2-392. Code of Ethics generally.

The conduct of the public officers and employees of the City shall be governed by the Code of Ethics of the City which shall include:

- (1) The State "Code of Ethics for Public Officers and Employees", codified in F.S. ch. 112, as may be amended from time to time, and
- (2) The "Miami-Dade County Conflict of Interest And Code of Ethics Ordinance," codified at section 2-11.1 et. seq., Miami-Dade County Code, as may be amended from time to time, and
- (3) Any provisions that the City Commission may adopt from time to time in addition to those set forth in subsections (1) and (2) above.

Sec. 2-393. Additional conflict of interest restriction concerning advisory board members.

(a) No member of any City Advisory Board shall vote on or participate in any way in any matter presented to the Board if said person is an officer, board member, or director of an organization which would be or might be indirectly or directly affected by any action of the Board or, if in any instance, the matter would affect the member in a manner distinct from the manner in which it would affect the public generally.

(b) Any Board Member who has any of the above relationships or who would or might, directly or indirectly, profit or be enhanced by the action of the Board shall absent himself or herself

Examples of Stricter Local Regulation

from the Board meeting during the discussion of the subject item and shall not vote on or participate in any way in said matter.

(c) Whenever any Board Member is in doubt as to the interpretation or application of this section to his/her particular situation, the Board member may submit to the City Attorney a written request for an opinion. The City Attorney shall review the facts of the particular matter and shall provide an opinion to the Board Member.

(d) For purposes of this section, the term "Advisory Board" shall refer to the members of those City Advisory Boards whose primary responsibility is to provide recommendations or advice to the City Commission.

(e) For purposes of this section, the term "organization" means a corporation for profit or not-for-profit, and includes a political committee or committee of continuous existence as defined in F.S. ch. 106.

Sec. 2-394. Penalty.

The Ethics Commission created pursuant to Miami-Dade County Ordinance 97-105 shall have primary jurisdiction for enforcement of sections 2-392, 2-393 and 2-396. A finding by the Ethics Commission that a person has violated sections 2-392, 2-393 and 2-396 shall subject said person to an admonition or public reprimand and/or a fine of \$250.00 for the first such violation and \$500.00 for each subsequent violation.

Sec. 2-395. Disclosure of business relationships and gifts.

(a) Definitions.

(1) *Applicant.* As used herein, the term "applicant" means any individual or entity requesting action of the City Commission or a City Advisory Board upon an application and all persons or entities representing such individual or entity (including, but not limited to, all attorneys, architects, landscape architects, engineers and lobbyists) (the "representatives"), and any individual who holds directly or indirectly, a five percent or more ownership interest in the total assets or capital stock of such applicant entity.

(2) *Business relationship.* As used herein the term "business relationship" means that a member of the City Commission or a City Advisory Board has a business relationship with a person or an entity if any of the following exist:

a. The member of the City Commission or City Advisory Board holds an ownership interest, directly or indirectly, in excess of one percent of the total assets or capital stock of the applicant, representative or interested person entity; or

b. The member of the City Commission or City Advisory Board is a partner, co-shareholder (as to the shares of a corporation which are not listed on any national or regional stock exchange) or joint venturer with the applicant, representative or interested person in any business venture;

Examples of Stricter Local Regulation

- c. The applicant, representative or interested person is a client of the member of the City Commission or City Advisory Board, or a client of another professional working from the same office or for the same employer as the member of the City Commission or City Advisory Board;
- d. The member of the City Commission or City Advisory Board is a client of the applicant, representative or interested person;
- e. The applicant, representative or interested person is a customer of the member of the City Commission or City Advisory Board (or of his/her employer) and transacts more than \$10,000.00 of the business of the member of the City Commission or City Advisory Board (or of his/her employer) in a given calendar year; or
- f. The member of the City Commission or City Advisory Board is a customer of the applicant, representative or interested person and transacts more than \$25,000.00 of the business of the applicant, representative or interested person in a given calendar year.

(3) *Client.* As used herein the term "client" means a person or entity who obtains the services of another for compensation.

(4) *Customer.* As used herein the term "customer" means a person or entity who purchases or leases materials, equipment or property from another.

(5) *Gift.* As used herein, the term "gift" means any gift required to be reported by quarterly disclosure pursuant to F.S. § 112.3148, or section 2-11.1(e) of the Miami-Dade County Code.

(6) *Interested person.* As used herein, the term "interested person" means any person who speaks for or against any resolution or ordinance before the City Commission or for or against any matter before any City Advisory Board and who has a direct financial interest in the action (including, but not limited to, vendors, bidders and proposers), except that owner occupied residential property owners shall not be deemed to have a direct financial interest in land use decisions that may affect the value of their property, and accordingly shall not be within the definition of the term "interested person," as used herein.

(b) *Application of definitions.*

(1) Notwithstanding the provisions of subsection (a)(2)a.--f. above, a business relationship shall not be construed to exist hereunder by virtue of the circumstance that a member of the City Commission or City Advisory Board executed or authorized a contract with an applicant, representative or interested person solely in such City Commission or City Advisory Board Member's capacity as an officer or director of a homeowner association, condominium association, cooperative association or master association.

(2) For the purpose of applying the 24-month period restriction provided in subsection (c)(1) below, a business relationship commences pursuant to subsection (a)(2)c.--f. (client/customer) above, when materials, equipment, property or services are ordered, sought, contracted for or obtained.

Examples of Stricter Local Regulation

(3) For the purpose of applying the 24-month period restriction provided in subsection (c)(1) below, a business relationship ends pursuant to subsection (a)(2)c.--f. (client/customer) above:

- a. Once the sale of materials, equipment or property is completed and no payment remains due; or
- b. Once the lease of materials, equipment or property expires or is terminated and no payment remains due; or
- c. Once the provision of services is fully performed and no payment for services remains due.

(c) *Restrictions.*

(1) Except as prohibited by law or regulatory standards, each member of the City Commission or any City Advisory Board **shall disclose** by public announcement or written filing with the City Clerk, the **existence of any business relationship of which he/she is aware** that he/she has, or has had **within the prior 24-month period, with any applicant, representative or interested person**, at the time that the applicant, representative or interested person appears before the City Commission or City Advisory Board on which the member sits.

(2) Except as prohibited by law or regulatory standards, if a member of the City Commission or any City Advisory Board learns, or with the exercise of due diligence, should have learned, at any time after an action is taken by the City Commission or the City Advisory Board on which the member sits, that he/she had a business relationship with any applicant, representative or interested person who appeared before the City Commission or the City Advisory Board, he/she shall within ten days of so learning, disclose any such business relationship in writing to the City Clerk that was not disclosed at the initial meeting.

(3) Except as prohibited by law or regulatory standards, if a member of the City Commission or any City Advisory Board **establishes a business relationship with any applicant, representative or interested person within 24 months after the applicant, representative or interested person appears** before the City Commission or the City Advisory Board on which the member sits, the member of the City Commission or the City Advisory Board **shall disclose** any such business relationship in writing to the City Clerk within 15 days after the business relationship is established.

(4) F.S. § 286.012 prohibits a member of the City Commission or any City Advisory Board from abstaining from voting unless there is, or appears to be, a possible conflict of interest under F.S. §§ 112.311, 112.313, and 112.3143. Accordingly, in any situation where a member of the City Commission or a City Advisory Board **discloses a business relationship** under this section, the member **may abstain from voting**, since such disclosure shall qualify as constituting the appearance of a possible conflict of interest. This paragraph shall not be construed to make abstention discretionary under situations in which abstention or non-participation is mandated by F.S. § 112.3143, section 2-11.1(d) of the Miami-Dade County

Examples of Stricter Local Regulation

Code as adopted by City Code section 2-392(2), or (as to Advisory Board Members) as provided by City Code section 2-393.

(5) Members of the City Commission or City Advisory Boards shall disclose gifts from applicants, representatives and interested persons in the same manner as provided for the disclosure of business relationships under subsection (c)(1)--(3) above.

(6) If any member of the City Commission or City Advisory Board believes that another member of the same body has willfully failed to make a disclosure required under this section, he/she may submit evidence supporting the alleged failure to disclose to the City Manager who shall place the item on the next available City Commission Agenda. The allegation and supporting evidence shall be presented by the member of the City Commission or City Advisory Board who raised the issue for consideration by the City Commission. The member of the City Commission or City Advisory Board against whom the allegation is made may present evidence refuting the allegations. If four or more members of the City Commission determine that an accused City Commissioner has willfully failed to make a required disclosure, the accused City Commissioner shall be deemed to be censured. If four or more members of the City Commission determine that an accused member of a City Advisory Board has willfully failed to make a required disclosure, the accused Advisory Board Member shall be removed from the Advisory Board. This provision shall not be construed to require any City Commission or City Advisory Board Member to report any suspected failure of another City Commission or City Advisory Board Member to make a disclosure which may be required pursuant to this section.

Sec. 2-396. Further ethics standards; prohibitions and restrictions.

(a) *Certain appearances, work or payment prohibited.* Pursuant to section 2-11.1(m) of the Miami-Dade County Code and as further specified herein:

(1) No member of the City Commission shall appear before any City department, board or agency and make a presentation on behalf of a third person with respect to any application, license, local business tax receipt, contract, certificate, ruling, decision, opinion, rate schedule, franchise, or other benefit sought by the third person.

(2) No member of the City Commission shall contact or direct another person to contact for the Commission Member, the City Manager or any department personnel concerning the status of any pending application or matter on behalf of any third person who has retained or employed the Commission Member or who has retained or employed the firm or business entity in which the Commission Member has an employment, contractual or financial interest.

(3) No member of the City Commission shall receive compensation, directly or indirectly or in any form, for services rendered to a third person, who has applied for or is seeking some benefit from the City or from a City department, board or agency, in connection with the particular benefit sought by the third person. Further, no member of the City Commission

Examples of Stricter Local Regulation

shall receive any portion of or share any fee with any other person in connection with any such matter.

(4) No member of the City Commission shall appear in any court or before any administrative tribunal as counsel or legal advisor to a party who seeks legal relief from the City or from a City department, board or agency through the litigation or proceeding in question.

(b) *Continued restrictions after City service.* Pursuant to section 2-11.1(q) of the Miami-Dade County Code and as further specified herein, no member of the City Commission shall, for a period of two years after his or her City service has ceased, lobby the City Commission or any City Officer, department personnel or employee in connection with any quasi judicial, judicial or other proceeding, application, purchasing RFP, RFQ or Bid, request for ruling, or other determination, contract, claim, controversy, charge, accusation, municipal ordinance violation, arrest or other particular subject matter in which the City or one of City's agencies, boards or instrumentalities is a party or has any interest, whether direct or indirect. However, nothing contained in this subsection (b) shall prohibit any individual included within the provisions of this subsection (b) from submitting a routine administrative request or application to a City department or agency during the two years after his or her City service has ceased. The term "routine administrative request or application", as used herein, means an application for a building permit, local business tax receipt, regular city recreation facility or park public use permit request, under those circumstances where no variance, waiver or special privilege is requested.

(c) *Further restriction on transactions.*

(1) In the event that during the term of office of a member of the City Commission, the City Commission grants an application (the "City Approval") for a rezoning, variance, conditional use, or zoning code or comprehensive plan amendment, upon the application of a person or entity (the "Zoning Applicant"), no person then serving as a member of the City Commission at the time of the City Approval shall then and for a period of two years after the issuance of the City Approval, regardless of whether still serving on the City Commission, perform any services for or directly or indirectly accept any financial remuneration, any financial interest in or any special private gain from the Zoning Applicant or from any successor or assignee of the Zoning Applicant, as a result of or in relation to any development which is enabled to occur as a direct consequence of such City Approval. Notwithstanding any provision of this subsection (c)(1), the restrictions and prohibitions of this subsection (c)(1) shall not apply to a member of the City Commission who has recused himself or herself from participating in or voting upon the item of City Approval and has absented himself or herself from the Commission meeting pertaining to such item.

(2) This subsection (c) shall not preclude the provision of services or the sale or lease of goods by a member of the City Commission to persons who subsequently, independently enter into a transaction with the developer, owner or operator of the property developed as a result of the City Approval solely by such person's purchasing or obtaining a lease for a unit in a building which was enabled to be built or redeveloped as a result of a City Approval.

Examples of Stricter Local Regulation

(3) Pursuant to section 2-11.1(o) of the Miami-Dade County Code and as further specified herein:

a. No member of the City Commission or and City officer or employee shall acquire a financial interest in a project, business entity or property at a time when he or she believes of has reason to believe that the said financial interest will be directly affected by his or her official actions or by the official actions by the City or City agency of which he is an official, officer or employee.

b. Any member of the City Commission or any City officer or employee who participated in the City development approval process concerning a residential development, shall be barred for a period of two years following such participation from purchasing directly or indirectly any dwelling unit at a price which he or she knows or should know is less than that which is then being offered to the general public or from purchasing any such dwelling at a discounted price which he or she knows or should know would constitute a gift requiring disclosure by him or her pursuant to F.S. § 112.3148. In addition, at the time of the closing of the purchase transaction, he or she shall file with the City Clerk a disclosure affidavit confirming that any purchase made complies with this subsection (3)b. The disclosure shall be made on an official City form which has been prepared by the City Attorney for the purpose of disclosing any such purchases.

(4) The prohibitions of this subsection (c), exclusive of subsection a. above, may be waived for a specific transaction by resolution of the City Commission which is adopted following a public hearing by a five-seventh (five member affirmative vote) of the City Commission, if not contrary to other applicable ethics provisions, upon a finding that:

a. The proposed transaction is consistent with the purposes of Article VII of Chapter 2 of the City Code; and

b. The transaction will not create or tend to create even the appearance of any impropriety.

(d) *Applicability to firms, business entities, business associates.* The restrictions and prohibitions which are imposed by subsections (a), (b) and (c) of this section upon any person, by virtue of that person's service (or former service) as a member of the City Commission, shall also be applicable to any firm or business entity in which such member of the City Commission has an employment, independent contractor or material interest and to any business associate of such member of the City Commission. The terms "material interest" and "business associate" have the meaning indicated by F.S. § 112.312.

(e) *Definitions.* Except as otherwise indicated herein or required by the context used herein, the terms utilized herein which are defined in F.S. § 112.312, or in section 2-11.1 of the Miami-Dade County Code, shall have the meanings provided in such State statute and County Code provisions.

Examples of Stricter Local Regulation

(f) *Stricter provisions prevail.* Nothing in this section shall be construed to impair or diminish any stricter ethical standards which are provided by F.S. § 112.313, et. seq., section 2-11.1 of the Miami-Dade County Code or by the provisions of the Charter and Ordinances of the City or by any applicable Federal law.

Examples of Stricter Local Regulation

D. City of Hollywood Proposed Charter Language, 11/10/09 Draft

Sec 2.05. Voting Conflicts.

(a) Any member of the City Commission **required by law, or for any reason not otherwise provided for herein, to recuse oneself from voting** on a matter to be considered by the City Commission, **or who recuses oneself from voting** on a matter being considered by the City Commission, due to a voting conflict or the appearance of a voting conflict, **shall, at the time of such recusal, disclose** the nature of his or her interest as a public record in a memorandum filed with the City Clerk, who shall incorporate the memorandum in the minutes of the City Commission. Such commission member **shall thereafter leave the Commission chamber prior to debate and not communicate or participate, directly or indirectly, in any discussion or other communication relating to that matter with any member of the City Commission or with any City employee.**

(b) Any member of the City Commission who knows, or by the exercise of reasonable diligence should know, that the member **has, or is likely to have, a voting conflict or the appearance of a voting conflict on a matter not yet subject to vote but otherwise under consideration** by the City Commission or any instrumentality of the City's municipal government, including, but not limited to, special districts wholly within the City's boundaries, City boards and committees, **shall immediately disclose** the nature of his or her interest as a public record in a memorandum filed with the City Clerk, who shall incorporate the memorandum in the official public records of the City, and said member **shall thereafter neither debate nor communicate or participate, directly or indirectly, in any discussion or other communication relating to that matter with any member of the City Commission or with any City employee.**

(c) A copy of each memorandum filed with the City Clerk pursuant to subsection (2) of this section shall promptly be posted on the city's website homepage and on the bulletin board on which notices of public meetings are posted. Any such memo shall be removed from posting if and when the City Manager determines either:

- (i) that the matter causing an actual voting conflict or appearance thereof is no longer likely to be submitted to the Commission for a vote; or
- (ii) the matter is either finally approved or disapproved by the City Commission.

Examples of Stricter Local Regulation

E. Palm Beach County Code of Ethics Excerpt, December 1, 2009 Draft

B. Disclosure of Voting Conflicts. County Officials shall abstain from voting and not participate in any matter that will result in a Financial Benefit as set forth in subsections A.(1) through (7) above. When abstaining, the Official shall publicly disclose the nature of the conflict and complete and file a State of Florida Commission on Ethics Conflict Form 8B pursuant to the requirements of section 112.3143, Florida Statutes. Simultaneously with filing Form 8B, the Official shall submit a copy of the completed form to the Palm Beach County Commission on Ethics. Officials who abstain and disclose a voting conflict as set forth herein, shall not be in violation of subsection A, provided the Official does not otherwise use his or her office to take or fail to take any action, or influence others to take or fail to take any action, in any other manner which he or she knows or should know with the exercise of reasonable care will result in a Financial Benefit, not shared with similarly situated members of the general public, as set forth in subsections A.(1) through (7).