



AGENDA ITEM REQUEST FORM

Town Attorney

Susan L. Trevarthen

Department Submitting Request

Dept Head's Signature

REG COMMISSION
Meeting Dates 7:00PM

DEADLINE TO
Town Clerk's Office

ROUNDTABLE
Meeting Dates 7:00PM

DEADLINE TO
Town Clerk's Office

- Oct 12, 2010
- Nov 9, 2010*
- Dec 14, 2010
- Jan 11, 2011
- Feb 8, 2011
- Mar 8, 2011

- Oct 1 (5:00 pm)
- Nov 12 (5:00 pm)
- Dec 3 (5:00 pm)
- Dec 31 (5:00 pm)
- Jan 28 (5:00 pm)
- Feb 25 (5:00 pm)

- Oct 26, 2010
- Nov 23, 2010*
- Dec 28, 2010*
- Jan 25, 2011
- Feb 22, 2011
- Mar 22, 2011

- Oct 15 (5:00 pm)
- Nov 12 (5:00 pm)
- Dec 17 (5:00 pm)
- Jan 14 (5:00 pm)
- Feb 11 (5:00 pm)
- Mar 11 (5:00 pm)

*Subject to Change

- Presentation
- Resolution
- Reports
- Quasi Judicial
- Consent
- Old Business
- Ordinance
- New Business

SUBJECT TITLE: AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 30 "UNIFIED LAND DEVELOPMENT REGULATIONS" TO CREATE SECTION 30-22 "ZONING RELIEF PROCEDURES" TO ADDRESS POSSIBLE UNINTENDED VIOLATIONS OF FEDERAL AND STATE LAWS IN THE IMPLEMENTATION OF THIS CODE OR ITS RELATED RULES, POLICIES, AND PROCEDURES; PROVIDING FOR SEVERABILITY, CONFLICT, CODIFICATION AND AN EFFECTIVE DATE (Exhibit 2)

EXPLANATION:

History: At the Commission meeting of July 27, 2010 the Commission approved Resolution 2010-16 (Exhibit 1) adopting a Notice of Intent. The Notice authorized moving forward with amending Chapter 30 "Unified Land Development Regulations" of the Town Code of Ordinances by creating Section 30-22 "Zoning Relief Procedures," to provide for a zoning relief procedure to address possible unintended violations of federal and state laws in the application of the Code or its related rules, policies, and procedures. This proposed amendment provides a preventative procedure to protect the Town from legal challenges, and facilitates the resolution of disputes. A public hearing was held on the Notice of Intent at the Town Commission meeting on August 25, 2010.

Background: From time to time, the Town Land Development Regulations (LDRs) are updated to conform with recent legal precedent. The Town's application of its Code and related rules, policies, and practices is governed by constantly-evolving case law decisions addressing the rights of applicants and affected parties under the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), the First Amendment to the U.S. Constitution, the Americans with Disabilities Act, the Fair Housing Act and other applicable state and federal laws.

Ordinance: In order to encourage resolution of disputes and avoid costly litigation, it is recommended that the LDRs be amended by this Ordinance, to provide a general zoning relief procedure consistent with federal law. An example of the application of the procedure is a request for a waiver from development regulations when a reasonable accommodation may be necessary to afford a disabled person the equal opportunity to use a dwelling under the Fair Housing Act. The Act makes it unlawful for the Town to refuse to make "reasonable accommodations" (modifications or exceptions) to rules, policies, practices, or services, when such



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accommodations may be necessary to allow a resident the equal right to housing. As an example, it may be a reasonable accommodation to waive a setback requirement so that a paved path can be provided to a resident who has impaired mobility.

Consistent with recent case law developments, the proposed zoning relief procedure expands the reasonable accommodation process to address additional types of alleged violations of state and federal civil rights law, such as a claim that a municipal land development regulation imposes a "substantial burden" on religious exercise in violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA). The proposed procedure provides a case-by-case review process by which Town staff and the Town Attorney will evaluate claims under federal or state statutes concerning the application of the LDRs or related policies, in accordance with the standards of the applicable legal precedent. The request will then be scheduled for a public hearing, with public notice, for consideration by the Town Commission.

Scope: The proposed zoning relief procedure supplements existing procedures within the LDRs, including the zoning variance procedure of Section 30-8, and the procedure for appeal of administrative decisions, as provided under Section 30-7(d) of the Town Code. It is intended to apply only when all other procedures have failed to provide legally required relief.

Implementation: The zoning relief process will be implemented by Development Services staff. Staff will advise interested persons of the procedure and provide public information and forms.

RECOMMENDATION: The Planning and Zoning Board reviewed this Ordinance at their September 15, 2010 meeting, and recommended its approval. Minutes are attached (Exhibit 3)

- EXHIBITS:**
1. Notice of Intent
 2. Ordinance
 3. Minutes of the Planning and Zoning Board's Discussion of this Ordinance

FISCAL IMPACT AND APPROPRIATION OF FUNDS:

Amount \$ _____ Acct # _____

Transfer of funds required From Acct # _____

Town Attorney review required
 Yes No

Town Manager Initials ST

Exhibit 1

RESOLUTION NO. 2010-16

**A RESOLUTION OF THE TOWN COMMISSION OF THE
TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA
PROVIDING FOR ISSUANCE OF A NOTICE OF INTENT
CONCERNING PENDING AMENDMENTS TO CHAPTER
30 OF THE CODE OF ORDINANCES**

WHEREAS, Section 30-531 of the Code of Ordinances of the Town of Lauderdale-By-The-Sea (the "Code") provides for a procedure for the public and the development community to be notified of changes to the Town's land development regulations through the issuance of a notice of intent of pending land development regulations; and

WHEREAS, pursuant to Section 30-531(c) of the Code, the Town Commission shall authorize the investigation, study, development, drafting and consideration of all proposed amendments to the Town's land development regulations; and

WHEREAS, proposed amendments to Section 30-313(31) of the land development regulations of Chapter 30 of the Code regarding sheds, storage buildings and accessory structures were considered by the Town Commission on June 9, 2010, requiring issuance of a notice of intent pursuant to Section 30-531(h) of the Code; and

WHEREAS, proposed amendments to list of permitted uses in the B-1 and B-1-A zoning districts of Chapter 30 of the Code were considered by the Town Commission on July 14, 2010, requiring issuance of a notice of intent pursuant to Section 30-531(h) of the Code; and

WHEREAS, Town staff and the Town Attorney have identified changes to the Town's sign regulations in Chapter 30 of the Code which will enhance their legal defensibility, requiring issuance of a notice of intent pursuant to Section 30-531(h) of the Code; and

WHEREAS, Town staff and the Town Attorney have identified the need to create a zoning relief process in Chapter 30 of the Code to enhance the defensibility of this Chapter, requiring issuance of a notice of intent pursuant to Section 30-531(h) of the Code; and

27 **WHEREAS**, Section 30-531(e) of the Code provides for posted and written notice of the
28 pending amendments to the land development regulations; and

29 **WHEREAS**, pursuant to Section 30-531(c) of the Code, the Town Commission shall
30 hold a public hearing at the next Commission meeting following issuance of a notice of intent,
31 and by majority vote shall either approve or disapprove the further processing of the proposed
32 land development regulations.

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

35 **SECTION 1. Authorization.** Pursuant to Section 30-531 of the Code of Ordinances,
36 the Town Commission authorizes the investigation, study, development, drafting and
37 the Town Commission authorizes the investigation, study, development, drafting and
38 consideration of the proposed amendments to Chapter 30, as described in the Notice of Intent of
39 Pending Land Development Regulations attached hereto as Exhibit "A."

40 **SECTION 2. Effective date of notice.** The Town Commission hereby finds that the
41 effective date of the Notice of Intent of Pending Land Development Regulations shall be July 27,
42 2010.

43 **SECTION 3. Public hearing.** The Town Commission shall hold a public hearing
44 concerning the Notice of Intent of Pending Land Development Regulations on August 25, 2010,
45 and approve or disapprove of the further processing of the proposed regulations.

46 **SECTION 4. Effective date of resolution.** This Resolution shall become effective
47 immediately upon passage and adoption.

48 **PASSED AND ADOPTED** this 27 of July, 2010.

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MAYOR ROSEANN MINNET

54 ATTEST:

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June White
June White, Town Clerk

60 Approved as to form:

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Susan L. Trevarthen
Susan L. Trevarthen, Town Attorney

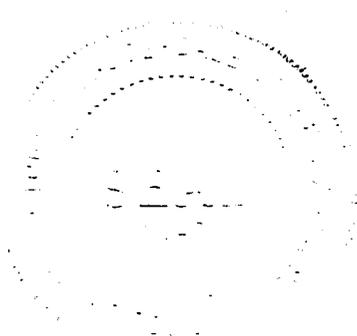


Exhibit "A"
Notice of Intent of Pending Land Development Regulations
Effective July 27, 2010

1. Statement of Purpose: In accordance with Section 30-531 of the Code of Ordinances, the Town hereby issues this **Notice of Intent** to notify the public of proposed changes to the land development regulations of Chapter 30 of the Code of Ordinances ("Code"). Upon Town Commission approval of the further processing of the proposed regulations, the amendments will be included in an ordinance and scheduled for hearing and adoption.

2. Description of Proposed Amendments to Chapter 30 "Unified Land Development Regulations" of the Code of Ordinances:

- a. Amendment to Section 30-313(31) in Article V. "Zoning," Division 2. "Districts," Subdivision L. "Supplemental Regulations," to modify the regulations for accessory buildings and structures, and specify regulations for sheds and storage buildings;
- b. Revising the list of permitted uses in the B-1 and B-1A zoning districts to include pet grooming and possibly other uses in Article V. "Zoning," Division 2. "Districts," Subdivision G. "B-1-A District Regulations" and Subdivision H. "B-1 District Regulations;"
- c. Adopting zoning relief procedures as a new Section 30-22 of Article I. "In General," to address possible unintended violations of federal and state laws in the implementation of this code or its related rules, policies, and procedures; and
- d. Revising the sign code, Article VIII. "Sign Regulations" to include additional severability provisions and possibly other amendments to enhance defensibility.

3. Projected Time Frame for Adoption of Regulations:

- | | |
|--|---------------------------|
| a. Public Hearing and Town Commission Approval of Processing of Proposed Regulatory Changes: | <u>August 25, 2010</u> |
| b. Planning and Zoning Board Hearing on Ordinance: | <u>September 15, 2010</u> |
| c. First Reading of Ordinance By Town Commission: | <u>October 12, 2010</u> |
| d. Second Reading of Ordinance By Town Commission: | <u>November 9, 2010</u> |

4. Application of Pending Regulations:

The proposed regulations shall become effective and applicable to development within the Town following second reading and adoption by ordinance.

Exhibit 2

29 accommodation procedure for claimants, and with the requirement that claimants exhaust
30 administrative remedies prior to filing suit; and

31 **WHEREAS**, the proposed zoning relief procedure will provide the Town with the
32 opportunity to resolve claims related to possible unintended violations of federal and state laws,
33 to avoid costly litigation; and

34 **WHEREAS**, the Town’s Planning and Zoning Board held a public hearing on Septemer
35 15, 2010 to review this Ordinance, and made a recommendation to the Town Commission to
36 adopt it; and

37 **WHEREAS**, the Town Commission has held a properly advertised public hearing
38 pursuant to Chapter 166, Florida Statutes, and finds that the regulation is consistent with its
39 comprehensive plan; and

40 **WHEREAS**, the Town Commission of the Town of Lauderdale-By-The-Sea, Florida,
41 finds that it is in the best interest of the Town’s citizens and residents to approve the proposed
42 amendments to the Code of Ordinances.

43 **NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE**
44 **TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, AS FOLLOWS:**

45 **SECTION 1: Recitals.** The foregoing “WHEREAS” clauses are ratified and confirmed
46 as being true and correct, and are made a specific part of this Ordinance.

47 **SECTION 2: Amendment.** Chapter 30, entitled “Unified Land Development
48 Regulations” of the Code of Ordinances of the Town of Lauderdale-By-The-Sea, Florida, is
49 hereby amended to create Section 30-22 “Zoning Relief Procedures,” as follows:

50 **Sec. 30-22. Zoning relief procedures.**

51 **(a) Purpose and applicability.** In order to address possible unintended violations
52 of federal and state laws, subsequent to implementation of this Code or its related
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54

55 rules, policies, and procedures in advance of costly litigation, zoning relief may
56 be granted pursuant to this section.

57
58 (b) Application. A person or entity shall request relief under this section prior to
59 filing a lawsuit, by completing a Zoning Relief Request form, which is available
60 from the Town's Department of Development Services. The form shall contain
61 such questions and requests for information as are necessary for evaluating the
62 relief requested.

63
64 (c) Notice. The Town shall display a notice on the Town's public notice bulletin
65 board and shall maintain copies available for review in the Department of
66 Development Services and the Town Clerk's Office. The notice shall advise the
67 public that a request for zoning relief under a federal or state law is pending. The
68 location, date and time of the applicable public hearing shall be included in the
69 notice. Mailed notice shall also be provided to property owners within 300 feet, if
70 the request for relief is site specific, in accordance with the procedure provided in
71 Section 30-13(d)(2)(b).

72
73 (d) Application and hearing. The Town Commission shall have the authority to
74 consider and act on requests for zoning relief submitted to the Department of
75 Development Services. A public hearing shall be held within seventy five (75)
76 days of receipt by the Town of the request for relief at a Town Commission
77 meeting. A written determination shall be issued by resolution no later than seven
78 (7) days after the conclusion of the public hearing. The determination may: (i)
79 grant the relief requested, (ii) grant a portion of the request and deny a portion of
80 the request, or impose conditions upon the grant of the request, or (iii) deny the
81 request. Any determination denying the requested relief shall be final, in writing,
82 and shall state the reasons the relief was denied. The final written determination
83 shall be sent to the requesting party by certified mail, return receipt requested.

84
85 (e) Additional information. If necessary, prior to the public hearing, the Town
86 may request additional information from the requesting party, specifying in
87 sufficient detail what information is required. In the event a request for additional
88 information is made to the requesting party by the Town, the seventy-five (75)
89 day time period to schedule a public hearing shall be extended to ninety (90) days
90 to include the time necessary to seek and review the additional information. The
91 requesting party shall have fifteen (15) days after the date the information is
92 requested to provide the needed information. If the requesting party fails to timely
93 respond with the requested additional information, the Town shall notify the
94 requesting party and proceed with scheduling a public hearing and issuing its final
95 written determination regarding the relief requested as required in subsection (d).

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97 (f) Criteria. In determining whether the zoning relief request shall be granted or
98 denied, the applicant shall be required to establish:

99
100 (1) The applicant is a potential claimant under a federal or state law; and

101
102 (2) The applicant believes in good faith that the Town through
103 implementation of its Code has intentionally or unintentionally violated
104 federal or state law for the reasons stated in the zoning relief request; and
105

106 (3) The applicant satisfies the standard set forth in the applicable federal or
107 state statute(s), or legal precedent interpreting the applicable statute(s).
108

109 (g) Exhaustion required. Completion of the zoning relief procedures shall be a
110 supplement to and not a substitute for any other pre-litigation dispute resolution
111 processes available by law to the Town or the applicant. Completion of the
112 zoning relief procedures shall constitute the exhaustion of all administrative
113 remedies available from the Town.
114

115 (h) Effect while pending. While an application for zoning relief or appeal of a
116 determination of same is pending before the Town, the Town will not enforce the
117 Code, rules, policies, and procedures against the property owner, except the Town
118 may seek injunctive relief if an imminent threat to the health, safety and welfare
119 of the public is present.
120

121 **SECTION 3. Codification.** This Ordinance shall be codified in accordance with the
122 foregoing. It is the intention of the Town Commission that the provisions of this Ordinance shall
123 become and be made a part of the Town of Lauderdale-by-the-Sea Code of Ordinances; and that the
124 sections of this Ordinance may be renumbered or re-lettered and the word “ordinance” may be
125 changed to “section,” “article” or such other appropriate word or phrase in order to accomplish such
126 intentions.

127 **SECTION 4. Severability.** If any section, sentence, clause, or phrase of this Ordinance is
128 held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall
129 in no way affect the validity of the remaining portions of this Ordinance.

130 **SECTION 5. Conflicting Ordinances.** All prior ordinances or resolutions or parts thereof
131 in conflict herewith are hereby repealed to the extent of such conflict.

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

134 Passed on the first reading, this ____ day of _____, 2010.

135 Passed on the second reading, this ____ day of _____, 2010.

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Mayor Roseann Minnet

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140

First Reading

Second Reading

141 Mayor Minnet

142 Vice-Mayor Dodd

143 Commissioner Clotey

144 Commissioner Sasser

145 Commissioner Vincent

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147 Attest:

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151 _____
Town Clerk, June White CMC

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153 (CORPORATE SEAL)

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155 Approved as to form:

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159 _____
Susan L. Trevarthen, Town Attorney

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Exhibit 3

Item #3. Amendments to Chapter 30-22 Adopting Zoning Relief Procedures (Town Attorney Susan Trevarthen)

Town Attorney Trevarthen explained no members of the public were present, hence the Board was not calling for public comment on any of the agenda items. The subject item had been drafted by her and presented to the Town for legal reasons. The amendments sought to create a procedure in the Town's Chapter 30 to be applied separately from Chapter 30; the new procedure sought to address the failure of the normal operations of the Code to provide the protections and treatments persons were entitled to under some other source of law. Thus, the proposed procedure would only become relevant if an applicant had been through the rest of the Town's Code and felt they were unable to attain relief and felt the resulting situation violated their rights under one of the other sources of law. The property owner feeling themselves to be in this position would have to file a "request for relief," specifying for the Town what the basis of the request was; this would allow the Town to have a complete understanding of the situation and have the opportunity to grant relief even in the face of the Code failing to do so; it might also forestall parties getting involved in expensive litigation. She noted the case law in such challenges indicated a potential challenger could not ignore this opportunity for relief and was forced to exhaust this remedy before using the avenue of litigation.

Chairman Oldaker asked if such a procedure was common among other municipalities.

Town Attorney Trevarthen replied it was becoming more common, as it was something that was anticipated in a number of statutory schemes; the Fair Housing Act called it a reasonable combination procedure, and the U.S. Congress encouraged such action. The Religious Land Use and Institutionalized Persons Act had statutory language encouraging local governments to provide for such procedures. She noted in the process of implementing those relatively new aspects of the law in other cities, it occurred to them not to limit it to individual statutory frameworks; it should be a tool for use in any kind of situation of this type, hence its being presented in a more generic frame.

Vice Chairman Brandt made a motion to approve the Amendment to Chapter 30, Section 30-22, seconded by Mr. Wick.

Mr. Wick inquired what effect the amendment might have with regard to the Bert J. Harris Act, wondering if it would offer someone a secondary opportunity to come after the Town, as he believed there were some suits in litigation under the Bert J. Harris Act.

Town Attorney Trevarthen remarked the claims under the Bert J. Harris Act were dismissed by the trial court. Some other claims were still pending. The procedure was purposely designed to be open ended and sought to encourage people to come forward to the Town for relief; the aim was for the Town to get one last chance to potentially resolve a dispute before going to court.

In a roll call vote, the motion passed 4 – 0.

**Weiss Serota Helfman
Pastoriza Cole & Boniske, P.L.**

Memo

To: Planning And Zoning Board Members

From: Susan Trevarthen, Town Attorney
James E. White, Assistant Town Attorney

Cc: Jeff, Bowman, Director of Development Services

Date: September 1, 2010

Re: Proposed Section 30-22 "Zoning Relief Procedures"

At the Commission meeting of July 27, 2010 the Commission authorized moving forward with amending Chapter 30 "Unified Land Development Regulations" of the Town Code of Ordinances by creating Section 30-22 "Zoning Relief Procedures" to provide for a zoning relief procedure to address possible unintended violations of federal and state laws in the application of the Code or its related rules, policies, and procedures. This proposed amendment provides a preventative procedure to protect the Town from legal challenges, and facilitates the resolution of disputes.

BACKGROUND

From time to time, the Town Land Development Regulations (LDRs) are updated to conform with recent legal precedent. The Town's application of its Code and related rules, policies, and practices is governed by constantly-evolving case law decisions addressing the rights of applicants and affected parties under the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), the First Amendment to the U.S. Constitution, the Americans with Disabilities Act, the Fair Housing Act and other applicable state and federal laws. In order to encourage resolution of disputes and avoid costly litigation, it is recommended that the LDRs be amended to provide a general zoning relief procedure consistent with federal law.

An example of the application of the procedure is a request for a waiver from development regulations when a reasonable accommodation may be necessary to afford a disabled person the equal opportunity to use a dwelling under the Fair Housing Act. The Act makes it unlawful for the Town to refuse to make "reasonable accommodations" (modifications or exceptions) to rules, policies, practices, or services, when such accommodations may be necessary to allow a resident the equal right to housing. As an example, it may be a reasonable accommodation to waive a setback requirement so that a paved path can be provided to a resident who has impaired mobility.

Consistent with recent case law developments, the proposed zoning relief procedure expands the reasonable accommodation process to address additional types of alleged violations of state and

federal civil rights law, such as a claim that a municipal land development regulation imposes a "substantial burden" on religious exercise in violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA). The proposed procedure provides a case-by-case review process by which Town staff and the Town Attorney will evaluate claims under federal or state statutes concerning the application of the LDRs or related policies, in accordance with the standards of the applicable legal precedent. The request will then be scheduled for a public hearing, with public notice, for consideration by the Town Commission.

The proposed zoning relief procedure supplements existing procedures within the LDRs, including the zoning variance procedure of Section 30-8, and the procedure for appeal of administrative decisions, as provided under Section 30-7(d) of the Town Code. It is intended to apply only when all other procedures have failed to provide legally required relief.

The zoning relief process will be implemented by Development Services staff. Staff will advise interested persons of the procedure and provide public information and forms.