



TOWN OF LAUDERDALE-BY-THE-SEA

AGENDA ITEM REQUEST FORM

Town Attorney

Susan L. Trevarthen

Department Submitting Request

Dept Head's Signature

Commission Meeting Dates	Last date to turn in to Town Clerk's Office	Commission Meeting Dates	Last date to turn in to Town Clerk's Office	Commission Meeting Dates	Last date to turn in to Town Clerk's Office
<input type="checkbox"/> May 25, 2010	May 14 (5:00 p.m.)	<input type="checkbox"/> July 27, 2010	July 16 (5:00 p.m.)	<input type="checkbox"/> Oct 26, 2010	Oct 15 (5:00 p.m.)
<input type="checkbox"/> June 8, 2010	May 28 (5:00 p.m.)	<input type="checkbox"/> Aug 24 2010*	Aug 13 (5:00 p.m.)	<input type="checkbox"/> Nov 9, 2010	Oct 29 (5:00p.m.)
<input checked="" type="checkbox"/> June 22, 2010	June 11 (5:00 p.m.)	<input type="checkbox"/> Sept 14, 2010	Sept 3 (5:00 p.m.)	<input type="checkbox"/> Nov 23, 2010	Nov 12 (5:00p.m.)
<input checked="" type="checkbox"/> July 13, 2010	June 2 (5:00 p.m.)	<input type="checkbox"/> Sep 27, 2010	Sept 17 (5:00 p.m.)	<input type="checkbox"/> Dec 14, 2010	Dec 3 (5:00p.m.)
		<input type="checkbox"/> Oct 12, 2010	Oct 1 (5:00p.m.)		

* Subject to change

NATURE OF AGENDA ITEM

- Presentation
- Resolution
- Manager's Report
- Public Safety Report
- Quasi Judicial
- Attorney's Report
- Consent Agenda
- Old Business
- Other
- Ordinance
- New Business

SUBJECT TITLE: AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, CREATING SECTION 2-26 OF THE TOWN CODE OF ORDINANCES REGARDING ETHICS REQUIREMENTS FOR THE MAYOR AND TOWN COMMISSIONERS; PROVIDING FOR CODIFICATION, CONFLICTS, SEVERABILITY AND AN EFFECTIVE DATE.

EXPLANATION: At the June 9, 2010 roundtable, the Town Commission requested that the Ethics Ordinance be finalized and placed on the Town Commission agenda for first reading. Attached to this item are: 1) a memo explaining what the Ordinance means; 2) the Ordinance; and 3) selected excerpts of the state ethics statutes.

STAFF RECOMMENDATION: N/A
BOARD/COMMITTEE RECOMMENDATION: N/A
FISCAL IMPACT AND APPROPRIATION OF FUNDS: None

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

Town Attorney review required
 Yes No

Town Manager's Initials: _____

The 2009 Florida Statutes
Title X PUBLIC OFFICERS, EMPLOYEES, AND RECORDS
Chapter 112 PUBLIC OFFICERS AND EMPLOYEES: GENERAL PROVISIONS

112.3143 Voting conflicts.--

(1) As used in this section:

(a) "Public officer" includes any person elected or appointed to hold office in any agency, including any person serving on an advisory body.

(b) "Relative" means any father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law.

(2) No state public officer is prohibited from voting in an official capacity on any matter. However, any state public officer voting in an official capacity upon any measure which would inure to the officer's special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom the officer is retained or to the parent organization or subsidiary of a corporate principal by which the officer is retained; or which the officer knows would inure to the special private gain or loss of a relative or business associate of the public officer shall, 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.

(3) (a) 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.

(b) However, a commissioner of a community redevelopment agency created or designated pursuant to s. 163.356 or s. 163.357, or an officer of an independent special tax district elected on a one-acre, one-vote basis, is not prohibited from voting, when voting in said capacity.

(4) No appointed public officer shall participate in any matter which would inure to the officer's special private gain or loss; which the officer 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; 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, without first disclosing the nature of his or her interest in the matter.

(a) Such disclosure, indicating the nature of the conflict, shall be made in a written memorandum filed with the person responsible for recording the minutes of the meeting, prior to the meeting in which consideration of the matter will take place, and shall be incorporated into the minutes. Any such memorandum shall become a public record upon filing, shall immediately be provided to the other members of the agency, and shall be read publicly at the next meeting held subsequent to the filing of this written memorandum.

(b) In the event that disclosure has not been made prior to the meeting or that any conflict is unknown prior to the meeting, the disclosure shall be made orally at the meeting when it becomes known that a conflict exists. A written memorandum disclosing the nature of the conflict shall then be filed within 15 days after the oral disclosure with the person responsible for recording the minutes of the meeting and shall be incorporated into the minutes of the meeting at which the oral disclosure was made. Any such memorandum shall become a public record upon filing, shall immediately be provided to the other members of the agency, and shall be read publicly at the next meeting held subsequent to the filing of this written memorandum.

(c) For purposes of this subsection, the term "participate" means any attempt to influence the decision by oral or written communication, whether made by the officer or at the officer's direction.

(5) Whenever a public officer or former public officer is being considered for appointment or reappointment to public office, the appointing body shall consider the number and nature of the memoranda of conflict previously filed under this section by said officer.

History.--s. 6, ch. 75-208; s. 2, ch. 84-318; s. 1, ch. 84-357; s. 2, ch. 86-148; s. 5, ch. 91-85; s. 3, ch. 94-277; s. 1408, ch. 95-147; s. 43, ch. 99-2.

Related statutory sections:

112.311 Legislative intent and declaration of policy.--

(1) 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.

(2) It is also essential that government attract those citizens best qualified to serve. Thus, the law against conflict of interest must be so designed as not to impede unreasonably or unnecessarily the recruitment and retention by government of those best qualified to serve. Public officials should not be denied the opportunity, available to all other citizens, to acquire and retain private

economic interests except when conflicts with the responsibility of such officials to the public cannot be avoided.

(3) It is likewise essential that the people be free to seek redress of their grievances and express their opinions to all government officials on current issues and past or pending legislative and executive actions at every level of government. In order to preserve and maintain the integrity of the governmental process, it is necessary that the identity, expenditures, and activities of those persons who regularly engage in efforts to persuade public officials to take specific actions, either by direct communication with such officials or by solicitation of others to engage in such efforts, be regularly disclosed to the people.

(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.

(5) It is hereby declared to be the policy of the state that no officer or employee of a state agency or of a county, city, or other political subdivision of the state, and no member of the Legislature or legislative employee, 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 people of the state in their government, there is enacted a code of ethics setting forth standards of conduct required of state, county, and city officers and employees, and of officers and employees of other political subdivisions of the state, in the performance of their official duties. It is the intent of the Legislature that this code shall serve not only as a guide for the official conduct of public servants in this state, but also as a basis for discipline of those who violate the provisions of this part.

(6) It is declared to be the policy of the state that public officers and employees, state and local, are agents of the people and hold their positions for the benefit of the public. They are bound to uphold the Constitution of the United States and the State Constitution and to perform efficiently and faithfully their duties under the laws of the federal, state, and local governments. Such officers and employees are bound to observe, in their official acts, the highest standards of ethics consistent with this code and the advisory opinions rendered with respect hereto regardless of personal considerations, recognizing that promoting the public interest and maintaining the respect of the people in their government must be of foremost concern.

History.--s. 1, ch. 67-469; s. 1, ch. 69-335; s. 1, ch. 74-177; s. 2, ch. 75-208; s. 698, ch. 95-147.

112.312 Definitions.--As used in this part and for purposes of the provisions of s. 8, Art. II of the State Constitution, unless the context otherwise requires:

* * * * *

(2) "Agency" means any state, regional, county, local, or municipal government entity of this state, whether executive, judicial, or legislative; any department, division, bureau, commission,

authority, or political subdivision of this state therein; or any public school, community college, or state university.

* * * * *

(5) "Business entity" means any corporation, partnership, limited partnership, proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, whether fictitiously named or not, doing business in this state.

* * * * *

(8) "Conflict" or "conflict of interest" means a situation in which regard for a private interest tends to lead to disregard of a public duty or interest.

* * * * *

(15) "Material interest" means direct or indirect ownership of more than 5 percent of the total assets or capital stock of any business entity. For the purposes of this act, indirect ownership does not include ownership by a spouse or minor child.

History.--s. 2, ch. 67-469; ss. 11, 12, ch. 68-35; s. 8, ch. 69-353; s. 2, ch. 74-177; s. 1, ch. 75-196; s. 1, ch. 75-199; s. 3, ch. 75-208; s. 4, ch. 76-18; s. 1, ch. 77-174; s. 2, ch. 82-98; s. 1, ch. 83-282; s. 2, ch. 90-502; s. 2, ch. 91-85; s. 3, ch. 91-292; s. 699, ch. 95-147; s. 1, ch. 96-328; s. 1, ch. 2000-243.

112.313 Standards of conduct for public officers, employees of agencies, and local government attorneys.--

* * * * *

(6) MISUSE OF PUBLIC POSITION.--No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others. This section shall not be construed to conflict with s. 104.31.

History.--s. 3, ch. 67-469; s. 2, ch. 69-335; ss. 10, 35, ch. 69-106; s. 3, ch. 74-177; ss. 4, 11, ch. 75-208; s. 1, ch. 77-174; s. 1, ch. 77-349; s. 4, ch. 82-98; s. 2, ch. 83-26; s. 6, ch. 83-282; s. 14, ch. 85-80; s. 12, ch. 86-145; s. 1, ch. 88-358; s. 1, ch. 88-408; s. 3, ch. 90-502; s. 3, ch. 91-85; s. 4, ch. 91-292; s. 1, ch. 92-35; s. 1, ch. 94-277; s. 1406, ch. 95-147; s. 3, ch. 96-311; s. 34, ch. 96-318; s. 41, ch. 99-2; s. 29, ch. 2001-266; s. 20, ch. 2002-1; s. 894, ch. 2002-387; s. 2, ch. 2005-285; s. 2, ch. 2006-275; s. 10, ch. 2007-217.

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.

History.--s. 5, ch. 75-196; s. 12, ch. 94-277.

Title XIX PUBLIC BUSINESS
Chapter 286 PUBLIC BUSINESS: MISCELLANEOUS PROVISIONS

286.012 Voting requirement at meetings of governmental bodies.--No member of any state, county, or municipal governmental board, commission, or agency 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.

History.--s. 1, ch. 72-311; s. 9, ch. 75-208; s. 2, ch. 84-357; s. 13, ch. 94-277.

Memo

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

Cc: Connie Hoffmann, Interim Town Manager

From: Susan L. Trevarthen, Town Attorney

Date: June 15, 2010

Re: Town Ethics Ordinance

As requested at the June 9, 2010, Roundtable meeting of the Town Commission, I have finalized the Ordinance creating a Code of Ethics for the Town Commission.

The Ordinance includes the initial concept considered by the Town Commission last year: that the Mayor or a Commission abstain from voting on a matter involving a Town vendor if they have a paid or unpaid affiliation with that vendor. It also requires that the Mayor or Commissioner not participate in a shade session involving a Town vendor with which they are affiliated.

Consistent with the Commission's direction, the Ordinance does not include the additional concept considered by the Town Commission in the draft ethics referendum, which broadly prohibited Commissioner business relationships in the Town.

The key points of the Ordinance are summarized below:

- The Commission shall not vote on matters affecting a Town vendor with whom they have a paid or unpaid affiliation, but they may participate in the matter. "Affiliated" is defined as "being in close formal or informal association." When abstaining from voting under this section, Commissioners shall file a written disclosure with the Town Clerk.
- Refraining from voting because of an affiliation with a vendor shall be deemed to be a potential conflict of interest sufficient to excuse the Mayor and Commission from the statutory obligation to vote under Section 286.012, Florida Statutes.
- The Commission shall not participate in shade sessions where they have a paid or unpaid affiliation to a party adverse to the Town in the litigation.

- Both of these voting prohibitions also apply if the affiliation is through a business entity related to the Commissioner or Mayor.
- If these prohibitions leave the Commission without a quorum to vote or to meet on a litigation matter, the remaining Commissioners can approve the item involving the vendor unanimously, or can meet in the shade session. Alternatively, the Commission can waive the prohibition if they find it consistent with this Code section, and find that it will not create or tend to create an appearance of impropriety.
- The Commission shall also follow the ethics requirements of Part III of Chapter 112, Florida Statutes. The stricter rule shall always prevail. The terms of this Code section shall be interpreted consistently with those of Chapter 112.

ORDINANCE 2010-07

34 abstains from voting under this section of Code, within 15 days after the vote occurs, he
35 or she shall file a written disclosure of the nature of his or her affiliation with the Town
36 Clerk, who shall incorporate the written disclosure into the minutes.

37

38 (3) *Effect of abstaining from voting under this section on obligation to vote.* Section
39 286.012, Florida Statutes, prohibits a Commissioner or Mayor from abstaining from
40 voting unless there is, or appears to be, a possible conflict of interest under Florida
41 Statutes. In any situation where a Commissioner or Mayor abstains from voting pursuant
42 to this section of Code, the Commissioner or Mayor shall be deemed to be able to abstain
43 because of the existence or appearance of a possible conflict of interest under the statute.

44

45 (4) *Requirement not to participate in shade sessions.* Neither the Mayor nor any
46 Commissioner shall participate in a shade session on any litigation matter involving a
47 party adverse to the Town with whom the Mayor or Commissioner is affiliated, whether
48 in a voluntary or paid capacity.

49

50 (5) *Applicability to related business entities.* The restrictions and prohibitions which are
51 imposed by this section upon any Commissioner or Mayor, by virtue of that person's
52 service as a Commissioner or Mayor, shall also be applicable to any business entity in
53 which such Commissioner or Mayor has an employment, independent contractor or
54 material interest. The term "material interest" shall have the meaning indicated by Section
55 112.312, Florida Statutes.

56

57 (6) *Majority of Town Commission unable to vote or to meet in a shade session.* If the
58 application of this provision results in a majority of the Commission being unable to vote
59 or to meet, then the remaining members of the Commission may approve the matter by
60 unanimous vote or participate in the shade session. Alternatively, by unanimous vote of
61 the remaining Commissioners present, the Commission may waive the requirements of
62 this section so that a quorum will be available to meet or to vote, if it finds that such
63 waiver will be consistent with the purposes of this section and will not create or tend to
64 create an appearance of impropriety.

65

66 (7) *Statutory standards of conduct.* The Mayor and each Commissioner shall comply
67 with the standards of conduct set forth in Part III of Chapter 112, Florida Statutes,
68 including but not limited to the regulations and prohibitions therein for solicitation or
69 acceptance of gifts, doing business with or appearing before the Town, unauthorized
70 compensation, misuse of public position, conflicting employment or contractual
71 relationships, disclosure or use of certain information, and lobbying.

72

73 (8) *Authority.* This section is adopted pursuant to home rule and to Section 112.326,
74 Florida Statutes, allowing stricter local regulation of ethics.

75

76 (9) *Interpretation.* Where terms used in Part III of Chapter 112, Florida Statutes, are
77 used in this section, they shall be defined and interpreted in a manner similar to how they
78 have been used in that statute. Nothing in this section shall be construed to impair or

ORDINANCE 2010-07

79 diminish any stricter ethical standards in Part III of Chapter 112 or any other part of the
80 Florida Statutes, the Charter, the Code of Ordinances or any applicable federal law.

81
82 **SECTION 3. Inclusion in the Code.** This Ordinance shall become and be made
83 a part of the Code of the Town of Lauderdale-By-The-Sea, Florida, and the sections of
84 this Ordinance may be renumbered or re-lettered to accomplish such intention.

85 **SECTION 4. Conflicts.** All Ordinances or parts of Ordinances, Resolutions or
86 parts of Resolutions in conflict herewith shall and the same are hereby repealed to the
87 extent of such conflict.

88 **SECTION 5. Severability.** If any section, sentence, clause or phrase of this
89 Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction,
90 then said holding shall in no way affect the validity of the remaining portions of this
91 Ordinance.

92 **SECTION 6. Effective Date.** This Ordinance shall become effective immediately
93 upon passage on second reading.

94 **SECTION 7. Adoption.**

95 Passed on the first reading, this ___ day of _____, 2010.

96 Passed and adopted on the second reading, this ___ day of _____, 2010.

97
98
99
100
101

Mayor Roseann Minnet

	First Reading	Second Reading
102		
103 Mayor Minnet	_____	_____
104 Vice-Mayor Dodd	_____	_____
105 Commissioner Clottey	_____	_____

ORDINANCE 2010-07

106 Commissioner Sasser _____

107 Commissioner Vincent _____

108 Attest:

109

110

111 _____
Town Clerk, June White

112 (CORPORATE SEAL)

113 Approved as to form:

114

115

116 _____
Town Attorney, Susan L. Trevarthen

