CITY OF VERO BEACH, FLORIDA
JULY 19, 2011 6:00 P.M.
REGULAR CITY COUNCIL MEETING
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA

A G E N D A

1. CALL TO ORDER

A. Roll Call
B. Invocation – Pastor Russel Johnson / Redeemer Lutheran Church
C. Pledge of Allegiance

2. PRELIMINARY MATTERS

A. Agenda Additions, Deletions, and Adoption
B. Proclamations

1. Treasure Coast Waterway Cleanup Day – July 23, 2011
2. Rotary International Youth Exchange Day – July 19, 2011

C. Public Comment

1. FP&L Update – Amy Brunjes

D. Adoption of Consent Agenda

1. Regular City Council Minutes – June 21, 2011
2. **Rotary International – "Peace Pole Project"**
3. **Utility Easement #2010-EG-0076 – Boys and Girls Club of Indian River County – 1729 17th Avenue**
4. **Utility Easement #2011-EG-0091 – Lyndell and Terry Fleming – 6160 37th Street**
5. **Work Order #1372-10 between the City of Vero Beach and URS Corporation; Obstructions Removal – Phase 2**
6. **Small Government Enterprise License Agreement**
7. **Monthly Capital Projects' Status Reports**

(The matters listed on the consent agenda will be acted upon by the City Council in a single vote unless any Councilmember requests that any specific item be considered separately.)

3. PUBLIC HEARINGS

A) An Ordinance of the City of Vero Beach, Florida, amending Section 58-106 of Chapter 58 "Personnel and Retirement," Article II, Division 4 of the Code

of Ordinances of the City of Vero Beach to provide for Enhanced Investment Opportunities; providing for Repeal of all Ordinances in conflict herewith; providing for severability; providing for Codification and providing for an effective date. Requested by the Police Pension Board

B) An Ordinance of the City of Vero Beach, Florida, amending Section 58-101 of Chapter 58 "Personnel and Retirement," Article II, Division 4 of the Code of Ordinances of the City of Vero Beach to provide clarification that an optional benefit selected by a Police Officer shall only be reduced on the death of the Police Officer; providing for repeal of all Ordinances in conflict herewith; providing for severability; providing for Codification and providing for an effective date. Requested by the Police Pension Board

4. RESOLUTIONS FOR ADOPTION WITHOUT PUBLIC HEARING

A) A Resolution of the City Council of the City of Vero Beach, Florida, releasing from all City Easements all that part of the 15 foot alley that was previously abandoned but with easement retained lying South of Lots 3 through 10 and lying North of Lots 11 through 18 in Block 2, replat of Conn Addition; providing for an effective date. Requested by the Engineering Department

B) A Resolution of the City Council of the City of Vero Beach, Florida, releasing from all City Easements the following properties: No. 1: The South 5.00 feet of Lots 24 through 34, Block 21, Royal Park Plat No. 4; together with the North 5.00 feet of Lots 36 and 37, Block 21, Royal Plat No. 4: No. 2: The North 5.00 feet of Lots 38 through 55, Block 21, Royal Park Plat No. 5; together with the North 5.00 feet of the East 10 feet of Lot 56, Block 21, Royal Park Plat No. 5: No. 3: All of the Easements of the previously abandoned alley retained and granted lying between: Lots 24 through 33, Block 21, Royal Park Plat No. 4 and Lots 38 through the East 10 feet of Lot 56, Block 21, Royal Park Plat No. 4 and Lot 38, Block 21, Royal Park Plat No. 5; No. 4: The West 15 feet of Lot 47, Block 21, Royal Park Plat No. 5; No. 5: The East 3 feet of Lot 24, Block 21, Royal Park Plat No. 4: together with the East and West 3 feet of Lots 25 to 37, Block 21, Royal Park Plat No. 4; together with the East and West 3 feet of Lots 38 to 55, Block 21, Royal Park Plat No. 5; together with the East 3 feet of Lot 56, Block 21, Royal Park Plat No. 5; and providing for an effective date.

C) A Resolution of the City of Vero Beach, Florida, prohibiting commercial motor vehicles from using residential streets within the subdivision known as Ocean Corporation Subdivision; providing for an effective date. Requested by the Engineering Department

5. FIRST READINGS BY TITLE FOR ORDINANCES AND RESOLUTIONS THAT REQUIRE A FUTURE PUBLIC HEARING

A) An Ordinance of the City of Vero Beach, Florida, amending Chapter 62, Article III, Commercial Districts of the city of Vero Beach Code; amending Section 62.35 to add Recreation and Park areas as a permitted use in the C-1B, B-1 and C-1 Districts; providing for conflict and severability; providing for an effective date. Requested by the Planning and Development Department

B) An Ordinance of the City of Vero Beach, Florida, amending Chapter 73, Article I, Flood Damage Prevention of the City of Vero Beach Code; providing for new definitions and text revisions to bring Floodplain Management regulations into full compliance with National Flood Insurance Program Rules and Regulations; providing for conflict and severability; providing for an effective date. Requested by the Planning and Development Department

C) An Ordinance of the City of Vero Beach, Florida, Comprehensively amending the following Parking Regulations of the city of Vero Beach Land Development Regulations: Chapter 61, Residential Zoning Districts, Sections 61.07, 61.43, 61.65, 61.87 and 61.102; Chapter 62, Nonresidential Districts, Sections 62.09, 62.29, 62.39, 62.55, 62.74, 62.91, 62.101, 62.191, 62.212, 62.310, 62.411, and 62.422; and Chapter 63, Off-Street Parking and Loading Requirements; providing for conflict and severability; providing for an effective date. Requested by the Planning and Development Department

D) A Resolution of the City Council of the City of Vero Beach, Florida, adopting a Residential neighborhood Traffic Management Program for speed and traffic control; establishing share of cost; providing an effective date. Requested by the Public Works Department

6. CITY CLERK'S MATTERS

A) City Manager Objectives – Requested by Council
B) Time of meeting for the August 16, 2011 City Council Meeting – Requested by City Clerk

7. CITY MANAGER'S MATTERS

A) Live Oak Road Paving and Drainage Improvements – Recommendation of Award – City of Vero Beach Project No. 2005-09-Bid No. 150-11/JV
B) Proposed Sewer Use Ordinance Amendments for Submittal to FDEP

8. CITY ATTORNEY'S MATTERS

A) Amendment to Letter of Intent with FP&L – Requested by the Acting City Attorney

9. CITY COUNCIL MATTERS

A. Old Business

1) **GAI Electrical Consulting Contract – Requested by Vice Mayor Turner**
2) **Water and Sewer Regionalization – Requested by Vice Mayor Turner**
3) **Go Line Bus Station – Requested by Vice Mayor Turner**
4) **Status of Position of City Attorney – Requested by Councilmember Carroll**

B. New Business

1) **Hiring of a Legal Firm with Both Transactional (Mergers and Acquisitions) and Utility Experience to Negotiate on Behalf of the City, and Reporting to the City Council, on the Sale of the Electric Utility to FPL – Requested by Councilmember Carroll**
2) **Chief of Police using Media to Politicize Budget Prior to Public Meetings – Requested by Councilmember Carroll**
3) **Invite FPL to Assist in Negotiations with OUC over our Contract – Requested by Councilmember Carroll**
4) **Council Employee Relationship – Requested by Councilmember Fletcher**
5) **Elimination of Election fees – Requested by Councilmember Heady**
6) **Use of Channel 13 to educate and inform citizens – Requested by Councilmember Heady**
7) **Referendum on Sale of Electric Utility – Requested by Councilmember Heady**
8) **Saving tax dollars on consultants – Requested by Councilmember Heady**
9) **Saving tax dollars and balancing future budgets – Requested by Councilmember Heady**
10) **Resolving traffic concerns – Requested by Councilmember Heady**
11) **Reduction in work load of staff and paper reduction – Requested by Councilmember Heady**
12) **Gag Orders – Requested by Councilmember Heady**
13) **Transactional Attorney – Requested by Councilmember Heady**
14) **Clarification from Richard Winger on Water and Sewer report – Requested by Councilmember Heady**

10. INDIVIDUAL COUNCILMEMBERS' MATTERS

A. Mayor Jay Kramer's Matters
   1. Correspondence
   2. Committee Reports

3. Comments

B. Vice Mayor Pilar Turner's Matters
1. Correspondence
2. Committee Reports
3. Comments

C. Councilmember Tracy Carroll's Matters
1. Correspondence
2. Committee Reports
3. Comments

D. Councilmember Brian Heady's Matters
1. Correspondence
2. Committee Reports
3. Comments

E. Councilmember Craig Fletcher's Matters
1. Correspondence
2. Committee Reports
3. Comments

11. ADJOURNMENT

Council Meetings will be televised on Channel 13 and replayed.

This is a Public Meeting. Should any interested party seek to appeal any decision made by Council with respect to any matter considered at such meeting or hearing, he will need a record of the proceedings and that, for such purpose he may need to ensure that a record of the proceedings is made which record includes the testimony and evidence upon which the appeal is to be based. Anyone who needs a special accommodation for this meeting may contact the City's Americans with Disabilities Act (ADA) Coordinator at 978-4920 at least 48 hours in advance of the meeting.

CITY OF VERO BEACH, FLORIDA
JULY 19, 2011 6:00 P.M.
REGULAR CITY COUNCIL MINUTES
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA

1. CALL TO ORDER

A. Roll Call

Mayor Jay Kramer, present; Vice Mayor Pilar Turner, present; Councilmember Craig Fletcher, present; Councilmember Brian Heady, present and Councilmember Tracy Carroll, present **Also Present:** Monte Falls, Interim City Manager; Wayne Coment, Acting City Attorney and Tammy Vock, City Clerk

B. Invocation

Pastor Russel Johnson of Redeemer Lutheran Church gave the invocation.

C. Pledge of Allegiance

The audience and the Council joined in the Pledge of Allegiance to the flag.

2. PRELIMINARY MATTERS

A. Agenda Additions, Deletions, and Adoption

Mrs. Turner requested that item 9A-1) and 9A-2) be removed from the agenda.

Mr. Monte Falls, Interim City Manager, stated that he has received a request from the Vero Beach Art Club and the Vero Beach Museum of Art to add the re-stated lease agreement to the agenda.

Mr. Fletcher had some concerns with adding something to the agenda that they have not had a chance to read.

Mrs. Peggy Lyon, Assistant City Attorney, assured Council that the lease basically has just been cleaned up, updated, and made a lot shorter than the previous lease.

Mrs. Carroll made a motion to add this item on under City Manager's Matters (item 7-C). Mr. Fletcher seconded the motion and it passed unanimously.

Mrs. Tammy Vock, City Clerk, removed item 4-C) "A Resolution of the City of Vero Beach, Florida, prohibiting commercial motor vehicles from using residential streets within the subdivision known as Ocean Corporation Subdivision; providing for an effective date."

Mr. Heady made a motion to adopt the agenda as amended. Mrs. Carroll seconded the motion and it passed unanimously.

B. Proclamations

1. Treasure Coast Waterway Cleanup Day – July 23, 2011
2. Rotary International Youth Exchange Day – July 19, 2011

Mayor Kramer read and presented both proclamations.

3. Plaque given to Monte Falls for serving as Interim City Manager

The City Council thanked Mr. Falls for serving as the Interim City Manager until a new City Manager could be hired.

C. Public Comment

1. FP&L Update – Amy Brunjes

Ms. Pam Rausch, Vice President of External Affairs for Florida Power and Light (FPL), apologized that Mrs. Brunjes could not be at tonight's meeting. She was here because she knows that FPL had attempted to schedule one on one meetings with Council a week or so ago and the meetings were cancelled because of some concerns from staff. She said hopefully all that has been worked out. She expressed to Council that FPL wants to go through this process as transparent and clear as possible. It is necessary for them to have access to the Elected Officials and they want to be accessible and open to the public at any time. She said with all that said that they do need to move forward with this transaction and the reason for the one on one meetings was to give Council an update on where they are. They are making progress with the due diligence process and they are on target to complete that by September 1st as they indicated early on with their time line. She said that is good news. However, they are at a stopping point because their team has geared up to move forward with the transaction of putting this together as they directed them to do a few months ago and it has become apparent that there really is not the legal negotiating team that the City needs to have in place for them to move forward to actually put together the transaction that Council has asked them to bring back for final consideration. At this point they cannot move forward without representation of legal staff. She was at tonight's meeting to ask Council to please consider this. She noticed that it is on the agenda to be discussed later on in the meeting. She reiterated that they are excited with possibly having the City as their partner and they would like to move forward. They cannot sit back and continue to devote the amount of time and resources that they have dedicated so far if they can't start making some progress. She said that their Attorney, Mr. Patrick Bryan, was at tonight's meeting with her to answer any questions that Council might have.

Mr. David Hunter stated that he was encouraged by what is going on especially with the Power Plant. He asked Council to consider when looking at all the factors of the budget that they don't raise taxes and to keep the Police Department the same. It is not the right time to send a signal to cut back on their Police force.

Mr. Heady commented that one of the things when you talk about taxes is that everyone should keep in mind that each and every single month, each and every single one of them who receive electric from Vero Beach are in a sense paying a tax. The excess that they pay over and above what they would pay if they had FPL rates is essentially a tax on their community. The six-million dollars that is transferred into the General Fund from the Electric Fund is a tax. If they took that same amount of money that is transferred from the Electric Fund and put it in ad valorem taxes it would not increase their taxes. They would just be paying for it out of a different "pocket."

Ms. Ross, Central Beach, stated that she is a part of the neighborhood watch program and is concerned about reducing the budget of the Police Department and no longer having Police Officers patrol their neighborhood. She does not agree with Mr. Heady's comments that recreation was an absolute necessity (article that was printed in the Press Journal).

Mrs. Carroll mentioned that a vast amount of people using their recreation facilities are adults.

Mr. Paul Tanner applauded City Council for making the request based on the amount of residency in the City to reduce the budget in the Police Department. They are doing a very difficult job. He requested that they seriously consider the sale of the utilities. They have the ability to do something important for this community.

Mr. Bill Burn, Vero Beach City Employee, is hearing people say that the employees for the City of Vero Beach don't pay anything. He has paid towards his pension the whole time that he has been employed with the City. He has always paid insurance for his family and the pension for his retirement that he has to pay has increased over the years. He mentioned that there is a cap on vacation and sick time. He expressed that they (the employees) are in the same boat with everyone else. He works for the Recreation Department and he is doing the job that six people used to do and now they are down to three people.

Mrs. Turner thanked Mr. Burn for bringing this to their attention. She mentioned that under the Recreation Department is also Parks.

Mrs. Carroll recognized some of the many things that the Recreation Department does every day.

D. Adoption of Consent Agenda

1. Regular City Council Minutes – June 21, 2011

2. **Rotary International – "Peace Pole Project"**
3. **Utility Easement #2010-EG-0076 – Boys and Girls Club of Indian River County – 1729 17th Avenue**
4. **Utility Easement #2011-EG-0091 – Lyndell and Terry Fleming – 6160 37th Street**
5. **Work Order #1372-10 between the City of Vero Beach and URS Corporation; Obstructions Removal – Phase 2**
6. **Small Government Enterprise License Agreement**
7. **Monthly Capital Projects' Status Reports**

Mrs. Carroll pulled item 2D-2) off of the consent agenda.

2. Rotary International – "Peace Pole Project"

Ms. Lisa Desmond stated that Rotary is an International Organization and they strive from their individuals clubs. They want to present a gift to the City of Vero Beach and that is a Peace Pole. She read a memo and provided information on the Rotary International District 6930 World Pease Initiative (attached to the original minutes). They would like to unveil the Peace Pole on September 21st of this year.

Mayor Kramer made it clear that the location was a little different then what is being shown on the screen.

Mrs. Carroll added that the City of Vero Beach would be joining some fine locations around the world of the 200,000 Peace Poles that already exist.

Mrs. Carroll made a motion that Council accept this gift from the Rotary Clubs of Vero Beach. Mrs. Turner seconded the motion and it passed unanimously.

Mr. Heady made a motion to adopt the consent agenda as amended. Mrs. Turner seconded the motion and it passed unanimously.

3. PUBLIC HEARINGS

A) An Ordinance of the City of Vero Beach, Florida, amending Section 58-106 of Chapter 58 "Personnel and Retirement," Article II, Division 4 of the Code of Ordinances of the City of Vero Beach to provide for Enhanced Investment Opportunities; providing for Repeal of all Ordinances in conflict herewith; providing for severability; providing for Codification and providing for an effective date. Requested by the Police Pension Board

The City Clerk read the Ordinance by title only.

Mayor Kramer opened and closed the public hearing at 6:51 p.m., with no one wishing to be heard.

Mr. David Puscher, Detective Sergeant for the City of Vero Beach Police Department and Chairman of the Police Pension Board, was at tonight's meeting to answer any questions that Council might have.

Mr. Fletcher made a motion to approve the Ordinance. Mr. Heady seconded the motion and it passed 4-1 with Mrs. Carroll voting yes, Mr. Heady, yes, Mr. Fletcher yes, Mrs. Turner no, and Mayor Kramer yes.

B) An Ordinance of the City of Vero Beach, Florida, amending Section 58-101 of Chapter 58 "Personnel and Retirement," Article II, Division 4 of the Code of Ordinances of the City of Vero Beach to provide clarification that an optional benefit selected by a Police Officer shall only be reduced on the death of the Police Officer; providing for repeal of all Ordinances in conflict herewith; providing for severability; providing for Codification and providing for an effective date. Requested by the Police Pension Board

The City Clerk read the Ordinance by title only.

Mayor Kramer opened and closed the public hearing, with no wishing to be heard.

Sergeant Puscher provided Council with some material that they had asked for when this Ordinance was first heard on June 21, 2011.

Mrs. Turner made a motion to approve the Ordinance. Mr. Heady seconded the motion and it passed 5-0 with Mrs. Carroll voting yes, Mr. Heady yes, Mr. Fletcher yes, Mrs. Turner yes, and Mayor Kramer yes.

4. RESOLUTIONS FOR ADOPTION WITHOUT PUBLIC HEARING

A) A Resolution of the City Council of the City of Vero Beach, Florida, releasing from all City Easements all that part of the 15 foot alley that was previously abandoned but with easement retained lying South of Lots 3 through 10 and lying North of Lots 11 through 18 in Block 2, replat of Conn Addition; providing for an effective date. Requested by the Engineering Department

The City Clerk read the Resolution by title only.

Mr. Monte Falls, Interim City Manager, explained that this Resolution is needed to help Center State Bank with the relocation of their utilities.

Mrs. Turner made a motion to approve the Resolution. Mr. Heady seconded the motion and it passed 5-0 with Mrs. Carroll voting yes, Mr. Heady yes, Mr. Fletcher yes, Mrs. Turner yes, and Mayor Kramer yes.

B) A Resolution of the City Council of the City of Vero Beach, Florida, releasing from all City Easements the following properties: No. 1: The South 5.00 feet

of Lots 24 through 34, Block 21, Royal Park Plat No. 4; together with the North 5.00 feet of Lots 36 and 37, Block 21, Royal Plat No. 4: No. 2: The North 5.00 feet of Lots 38 through 55, Block 21, Royal Park Plat No. 5; together with the North 5.00 feet of the East 10 feet of Lot 56, Block 21, Royal Park Plat No. 5: No. 3: All of the Easements of the previously abandoned alley retained and granted lying between: Lots 24 through 33, Block 21, Royal Park Plat No. 4 and Lots 38 through the East 10 feet of Lot 56, Block 21, Royal Park Plat No. 4 and Lot 38, Block 21, Royal Park Plat No. 5; No. 4: The West 15 feet of Lot 47, Block 21, Royal Park Plat No. 5; No. 5: The East 3 feet of Lot 24, Block 21, Royal Park Plat No. 4: together with the East and West 3 feet of Lots 25 to 37, Block 21, Royal Park Plat No. 4; together with the East and West 3 feet of Lots 38 to 55, Block 21, Royal Park Plat No. 5; together with the East 3 feet of Lot 56, Block 21, Royal Park Plat No. 5; and providing for an effective date.

The City Clerk read the Resolution by title only.

Mrs. Turner made a motion to approve the Resolution. Mrs. Carroll seconded the motion and it passed 5-0 with Mrs. Carroll voting yes, Mr. Heady yes, Mr. Fletcher yes, Mrs. Turner yes, and Mayor Kramer yes.

C) A Resolution of the City of Vero Beach, Florida, prohibiting commercial motor vehicles from using residential streets within the subdivision known as Ocean Corporation Subdivision; providing for an effective date. Requested by the Engineering Department

This item was pulled off of the agenda.

5. FIRST READINGS BY TITLE FOR ORDINANCES AND RESOLUTIONS THAT REQUIRE A FUTURE PUBLIC HEARING

A) An Ordinance of the City of Vero Beach, Florida, amending Chapter 62, Article III, Commercial Districts of the City of Vero Beach Code; amending Section 62.35 to add Recreation and Park areas as a permitted use in the C-1B, B-1 and C-1 Districts; providing for conflict and severability; providing for an effective date. Requested by the Planning and Development Department

The City Clerk read the Ordinance by title only.

Mr. Tim McGarry, Planning and Development Director, explained that this Ordinance amends the City's Land Development Regulations to allow "recreation and park areas" as permitted uses in the C-1B, B-1, and C-1 Commercial Districts. Parks and recreation areas are presently allowed in the C-1A District.

Mr. Falls explained the need for this amendment came to light when City staff met with Representatives from Northern Trust Bank regarding possible conversion of its property located at the southeast corner of East Causeway Boulevard and Highway A-1-A from an ATM facility to a "pocket park." Northern Trust Bank intends to transfer ownership of this commercial property, which will adversely be impacted by the widening of turn lanes on SR A-1-A at 17th Street, to the Indian River Land Trust.

Mrs. Carroll thanked Northern Trust for their help in this matter.

Mrs. Turner made a motion to approve the Ordinance on first reading and set the two (2) public hearings for August 16, 2011 and September 6, 2011. Mrs. Carroll seconded the motion and it passed 5-0 with Mrs. Carroll voting yes, Mr. Heady yes, Mr. Fletcher yes, Mrs. Turner yes, and Mayor Kramer yes.

B) An Ordinance of the City of Vero Beach, Florida, amending Chapter 73, Article I, Flood Damage Prevention of the City of Vero Beach Code; providing for new definitions and text revisions to bring Floodplain Management regulations into full compliance with National Flood Insurance Program Rules and Regulations; providing for conflict and severability; providing for an effective date. Requested by the Planning and Development Department

The City Clerk read the Ordinance by title only.

Mr. McGarry reported that last year the City adopted comprehensive revisions to its floodplain regulations based on recommendations by the Floodplain Management Office of the Florida Division of Emergency Management. The adopted Ordinance was approved by the Floodplain Management Office. However, that agency conducted further review of local governments' floodplain regulations, including Vero Beach's, earlier this year. The Floodplain Management Office's review identified specific additions to be included in the City's floodplain regulations and enacted by November 15, 2011 (date new flood insurance rating maps will be available). This Ordinance is intended to bring the City's floodplain regulations into full compliance with the National Flood Insurance Program's rules and regulations.

Mrs. Carroll wondered if this would affect individuals living near river front property and require them to have flood insurance.

Mr. McGarry felt that would depend on their mortgage and insurance company.

Mrs. Turner made a motion to approve the Ordinance on first reading and set the public hearing for August 16, 2011. Mrs. Carroll seconded the motion and it passed 5-0 with Mrs. Carroll voting yes, Mr. Heady yes, Mr. Fletcher yes, Mrs. Turner yes, and Mayor Kramer yes.

C) An Ordinance of the City of Vero Beach, Florida, Comprehensively amending the following Parking Regulations of the city of Vero Beach Land Development Regulations: Chapter 61, Residential Zoning Districts, Sections 61.07, 61.43, 61.65, 61.87 and 61.102; Chapter 62, Nonresidential Districts, Sections 62.09, 62.29, 62.39, 62.55, 62.74, 62.91, 62.101, 62.191, 62.212, 62.310, 62.411, and 62.422; and Chapter 63, Off-Street Parking and Loading Requirements; providing for conflict and severability; providing for an effective date. Requested by the Planning and Development Department

The City Clerk read the Ordinance by title only.

Mr. McGarry reported that the need for such a comprehensive review was called for in the City's adopted Vision Plan (2005) and more recently in the adopted Evaluation and Appraisal Report (2010) for the Comprehensive Plan. Parking and transportation experts recommend that a municipality's parking regulations should be routinely evaluated every three to five years. The City's parking regulations have not been reviewed or amended in over twenty years and contain numerous inconsistencies and omissions. The regulations have not kept up with changes that have occurred in the parking needs of various land uses and do not reflect the urbanized setting of the City of Vero Beach as compared to the more suburban setting upon which most of the City's parking regulations are based. The existing regulations require more parking than needed in many cases resulting in excessive parking areas, characterized by aesthetically undesirable "seas of concrete" that further contribute to increase stormwater flows, degraded surface water quality, and higher development costs. In recognition of these issues, staff in conjunction with the Planning and Zoning Board, prepared this Ordinance that comprehensively revises the City's parking regulations.

Mrs. Turner thanked the Planning and Zoning Board and all the volunteers that serve on their different Boards and Commissions.

Mrs. Carroll thanked Mr. Keith Pelan, the new Chairman of the Planning and Zoning Board, as well as all the new members on the Planning and Zoning Board for the amount of time that they spent on this item.

Mrs. Turner made a motion to approve the Ordinance on first reading and set the public hearing for August 16, 2011. Mrs. Carroll seconded the motion and it passed 5-0 with Mrs. Carroll voting yes, Mr. Heady yes, Mr. Fletcher yes, Mrs. Turner yes, and Mayor Kramer yes.

D) A Resolution of the City Council of the City of Vero Beach, Florida, adopting a Residential neighborhood Traffic Management Program for speed and traffic control; establishing share of cost; providing an effective date. Requested by the Public Works Department

The City Clerk read the Resolution by title only.

Mr. Don Dexter, Interim Assistant Public Work's Director, explained that the Traffic Calming Policy has been developed to address traffic issues that are brought to the City's attention by residents who are concerned about various traffic related conditions on their neighborhood streets. This policy will provide a process and guidelines for the City's staff and citizens to follow as traffic related conditions are analyzed and addressed. He recommended approval of the Resolution.

Mrs. Carroll requested that schools be added in this Traffic Calming Policy. Mr. Dexter told her that could be done before the public hearing is heard.

Mrs. Turner made a motion to approve the Resolution on first reading and set the public hearing for August 16, 2011. Mr. Heady seconded the motion and it passed 5-0 with Mrs. Carroll voting yes, Mr. Heady yes, Mr. Fletcher yes, Mrs. Turner yes, and Mayor Kramer yes.

6. CITY CLERK'S MATTERS

A) City Manager Objectives – Requested by Council

Mrs. Turner felt that it was good that each Councilmember review their different objectives for the new City Manager and come to a consensus and that is what will be discussed at the workshop. She asked Mr. Heady if he would submit his objectives for the new City Manager.

Mr. Heady felt that one of the things that was necessary before they know what the objectives are going to be for the new City Manager is to work their way through the budget. He said until they get through the budget and find out what they are going to do he was not sure what his priorities were going to be.

B) Time of meeting for the August 16, 2011 City Council Meeting – Requested by City Clerk

It was the consensus of Council to hold their August 16, 2011 meeting at 9:30 a.m.

7. CITY MANAGER'S MATTERS

A) Live Oak Road Paving and Drainage Improvements – Recommendation of Award – City of Vero Beach Project No. 2005-09-Bid No. 150-11/JV

Mr. Falls reported that this project is to raise the current elevation of Live Oak Road between Mockingbird Drive and State Road A-1-A and to install new underground stormwater treatment and conveyance system facilities in order to improve the drainage in the area. Included in the bid is an alternate to construct a sidewalk along the south side of Live Oak Road, which will provide a much needed connection between the existing sidewalks on Mockingbird Drive and State Road A-1-A. A poll of the neighbors on the portion of Live Oak that will experience the construction was conducted and showed a

majority are in favor the proposed sidewalk. However, a new poll will be conducted over a larger portion of the neighborhood and will be discussed at future community meetings dealing with traffic calming measures that will also be instituted in the area. It is staff's recommendation to award the contract with the sidewalk portion included as an alternate that staff can direct the contractor to perform at any time during the duration of the contract term. The sidewalk was originally included in the design of the project because of safety concerns for the pedestrians who currently use Live Oak Road.

Mr. Heady commented that the cost of this project is $350,000. He asked if that money was categorical.

Mr. Falls explained that since this is a capital project the money will come from the one-cent sales tax.

Mr. Bill Curley, 436 Live Oak Road, understood that this was the time in the meeting where he could make comments about the sidewalk. He is in favor of having the sidewalk. He told of instances where he has been walking with his wife and has had to actually go into the swale to avoid being hit by a car. He thought that the poll that took place showed that the majority of people in the area were in favor of having the sidewalk installed. He also heard that the cost of the sidewalk was in line with the projected cost of the project.

Mayor Kramer asked if it was possible to put the sidewalk on the other side of the street.

Mr. Falls felt that where they propose to install the sidewalk is the most logical place for it to go. He said that history has shown that once a sidewalk has been installed that property owners do begin to enjoy it.

Mr. Fletcher made a motion to approve the Live Oak Road Paving and Drainage Improvements as presented by staff. Mrs. Turner seconded the motion and it passed unanimously.

B) Proposed Sewer Use Ordinance Amendments for Submittal to FDEP

Mr. John TenEyck, Assistant Water and Sewer Director, presented Council with a proposed sewer use Ordinance with amendments for submittal to the Florida Department of Environmental Protection (FDEP). He explained that FDEP has recently revised their regulations relating to industrial waste pretreatment programs. As a result, the City as the control authority of an approved industrial waste pretreatment program is now required to update its sewer use Ordinance to incorporate these changes. In addition, he understands that the City Council wishes to transfer the duties of the Board of Adjustment to the Planning and Zoning Board. He said this draft of proposed revisions to their ordinance is designed to modify it to comply with both the new FDEP requirements and the Council's objective. The revisions are basically technical changes and are not expected to have any impact on their permitted industrial users. He is requesting that Council give him permission to submit the amended Ordinance to the FDEP for their comments and

preliminary review. After their review, the Ordinance with any FDEP recommended amendments will be brought back to City Council for first reading and then a public hearing.

Mr. Fletcher made a motion to adopt this transmittal and send it to FDEP for their review. Mrs. Carroll seconded the motion.

Mrs. Turner referred to page 10, Section 78-82. She had some concerns where it said that all persons shall connect to the public sewer system where the sewer system is reasonably accessible, in accordance with all applicable regulations. She expressed that many of her neighbors are on septic tanks now and may not want to have to make this change.

Mr. TenEyck explained that the language has not been changed to what is in the current Ordinance.

Mrs. Turner was concerned with the interpretation. She then read on page 11, (2) where it states "The director can impose such conditions, including the requirement that the actual connection be made in his presence and under his supervision, as he deems necessary to enforce the provisions of this article."

Mr. Rob Bolton, Water and Sewer Director, agreed with Mr. TenEyck that this existing language is already in the Ordinance. He explained that the State mandates when someone must connect to sewers.

Mr. Turner felt that it needed to be clarified in the Ordinance. That is not how she would interpret it.

Mr. Bolton said that they could make that revision and bring it back to the City Council.

Mr. Falls asked what kind of time frame were they under.

Mr. TenEyck explained that this needs to be submitted to FDEP by August 1st. The only changes that they made to the Ordinance were the ones that they needed to make in order to comply with FDEP regulations. If there are any other changes that need to be made (he referenced the concerns of Mrs. Turner) then FDEP would like to review them also. He did not see a problem with making a revision to the Ordinance with these minor changes and then submitting them to FDEP by the deadline of August 1st.

Mr. Fletcher amended the motion to include that. Mr. Heady seconded the amendment and it passed unanimously.

This Ordinance will be brought back to Council for approval with these new revisions once it has been approved by FDEP.

A) Vero Beach Museum of Art Amended and Re-Stated Lease Agreement

The Attorneys for both the Vero Beach Museum of Art and the Vero Beach Art Club were at tonight's meeting to discuss the lease agreement.

Mr. Ralph Evans, Attorney representing the Vero Beach Museum of Art, explained that the reason for the rush in getting this lease agreement approved is because some engineering work needs to be done. He recalled that the original 1981 lease agreement between the City of Vero Beach, the Alliance for the Arts, Inc., and the Vero Beach Art Club, Inc., required that the Tenant shall not make any structural alternations, changes, additions, or improvements to the leased premises without prior written consent of the City. The Vero Beach Museum of Art is currently seeking approval of proposed improvements to the Museum that would add a new office and art storage space and would realign the existing service road and these changes require Council approval. The current lease has been amended four (4) times since 1981. They are all in agreement to create a single updated lease incorporating all four lease amendments. In addition, the lease updates include various provisions such as the insurance and bankruptcy requirements and reflects the revised service road being proposed. He urged Council to approve the amended lease agreement.

Mr. Fletcher reiterated that he does not like approving anything that he has not had a chance to read. However, in this case staff has assured him that there are no problems with this lease agreement.

Mr. Fletcher made a motion to approve the lease and allow them (Vero Beach Museum of Art) to move on with their construction. Mrs. Carroll seconded the motion.

Mr. Keith McCormick, Attorney for the Vero Beach Art Club, said that the Art Club is in agreement with the lease. The lease is basically the same as before, it just has been cleaned up a little bit. The Vero Beach Art Club is happy to assist the Museum in going forward with this project.

Mrs. Carroll referred to the changes to the driveway.

Mr. Falls explained that the City has requested that the driveway be that way. They have worked with the Museum on the location of the driveway to make sure that people with boats have adequate room to maneuver.

Mrs. Carroll asked if there would still be parking spaces on the grass.

Mr. Falls answered yes. He said that basically it will be like it is now.

Mrs. Carroll asked if there were going to be any times when this road would have to be shut down for special events.

Mr. Evans said if the road has to be shut down that the Museum would notify the City.

The motion passed unanimously.

8. CITY ATTORNEY'S MATTERS

A) Amendment to Letter of Intent with FP&L – Requested by the Acting City Attorney

Mr. Coment reported that before them is the proposed amendment to the Letter of Intent regarding the potential sale transaction with FPL. The amendment extends the due diligence and negotiation period provided in the original Letter of Intent to December 31, 2011. This extension is necessary due to the previously provided expiration date of July 1, 2011.

Mrs. Turner asked Mr. Coment how he came up with December 31st.

Mr. Patrick Bryan, Attorney for FPL, explained that they chose a date that they felt was realistic.

Mayor Kramer asked with the Letter of Intent, was there still exclusivity between FPL and Vero Beach. Mr. Coment explained that none of the terms have changed. This was just to extend the date of the agreement. Mayor Kramer said so if they wanted to explore different ideas, they would be held hostage until December 31st. He said that he was still pushing for a partial sale and he is unable talk to OUC unless the exclusivity is lifted. Mr. Heady told Mayor Kramer that he could talk to OUC any time that he wanted to. Mayor Kramer said not in regards to a sale of the utility.

Mr. Coment reported that there is a restriction in the Letter of Intent that limits their negotiations with FPL.

Mr. Heady agreed that the Mayor could not negotiate with OUC without Council approval. However, he can talk to OUC any time that he wants to.

Mr. Bryan read the language in the contract that does allow this discussion to take place. He said that these were conditions that they require to this potential transaction.

Mrs. Carroll made a motion to approve the Amendment to the Letter of Intent with FPL. Mrs. Turner seconded the motion.

Mayor Kramer wanted to have a statement from FPL that if they wanted to talk to OUC about these other issues that they could. He said that there have been other Councilmembers expressing some interest in other alternative ideas and he would like to explore them. But, he wanted to have clear language that he is allowed to do that.

Mr. Bryan read the part of the contract that was clear that the City will not participate in any negotiations with any other person regarding the transfer of the assets. He said that this would apply to discussions with OUC.

Mrs. Carroll reminded the Mayor that the City has asked FPL to participate in this with them.

Mayor Kramer would argue with that. He said that there are different people who have pushed for this to happen. He would be happy to negotiate with them, however he would like to have the freedom to explore different ideas.

Mr. Fletcher felt that they needed to stand by their original agreement. Tonight the only thing that they are discussing is changing the date on the Letter of Intent.

Ms. Raush recalled that they spoke about this publically when they originally had the Letter of Intent approved by the Council. This is a provision that they need to stick to as a company. They have spent a lot of time and money and they are working on bringing back a deal for final negotiation, whether the City approves it or not. She said that at this time in order to move forward (and there is a long way to go) they need to keep the exclusively provision and have commitment from the Council that they want to see a transaction put together. She said going down three different paths would not be productive for anyone and not a deal that FPL would be interested in pursuing at this time.

Mayor Kramer did not see them going down three different paths. He said that he just wants them all to work out something that is best for everyone. He cannot imagine picking up liabilities on penalties and having to deal with other entities that might try to have some road blocks placed in this procedure. He felt that it would be beneficial to keep them in the loop.

Ms. Raush commented that they have spent many months doing analysis to see whether they could offer the City's customers the same low rates that they provide their customers. The analysis that was done was based on the entire system and the entire customer base. She said now to go back and look at another scenario is a completely different analysis, which they have not done.

Mr. Heady understands that FPL is going to negotiate the kind of deal that they want whether it is full, partial, or whatever, but FPL is going to do what is in their best interest. He said that during his term, he has talked to a lot of people about the sale of the utility, including Ms. Raush and others from FPL, and he intends to continue to do that. There is not anything at all that this City Council could pass that would in any way infringe his rights of free speech to talk to anybody he wants. He does not have the authority to negotiate a different deal and he thinks the bottom line is that they eventually are going to sell to FPL. If they were voting tonight then FPL would get his vote in the affirmative. But, to tell the Mayor or any Councilmember that they cannot go out and talk to other people (OUC or whoever) is not at all acceptable.

Mr. Fletcher reiterated that this discussion was not about who you can or cannot talk to, it is about extending the date of the Letter of Intent. He said if the Mayor wants to talk to someone then "have at it."

Mayor Kramer commented that if he does that then a lawsuit could be filed and this would put a road block in this process. He wants to do everything legal and abide by what the documents say. Mr. Fletcher told the Mayor that was his decision.

Mr. Bryan made it clear to Council that they were not here tonight to tell Council who they can or cannot talk to. He wanted to make it clear that the objectives are for this period (whatever it is) that they (the City) will negotiate with FPL, because they have devoted a lot of time and expense towards this effort.

Mr. Heady told Mr. Bryan that the City will negotiate with FPL. However, that does not stop any individual member of the City Council from speaking to anyone that they wish to. If the Mayor wants to go and talk to OUC, he could do that because he is not negotiating a contract. The negotiation from the City is with FPL.

Mayor Kramer explained that if he went to talk to OUC it would be about some of the things in the Letter of Intent and he has been advised not to do that.

Mrs. Carroll called the question.

The motion passed 3-2 with Mr. Heady and Mayor Kramer voting no.

Council took a ten-minute break at 7:54 p.m.

9. CITY COUNCIL MATTERS

A. Old Business

1) GAI Electrical Consulting Contract – Requested by Vice Mayor Turner

This item was removed from the agenda.

2) Water and Sewer Regionalization – Requested by Vice Mayor Turner

This item was removed from the agenda.

3) Go Line Bus Station – Requested by Vice Mayor Turner

Mrs. Turner asked for an update on the relocation of the bus terminal.

Mr. Falls reported that he has met with Karen Diegel, of the Senior Resource Association, at a meeting that was held at the County and they reviewed a preliminary site plan for relocating the bus hub. The parcel is located on 16th Street. The Senior Resource Association has indicated that this site would work for them and they haven't

heard any negative feedback from the neighbors. Ms. Diegel will be at the August 16th City Council meeting to talk to Council about this new location.

Mr. Carroll informed the public that there was a location that had been selected and progress was being made, but it was halted by some concerns by the business community. This was in no way the fault of the City Council or City staff in slowing down this process.

Mr. Fletcher asked if Ms. Diegel expects the City to give her this property or are they going to lease it to the Senior Resource Association.

Mr. Falls stated that they have not discussed any of the details. They will get an approximate figure of what the property is worth. He said that this property has not been utilized and has been vacant for the last 30 years.

4) Status of Position of City Attorney – Requested by Councilmember Carroll

Mrs. Carroll read from her memo (on file in the Clerk's office). She said that their City Attorney has voiced concerns to the Council during the budget process that the two (2) City Attorneys they have on staff now are "swamped". She felt that the City needed to decide to either go forward with a full time City Attorney to take over the utility contracts or discuss later on in the meeting to go with hiring a transactional attorney. She knew that the Human Resource Department was working on putting together the advertisement for the City Attorney's job position and she wanted to know what the status of that was and if this Council would like to decide to go forward with an additional City Attorney (which would require a modified budget request) or stay with the attorneys that they have now and hire a transactional attorney.

Mr. Falls recalled that Mr. Anderson forwarded to Council the job description for the City Attorney's job. They have received four (4) applications so far. He briefly went over how the position was posted.

Mr. Carroll reiterated that they needed to come to a decision about hiring a City Attorney and placing it in the budget or stay with their status of the two (2) City Attorneys and consider one of those individuals being appointed as City Attorney and possibly moving forward with hiring a transactional attorney.

Mr. Heady noticed that under New Business there is discussion concerning hiring a transactional attorney. He felt that it was important that they hire a transactional attorney to take care of FPL negotiations. This would also include inviting FPL to assist them with negotiations with OUC and they would have a transactional attorney at that meeting also. He said rather than looking at increasing the staff in the City Attorney's office, if they went ahead and hired a transactional attorney it would take care of this issue. He was in favor of hiring a legal firm (transactional attorney).

Mrs. Turner suggested that they table the status of the City Attorney until they have finished the budget review and had discussion on hiring a transactional attorney.

Mayor Kramer would much rather have them hire an attorney and having the money come from the Enterprise Fund rather than from the General Fund, which is where the money would have to come from if they hired a new City Attorney. He would like to see having a transactional attorney who had experience in electrical utility sales.

Mrs. Carroll will table this item and bring it back at the August meeting to further discuss the status of the position of the City Attorney.

B. New Business

1) Hiring of a Legal Firm with Both Transactional (Mergers and Acquisitions) and Utility Experience to Negotiate on Behalf of the City, and Reporting to the City Council, on the Sale of the Electric Utility to FPL – Requested by Councilmember Carroll

Mrs. Carroll felt that they needed to hire a legal firm with both transactional (mergers and acquisitions) and utility experience to negotiate on behalf of the City and report to the City Council on the sale of the Electric utility to FPL. The firm would be responsible for the OUC contract, FMPA entitlements and the acquisition of the Vero Beach Electric with FPL. The City needs representation on all of those issues. Gray Robinson has stated that they have not been hired to do so and are not negotiating on behalf of the City with other agencies, such as FMPA and OUC. The City Attorney's office only has two (2) attorneys and there office is very busy at this time. She provided some names of firms that they may want to consider having represent the City Council as their transactional attorney to negotiate the terms of the contract resolution with FMPA, OUC, and any other entities. She does not have any relationship with any of these firms. Her point in putting this package together was to show that there are a number of large firms in the State of Florida who are experienced both in utilities and transactional law. In discussing this concept with FPL they feel that the City needs representation to begin negotiations.

Mr. Heady had some additional names of some firms that he could add to the list. He suggested discussing this item at their meeting that has already been scheduled for Friday.

Mr. Fletcher asked Mr. Coment if they would need to go out to bid on this.

Mr. Coment explained that attorney services are a little different than architects and engineers. They are not constricted by the CCNAC process. He asked their Purchasing Manager to discuss the RFQ that they did in the past for the headhunter that was hired.

Mr. John O'Brien, Manager of Purchasing, was looking at the Florida Statutes where it mentions the procurement of contractual services. He does not have the definition of

contractual services. He felt that he should get with the City Attorney after the meeting and they should look at the Statute more closely before giving advice to the Council. The Statute does say anything over $35,000 for contractual services has to go out to bid.

Mr. Coment added that he felt that they had pretty fertile grounds advertising in the Florida Bar news when looking for a labor attorney.

Mrs. Carroll expressed that the other thing that they need to be concerned with is that FPL is a very large statewide company and she is sure that they have many transactions throughout the State and they needed to make sure that whoever is selected that there would not be a conflict with FPL.

Mr. Fletcher requested that Mr. O'Brien and Mr. Coment meet and be prepared to discuss this item at their Friday meeting.

Mrs. Carroll made a motion that the Council feels that it is imperative that they do hire a transactional attorney and in order to move forward with that, staff (Mr. O'Brien and Mr. Coment) needs to get together and discuss procedures. Mr. Fletcher seconded the motion.

Mayor Kramer wanted to amend the motion to include that the firm hired must have electrical utility experience.

Mr. O'Brien said they could delineate that in the RFQ.

Mrs. Carroll disagreed with specifically stipulating electrical experience. She believed that there have been very few electrical transactions within the State of Florida with the sale of electrical utilities.

Mayor Kramer wanted to limit the qualifications at this point then open it up as they go. He said they need to get the firms who have the most experience and then move on if they need to look at the firms who don't have as much experience. He was told that is the short listing process.

The motion passed unanimously.

Mr. Heady commented that without exceeding the threshold of $35,000 they could on Friday hire someone to work against a retainer of $35,000 so that they could start the process. He said whoever they give a long term contract they could start where this person left off. This could happen on Friday.

Mr. Coment reported that there still are several things going on in the background as far as not getting the final evaluations from GAI on the whole system. Also, the FMPA process of trying to find out if there is someone interested in those entitlements. He does not know if this is that big of a rush that needs to be done in the next week or two. He did not know what negotiations could take place if there are no numbers yet.

Mr. Fletcher felt that they needed to get the attorneys on line.

Mr. Heady added that there are lots of things to negotiate. He said as far as the evaluation is concerned, when they receive the evaluation then it will be used by Council to determine whether or not the offer from FPL comes close to the evaluation. They do not need that evaluation to start this process.

Mrs. Carroll asked Ms. Rausch if they had someone to negotiate on their behalf now, is FPL ready to begin negotiations.

Ms. Rausch said that they would be ready to start tomorrow.

Mr. Bill Teston, Finance Commission member, had some questions. He said that no one liked the excess fees that they are having to pay for utilities. He asked where is the due diligence that they should do as a City to make sure that when they sign that contract that the citizens of this community come out of this "whole". He said that FPL has done their due diligence and knows before they purchase something what a value it is for them. He asked where is the information (numbers) that the City is obtaining and where are they obtaining it from that will tell them what they have to come away with so that the citizens won't be told that they have a big bill on their hands. He asked again if they were doing due diligence.

Mr. Fletcher answered yes that GAI is doing their due diligence and it is underway.

Mr. Teston continued by saying that this City owns this utility entity and they need to have information in hand when they begin negotiations with this company as to what the City has to have in order to keep…Mr. Fletcher told him that they have a corporation currently doing an evaluation of their system to tell them what it is worth. Mr. Teston asked if the citizens of Vero Beach are going to know that information before the sale is finalized. He was told that this information should be provided to them in the middle of September.

Mr. Heady added that there are Advisory Commissions who certainly understand what is going on in the community and will be looking into these things.

Mr. Teston just wanted to make sure that whatever they choose to do (sell or not to sell to FPL) that they have clearly taken the citizens of Vero Beach into consideration in any deal that they make.

Mr. Falls reported that there has been a joint Utility/Finance Commission meeting set for August 30th at 10:00 a.m. and September 8th at 10:00 a.m. and at those meetings this matter will be discussed.

Mr. Teston wanted to make sure that they were talking about the same thing. He said that there is a stream of revenue of about six and a half million dollars that is being made use

of primarily by the citizens of Vero Beach. He asked will the evaluation show where that stream is to be captured in lieu of coming from the utilities.

Mr. Falls understood that the appraisal would show how much the system is worth. These issues will be discussed at the joint meetings scheduled for the Finance and Utilities Commission. He reiterated that the City has hired GAI to do the appraisal.

Mr. Heady told Mr. Teston that the income stream that currently comes from utilities is a tax. Mr. Teston agreed with Mr. Heady. But still wanted to know where the rest of the revenue would come from for a small inefficient utility company. Mr. Heady said that all of the income from the City is essentially a tax and if you look at the rate disparity between FPL and Vero Beach Electric and take out that six million dollars, there is still a huge gap between what ratepayers pay.

Mr. Dick Winger, Vice Chairman of the Finance Commission, wanted to support Mr. Teston. It seems to him that when they are doing the budget process that they do a budget that allows for the sale of this entity and figuring out what the consequences will be if it is sold. He suggested having two budgets instead of just one.

Mr. Herb Whittall, Chairman of the Utilities Commission, commented that both the Finance and Utilities Commission will be looking at these things, but the new City Manager will have to look at what staff changes are going to be made in City Hall if they sale the utilities. He said that those savings also need to be included in the budget. He reiterated that is a matter that has nothing to do with the Finance or Utilities Commission.

Mr. Fletcher noted that he has talked to Mr. O'Connor and he is aware of that.

Mr. Ken Daige asked with the due diligence process that is rolling on out, are they were going to hold a public hearing where the public can come in and will be shown the worth of their system, will taxes go up and where is the money going to come from.

Mrs. Turner expressed that they cannot recommend a sale without providing that information. She said they are not there yet. The City Council is not going to go forward and recommend a sale without presenting the information to the public.

2) Chief of Police using Media to Politicize Budget Prior to Public Meetings – Requested by Councilmember Carroll

Mrs. Carroll stated that this item was discussed yesterday at the Budget Hearings when they were discussing the Police budget. The question was did the Chief of Police use the media to politicize the budget prior to public meetings. She was asked by Mr. Fletcher if by discussing this item yesterday, would this item be pulled off the agenda tonight. She told him that she would need to wait and see if all of her questions were answered. She said that all of her questions have not been answered. She was surprised that Chief Dappen was not at tonight's meeting. Her question to him would be in the email that was sent out to the community from Officer Morrison concerning how the Police budget cuts

would affect the neighborhood watch program, how did people in the community know of these cuts so Officer Morrison could produce this email. Chief Dappen answered her by saying that he knew about this for about a month. Mrs. Carroll then asked him how did the community know about these cuts before the email was written. She listened to the tape of yesterday's meeting when this was discussed and Chief Dappen said seven (7) times that he did not know. She said that last night she received two (2) telephone calls at home by individuals who were at a neighborhood watch meeting in these Council Chambers and Chief Dappen told individuals about two to three days prior to the email coming out that he was asking them to contact the Council about these cuts. She was told by Chief Dappen yesterday that he did not know how the community found out about it and yet she received phone calls that said that he had told members of the community to make those calls before the information came out from Officer Morrison. Mrs. Carroll stated that if this is true then Chief Dappen was lying to her yesterday and she does not appreciate that.

Mr. Falls stated that he could not speak for Chief Dappen.

Mrs. Carroll voiced her displeasure that Chief Dappen was not in attendance for tonight's meeting. She told Mr. Falls that for the next three (3) days he (Chief Dappen) was his (Mr. Falls') responsibility.

Mayor Kramer agreed that seeing that Chief Dappen was on the agenda that you would have thought he would have been at the meeting. However, he did not want to get too far in going after someone if they were not at the meeting to defend themselves.

Mr. Heady would agree with the Mayor in principal. However, when a staff member sees something listed on the agenda that pertains to him or his department, he would say that they would have some obligation to be at the meeting. He said avoidance of a meeting does not give Chief Dappen a free pass.

Mrs. Carroll would leave this up to Mr. Falls on how he would like to pursue this issue.

3) Invite FPL to Assist in Negotiations with OUC over our Contract – Requested by Councilmember Carroll

Mrs. Carroll explained that their consultants GAI, have not been hired by the City to negotiate the contracts. She would like to invite FPL to assist the City with their negotiations with OUC.

Mr. Heady made a motion to invite FPL to assist the City with negotiations with OUC. Mrs. Turner seconded the motion.

Mayor Kramer cautioned the Council to have them (FPL) negotiate on the City's behalf.

Mr. Bryan commented that he did hear the term negotiate and that is not their intention. He said that they are willing to assist and not negotiate on behalf of the City.

The motion passed 3-2 with Mr. Fletcher and Mayor Kramer voting no.

4) Council Employee Relationship – Requested by Councilmember Fletcher

Mr. Fletcher commented that the Charter is specific about Council giving orders to employees. Only the Charter Officers are to receive instructions from Councilmembers. He read they are strictly prohibited from giving requests to employees. He said that in the past months a large portion of the correspondence that has come across his desk has been from individual Councilmembers to select employees other than Charter Officers giving orders for specific actions to be taken or directing such employees to perform certain tasks. The Charter is very clear that any action requested by a Councilmember must be directed to a Charter Officer not to an employee of a Charter Officer. Charter Officers "must" have control of their employees work assignments and not be controlled by random demands by Councilmembers. He asked Council to please extend their new City Manager the courtesy of going directly to him for any action that they might need. He said that Managers need to know what is going on and what the workload of their employees is. The only way they can control this is if the Councilmembers go directly to the Charter Officers. He spoke to Mr. Coment about the Charter and it does not carry with it a force of law, however if this action continues that anyone could get a court order to stop the action. If that action is still ignored it is reason for removal for a Councilmember. He reiterated to Council that they need to go through the Charter Officers when they have action to take.

Mrs. Turner told Mr. Fletcher that maybe his mail is different then hers, but she has not seen the correspondence that Mr. Fletcher is referring to. Mr. Fletcher said that he was not going to argue about this. He has made his point. Mrs. Turner showed him her last three months of correspondence. She said that if he is going to taint this Council with this, then she feels that he needs to substantiate this claim.

Mr. Fletcher felt that it was unfortunate that Mrs. Turner would use the word "taint."

Mr. Heady agreed with Mrs. Turner that he has not seen this large number of correspondence directing any staff member to perform certain tasks. He said generally speaking this Council has a pretty good relationship with the City Manager and the rest of the staff. He thinks that staff understands that there is not a single Councilmember that can direct them to do something. He did not see this as an issue or a problem.

Mrs. Carroll asked Mr. Fletcher why the work agreement between the City and Mr. Coment was attached to this document.

Mr. Fletcher explained because it specifically mentions Mr. Coment's terms in the contract, meaning they will go through him and not through his immediate employees.

Mr. Coment explained that in paragraph one of his contract that he outlined how historically things have worked in the City Attorney's office. He said that if they are

asked by one Councilmember to do a project that is going to consume a lot of time that would be something where direction needs to come from the whole Council.

Mrs. Turner asked Mr. Falls if he has seen any correspondence from a Councilmember directing his staff to do something.

Mr. Falls did not recall a specific one. He said most of the things that he has received recently have come to him and he sends it to his staff.

5) Elimination of Election fees – Requested by Councilmember Heady

Mr. Heady wished to discuss the elimination of the Election fee that the City charges.

Mrs. Vock informed Council that the total filing fee is 158.00. She said that $50.00 is charged by the City and the remainder $108.00 is an Election assessment charged by the State. She said that they don't have the authority to eliminate the fee that the State charges.

Mr. Coment added that there is a form that can be filled out declaring hardship if someone chooses not to pay the fee.

Mr. Heady corrected Mr. Coment and said that it is an undue burden. He made a motion to eliminate the fee that the City charges ($50.00). The motion died for lack of a second.

6) Use of Channel 13 to educate and inform citizens – Requested by Councilmember Heady

Mr. Heady suggested that for the month of September and the month of October one of the things that would be nice to run on Channel 13 is a free and open discussion with the candidates and then the community at large would understand where the candidates are coming from, what plans they have and what they want to accomplish if they are elected or re-elected. He said that this is an informational tool to inform citizens. He said they are running the channel anyway so it would not be a huge cost to the City.

Mrs. Turner mentioned that the City Clerk provided them with the Programming Policy for the Government Access Channel and although it may be very interesting and informative to the public, political or campaign programming is specifically prohibited according to their policy.

Mr. Heady was not suggesting that they should have someone with paid political advertisements. What he is suggesting is an educational opportunity where candidates could sit and debate some of the issues and the public would know where they stand. He said right now they have an unannounced candidate who comes up to the podium and gives his position on issues all the time. So there are some candidates that they know where they stand.

Mrs. Turner asked Mr. Coment if this would be allowed.

Mr. Coment said that policies can be changed. But traditionally this local government has kept Channel 13 politics free.

Mayor Kramer added that the issue might be that it would be favoring incumbents rather than new candidates coming in. He said that it is a good idea, but there is a lot of room for abuse.

Mrs. Carroll asked if they allow paid advertisements. She was told no. She said that she would rather see Channel 13 be utilized by some of their non-profit organizations in the area.

Mr. Coment said that the problem comes in when you start opening up your local channel to other entities or who do you allow on the channel and who do you say cannot be on the channel.

Mr. Fletcher felt that they should leave the Channel as it stands now.

7) Referendum on Sale of Electric Utility – Requested by Councilmember Heady

Mr. Heady said that this item was talked about earlier and it is clear that his item will be put on the November ballot.

8) Saving tax dollars on consultants – Requested by Councilmember Heady

9) Saving tax dollars and balancing future budgets – Requested by Councilmember Heady

These items were not discussed.

10) Resolving traffic concerns – Requested by Councilmember Heady

Mr. Heady said that Mr. Falls has already taken care of this matter.

11) Reduction in work load of staff and paper reduction – Requested by Councilmember Heady

Mr. Heady would have Computer Limits deliver a computer so Council could take a look at it and make a choice of what kind of computer that they would like to have if they choose to go with a paperless agenda.

12) Gag Orders – Requested by Councilmember Heady

Mr. Heady wanted to make it clear that there was not a gag order that would stop him from talking to people. He fully intends to talk to anyone that he wishes to talk to. Also, that anyone on this Council can talk to anyone that they would like they just are not free to go out and negotiate a contract.

13) Transactional Attorney – Requested by Councilmember Heady

Mr. Heady requested that they add on to Friday's meeting that Council come up with some names of different firms for the process of hiring a transactional attorney. They could have someone begin working as long as they stay below the statutory limits of a retainer fee.

14) Clarification from Richard Winger on Water and Sewer report – Requested by Councilmember Heady

Mr. Heady mentioned that in regards to the water and sewer regionalization, they heard that a member of the public was one-hundred percent wrong when they spoke before the Council in regards to the rates for the Village of Royal Palm Beach. He asked for clarification on this.

Mayor Kramer wanted to make it clear that there was no way that someone could be one-hundred percent right or one-hundred percent wrong in this matter.

Mr. Dick Winger asked Mr. Heady if he would accept the word of a former Elected Official from the Village of Royal Palm Beach. Her name is Barbara Yourish (spelling may not be correct). She was quoted in the Vero Beach News Weekly as saying that she can assured them that the sale of the Royal Palm Beach utilities system to Palm Beach County was and still is the envy of other municipalities and said that she felt that it was a win-win situation for the community. He referred to a letter sent by Mr. Heady to the Finance Commission and read the last sentence. Mr. Winger said that what he did when he received the letter this afternoon was talk to Mr. Falls and asked him to assemble the information as requested by Mr. Heady. He said that whatever staff says are the facts in the case and he would be willing to say they are the facts. He still suggested to Council that it was a very good offer (referring to the Village of Royal Palm Beach and Palm Beach County) and the City of Vero Beach would be lucky to get an offer as good as that one. He thanked the Council for listening to his comments.

Mr. Heady noted that in the article that appeared in the Vero Beach News Weekly they talked about it being a very good deal for government in that the ratepayers were held hostage with a higher rate for a term. He said there was a presentation showing that the ratepayers were stuck with higher rates and then they heard from the Finance Commission that was one-hundred percent inaccurate, that they were paying the same rates. He said as far as the former Councilmember's comments go that it was good for the government, he would argue that FPL is sitting there and they could go out and negotiate a deal with them that would add a surcharge to the ratepayers in their territory for a period of years and get an enormous price for their utilities. He said that this would

be a very good deal for the City of Vero Beach, but he did not think that it would be a very good deal for the community. What he likes about FPL is that they have said that the ratepayers in their territory would get the same low FPL rates as their customers do now with no surcharge added on. Mr. Heady thought that this also applies with water and sewer. He said they could add a surcharge to those in their territory and increase the price and proceeds to the City, which would amount to a good deal for City government, but it would not be a good deal for the community. He just wanted some clarification from Mr. Winger, because he said that the presentation given by Mr. Heran was inaccurate. He wants to be able to make a decision with accurate information. Also, when the presentation was given to them they were told that this was a presentation from the Finance Commission. He has since been informed by members of the Finance Commission that was not at all accurate.

Mr. Rob Bolton, Water and Sewer Director, stated that today he sent a memo to Mr. Falls that Council should be receiving that discusses the transaction. He thinks that there is a little confusion and he will make a phone call tomorrow to Palm Beach County. The rates that the Village of Royal Palm Beach paid and froze was for the Village of Royal Palm Beach. The outside territory went to the County's rate, plus a ten-percent surcharge. He will verify this information and report back to the Council on Thursday.

Mr. Heady wants to know the truth about the Village of Royal Palm Beach deal. He reiterated that he still does not believe that they were being told the truth about the deal.

Mr. Bolton reported that Mr. Winger was provided with some wrong information from the Attorney in Palm Beach County and that is outlined in the memo that Council will be receiving from him.

10. INDIVIDUAL COUNCILMEMBERS' MATTERS

A. Mayor Jay Kramer's Matters

1. **Correspondence**
2. **Committee Reports**
3. **Comments**

Mayor Kramer reported that he attended a Groundbreaking ceremony at Center State Bank, and toured the Florida Institute of Technology (FIT).

B. Vice Mayor Pilar Turner's Matters

1. **Correspondence**
2. **Committee Reports**
3. **Comments**

Mrs. Turner noted that she received a request from a citizen residing between State Road 60 and 58th Avenue regarding an update of the tree trimming near power lines. Mr. Falls would get the person's name from Mrs. Turner and get in touch with him.

Mrs. Turner again thanked Mulligan's for their support in the July 4th events. She said that the citizens of this community need to support Mulligan's by attending the restaurant.

C. **Councilmember Tracy Carroll's Matters**
   1. **Correspondence**
   2. **Committee Reports**
   3. **Comments**

Mrs. Carroll attended Christmas in July for the Homeless Family Center and she informed the public of a Play that would be taking place at the Riverside Children's Theater.

C. Councilmember Brian Heady's Matters
   1. **Correspondence**
   2. **Committee Reports**
   3. **Comments**

D. Councilmember Craig Fletcher's Matters
   1. **Correspondence**
   2. **Committee Reports**
   3. **Comments**

11. ADJOURNMENT

Tonight's meeting adjourned at 9:38 p.m.

2D-2)

City Council Agenda Item
Meeting of July 19, 2011

TO: Mayor Jay Kramer
Vice Mayor Pilar Turner
Councilmember Brian Heady
Councilmember Craig Fletcher
Councilmember Tracy Carroll

FROM: Monte K. Falls, P.E. - Interim City Manager MKFalls 7/12

DATE: July 12, 2011

SUBJECT: **Rotary International "Peace Pole Project"**

REQUESTED BY: Interim City Manager

The following is requested as it relates to the above-referenced agenda item:

✓ Request Council review and approval based on the attached supporting documentation.

____ Request Council review and possible action.

____ No action required. (Information only)

MEMORANDUM

TO: The Honorable Mayor Jay Kramer, Vice Mayor Pilar Turner, Councilmember Brian Heady, Councilmember Craig Fletcher and Councilmember Tracy Carroll

FROM: Monte Falls, P.E. - Interim City Manager

DATE: July 12, 2011

SUBJECT: **ROTARY INTERNATIONAL "PEACE POLE PROEJCT"**

Recommendation:

Approve placing the Rotary International Peace Pole at Humiston Park.

Funding:

No funding is required.

Background:

On November 9, 2010, Ms. Lisa Ferrari Desmond, Chairperson for Rotary International, made a presentation to the Recreation Commission regarding their "Peace Pole Project" (see attached Minutes). On July 7, 2011, Councilmember Tracy Carroll suggested Humiston Park as the location of the Peace Pole.

I have met with Public Works Grounds Maintenance Manager Nanette Haynes, and she concurs with the location shown on the attached sketch. Rotary International will be responsible for installation and maintenance.

Monte K. Falls, P.E.

MKF:jav
Attachments

N:\AGENDA\PUBLICWORKS\2011\ROTARY INTERNATIONAL PEACE POLE PROJECT.DOCX

VERO BEACH RECREATION COMMISSION MINUTES
Tuesday, November 9, 2010 – 4:00 p.m.
City Hall, Council Chambers, Vero Beach, Florida

PRESENT: Chairman, Debbie-Kay Whitehouse; Vice Chairman, Richard Yemm; Members: Dr. Daniel Stanley, Greg Holtan (arrived at 4:14), Judy Jones, and Mike Redstone **Also Present:** Recreation Director, Rob Slezak; Assistant Recreation Director, Patty Howard; and Senior Administrative Assistant, Rita Hawkins

Excused absence: Bea Gardner

1. CALL TO ORDER

The Chairman called the meeting to order at 4:00 p.m. and the Senior Administrative Assistant performed the roll call.

2. APPROVAL OF MINUTES

A) October 12, 2010

Mr. Yemm made a motion to approve the October 12, 2010 Recreation Commission minutes. Mr. Redstone seconded the motion and it passed unanimously.

3. NEW BUSINESS

A) Election of Officers

1. Chairman

Mrs. Whitehouse nominated Mr. Yemm for Chairman. Ms. Jones seconded the nomination. There were no other nominations. Mr. Yemm was unanimously appointed as Chairman of the Recreation Commission.

2. Vice Chairman

Mrs. Whitehouse nominated Mr. Redstone for Vice Chairman. Ms. Jones seconded the nomination. There were no other nominations. Mr. Redstone was unanimously appointed as Vice Chairman of the Recreation Commission.

B) Peace Pole – Ms. Sandy Oswald, Rotary Club

Ms. Lisa Ferrari Desmond, Chairperson for Rotary International, explained that she took over as Chairman for Ms. Oswald last week so that is why Ms. Oswald is not at the meeting. Ms. Desmond read from a handout (copy on file in the City Clerk's Office). She said that on September 29, 2010 she gave this "Peace Pole Project" presentation to the Veteran's Council, but it was not approved by them for the Veterans Memorial Island location. She said that she came to the Recreation Commission meeting today to ask for

their consideration of erecting a Peace Pole in the City of Vero Beach. She asked if there were any questions from Commission members.

Mr. Redstone asked if they are going to place a Peace Pole at each of the locations she listed in the handout.

Ms. Desmond replied no. They are looking for just one location and the list provided a few suggestions.

Mr. Redstone asked Mr. Rob Slezak, Recreation Director, if the pole would be placed in the middle of the Park or near a walking area.

Mr. Slezak said that they are normally put near a walking area. He said that the Peace Pole is not very large, but they want it to have a lot of visibility.

Ms. Desmond said that the Peace Pole can be made of wood, metal, marble, etc., and Rotary International will cover the cost of making the pole.

Mr. Redstone asked Ms. Desmond if they would consider putting the Peace Pole near the Royal Palm Pointe fountain since that is a Rotary sponsored fountain.

Ms. Desmond said that would not be a bad idea, but she is not here today to tell the Commission what she would like. She would love to hear what the Commission envisions.

Dr. Stanley said that he had the opportunity to be at the Veterans Council meeting when Rotary International gave their presentation. He suggested that they consider Charles Park, because there were discussions of making that a sanctuary area.

Ms. Jones said that she noticed landscaping in the diagram. She asked if the City would be responsible for the initial planting.

Ms. Desmond said that the City could do the landscaping if they wanted to.

Ms. Jones asked if there would be a dedication ceremony.

Ms. Desmond replied yes. They usually dedicate them on World Peace Day.

Mrs. Whitehouse asked if the Rotary Club would be responsible for the installation.

Ms. Desmond replied yes.

Mrs. Whitehouse said that one area that has a lot of diverse traffic is at City Hall. She said that the idea of having a Peace Pole outside of City Hall sends a wonderful message.

Mr. Yemm asked who would be responsible for the maintenance.

Ms. Desmond said that Rotary would be responsible for any maintenance if it is needed.

Mr. Yemm said that one place in Vero Beach that tourists frequent is Riverside Park.

Ms. Desmond said that she is looking to the Commission to decide on a location.

Mrs. Whitehouse made a motion that a letter of recommendation be given to City Council stating the Commission is in agreement for the consideration of placing a Peace Pole in the City of Vero Beach, but they are not recommending a specific location. Mr. Redstone seconded the motion and it passed unanimously.

Ms. Desmond thanked the Commission for their recommendation.

Mr. Yemm said that it would help if Rotary International recommended a specific location for the Peace Pole when they make their presentation to City Council.

C) Congratulations to Bea Gardner

Mrs. Whitehouse said that Ms. Gardner was given an award for being a founder of the Downtown Friday Fest. Mrs. Whitehouse showed a photograph that she took of Ms. Gardner receiving a plaque and she wanted to present the photo to her.

4. OLD BUSINESS

A) Letter of Recommendation - Concept of Vero Beach Sport Village Cloverleaf Project

Mrs. Whitehouse said that Mr. Craig Callan, Minor League Baseball General Manager, came to a couple of their Commission meetings and gave presentations on the Vero Beach Sport Village. She said that he has also gone before City Council, been to Special Call meetings, and he has met with the County Commissioners regarding the property.

Mrs. Whitehouse made a motion that a letter of recommendation be written to City Council showing the Commissions support of the Cloverleaf project. Mr. Holtan seconded the motion and it passed unanimously.

5. RECREATION DIRECTOR'S MATTERS

A) Veterans Day

Mr. Slezak said that there will be a Veterans Day ceremony on Thursday November 11, 2010 at Memorial Island Sanctuary starting at 10:00 a.m.

B) Tree Lighting and Boat Parade

Mr. Slezak said that the Tree lighting and Boat Parade will be on Friday December 3, 2010 at Royal Palm Pointe starting at 5:30 p.m.

C) Senior Christmas Party

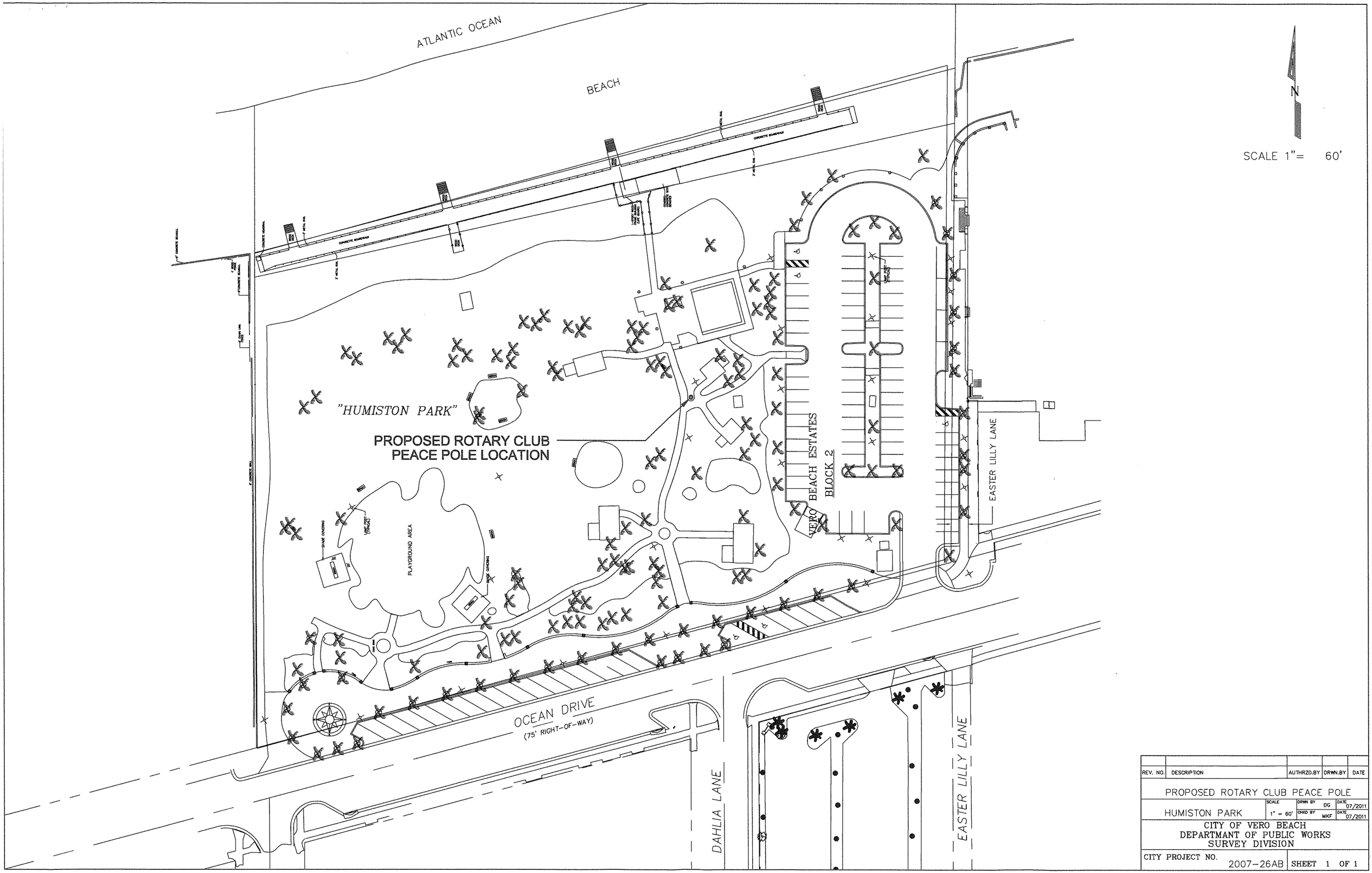
A Peace Pole is a hand-crafted monument that displays the message and prayer **May Peace Prevail on Earth** on each of its four to seven sides, each side in different languages. The project started in Japan in 1955 by Masahisa Goi, who decided to dedicate his life to spreading the message, "May Peace Prevail on Earth" in response to the bombings on Hiroshima and Nagasaki. Peace Poles are handcrafted monuments erected the world over as international symbols of Peace.

Poles Around the World
Peace Poles can be found in town squares, city halls, schools, places of worship, parks, and gardens - any place where the spirit of Peace is embraced by people of good will. Since the beginning of the project over 200,000 Peace Poles have been planted in over 200 countries around the world.

Some of the extraordinary locations include the Pyramids of El Giza in Egypt, the Magnetic North Pole in Canada, Gorky Park in Russia, and Angkor Wat in Cambodia. They are promoting healing of conflict in places like Sarajevo, the Atomic Bomb Dome in Hiroshima, and the Allenby Bridge on the border between Israel and Jordan.

Mayors in many parts of the world have planted Peace Poles to dedicate their cities and towns to world Peace. Both political leaders, such as former U.S. President Jimmy Carter, and religious leaders, such as Pope John Paul II, Mother Teresa and the Dalia Lama, have dedicated Peace Poles.

Lime Stone Stone might be the best thing out of which to make a peace pole. It lasts centuries making it a legacy. It feels regal. And it has a stateliness and a solidity that serve the message well.



REV. NO.	DESCRIPTION	AUTHRZD.BY	DRWN.BY	DATE

PROPOSED ROTARY CLUB PEACE POLE

HUMISTON PARK	SCALE 1" = 60'	DRWN BY DG	DATE 07/2011
		CHKD BY MKF	DATE 07/2011

CITY OF VERO BEACH
DEPARTMANT OF PUBLIC WORKS
SURVEY DIVISION

CITY PROJECT NO. 2007-26AB | SHEET 1 OF 1

2D-3)

City Council Agenda Item
Meeting of July 19, 2011

TO: Mayor Jay Kramer
Vice Mayor Pilar Turner
Councilmember Brian Heady
Councilmember Craig Fletcher
Councilmember Tracy Carroll

FROM: Monte K. Falls, P.E. - Interim City Manager MKFalls 6/30

DATE: June 30, 2011

SUBJECT: **Utility Easement #2010-EG-0076**
Boys and Girls Club of Indian River County
1729 17th Avenue

REQUESTED BY: Chief Surveyor

The following is requested as it relates to the above-referenced agenda item:

✓ Request Council review and approval based on the attached supporting documentation.

____ Request Council review and possible action.

____ No action required. (Information only)

DEPARTMENTAL CORRESPONDENCE

TO: Monte K. Falls, Interim City Manager
DEPT: City Manager

FROM: David R. Gay, PSM, Chief Surveyor
DEPT: Public Works

DATE: June 29, 2011

RE: Utility Easement #2010-EG-0076
Boys and Girls Club of Indian River County
1729 17th Avenue

Recommendation:

- Place this item on the City Council's agenda for July 19, 2011;
- Approve and accept the conveyance of the utility easement over the Boys and Girls Club site.

Funding:

No funding is required for this request.

Background:

As part of the construction of the new Boys and Girls Club located at 1729 17th Avenue easements were required to be granted over the new water and sewer facilities. Utility easement "A" of the attached Exhibit "A" is for the sewer connection from the old recreation administration building. Utility easement "B" covers the area required for the water meter and backflow preventers.

These easements were granted to the City of Vero Beach by Indian River County at the June 14, 2011 County Commission meeting. We recommend placing this item on the City Council agenda to accept conveyance of the utility easements.

Attachments

DRG/jb

T:\REVIEWS\Easements Granted\2010-EG-0076 Boys & Girls Club of IRC\Agenda Recommendation_MFalls_Jun 29 2011.docx

DEPARTMENTAL CORRESPONDENCE

TO: Distribution

FROM: David R. Gay, PSM, Chief Surveyor
DEPT: Public Works

DATE: June 23, 2011

RE: Utility and Access Easement
Boys and Girls Club of Indian River County
1729 17th Avenue

Attached for your signatures please find the referenced Deed of Easement, along with Exhibit "A". This easement grants the City of Vero Beach a utility easement as part of the Boys and Girls Club approved site plan.

We have attached the *original* Utility Easement, which has been executed by the County, for your review and signature. Once complete, we request the City Attorney's Office have same recorded and forward the original recorded document to the City Clerk with a copy to our department.

Should you have any questions please advise.

DISTRIBUTION:

David R. Gay, PSM, Chief Surveyor Public Works	6/23/11
Monte K. Falls, Interim City Manager	MKF 6/28/11
Tammy Vock, City Clerk	
Wayne R. Coment, Acting City Attorney	WRC 6/29/11

Attachment

DRG/jb

T:\REVIEWS\Easements Granted\2010-EG-0076 Boys & Girls Club of IRC\Routing_COVB_Jun 23 2011.docx

Received
JUN 2011
City Mgr's Office

Prepared by and return to:
Office of the City Attorney
P.O. Box 1389
Vero Beach, FL 32961-1389

UTILITY AND ACCESS EASEMENT DEED ("A" and "B")
(2010-EG-0076)

THIS INDENTURE made and entered into this 14th day of March 2011, by and between INDIAN RIVER COUNTY, a political subdivision of the State of Florida (the "Grantor"), whose mailing address is 1801 27th Street, Building A (South), Vero Beach, FL 32960, and the CITY OF VERO BEACH, a Florida municipal corporation (the "Grantee"), whose mailing address is P.O. Box 1389, Vero Beach, FL 32961-1389:

(Wherever used herein the terms "Grantor" and "Grantee" include all the parties to this instrument and their respective heirs, legal representatives, successors and assigns.)

WITNESSETH:

That Grantor is the owner in fee simple of that certain real property (the "Property") lying, situate and being in Indian River County, Florida and more particularly described as

> commence at the Southwest corner of the Southeast quarter of Section 2, Township 33 South, Range 39 East, and run S 89° 22' E along the section line 978.48 feet. Then run N 0° 56' 45" E along the centerline of 17th Avenue 1126.14 feet to a point. Then run N 89° 07' 33" W 35 feet to a POINT OF BEGINNING. Then run N 89° 07' 33" W 318.00 feet to a point. Then run N 0° 56' 45" E 140 feet to a point. Then run S 89° 07' 33" E 318.00 feet to a point. Then run S 0° 56' 45" W 140 feet to the POINT OF BEGINNING. Containing 1.02 acres more or less.

That Grantor, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants to the Grantee, its successor and assigns, a non-exclusive easement in perpetuity for utility purposes, more particularly described in Exhibit "A" (the "Easement Premises"), attached hereto and incorporated herein by reference, which shall run with and be a burden upon the Property.

Grantor hereby reserves for itself, it successors, and assigns the right to use the Easement Premises for purposes not inconsistent with the Easement granted herein, including without limitation, the right of ingress, egress and passage by Grantor and its employees, agents, customers, and invitees, over, across, and through the Easement Premises, and the right to pave, sod and install minor landscaping (but not trees) within the Easement Premises. Notwithstanding the foregoing to the contrary, Grantor shall not install, nor allow the installation of trees, buildings, or other vertical structures within the Easement Premises. In addition, Grantor shall coordinate with Grantee the location and installation of any additional other utility lines and/or facilities to be placed in the Easement Premises and any additional utility lines and facilities to cross and intersect the Easement Premises in order to facilitate the orderly development of Grantor's Property and avoid damage or disruption to the utility facilities and lines provided for in this grant of easement. Should the Grantor plant or construct improvements, which

interfere with the Easement rights granted herein, such improvements shall be subject to removal or destruction by the Grantee, without liability or responsibility thereof on the part of the Grantee.

Grantor further grants to the Grantee, its agents, employees, contractors, and assigns, a general ingress/egress easement over and across its driveways, parking, common and open areas of the Property for the purpose of access to, and/or maintenance of, any of the Grantee's utility lines, equipment, and facilities. Grantee shall not be otherwise responsible for maintenance of the Easement Premises.

The undersigned hereby covenants and warrants that Grantor owns the said land described herein and the undersigned, as or on behalf of Grantor, has the right to grant this easement.

IN WITNESS WHEREOF, the Grantor has duly authorized and caused this Indenture to be executed in its name as of the day and year first herein written.

ATT: J.K. Barton, Clerk

GRANTOR (INDIAN RIVER COUNTY, FLORIDA, BOARD OF COUNTY COMMISSIONERS)

By: _____
Deputy Clerk

By: _____
Bob Solari, Chairman

BCC approval date June 14, 2011

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this 14 day of June, 2011, by Bob Solari, as Chairman, and attested by Leona Allen, as Deputy Clerk, of the Board of County Commissioners of Indian River County, Florida. They are personally known to me.

_____
NOTARY PUBLIC
Print Name:
Commission No.:
My Commission Expires:

TERRI COLLINS-LISTER
MY COMMISSION # EE 012487
EXPIRES: October 30, 2014
Bonded Thru Budget Notary Services

Approved as to form and legal sufficiency:

_____
County Attorney (or Assistant)

LESSEE APPROVAL OF CONVEYANCE

The Boys & Girls Club of Indian River County, Inc. ("Lessee"), as lessee in possession of the real property subject of the foregoing Utility and Access Easement Deed (2010-EG-0076) pursuant to that certain Non-Profit Lease between Indian River County and Lessee dated September 1, 2008, does hereby approve the conveyance of the subject utility and access easements provided for in said deed and acknowledges said encumbrance against the subject property, as evidenced by the signature of the undersigned, who are authorized to approve the conveyance.

ATTEST:

BOYS & GIRLS CLUB OF INDIAN RIVER COUNTY, INC.

William Helmly
Secretary

Jay McNamara
Board Chairman

[SEAL]

Date: 3/14/2011

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing Lessee Approval of Conveyance was acknowledged before me this 14 day of March, 2011 by Jay McNamara, as Board Chairman, and attested to by William Helmly, as Secretary, of Boys & Girls Club of Indian River County, Inc. They are ~~known to me~~ or provided _____ as identification.

NOTARY PUBLIC
Print Name:
Commission No.:
My Commission Expires:

SANDRA SINGER
Notary Public - State of Florida
My Comm. Expires Nov 3, 2013
Commission # DD 929939

ACCEPTANCE OF CONVEYANCE

The foregoing conveyance is hereby accepted by the City of Vero Beach, Florida, as evidenced by the signature of the undersigned, who is authorized to accept this conveyance.

ATTEST:

CITY OF VERO BEACH

Tammy K. Vock
City Clerk

Jay Kramer
Mayor

[SEAL]

Date: _____

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing Acceptance of Conveyance was acknowledged before me this _____ day of _____, 20____ by Jay Kramer, as Mayor, and attested by Tammy K. Vock, as City Clerk, of the City of Vero Beach, Florida. They are both known to me.

NOTARY PUBLIC
Print Name:
Commission No.:
My Commission Expires:

Approved as to form and legal sufficiency:

~~Charles~~ P. ~~Vitunac~~ WAYNE R. COMENT
Acting City Attorney

Approved as conforming to municipal policy:

Monte K. Falls
Interim City Manager

Approved as to technical requirements:

Rob Bolton, Water & Sewer Director

EXHIBIT "A"
PROPERTY DESCRIPTION
UTILITY EASEMENT #2010-EG-0076
PARCEL #33-39-02-00000-7000-00001.5

Situated in the State of Florida, County of Indian River, City of Vero Beach and being a part of Section 02, Township 33 South, Range 39 East and being more particularly bounded and described as follows:

Utility Easement "A":

Commencing at the southwest corner of the southeast ¼ of Section 2, Township 33 South, Range 39 East;

Thence north 89°56'03" east along the south line of said southeast ¼ of Section 2 for a distance of 978.48 feet to an intersection with the centerline of 17th Avenue;

Thence north 00°35'31" east along the said centerline of 17th Avenue for a distance of 1,126.14 feet;

Thence north 89°28'16" west for a distance of 35 feet to a point on west right-of-way of 17th Avenue, said point also being the Point of Beginning of the parcel leased to the Boys and Girls Club of Indian River County, Inc. as described in Official Record Book 844, Page 1331 of the Public Records of Indian River County;

Thence north 00°35'31" east along the west right-of-way of 17th Avenue for a distance of 12.63 feet to the point of Beginning of Easement "A";

Thence from the Point of Beginning continue north 00°35'31" east along the said west right-of-way of 17th Avenue for a distance of 19.00 feet;

Thence north 89°24'29" west for a distance of 15.00 feet;

Thence south 00°35'31" west for a distance of 19.00 feet;

Thence south 89°24'29" east for a distance of 15.00 feet to the Point of Beginning;

Said easement containing 285 square feet more or less.

Utility Easement "B":

Commencing at the southwest corner of the southeast ¼ of Section 2, Township 33 South, Range 39 East;

Thence north 89°56'03" east along the south line of said southeast ¼ of Section 2 for a distance of 978.48 feet to an intersection with the centerline of 17th Avenue;

Thence north 00°35'31" east along the said centerline of 17th Avenue for a distance of 1,126.14 feet;

Thence north 89°28'16" west for a distance of 35 feet to a point on west right-of-way of 17th Avenue, said point also being the Point of Beginning of the parcel leased to the Boys and Girls Club of Indian River County, Inc. as described in Official Record Book 844, Page 1331 of the Public Records of Indian River County;

Thence continue north 89°28'16" west along the south line of said Boys and Girls Club parcel for a distance of 51.88 feet to the Point of Beginning of Easement "B";

Thence continue north 89°28'16" west along said south line for a distance of 119.62 feet;

Thence north 00°31'44" east for a distance of 10.00 feet;

Thence south 89°28'16" east for a distance of 109.63 feet;

Thence north 00°33'05" east for a distance of 125.00 feet;

Thence north 38°54'31" east for a distance of 6.37 feet to a point of the north line of said Boys and Girls Club parcel;

Thence south 89°28'16" east along said north line for a distance of 12.76 feet;

Thence south 38°54'31" west for a distance of 10.81 feet;

Thence south 00°33'05" west for a distance of 131.52 feet to the Point of Beginning;

Said easement containing 2,515 square feet more or less.

David R. Gay, PSM #5973

NOTE: EASMENT DECSRIPTIONS ARE BASED UPON AN AS-BUILT SURVEY SUPLLIED BY DAVID M. JONES, PROJECT 2009--048AB, DATED 11-03-09.

SCALE 1"= 40'

BOYS & GIRLS CLUB
1729 17TH AV
33-39-02-00000-7000-00001.5

17TH AVENUE
(70' R/W)

N 00°35'31"E 140.00'

N 00°35'31"E 170.00'

N89°24'29"W 15.00'

S00°35'31"W 19.00'

N00°35'31"E 19.00'

SUBJECT EASEMENT
(UTILITY/WATER)

15.00' S89°24'29"E

12.63'

N 89°28'16"W 35.00'

N 89°28'16"W 318.00'

POINT OF BEGINNING
UTILITY EASEMENT "A"

N 00°35'31"E 1126.14'

CITY OF VERO BEACH
1725 17TH AV
33-39-02-00000-7000-00001.4

POINT OF COMMENCEMENT
SOUTHWEST CORNER OF THE
SOUTHEST 1/4 OF SECTION 2-33-39

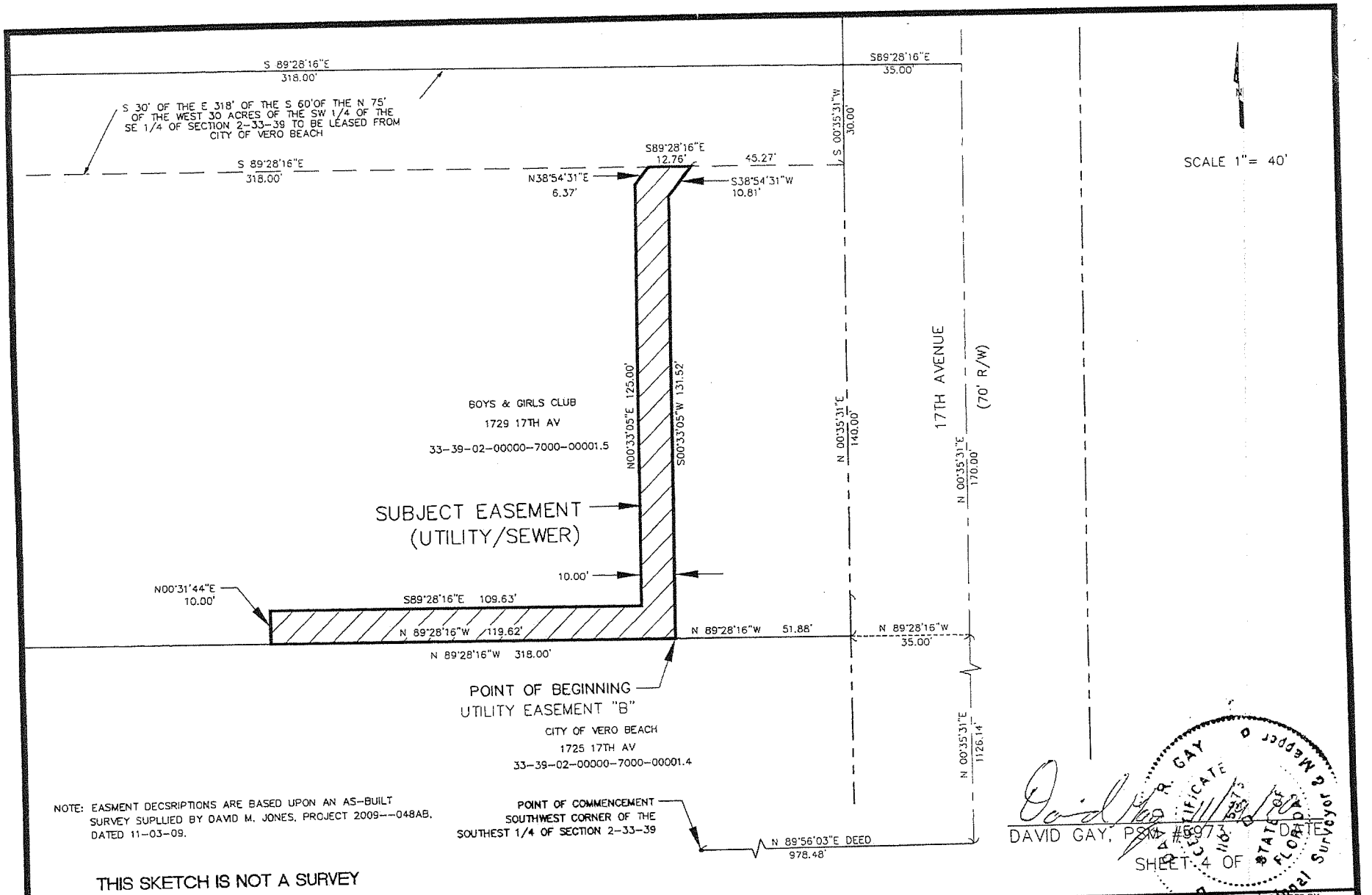
N 89°56'03"E DEED 978.48'

DAVID GAY, PSM 4973 DATE

SHEET 3 OF 4

THIS SKETCH IS NOT A SURVEY

CITY OF VERO BEACH	SKETCH OF PROPERTY DESCRIPTION	EXHIBIT "A"		REV. NO.	AUTHRZD.BY
DEPARTMENT OF PUBLIC WORKS	UTILITY EASEMENT "A"	CITY PROJECT NO. 2010-EG-076		DRWN.BY	DATE
SURVEY DIVISION	SW 1/4 OF SE 1/4 OF SECTION 02-33-39	DATE 11/2010	DRWN BY DG	CHKD BY MKF	DESCRIPTION



NOTE: EASMENT DECSRIPTIONS ARE BASED UPON AN AS-BUILT SURVEY SUPLLIED BY DAVID M. JONES, PROJECT 2009--048AB, DATED 11-03-09.

THIS SKETCH IS NOT A SURVEY

CITY OF VERO BEACH	SKETCH OF PROPERTY DESCRIPTION	EXHIBIT "A"		REV. NO.	APPRZD.BY
DEPARTMENT OF PUBLIC WORKS	UTILITY EASEMENT "B"	CITY PROJECT NO. 2010-EG-076		DRWN.BY	DATE
SURVEY DIVISION	SW 1/4 OF SE 1/4 OF SECTION 02-33-39	DATE 11/2010	DRWN BY DG / CHKD BY MKF	DESCRIPTION	

2D-4)

City Council Agenda Item
Meeting of July 19, 2011

TO: Mayor Jay Kramer
Vice Mayor Pilar Turner
Councilmember Brian Heady
Councilmember Craig Fletcher
Councilmember Tracy Carroll

FROM: Monte K. Falls, P.E. - Interim City Manager MKFalls 7/12

DATE: July 12, 2011

SUBJECT: **Utility Easement #2011-EG-0091**
Lyndell and Terry Fleming
6160 37th Street

REQUESTED BY: Chief Surveyor

The following is requested as it relates to the above-referenced agenda item:

✓ Request Council review and approval based on the attached supporting documentation.

____ Request Council review and possible action.

____ No action required. (Information only)

DEPARTMENTAL CORRESPONDENCE

TO: Monte K. Falls, Interim City Manager
DEPT: City Manager

FROM: David R. Gay, PSM, Chief Surveyor
DEPT: Public Works

DATE: July 11, 2011

RE: Utility Easement #2011-EG-0091
Lyndell and Terry Fleming
6160 37th Street

Recommendation:

- Place this item on the City Council's July 19, 2011 agenda;
- Approve and accept conveyance of the Deed of Easement which will be used for the placement of City electric facilities.

Funding:

There is no funding required for this item.

Background:

As part of their site improvements to run electricity to their barn, a utility easement is required to be granted to the City.

Cc: Ted Fletcher, Supervisor, Electrical Engineering and New Construction

DRG/jb

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Prepared by and return to:
Office of the City Attorney
P.O. Box 1389
Vero Beach, FL 32961-1389

UTILITY EASEMENT DEED
(2011-EG-0091)

THIS INDENTURE made and entered into this _____ day of _____ 2011, by and between LYNDELL R. FLEMING and TERRY R. FLEMING (the "Grantors"), whose mailing address is 6160 37th Street, Vero Beach, FL 32966, and the CITY OF VERO BEACH, a Florida municipal corporation (the "Grantee"), whose mailing address is P.O. Box 1389, Vero Beach, FL 32961-1389:

(Wherever used herein the terms "Grantors" and "Grantee" include all the parties to this instrument and their respective heirs, legal representatives, successors and assigns.)

WITNESSETH:

That Grantors are the owners in fee simple of that certain real property (the "Property") lying, situate and being in Indian River County, Florida and more particularly described as

Property conveyed by Warranty Deed as recorded in OR Book 2459, Page 2403 of the Public Records of Indian River County, Florida.

That Grantors, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grant to the Grantee, its, successors and assigns, a public utility easement, which easement is more particularly described in Exhibit "A" (the "Easement Premises"), attached hereto and incorporated herein by reference, and which easement shall run with and be a burden upon the Property.

Grantors hereby reserve for themselves, their heirs, successors, and assigns the right to use the Easement Premises for purposes not inconsistent with the Easement granted herein, including without limitation, the right of ingress, egress and passage by Grantor and its employees, agents, customers, and invitees, over, across, and through the Easement Premises.

Grantors further grant to the Grantee, its agents, employees, contractors, and assigns, a general ingress/egress easement over and across their driveways, parking, common and open areas of the Property for the purpose of access to, and/or maintenance of, any of the Grantee's improvements. Grantee shall not be otherwise responsible for maintenance of the Easement Premises.

The undersigned hereby covenant and warrant that Grantors own the said land described herein and the undersigned, as or on behalf of Grantors, have the right to grant this easement.

IN WITNESS WHEREOF, the Grantors have duly authorized and caused this Indenture to be executed in their names as of the day and year first herein written.

GRANTORS:

WITNESS:

Sign: Doreen Meade
Print: Doreen Meade

Sign: Kara Patton
Print: Kara Patton

Sign:
Print: Lyndell R. Fleming

WITNESS:

Sign: Doreen Meade
Print: Doreen Meade

Sign: Kara Patton
Print: Kara Patton

Sign:
Print: Terry R. Fleming

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this 11 day of July, 2011, by Lyndell R. Fleming and Terry R. Fleming, as Grantors. They are **[circle one] personally known to me OR produced [describe ID shown]** Fl Driver licenses **as identification,** and **[circle one] did OR did not** take an oath.

SHELAGH R. HOLBROOK
Notary Public - State of Florida
My Comm. Expires Jul 7, 2013
Commission # DD 870073
Bonded Through National Notary Assn.

NOTARY PUBLIC
Sign:
Print: Shelagh Holbrook
State of Florida at Large
My Commission No:
My Commission Expires:

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EXHIBIT "A"
PROPERTY DESCRIPTION
UTILITY EASEMENT #2011-EG-0091
TRACT 26, SECTION 29-32-39
PARCEL #32-39-29-00002-0260-00001.0

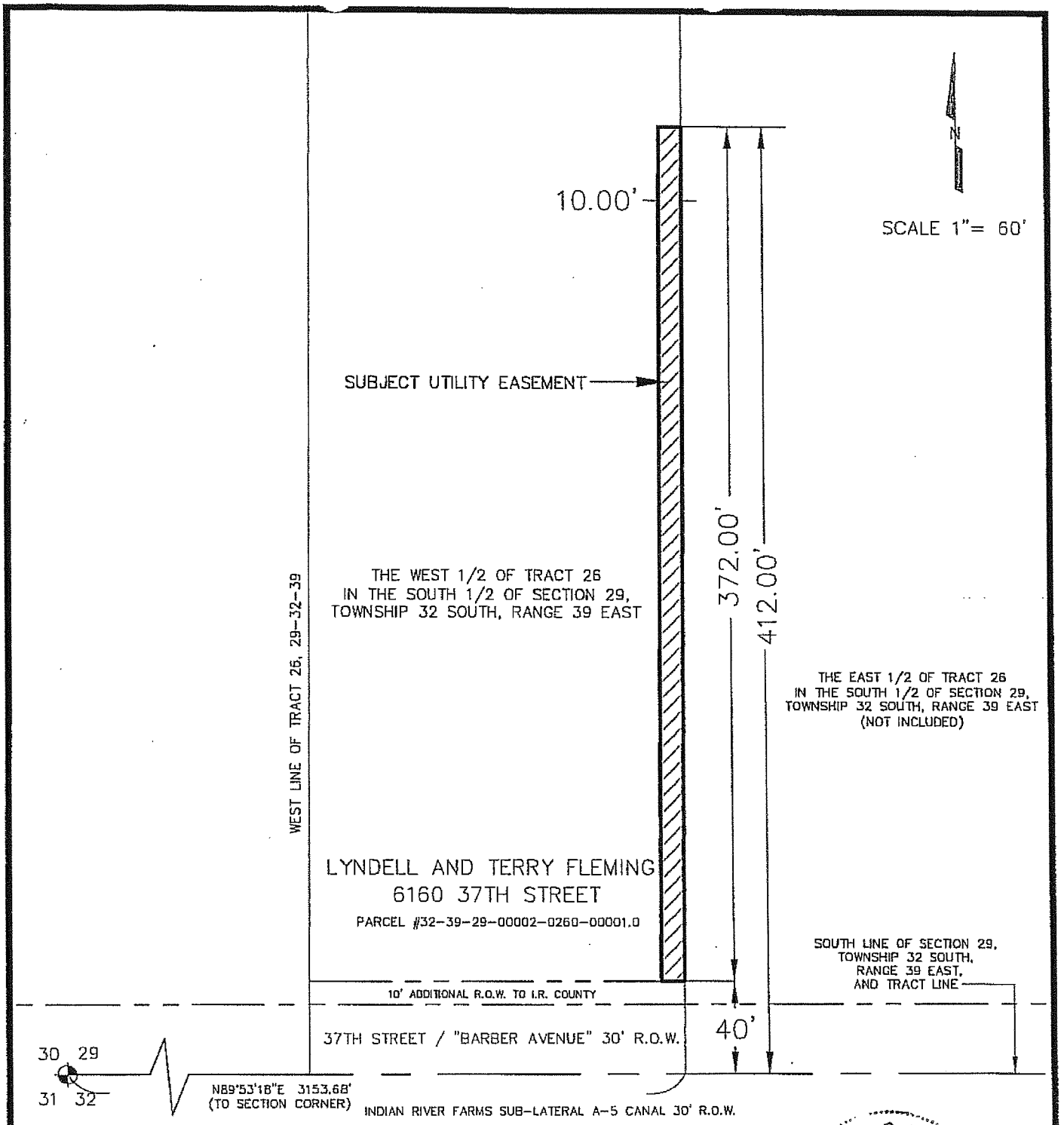
Situated in the State of Florida, County of Indian River, and being a part of the West ½ of Tract 26 in Section 29, Township 32 South, Range 39 East and being more particularly bounded and described as follows:

The East 10 feet of the North 372 feet of the South 412 feet of the West ½ of said tract 26;

Containing 3,720 square feet more or less.

David R. Gay, PSM #5973

S:\Property Descriptions\2011\2011-EG-0091_6160 37th St_Fleming_Jun 29 2011.doc



THIS SKETCH IS NOT A SURVEY

DAVID GAY, PSM #5973 DATE

SHEET 1 OF 2

CITY OF VERO BEACH	SKETCH OF PROPERTY DESCRIPTION	EXHIBIT "A"		REV.	AUTHRZD BY
DEPARTMENT OF PUBLIC WORKS	UTILITY EASEMENT	CITY PROJECT NO. 2011-EG-091		DRWN BY	DATE
SURVEY DIVISION	TRACT 26, SECTION 29-32-39	DATE 06/2011	DRWN BY BMM	CHKD BY DG	DESCRIPTION

ACCEPTANCE OF CONVEYANCE

The foregoing conveyance is hereby accepted by the City of Vero Beach, Florida, as evidenced by the signature of the undersigned, who is authorized to accept this conveyance.

ATTEST:

Tammy K. Vock
City Clerk

CITY OF VERO BEACH

Jay Kramer
Mayor

Approved by CC _____

Approved as to form and legal sufficiency:

Margaret S. Lyon
Assistant City Attorney

Approved as conforming to municipal policy:

Monte K. Falls
Interim City Manager

Approved as to technical requirements:

William T. Fletcher
Supervisor, Electric Equipment Design
Transmission & Distribution

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2D-5)

City Council Agenda Item
Meeting of July 19, 2011

TO: Mayor Jay Kramer
Vice Mayor Pilar Turner
Councilmember Brian Heady
Councilmember Craig Fletcher
Councilmember Tracy Carroll

FROM: Monte K. Falls, P.E. - Interim City Manager MKFalls 7/12

DATE: July 11, 2011

SUBJECT: **Work Order #1372-10 between the City of Vero Beach and URS Corporation; Obstructions Removal – Phase 2**

REQUESTED BY: Airport Director

The following is requested as it relates to the above-referenced agenda item:

____ Request Council review and approval based on the attached supporting documentation.

____ Request Council review and possible action.

____ No action required. (Information only)

MEMORANDUM

TO: Monte K. Falls, Interim City Manager

VIA: Wayne Coment, Acting City Attorney WRC

FROM: Ericson W. Menger, Airport Director JM FOR EWM

DATE: July 7, 2011

SUBJECT: WORK ORDER # 1372-10 BETWEEN THE CITY OF VERO BEACH AND URS CORPORATION; OBSTRUCTIONS REMOVAL – PHASE 2

Attached are three (3) originals of the above-referenced work order. This work order is to authorize construction phase engineering services in conjunction with the above-referenced project at the Vero Beach Municipal Airport.

BACKGROUND

This project has two phases. Phase 1 was the design and development (obstruction location) and Phase 2 will be the actual obstruction removal of this project. Phase 2 proposes to remove, reduce, trim, and/or mitigate all natural and man-made obstacles that were found to penetrate the imaginary surfaces that define our approach clearances around the airport. This phase of the project will also include a Florida Scrub-Jay Survey and Habitat Assessment which is to insure the protection of this endangered species.

On June 15, 2010, the City Council accepted a Joint Participation Agreement (JPA) from FDOT to help fund the cost of Obstructions Removal, Phase 2. An amendment was made (SJPA – February 1, 2011) due to an executive directive of the newly elected Florida Governor, who wanted wording to clarify e-verify and project scopes added to all JPA's.

Currently, the City is awaiting a Grant Agreement from the Federal Aviation Administration (FAA), which will be based on bids. Phase 2 is estimated at $1,000,000.00 with FAA sharing $950,000.00 (95%), FDOT sharing $25,000.00 (2.5%), and the Airport sharing approximately $25,000.00 (2.5%). No General Fund monies are involved with this project. The project is in the Airport's budget under account number 443.4000.542.611001.

The attached work order is for the construction phase engineering services and a complete Florida Scrub-Jay Survey and Habitat Assessment. Once an FAA grant is received, a contractor will be selected based on bids and a recommended contract for obstruction removal will be brought before Council for final approval.

RECOMMENDATION

I respectfully request that this item be placed on the July 19, 2011, City Council Agenda. I recommend approval of the Agreement in the not-to-exceed amount of $60,544.00.

EWM:drg
Attachments (3)

cc: Airport Commission Members, via email and/or U.S. Mail
Joyce Vonada, City Manager's Office

CITY OF VERO BEACH, FLORIDA
DEPARTMENT: Airport
PROJECT: Obstructions Removal – Phase 2

WORK ORDER NO. 1372-10
TO PROFESSIONAL SERVICES MASTER AGREEMENT
DATED MARCH 12, 2007 BETWEEN CITY OF VERO BEACH
AND URS CORPORATION SOUTHERN

This Work Order is issued pursuant to and incorporates herein that certain Professional Services Master Agreement ("Master Agreement") entered into on March 12, 2007 by and between the City of Vero Beach, Florida ("**CITY**") and URS Corporation Southern ("**PROFESSIONAL**").

CITY requests and **PROFESSIONAL** agrees to provide the services specified herein pursuant to the terms and conditions herein set forth and in the Master Agreement.

SECTION 1 – PROJECT DESCRIPTION

The **CITY** hereby retains **PROFESSIONAL** to furnish professional engineering services for the construction phase of:

- Obstructions Removal – Phase 2 at the Vero Beach Municipal Airport

The above described improvements are hereinafter called the **PROJECT**.

SECTION 2 – SCOPE OF SERVICES

The engineering services that **PROFESSIONAL** shall furnish to the **CITY** under this Agreement shall include the defined below and attached Exhibit "A" Fee Proposal.

A. Basic Services

1. Complete a Florida Scrub-Jay Survey and Habitat Assessment for the project, including coordination with jurisdictional state and federal agencies. This work is further described in the attached scope and fee estimate.

2. Modify completed design documents to include revisions required based on the results of the Florida Scrub-Jay Survey and Habitat Assessment.

3. Assist the **CITY** in obtaining proposals from construction contractors for the construction of the project, review technical qualifications of bidders, review and tabulate all proposals received by the City and make recommendations for the award of construction contracts subject to the investigation of the bidder's financial qualifications, and to the concurrence of the legal counsel.

4. Assist the **CITY** in the pre-bid conference.

5. Prepare a grant application for Federal funds on behalf of the **CITY,** for **CITY** submittal to **FAA.**

B. Construction Phase Services

1. Assist the **CITY** in the Preconstruction Conference.

2. Provide general consultation and advice to the **CITY** with respect to the construction of the **PROJECT**.

3. Assist the **CITY** in estimating cash flow projections of **PROJECT** expenditures.

4. Perform Quality Assurance testing of materials used in the **PROJECT**. Subconsultant Cal-Tech Testing will perform these professional services.

5. Perform monthly inspections, including the services of a full-time inspector (RPR), of the **PROJECT** while construction is in progress to review and monitor the progress, workmanship and quality of materials for conformity with the plans, specifications and construction schedule and provide appropriate reports to the **CITY**.

6. Review and approve, for compliance with the design concept of the **PROJECT** and compliance with the information given in the construction contract documents, all detailed construction, shop and erection drawings and materials certification submitted by the Contractor(s).

7. Prepare routine change orders or routine supplemental agreements as may become necessary during construction of the work.

8. Review and recommend for approval, monthly and final progress payments to contractors, change orders, supplemental agreements, and time extensions and assist the **CITY** in preparing pertinent governmental agency standard forms.

9. Review reports of field testing activities performed by the **CITY** or others.

10. Perform final inspections with representatives of the **CITY** and appropriate governmental agencies of the completed **PROJECT** and prepare certificates of substantial completion and affidavits of compliance for the **CITY**.

11. Provide one set of reproducible drawings and CADD files of record drawings, which shall become the property of the Airport, corrected to show significant changes made in the work during the construction of the project. Such corrections shall be based upon "as-built" prints, drawings, field sketches and other data furnished to the **ENGINEER** by the Airport and/or contractor, and upon change orders issued during construction.

12. Update the current Airport Layout Plan to reflect the completed construction under this **PROJECT**.

C. Additional Services

If authorized in writing by the **CITY**, the **PROFESSIONAL** will furnish or obtain from specialty consultants, the following additional services in connection with the **PROJECT**.

1. Make major revisions to completed or partially completed design plans and specifications to incorporate changes made to the scope of work after approval of the preliminary plans by reviewing agencies provided that these revisions are not attributable to any errors or omissions of the **PROFESSIONAL**.

2. Prepare construction contract change orders or supplemental agreements involving major changes or revisions of the completed construction plans, and specifications which are not attributable to any error or omission on the part of the **PROFESSIONAL**.

3. Prepare to serve or serve as consultant, witness or representative for the **CITY** in any public hearing, public information meeting or other administrative proceeding involving the **PROJECT**. Such consultation and representation in connection with litigation or other legal proceeding involving the **PROJECT** shall be covered under subsequent Supplemental Agreement.

4. Assist the **CITY** in performing any inspection of facilities constructed under this Agreement after final acceptance of the work but prior to the expiration of any contractor's warranty periods imposed in construction contract documents.

5. Perform services involving the preparation of rate schedules, earnings and expense statements, feasibility studies appraisals, evaluations or other similar detailed analysis that are not normally required in the scope of the **PROJECT**.

6. Prepare drawings from field measurements of existing construction when required for planning additions or alterations thereto where they are not included in the original scope of the **PROJECT**.

7. Perform additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) prolongation of the construction contract time due to causes beyond the control of the **ENGINEER**, (3) acceleration of the work schedule involving service beyond normal working hours, (4) special investigations due to construction compliance problems, and (5) contract default due to delinquency or insolvency of the contractor(s).

8. Verify "as-built" information provided by the construction contractors if full-time inspection is not provided by the **PROFESSIONAL**.

9. Perform services as may be specified in a Trust Agreement or Bond Resolution in connection with the **PROJECT**.

10. Prepare plans and other necessary documents for the acquisition of land, right-of-way and easements required for the **PROJECT** and administer the acquisition program on behalf of the **CITY** using retained appraisers, title searchers, negotiators and legal counsel.

11. Perform other than routine services when required by FAA audit subsequent to the completion of the **PROJECT**.

12. Additional services not otherwise provided for by this Work Order.

SECTION 3 – SPECIFICATIONS

URS will prepare conformed documents for construction of the project incorporating all required bid and contract information, and distribute copies to the **CITY**, contractor, **FAA** and **FDOT**.

SECTION 4 – CITY RESPONSIBILITIES

The **CITY'S** responsibilities shall include the following:

1. Coordinate the **CITY's** requirement for the **PROJECT** with **PROFESSIONAL**.

2. Provide copies of pertinent documents, reports, plans, specifications, photography, standard forms and other similar data available to the **CITY** that are required by **PROFESSIONAL** for the proper performances of these services.

3. Provide information and make decisions as may be required by the **PROFESSIONAL** to prosecute the work in a timely manner.

4. Perform or authorize **PROFESSIONAL** to arrange to have specialty consultants perform all necessary test borings, subsurface investigations, testing of soil samples, construction quality control testing, and engineering surveys as may be required by the **ENGINEER** for the proper performance of his services.

5. Reimburse the **PROFESSIONAL** for the actual cost of legal advertisements and of printing contract plans, specifications, and contract documents required for the securing of bids for the **PROJECT** and for the use by contractors, subcontractors, testing laboratories, and others having need for such documents, less any amount paid to the **PROFESSIONAL** by prospective bidders or other plan purchasers, for copies of these documents. The above shall not preclude the **CITY** from causing such advertising or printing to be performed directly by the **CITY** or other agencies.

6. Review insurance documents submitted by Contractor(s) for conformance with the construction contract documents.

SECTION 5 – TIME OF PERFORMANCE

PROFESSIONAL shall commence work within ten (10) business days after issuance of a written notice-to-proceed. A mutually agreeable project schedule will be developed at the project pre-construction conference.

SECTION 6 – COMPENSATION

CITY agrees to pay and **PROFESSIONAL** agrees to accept, for services rendered pursuant to the Scope of Services and Specifications identified in this Work Order and in accordance with the conditions set forth in this Work Order and the Master Agreement, a not-to-exceed fee under this Work Order of **$ 60,544.00**. This fee is itemized in Exhibit "A" attached.

SECTION 7 – OTHER/ADDITIONAL CONDITIONS

N/A

SECTION 8 – RELATION TO MASTER AGREEMENT

All conditions set forth in the Master Agreement shall control unless otherwise specified in this Work Order.

SECTION 9 - DESIGNATED PROFESSIONAL REPRESENTATIVE.

PROFESSIONAL designates the following listed individual as **PROFESSIONAL'S** representative, to represent **PROFESSIONAL** in all matters pertaining to this Work Order:

Name:	Steve Henriquez
Title:	Vice President
Street Address:	7650 W. Courtney Campbell Causeway, Suite 700
Mailing Address:	7650 W. Courtney Campbell Causeway, Suite 700 Tampa, Florida 33607-1462
Telephone:	813-636-2422
Facsimile:	813-675-6665

SECTION 10 - DESIGNATED CITY REPRESENTATIVE.

CITY designates the following listed individual as **CITY'S** designated representative, to represent **CITY** in all matters pertaining to this Work Order.

Name:	Ericson W. Menger
Title:	Airport Director
Street Address:	3400 Cherokee Drive
Mailing Address:	P.O. Box 1389
	Vero Beach, Florida 32961-1389
Telephone:	772-978-4930
Facsimile:	772-567-3459

IN WITNESS WHEREOF, the parties hereto have executed this Work Order as of the last date written below.

PROFESSIONAL SERVICES PROVIDER:

WITNESSED BY:

Sign: _____
Print: David Schmidgall

Sign: _____
Print: Pawel Mankowski

URS CORPORATION SOUTHERN
(full legal name of service provider)

BY:
Sign: _____
Print: Steven Henriquez
Title: Vice President

Sign: _____
Print: Thomas Lovett
Title: Vice President

STATE OF Florida
COUNTY OF Hillsborough

The foregoing instrument was acknowledged before me this 19 day of May, 2011, by Steve Henriquez & Tom Lovett, as Vice Presidents of URS Corporation, who ✓ is personally known to me; OR ____ presented _____ as identification.

DIANE KLINE
Notary Public - State of Florida
My Comm. Expires May 9, 2013
Commission # DD 871901
Bonded Through National Notary Assn.

NOTARY PUBLIC

Sign: Diane Kline
Print: Diane Kline
State of Florida at Large (seal)
Commission No.: DD871901
My Commission Expires: 5-9-13

CITY OF VERO BEACH, FLORIDA:

ATTEST:

Sign: _____
Print: Tammy K. Vock
Title: City Clerk

CITY OF VERO BEACH

BY:
Sign: _____
Print: Jay Kramer
Title: Mayor

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this _____ day of _____, 20___, by _____, as_____, and attested by Tammy K. Vock, as City Clerk, of the City of Vero Beach, Florida. They are both known to me.

NOTARY PUBLIC
Sign: _____
Print: _____
State of Florida at Large (seal)
Commission No.:_____
My Commission Expires:_____

Approved as to form and legal sufficiency:

Wayne R. Coment
Acting City Attorney

Approved as conforming to municipal policy:

Monte K. Falls
Interim City Manager

Approved as to technical requirements:

Joseph Malfait FOR ERICSON W. MENGER
Airport Director

EXHIBIT "A"
FEE PROPOSAL

SUMMARY OF ENGINEERING FEES
OBSTRUCTIONS REMOVAL - PHASE 2
VERO BEACH MUNICIPAL AIRPORT

Design Phase	$	15,302.00	
Scrub-Jay Survey	$	8,040.00	
Bid and Award Phase	$	7,652.00	
Construction Phase	$	26,640.00	
Expenses	$	2,910.00	
TOTAL	**$**	**60,544.00**	**Not-To-Exceed**

URS CORPORATION
MAN-HOUR AND LABOR COST ESTIMATE

LOCATION: Vero Beach Municipal Airport
PROJECT: Obstructions Removal - Phase 2

DATE: 05/03/11
PREPARED BY: SGH/dk

CONTRACT: 3036624

EMPLOYEE CLASSIFICATION	Project Manager		Sr. Biologist		Engineer		CADD Technician		Clerical		TOTAL	TOTAL
	Rate:	$190.00	Rate:	$145.00	Rate:	$115.00	Rate:	$85.00	Rate:	$68.00	Hours	Fee
TASK DESCRIPTION	Hours	Amount	Hours	Amount	Hours	Amount	Hours	Amount	Hours	Amount		
ENGINEERING DESIGN												
Scrub-Jay Survey	4	$760	16	$2,320	0	$0	20	$1,700	4	$272	44	$5,052
Review Plans, Specs and Eng. Report	8	$1,520	12	$1,740	4	$460	2	$170	16	$1,088	42	$4,978
Final Quantities an Cost Estimate	2	$380	0	$0	8	$920	12	$1,020	4	$272	26	$2,592
Quality Control Review	8	$1,520	8	$1,160	0	$0	0	$0	0	$0	16	$2,680
SUBTOTAL	*22*	*$4,180*	*36*	*$5,220*	*12*	*$1,380*	*34*	*$2,890*	*24*	*$1,632*	***128***	**$15,302**
BID AND AWARD PHASE:												
Advertise & Pre-Bid Assistance	4	$760	0	$0	4	$460	0	$0	4	$272	12	$1,492
Pre-Bid Conference	8	$1,520	0	$0	0	$0	0	$0	2	$136	10	$1,656
Addendum Preparation	4	$760	0	$0	8	$920	8	$680	2	$136	22	$2,496
Recommendation of Award/Grant Application	6	$1,140	0	$0	4	$460	0	$0	6	$408	16	$2,008
SUBTOTAL	*22*	*$4,180*	*0*	*$0*	*16*	*$1,840*	*8*	*$680*	*14*	*$952*	***60***	**$7,652**
CONSTRUCTION PHASE:												
Pre-Bid Construction Conference	8	$1,520	8	$1,160	0	$0	0	$0	2	$136	18	$2,816
Gen'l Consult. Meetings/Project Management	12	$2,280	0	$0	4	$460	0	$0	4	$272	20	$3,012
Construction Management Plan	8	$1,520	0	$0	40	$4,600	0	$0	2	$136	50	$6,256
Construction Monthly Site Visits	24	$4,560	8	$1,160	16	$1,840	0	$0	2	$136	50	$7,696
RFI's & Shop Drawings	8	$1,520	0	$0	16	$1,840	0	$0	2	$136	26	$3,496
Final Inspection, Change Order, Closeout Report	10	$1,900	0	$0	8	$920	0	$0	8	$544	26	$3,364
SUBTOTAL	*70*	*$13,300*	*16*	*$2,320*	*84*	*$9,660*	*0*	*$0*	*20*	*$1,360*	***190***	**$26,640**
TOTALS	**114**	**$21,660**	**52**	**$7,540**	**112**	**$12,880**	**42**	**$3,570**	**58**	**$3,944**	**378**	**$49,594**

URS CORPORATION

OUT-OF-POCKET EXPENSE ESTIMATE:

LOCATION: Vero Beach Municipal Airport
PROJECT: Obstructions Removal - Phase 2

Date: 5/3/2011

CONTRACT NUMBER: 03036624

Prepared By: SGH/dk

DESCRIPTION	ESTIMATED QUANTITY	UNITS		UNIT PRICE	ESTIMATED TOTAL PRICE
I. TRAVEL EXPENSES					
Auto	8	trips	@	$125.00	$1,000.00
Meals	8	trips	@	$20.00	$160.00
SUBTOTAL TRAVEL EXPENSES					**$1,160.00**
II. COMMUNICATION EXPENSES					
Telephone	20	weeks	@	$10.00 /week	$200.00
U.S. Postage / Express Service	1	lump sum	@	$200.00	$200.00
SUBTOTAL COMMUNICATION EXPENSES					**$400.00**
III. PRODUCTION / PRESENTATION EXPENSES					
Prints	10	sets	@	$50.00	$500.00
Photocopying	1	lump sum	@	$750.00	$750.00
Report Printing / Binding / Graphic / Covers, Etc.	1	lump sum	@	$100.00	$100.00
Presentation Graphics			@		$0.00
Boards / Signs			@		$0.00
Slides			@		$0.00
Video			@		$0.00
Model			@		$0.00
Reference Materials			@		$0.00
Aerial Photography			@		$0.00
Quad Sheets / Maps			@		$0.00
Coordinate Data			@		$0.00
Microfilm		lump sum	@		$0.00
SUBTOTAL PRODUCTION / PRESENTATION EXPENSES					**$1,350.00**
TOTAL PROJECT OUT-OF-POCKET EXPENSES					**$2,910.00**

Proposal for Environmental Permitting Services
Florida Scrub-Jay Survey and Habitat Assessment
City of Vero Beach - Vero Beach Municipal Airport
Indian River County, Florida

1.0 INTRODUCTION

URS Corporation Southern (hereafter referred to as "URS") is assisting the Vero Beach Municipal Airport with design and management of a project that will remove vegetation and selected trees from runway safety areas and vertical clear zones as required by the Federal Aviation Authority (FAA) to maintain their Part 77 and/or 139 Certification. During habitat assessments of the areas to be cleared, Florida scrub-jays were observed north of Runway 11L-29R. Florida scrub-jays are listed as threatened by the U.S. Fish and Wildlife Service (FWS). On March 29, 2011, URS initiated an informal meeting with the FWS to discuss potential impacts to Florida scrub jays and their habitat that may result from the proposed clearing project. The FWS requested a formal scrub-jay survey of the airport property to (1) determine the existing number of family groups and their territories; and (2) assess the potential impacts to the existing family groups as a result of the proposed action and determine appropriate mitigation measures. The FWS stated that all suitable habitats for Florida scrub-jay within the project boundaries be surveyed. A preliminary examination of land within project boundaries yields both unsuitable and suitable scrub-jay habitat on both the eastern and western sides of the airport property. The latest guidance from the FWS (Florida Scrub-jay General survey Guidelines and Protocols, updated 8/24/2007) requires five visits to each survey point for project related surveys. URS has teamed with a local consulting firm, Carroll and Associates, to complete the required survey. The following scope of services describes the tasks and associated costs required to complete the Florida scrub-jay survey and habitat assessment. All activities performed by Carroll and Associates will be completed as described in the DRAFT proposal from Carroll and Associates, dated April 19, 2011 (see Attachment A).

2.0 SCOPE OF SERVICES

Task 1: <u>Florida Scrub-Jay Survey</u>

Carroll and Associates will survey suitable Florida-scrub jay habitats within the airport property to determine the existing number of family groups and approximate territories. This survey shall be completed and documented using the procedures established in the most recent version of the FWS Florida Scrub-Jay General Survey Guidelines and Protocol. Generally, the survey will entail the establishment of a call station every 200 meters (at a minimum) within suitable scrub-jay habitat on the airport property. It is estimated that approximately 35 call stations will be marked in the field and surveyed once a day for a minimum of five days.

Task 2: <u>Results Reporting/Deliverable</u>

Carroll and Associates will provide a report outlining the results of the survey outlined in Task 1.

The results shall be provided in written, tabular, and graphics as appropriate. URS will create and provide the graphics for the report based on information provided by Carroll and Associates. At a minimum, the report shall include:

- An evaluation of current use of the airport property by Florida-scrub jays to decide what habitat continues to be occupied by jays and how successful reproduction has been this year;
- A comparison of this information with past studies to make population predictions of Florida scrub-jay populations at the Vero Beach Airport;
- A determination of the potential habitats available on the airport property that are not currently used by jays, but could support jays with proper management techniques;
- A general evaluation of the current vegetative conditions in the area north of Runway 11L-29R and south of 41st Avenue that is designated as Conservation in the airport's Master Plan (this would include the city well field);
- A determination of management practices that would be effective for improving habitats away from the runway areas (north of security fence); and
- Logical areas or segments that call for similar habitat management efforts.

3.0 SERVICES AND/OR MATERIALS TO BE PROVIDED BY THE CLIENT

With reasonable advance notice, Vero Beach Airport shall provide access to the airport property, both within and outside the security fence, as needed to establish call stations and survey for scrub-jays for a minimum of five days.

4.0 ITEMS NOT INCLUDED IN THIS PROPOSAL

The following items are not included in this proposal and cost estimate:

- A formal land or habitat management plan (although potential actions will be included);
- Preparation of any local, state, or federal permit or authorization forms;
- Formal or informal Section 7 consultations with the US Fish and Wildlife Service;
- The development of conservation measures for impacts to any protected species which may be affected by construction of the project;
- U.S. Fish and Wildlife Service or Florida Fish and Wildlife Conservation Commission Incidental take permits or relocation permits for any listed species;
- Seasonal assessments of the project area for specific flowering plant species or seasonal animal species, nor does it include such sampling methods as field trap, drift nets, etc. for the collection of mammals, birds, reptiles, amphibians, or invertebrates.

5.0 FUTURE/ADDITIONAL ACTIVITIES

Because the proposed clearing project may impact scrub-jays and/or their habitats, informal consultation with the FAA must be initiated. The FAA must provide a letter to the FWS requesting informal consultation because they are the federal agency potentially funding the project. The letter must contain a package that includes the following:

- A description of the proposed action (clearing);
- Existing and proposed conditions at the airport;
- A determination of affect the proposed action may have on the Florida scrub-jay;
- A copy of the current scrub jay survey; and
- The burning/habitat management plan.

The survey data and habitat report generated from these services will be used to create a Nuisance Wildlife Deterrent Plan (NWDP) for presenting to the FWS during the informal consultation process. The NWDP will contain a habitat/burn management plan for undeveloped areas on the airport property outside of the existing security fence. The purpose of the NWDP is to provide enhanced habitat value outside of the security fence in an attempt to draw scrub-jays away from the existing runways and approach and departure lanes. The proposed clearing and lack of habitat improvement inside of the security fence will potentially discourage the use of these habitats by the Florida scrub-jay.

Services associated with the initiation of Section 7 consultation between the FAA and FWS and development of the NWDP are not included in the current Scope of Services. URS is available to provide these services in the next phase of the project.

Proposal for Environmental Permitting Services
Florida Scrub-Jay Survey and Habitat Assessment
City of Vero Beach - Vero Beach Municipal Airport
Indian River County, Florida

Attachment A

April 19, 2011 Proposal from Carroll and Associates

Carroll and Associates
1160 38th Avenue
Vero Beach, FL 32960
772-569-0086

DRAFT April 19, 2011

Eric Menger
Airport Director
Vero Beach Municipal Airport
3055 Cherokee Avenue
Vero Beach, FL 32960

Steve Henriquez
URS
7665 West Courtenay Campbell Causeway
Tampa , FL 36675

Dear Eric and Steve:

On April 15, 2010, Carroll and Associates submitted a proposal to the Airport Director to perform an evaluation of the Florida scrub-jay for use in developing a scrub management plan for the north side of the Vero Beach Municipal Airport property. The proposal aimed to go through a series of steps to achieve that goal.

These steps are:

1. Evaluate current use by Florida-scrub jay to decide what habitat continues to be occupied by jays and how successful reproduction has been this year.

2. Compare this information with past studies and make population predictions.

3. Determine the potential habitat available in areas not used by jays presently but with proper conditions could likely support jays.

4. Generally evaluate the current vegetative conditions in the area north of the runways and south of 41st street that is designated environmental preservation or conservation (this would include the city well field).

5. Determine what management practices would be effective for these particular areas to best improve habitat away from the runway areas (north of the security fence).

6. Draft map of logical blocks or segments that call for similar management efforts.

With the above steps completed the City would be in position to consider a management plan for Threatened Species and for scrub lands on the airport property that could be part of the next update of the Airport Master Plan or City Comprehensive plan as well as other uses such as grant requests and mitigation needs.

On April 14, 2011 we were asked to update that proposal. We discovered 2 items that we needed to clarify or update before completion of this new cost estimate.

1. What is the size of the area to be evaluated? Previous estimates were all for the north side of the airport property, yet currently a clearing project is in planning stages for a scattered larger area.

2. There is a substantial difference between protocols for Jaywatch citizen science and studies for development project proposals.

There is a clearing project associated with upcoming airport development. URS Corporation provided the map of project boundaries. US Fish and Wildlife Service requires that all suitable habitats for Florida scrub-jays within the project boundaries be surveyed. We believe that all project specific, monitoring, and planning work should be performed at the same time. A preliminary examination of land within project boundaries yields both unsuitable and suitable scrub-jay habitat on both the eastern and western sides of the airport property.

Second, upon examination of the latest Guidance from the US Fish and Wildlife Service (Florida scrub-jay General survey Guidelines and Protocols, updated 8/24/2007) we note that the guidance continues to require 5 visits to each survey point for project related surveys. The Jaywatch protocol as presented by The Nature Conservancy calls for 3 visits to each survey site at very specific times of the year. In this proposal we have expanded our estimate for field work to insure the Service is satisfied with our methodology in this study.

The survey will be performed at our normal field biologist rate. In this proposal, the city would not use the volunteer effort of the Jaywatch program. No volunteers will be enlisted however data collected would be presented for their use for monitoring Florida scrub-jay populations statewide. URS Corporation will be charged with presenting results in map and graphic form.

We propose to complete these steps for at total of $8000. Attached you will find an estimate of hours spent and cost to do this evaluation. These costs are presented as "not to exceed" values, and could be reduced if Jaywatch volunteers were used during the narrow time frame of late June and July. Also each task could be performed in one contract or performed over a longer time frame.

If approved the city would be responsible for providing maps of the Airport, Well field boundaries and the Preserved habitat boundaries in the Comprehensive Plan, and to provide for access to the site for evaluation tasks including inside the security perimeter. Also previous Florida scrub-jay monitoring reports for both the Airport and the city water department should be provided by the City of Vero Beach. In addition, we would need to know the airport operational needs such as clear zones.

Please call if you have any questions.

Sincerely,

Joseph D. Carroll

Approved _____ Date_____

Proposal

Task 1

Evaluate current use of the area by Florida-scrub jay to decide what habitat continues to be occupied by jays and how successful reproduction has been this year.

	Field Biologist Hours	Cost
Field survey time to meet FWS&Jaywatch protocol	50	3000
Report Preparation	7 hours	420
	57 hours	$3420

Task 2

	Senior Biologist Hours	
Compare this information with past studies. Make population predictions	6 hours	$540

Task 3

Determine the potential habitat available in areas not used by jays presently but with proper conditions could likely support jays.

	Senior Biologist Hours	
Consult with Experts (Breineger, Bowman)	5 hours	
Review soil maps	1 hour	
Literature review	3 hours	
Predict Potential scrub-jay population		
	9 hours	$810

Task 4

Generally evaluate the current vegetative conditions in the area north of the runways and south of 41st Avenue that is designated as environmental preservation (this would include the city well field).

	Field Biologist Hours	
Use simple vegetative condition sampling	26 hours	$1560
W/photographic stations(grid)		
Presence of exotics and height of vegetation		

Task 5

Determine what management practices would be effective for these particular areas to best improve habitat away from the runway areas (north of security fence).

	Senior Biologist Hours	Cost
Choose or mix from various management techniques (Burn, Mechanical, Exotic herbicides, etc.) Draft evaluation report	10	$900

Task 6

Draft logical areas or segments that call for similar management efforts.

	Senior/Field Biologist Hours	
Outline area segments		
Draft phases	6 hours	
Draft maps	3 hours	
	9 hours	$810
Mileage waived in Home County		$0
Total Amount		$8040

2D-6)

City Council Agenda Item
Meeting of July 19, 2011

TO: Mayor Jay Kramer
Vice Mayor Pilar Turner
Councilmember Brian Heady
Councilmember Craig Fletcher
Councilmember Tracy Carroll

FROM: Monte K. Falls, P.E. - Interim City Manager MK Falls 7/12

DATE: July 12, 2011

SUBJECT: **Small Government Enterprise License Agreement**

REQUESTED BY: GIS Manager

The following is requested as it relates to the above-referenced agenda item:

✓ Request Council review and approval based on the attached supporting documentation.

____ Request Council review and possible action.

____ No action required. (Information only)

DEPARTMENTAL CORRESPONDENCE

TO: Monte K. Falls, PE, Interim City Manager
DEPT: City Manager

VIA: Donald H. Dexter, Jr., Interim Assistant Director
DEPT: Public Works

FROM: Jim Kirkpatrick, GISP, GIS Manager
DEPT: Public Works

DATE: July 12, 2011

RE: Small Government Enterprise License Agreement

Received
JUL 2011
City Mgr.'s Office

Recommendation:

- Place this item on the City Council's Agenda for July 19, 2011;
- Authorize the purchase of a 3 year 2 month Geographical Information Systems (GIS) software license agreement from ESRI in the amount of $25,000 per year (*$29,469 for the first year).

Funding:

Funding for this project will be from account numbers:

403.5400.531.670391 (Electrical Engineering)
001.9900.519.346200 (General Fund \ Public Works)
421.9005.536.346200 (Water & Sewer)

Background:

The Department of Public Works' GIS Division has been using ESRI software for approximately 10 years to create and manage the City's GIS data. Recently, the Departments of Electrical Engineering and Water & Sewer have purchased ESRI software to support their GIS efforts. Due to the increased use of GIS software, the GIS Division inquired about possible opportunities to consolidate the City's GIS software purchases to reduce spending.

Three years ago ESRI announced a new software license program called Small Government Enterprise License Agreement (SGELA) which allows public agencies to acquire unlimited license seats for a fixed price of $25,000.00 per year (*$29,469 for the first year), based on a three year contract. This license agreement also includes software maintenance and $5,000.00

of online GIS training. The GIS Division contacted the Departments of Electrical Engineering and Water & Sewer regarding this program, and after discussing the details and costs involved all three departments agreed that the SGELA program would allow the City to have one contract with ESRI in lieu of individual contracts for each user department, resulting in a cost savings of approximately $26,731 as well as providing flexibility for software distribution. The cost comparison for purchasing software separately and jointly through a SGELA contract is as follows:

	Projected 3 Yr. 2 Mo. Software Costs
Public Works Dept.	$14,700
Water & Sewer Dept.	$39,600
Electrical Eng. Dept.	$51,900
Total	$106,200

SGELA 3 Yr. 2 Mo. Contract Cost	$79,469

3 Yr. 2 Mo. Cost Savings	$26,731

The contract costs will be shared for year one as follows:

Department of Electrical Engineering	$9,823.09
Department of Water & Sewer	$9,823.09
Department of Public Works	$9,823.09
Total Year One	***$29,469.27**

The contract costs will be shared for each subsequent year as follows:

Department of Electrical Engineering	$8,333.33
Department of Water & Sewer	$8,333.33
Department of Public Works	$8,333.33
Total Per Year	**$25,000.00**

*The actual total due for the first year payment is $29,469.27. The current contract ends on July 27th, 2011. This pro-rated payment will allow the contract to remain active an additional 2 months and then re-new on October 1st of each year which corresponds with the City's fiscal budget cycle. The pro-rated payment will be shared equally by all three departments.

Therefore, we recommend that all three Departments be authorized to re-enter into the SGELA license contract with ESRI. We have attached a copy of the ESRI SGELA quotation for your information.

Attachment

Cc: Steve Maillet, Finance Director w/attachment
John O'Brien, Purchasing Manager w/attachment
Wayne Comet, Acting City Attorney w/attachment
Rob Bolton, Water & Sewer Director
Ted Fletcher, Acting Electrical Engineering Director

JK:DHD/ntn

T:\Documents\Agenda_GIS SGELA 2011_MFalls_Jun 21 2011.docx

Jim Kirkpatrick
City of Vero Beach
1053 20th Pl
Vero Beach, FL, 32960

To City of Vero Beach,

The City of Vero Beach is currently under contract with Esri for the Small Municipal and County Government Enterprise License Agreement (SGELA) which is a three year agreement that has granted your organization access to Esri term license software on an unlimited basis including maintenance on all software offered through the ELA for the term of the agreement. This contract term is expiring on July 27, 2011. Due to the understanding that Vero Beach wishes to change the SGELA contract term dates officially to October instead of July, Esri has offered the following solution;

Vero Beach will pay for the SGELA on October 1, 2011 which will be the new renewal date for the full three year contract. In order to ensure uninterrupted use of the SGELA licensing between the dates of July 28th and October 1st, we are proposing that your first year officially start on July 28, 2011 and end on Sept 30, 2012; because of these dates, your first year payment will be $29,469.27. The following second and third year payments will be the yearly price of $25,000.00 starting on October 1, 2012 and October 1, 2013 respectively.

By signing this letter the City agrees to this payment plan and allowing the extension of your SGELA licenses until October 1, 2011 when payment is due. When October 1, 2011 comes then the actual SGELA contract and City PO will be signed and submitted to Esri for processing.

Thank you for your business,

Robyn Garrett
704-541-9810 *8640
rgarrett@esri.com

City of Vero Beach signature

June 1, 2011

Mr. Jim Kirkpatrick
CITY OF VERO BEACH
1053 20TH PL
VERO BEACH, FL 32960

Dear Jim,

The Esri Small Municipal and County Government Enterprise License Agreement (ELA) is a three-year agreement that will grant your organization access to Esri® term license software on an unlimited basis including maintenance on all software offered through the ELA for the term of the agreement. The ELA will be effective on the date executed and will require a firm, three-year commitment.

Based on Esri's work with several organizations similar to yours, we know there is significant potential to apply geographic information system (GIS) technology in many operational and technical areas within your organization. For this reason, we believe that your organization will greatly benefit from an enterprise license agreement.

An ELA will provide your organization with numerous benefits including:

- A lower cost per unit for licensed software
- Substantially reduced administrative and procurement expenses
- Maintenance on all Esri software deployed under this agreement
- Complete flexibility to deploy software products when and where needed

The following business terms and conditions will apply:

- All current departments, employees, and in-house contractors of the organization will be eligible to use the software and services included in the ELA.

- If your organization wishes to acquire and/or maintain any Esri software during the term of the agreement that is not included in the ELA, it may do so separately at the Esri pricing that is generally available for your organization for software and maintenance.

- This ELA contains a limited number of Bing Maps transactions per standard Esri list pricing.

- The organization will establish a single point of contact for orders and deliveries and will be responsible for redistribution to eligible users.

- The organization will establish a Tier 1 support center to field calls from internal users of Esri software. The organization may designate individuals as specified in the ELA who may directly contact Esri for Tier 2 technical support.

- The organization will provide an annual report of installed Esri software to Esri.

380 New York Street
Redlands, California 92373-8100 USA

909 793 2853
info@esri.com

esri.com

- Esri software and updates that the organization is licensed to use will be automatically available for downloading.

- The organization will act as an Esri reference site and will permit Esri to publicize its use of Esri software and services.

- The fee and benefits offered in this ELA proposal are contingent upon your acceptance of Esri's Small Municipal and County Government ELA terms and conditions.

- Licenses are valid for the term of the ELA.

This program offer is valid for 90 days. To complete the agreement within this time frame, please contact me within the next seven days to work through any questions or concerns you may have. To expedite your acceptance of this ELA offer:

1. Sign and return the signature page of the ELA with a Purchase Order or issue a Purchase Order that references this ELA Quotation and includes the following statement on the face of the Purchase Order: **"THIS PURCHASE ORDER IS GOVERNED BY THE TERMS AND CONDITIONS OF THE ESRI SMALL MUNICIPAL AND COUNTY GOVERNMENT ELA, AND ADDITIONAL TERMS AND CONDITIONS IN THIS PURCHASE ORDER WILL NOT APPLY."** Have it signed by an authorized representative of the organization.

2. On the first page of the ELA, identify the central point of contact/agreement administrator. The agreement administrator is the party that will be the contact for management of the software, administration issues, and general operations. Information should include name, title (if applicable), address, phone number, and e-mail address.

3. In the purchase order, identify the "Ship to" and "Bill to" information for your organization.

4. Send the purchase order and agreement to the address, email or fax noted below:

   Esri
   Attn: Customer Service SG-ELA
   380 New York Street
   Redlands, CA 92373-8100

   e-mail: service@esri.com
   fax documents to: 909-307-3083

I appreciate the opportunity to present you with this proposal, and I believe it will bring great benefits to your organization.

Thank you very much for your consideration.

Best Regards,

Robyn Garrett
rgarrett@esri.com
704-541-9810 *8640

Quotation # 20387370

Date: May 31, 2011

ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC.
3325 Springbank Ln, Ste 200
Charlotte, NC 28226-3343
Phone: (704) 541-9810 Fax: (704) 541-7620
DUNS Number: 06-313-4175 CAGE Code: 0AMS3

To expedite your order, please attach a copy of this quotation to your purchase order.
Quote is valid from: 05/31/2011 To: 08/29/2011

Customer # 183952 Contract #

CITY OF VERO BEACH
PUBLIC WORKS DEPT
1053 20TH PL
VERO BEACH, FL 32960

ATTENTION: Jim Kirkpatrick
PHONE: (772) 978-4870
FAX:

Material	Qty	Description	Unit Price	Total
110035	1	Populations of 0 to 25,000 Small Government Term Enterprise License Agreement -First year payment to cover July 28,2011 - Sept 30,2012	29,469.27	29,469.27
110035	1	Populations of 0 to 25,000 Small Government Term Enterprise License Agreement -Second year payment to cover Oct 1, 2012 - Sept 30,2013	25,000.00	25,000.00
110035	1	Populations of 0 to 25,000 Small Government Term Enterprise License Agreement -Third year payment to cover Oct 1,2013 - Sept 30,2014	25,000.00	25,000.00

Item Total:	79,469.27
Subtotal:	79,469.27
Sales Tax:	0.00
Estimated Shipping & Handling(2 Day Delivery) :	0.00
Contract Pricing Adjust:	0.00
Total:	$79,469.27

The following items are optional items listed for your convenience.
These items are not included in the totals of this quotation.

Material	Qty	Description	Unit Price	Total
116997	1	Small Enterprise License Agreement Training Package at ESRI Site 21 Days Prepaid ILT / ILV, Over 3 Year Term, Per Student Seat, 7 Days per Annum Instructor Led Training -First year payment	3,185.00	3,185.00
116997	1	Small Enterprise License Agreement Training Package at ESRI Site 21 Days Prepaid ILT / ILV, Over 3 Year Term, Per Student Seat, 7 Days per Annum Instructor Led Training -Second year payment	3,185.00	3,185.00
116997	1	Small Enterprise License Agreement Training Package at ESRI Site 21 Days Prepaid ILT / ILV, Over 3 Year Term, Per Student Seat, 7 Days per Annum Instructor Led Training -Third year payment	3,185.00	3,185.00

* Please indicate on your purchase order if this purchase is funded through the American Recovery and Reinvestment Act, and whether Esri is a Prime Recipient, Sub-recipient, or Vendor for reporting purposes.

For questions contact: Robyn Garrett **Email:** rgarrett@esri.com **Phone:** (704) 541-9810 x8640

Acceptance of this quotation is limited to the Esri License Agreement and the Quotation Terms and Conditions
This Quotation is made in confidence for your review. It may not be disclosed to third parties, except as required by law.

If sending remittance, please address to: Esri, File No. 54630, Los Angeles, Ca 90074-4630

GARRETTR **This offer is limited to the terms and conditions incorporated and attached herein.**

SMALL MUNICIPAL AND COUNTY ENTERPRISE LICENSE AGREEMENT (E214-1 04/04/2011)

Esri, 380 New York St., Redlands, CA 92373-8100 USA • TEL 909-793-2853 • FAX 909-793-5953

This Small Municipal and County Enterprise License Agreement ("ELA") is by and between the organization identified in the ELA Quotation (**"Licensee"**) and **Environmental Systems Research Institute, Inc. ("Esri")**, with offices at 380 New York Street, Redlands, California 92373-8100. Unless otherwise agreed to by the parties, the Effective Date of this ELA is the date of the signature below or, if no date is provided with the signature, the date of Esri's receipt of Licensee's Purchase Order citing this ELA. This ELA grants Licensee certain rights to use specific Esri Software, Data, Web Services, and Documentation for a limited, fixed period beginning from the Effective Date and provides tailored maintenance subject to payment of fees and the terms of this ELA.

This ELA is composed of (i) this signature page and the ELA Terms and Conditions, (ii) Exhibit 1—Scope of Use (E300), (iii) Exhibit 2—Training Addendum (E207SET), and (iv) the ELA Quotation, which together constitute the sole and entire agreement of the parties as to the subject matter set forth herein. Should there be any conflict between the terms and conditions of the documents that comprise the ELA, the order of precedence for the documents shall be as follows: (i) this signature page and the ELA Terms and Conditions, (ii) Exhibit 1—Scope of Use (E300), (iii) Exhibit 2—Training Addendum (E207SET), and (iv) the ELA Quotation. In the event Licensee orders training courses, the terms and conditions of the Training Addendum will take precedence over the provision of the ELA with respect to the training courses. Licensee agrees that additional terms and conditions in any Licensee Purchase Order or addendum will not apply, and the terms of this ELA will govern.

ENTERPRISE SOFTWARE SCHEDULE

Unlimited Quantities

Desktop Software and Extensions
ArcInfo
ArcEditor
ArcView
ArcGIS Desktop Extensions: 3D Analyst, Spatial Analyst, Network Analyst, Geostatistical Analyst, ArcScan for ArcGIS, ArcGIS Publisher, Maplex for ArcGIS, Schematics, and ArcGIS Workflow Manager

Server Software and Extensions
ArcGIS Server Workgroup or Enterprise (Advanced, Standard, and Basic)
ArcIMS
ArcGIS Server Extensions: 3D, Schematics, Geostatistical, ArcGIS Workflow Manager, Network, Image, and Spatial

Developer
ArcGIS Engine Runtime
ArcGIS Engine Runtime Extensions: 3D, Spatial, Geodatabase Update, Network, Schematics, and Maplex

Limited Quantities
One Annual Subscription to Esri Developer Network (EDN)

OTHER BENEFITS

Number of Esri International User Conference Registrations provided annually	**2**
Number of Tier 1 Help Desk Individuals authorized to call Esri	**2**
Maximum number of sets of backup media, if requested*	**2**
Virtual Campus Annual User License allowance	**5,000**
Five percent (5%) discount on all individual commercially available instructor-led training classes at Esri facilities purchased outside of this Agreement (Discount does not apply to Small Enterprise Training Package.)	

* Additional sets of backup media may be purchased.

This ELA supersedes any previous agreements, proposals, presentations, understandings, and arrangements between the parties relating to such subject matter, which is the licensing of the Enterprise Software. Except as provided in Section 9.1 Future Versions/Updates, any modifications or amendments to this ELA must be in writing and signed by an authorized representative of each party.

Licensee may accept this ELA by signing and returning it with an authorizing Purchase Order that matches the ELA Quotation, references the ELA, and includes the following statement on the face of its Purchase Order: **"THIS PURCHASE ORDER IS GOVERNED BY THE TERMS AND CONDITIONS OF THE ESRI SMALL MUNICIPAL AND COUNTY ELA, AND ADDITIONAL TERMS AND CONDITIONS IN THE PURCHASE ORDER WILL NOT APPLY."**

Licensee will return this ELA and its Purchase Order to Attn.: Esri Customer Service, 380 New York Street, Redlands, CA 92373-8100; e-mail it to service@esri.com; or fax it to 909-307-3083.

ACCEPTED AND AGREED:

_____
(Licensee)

By: _____
Signature

Printed Name: _____

Title: _____

Date: _____

Esri EIN Number: **95-2775732**

Licensee Contact Information

Contact Name: _____

Address: _____

City, State, ZIP: _____

Telephone: _____

Fax: _____

E-mail: _____

ELA Quotation Number: _____

Esri Contract Number: _____

ELA TERMS AND CONDITIONS

ARTICLE 1—DEFINITIONS

Definitions. The terms used are defined as follows:

- "Data" means any Esri or third-party digital dataset(s) including, but not limited to, geographic vector data coordinates, raster, reports, or associated tabular attributes licensed under this ELA.
- "Deploy," "Deployed," or "Deployment" means to redistribute and install or the redistribution and installation of the Enterprise Software (and related key codes/registration files) or its having been redistributed and installed by Licensee on Licensee's hardware.
- "Documentation" means all printed and digital materials including, but not limited to, help files, user reference documentation, training documentation, or technical information and briefings.
- "ELA Fee" means the fee set forth in the ELA Quotation.
- "ELA Maintenance" means Tier 2 Support, updates, and patches provided by Esri to Licensee for the Enterprise Software.
- "ELA Quotation" means the Esri quote form provided to Licensee for the Small Municipal and County ELA containing the ELA Fee and annual payment schedule.
- "Enterprise Software" means the items identified in the Enterprise Software Schedule on page 1 of this ELA.
- "Incident" means a failure of the Software to operate according to the Documentation where such failure substantially impacts operational or functional performance.
- "License Agreement" and "ELA" are used interchangeably and mean the ELA Terms and Conditions, including Exhibit 1—Scope of Use (E300), that apply to Enterprise Software provided to Licensee by Esri under this ELA.
- "Samples" means sample code, sample applications, add-ons, or sample extensions of Software, Data, Documentation, or Web Services.
- "Software" means the actual copy of all or any portion of Esri's proprietary software technology accessed or downloaded from an authorized Esri website or delivered on any media, in any format, including backups, updates, service packs, patches, hot fixes, or permitted merged copies.
- "Technical Support" means a process to attempt to resolve reported Incidents through error correction; patches; hot fixes; workarounds; or any other type of Software, Data, or Documentation corrections or modifications.
- "Term License" means licenses provided for use during a fixed or limited time period concurrent with the term of this ELA.
- "Tier 1 Help Desk" means Licensee point of contact from which all Tier 1 Support will be given to Licensee.
- "Tier 1 Support" means the Technical Support provided by the Tier 1 Help Desk as the primary contact to Licensee in attempted resolution of reported Incidents.
- "Tier 2 Support" means the Technical Support provided by Esri to the Tier 1 Help Desk when the Incident cannot be resolved through Tier 1 Support.
- "Web Services" means software services or Esri or third-party data provided by Esri that perform geographic information system (GIS) functions, tasks, or data services and are accessed over the Internet, excluding Virtual Campus.

ARTICLE 2—INTELLECTUAL PROPERTY RIGHTS AND RESERVATION OF OWNERSHIP

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9.3 Taxes and Fees. Sales or use taxes for the fees quoted are as required by law. The tax amount may change depending on the time elapsed between this quote and date of the invoice. Esri will include applicable sales or use taxes on your invoice unless you provide proof with your order that your organization or use of the product is tax exempt.

9.4 No Implied Waivers. The failure of either party to enforce any provision of this ELA shall not be deemed a waiver of the provisions or of the right of such party thereafter to enforce that or any other provision.

9.5 Severability. The parties agree that if any provision of this ELA is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make the intent of the language enforceable.

9.6 Successor and Assigns. Licensee shall not assign, sublicense, or transfer Licensee's rights or delegate its obligations under this ELA without Esri's prior written consent, and any attempt to do so without consent shall be void. This ELA shall be binding upon the respective successors and assigns of the parties to this ELA.

9.7 Survival of Terms. The provisions of Articles 2, 5, 6, 7, 8, and 9 of this ELA shall survive the expiration or termination of this ELA.

9.8 Equitable Relief. The parties agree that any breach of this ELA may cause irreparable damage and that, in the event of such breach, in addition to any and all remedies at law, a party shall have the right to seek an injunction, specific performance, or other equitable relief in any court of competent jurisdiction.

9.9 Governing Law. This ELA shall be governed by and construed in accordance with the laws of the state in which Licensee is located without reference to conflict of laws principles, except that US federal law shall govern in matters of intellectual property.

ARTICLE 10—ELA MAINTENANCE

ELA Maintenance for Enterprise Software provided under this ELA is included with the ELA Fee. ELA Maintenance includes standard maintenance benefits specified in the most current applicable Esri US Software Maintenance Program document (found at www.esri.com/legal) as modified by this Article 10—ELA Maintenance. ELA Maintenance does not include Technical Support for Web Services.

a. Tier 1 Support Provided by Licensee

   (1) Licensee shall provide Tier 1 Support through the Tier 1 Help Desk to all Licensee's authorized users.
   (2) The Tier 1 Help Desk will use analysts fully trained in the Software they are supporting.
   (3) At a minimum, Tier 1 Support will include those activities that assist the user in resolving how-to and operational questions as well as questions on installation and troubleshooting procedures.
   (4) Tier 1 Support analysts will be the initial points of contact for all questions and Incidents. Tier 1 Support analysts shall obtain a full description of each reported Incident and the system configuration from the user. This may include obtaining any customizations, code samples, or data involved in the Incident. The analyst may also use any other information and databases that may be developed to satisfactorily resolve Incidents.
   (5) If the Tier 1 Help Desk cannot resolve the Incident, an authorized Tier 1 Help Desk individual may contact Esri Tier 2 Support. The Tier 1 Help Desk shall provide support in such a way as to minimize repeat calls and make solutions to problems available to Licensee.
   (6) Tier 1 Help Desk individuals identified by Licensee are the only individuals (callers) authorized to contact Esri directly for Tier 2 Support. Licensee may revise named individuals by written notice.

b. Tier 2 Support Provided by Esri

   (1) Esri shall log the calls received from Tier 1 Help Desk individuals.
   (2) Esri shall review all information collected by and received from Tier 1 Help Desk individuals including preliminary documented troubleshooting provided by Tier 1 Help Desk when Tier 2 Support is required.
   (3) Esri may request that Tier 1 Help Desk individuals provide verification of information, additional information, or answers to additional questions to supplement any preliminary information gathering or troubleshooting performed by Tier 1 Help Desk.
   (4) Esri shall attempt to resolve the Incidents submitted by Tier 1 Help Desk by assisting the Tier 1 Help Desk individuals.
   (5) When the Incident is resolved, Esri shall communicate the information to the Tier 1 Help Desk individuals, and the Tier 1 Help Desk shall disseminate the resolution to the user.

   Esri may, at Esri's sole discretion, make patches, hot fixes, or updates available for downloading from Esri's website.

c. No Software other than the defined Enterprise Software will be provided maintenance under this ELA. Licensee may acquire maintenance for other Software (non-Enterprise Software) outside of this ELA.

ARTICLE 11—ORDERING, ADMINISTRATIVE PROCEDURES, DELIVERY, AND DEPLOYMENT

11.1 Purchase Orders, Delivery, and Deployment

a. Licensee shall issue a Purchase Order upon execution of the ELA and annually thereafter in accordance with the ELA Quotation. Payment shall be due and payable within thirty (30) days of the anniversary date of the Effective Date, with the initial payment due within thirty (30) days of execution of the ELA. Esri's Federal ID Number is 95-2775-732.
b. Upon receipt of the initial Purchase Order from Licensee, Esri shall authorize download of the Enterprise Software to Licensee for its Deployment activities. If requested, Esri will ship backup media to the ship-to address identified on the Purchase Order, FOB Destination, with shipping charges prepaid. For those entities that avoid sales tax by downloading deliverables, request for delivery or receipt of tangible media may cause license fees to be subject to taxes. Licensee acknowledges that should such taxes become due, Esri has a right to invoice and Licensee agrees to pay any such sales or use tax associated with its receipt of tangible media.
c. Esri shall provide registration numbers or keycodes, as applicable, to activate the nondestructive copy protection program that enables the Enterprise Software to operate.
d. Licensee shall Deploy, install, configure, and track the Deployment status of the Enterprise Software.

11.2 Purchase Order Requirements

a. All orders pertaining to this ELA shall be processed through Licensee's centralized point of contact.
b. The following information shall be included in each Purchase Order:

   (1) Licensee name; Esri customer number, if known; and bill-to and ship-to addresses
   (2) Purchase Order number
   (3) Applicable annual payment due

(4) On the face page of its Purchase Order (or ordering document), Licensee shall insert a reference to the ELA and the following statement: "THIS PURCHASE ORDER IS GOVERNED BY THE TERMS AND CONDITIONS OF THE ESRI SMALL MUNICIPAL AND COUNTY ELA, AND ADDITIONAL TERMS AND CONDITIONS IN THE PURCHASE ORDER WILL NOT APPLY."

ARTICLE 12—ENDORSEMENT AND PUBLICITY

This ELA shall not be construed or interpreted as an exclusive dealings agreement or an endorsement of Esri by Licensee. Licensee agrees that upon execution of the ELA, Esri may publicize the existence of this ELA.

ARTICLE 13—ADMINISTRATIVE REQUIREMENTS

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13.3 Renewal. Upon expiration of this ELA, the parties will evaluate Licensee's requirements. Any follow-on ELA will be offered in accordance with license terms and condition and pricing then in effect and based on Licensee's then current population count.

ARTICLE 14—OPTIONAL ITEMS

If training courses identified in the ELA Quotation are acquired, they will be subject to the terms found in Exhibit 2—Training Addendum. In the event Licensee orders training courses, the terms and conditions of the Training Addendum will take precedence over the provision of the ELA with respect to the training courses.

EXHIBIT 1
SCOPE OF USE
(E300 03/29/2011)

Esri, 380 New York St., Redlands, CA 92373-8100 USA • TEL 909-793-2853 • FAX 909-793-5953

The scope of use for the Software, Data, Web Services, and Documentation identified below is described in the applicable footnotes identified in parentheses.

Software

- ArcExplorer—Java and Windows Editions (20 and 25)
- ArcGIS API for iOS, Windows Phone, or Android (1, 16, 25, and 33)
- ArcGIS Desktop
  - ArcInfo (either 1 or 2 and 25, 26, 33, 44, and 45)
  - ArcEditor (either 1 or 2 and 25, 26, 33, 44, and 45)
  - ArcView (either 1 or 2 and 25, 33, 44, and 45)
- ArcGIS Desktop Extensions (7)
- ArcGIS Engine Developer Kit and Extensions (1, 14, 15, 22, 25, 26, and 43)
- ArcGIS Engine Runtime and Extensions (either 1 or 2 and 15, 22, 25, 26, and 33)
- ArcGIS Explorer (20, 25, and 33)
- ArcGIS for AutoCAD (1, 20, and 25)
- ArcGIS for iOS (1, 25, and 33)
- ArcGIS Mobile Deployments (1, 15, 16, 25, 33, and 54)
- ArcGIS Server
  - Workgroup (either 3 or 5 and 8, 9, 25, 28, 29, 30, 32, 33, 38, 39, 40, and 45; if licensed as a Term License, 6 will also apply)
  - Enterprise (either 3, 4, or 5 and 8, 9, 25, 27, 31, 33, 38, 39, 40, and 45; if licensed as a Term License, 6 will also apply)
    - > Cloud Bundle (6 and 33)
- ArcGIS Server Extensions
  - ArcGIS for INSPIRE (7, 8, 33, and 35)
  - ArcGIS Server Geoportal Extension (either 3, 4, or 5 and 7 and 52)
  - ArcGIS Server Image Extension (7, 8, and 42)
  - ArcGIS Server Image Extension Service Editor (1)
  - Other Extensions (7)
- ArcGIS Web Mapping (including SharePoint, JavaScript, Adobe Flex, Microsoft Silverlight/WPF, SOAP, and REST) (6, 33, 35, and 53)
- ArcIMS
  - ArcIMS and Extensions (either 3, 4, or 5 and 8, 10, 31, and 45)
- ArcLogistics
  - Desktop (1 and 25)
  - Using ArcGIS Online (6, 20, 25, 34, 35, and 46)
  - Using ArcGIS Server (6, 20, 25, 34, 35, and 46)
  - Navigator (1 and 46)
- ArcPad (1, 12, 13, 25, and 33)
- ArcReader (20, 25, 33, and 45)
- ArcView 3.x and Extensions (1, 7, and 17)
- Esri Aeronautical Solution (either 1 or 2)
- Esri Business Analyst (Canadian Edition) (either 1 or 2 and 6, 25, 33, 36, 45, and 48)
- Esri Business Analyst (either 1 or 2 and 25, 33, 45, and 48)
- Esri Business Analyst Online API for Adobe Flex, Microsoft Silverlight, SOAP, and REST (6, 16, 25, 33, 35, 55, and 56)
- Esri Business Analyst Server
  - Workgroup (either 3, 4, or 5 and 8, 9, 21, 25, 28, 29, 31, 33, 39, 40, 45, and 48)
  - Enterprise (either 3, 4, or 5 and 8, 9, 21, 25, 27, 31, 33, 39, 40, 45, and 48)
- Esri Business Analyst Server (Canadian Edition) (either 3, 4, or 5 and 8, 9, 21, 25, 27, 31, 33, 36, 39, 40, 45, and 48)
- Esri Business Analyst Server Developer (3, 6, 25, 33, 35, and 51)
- Esri Business Analyst Server Developer (Canadian Edition) (3, 6, 25, 33, 35, 36, and 51)
- Esri Defense Mapping (either 1 or 2)
- Esri Developer Network (EDN) Software, Web Services, and Data (6, 7, 24, 25, 26, 33, 34, and 35)
- Esri Nautical Solution (either 1 or 2)
- Esri Production Mapping (either 1 or 2)
- File Geodatabase API
- Geoportal Clients for ArcGIS (7, 20, and 52)
- MapIt (11, 25, 31, 33, 35, 49, and 50)
- MapObjects—Java Edition (1, 5, 8, 15, 18, and 19)
- MapObjects LT (1, 14, and 16)
- MapObjects—Windows Edition (1, 14, 15, 16, and 18)
- MOLE (1)
- NetEngine Internet (5)
- Tracking Server (either 4 or 5 and 31)

Web Services

- ArcGIS Online Services (6, 25, 33, 34, and 35)
- Business Analyst Online (6, 25, 33, 48, 56, 57, and 58)
- Esri Redistricting Online (6, 25, 33, 34, and 35)

Data

- Data with ArcGIS Data Appliance (6, 23, 25, and 41)
- Esri Address Coder (either 1, 2, or 5 and 21, 22, 25, and 48)
- Esri Business Analyst (Canadian Edition) Data (either 1 or 2 and 6, 21, 25, 33, 36, 45, and 48)
- Esri Business Analyst Data (either 1 or 2 and 21, 25, 33, 45, and 48)
- Esri Business Analyst Server (Canadian Edition) Data (either 3, 4, or 5 and 21, 25, 33, 36, 45, and 48)
- Esri Business Analyst Server Data (either 3, 4, or 5 and 21, 25, 33, 45, and 48)
- Esri Data & Maps (either 1, 2, 3, 4, or 5 and 23 and 37)
- Esri Data (either 1, 2, or 5 and 25 and 48)
  - Demographic, Consumer Spending, Market Potential, Retail MarketPlace, Business, Traffic, Shopping Center, Cable Boundaries, Banking, and Crime
- Sourcebook•America (1 and 21)
- StreetMap Premium (either 1, 2, 4, or 5 and 6 and 25)
- Tapestry Segmentation (either 1, 2, or 5 and 21 and 48)

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12. Software is only licensed for navigational use when used in conjunction with ArcLogistics.
13. "Dual Use License" means the Software may be installed on a desktop computer and used simultaneously with either a personal digital assistant (PDA) or handheld mobile computer as long as the Software is only used by a single individual at any one (1) time.
14. Developers must include the following attribution with any deployed MapObjects application: "Portions of this computer program are owned by LizardTech, Inc., and are Copyright © 1995–2002 LizardTech, Inc., and/or the University of California. All rights reserved. US Patent No. 5,710,835."
15. Deployment licenses for desktop or Internet application(s) may be subject to payment of additional license fees.
16. Licensee may deliver applications to its sublicensee(s) provided Licensee uses a written sublicense agreement that protects Esri's rights in its Software, Data, Web Services, and Documentation to the same extent as the Esri License Agreement including, but not limited to, the following terms:

    a. Sublicensee may not reverse engineer, decompile, or disassemble the Esri Software, Data, Web Services, or Documentation, except to the extent permitted by applicable law; copy for commercial use; transfer; or assign its rights under the license grant;
    b. Sublicensee may not use any Esri Software, Data, Web Services, or Documentation, in whole or in part, separate from Licensee's executable application; and
    c. Third-party dependent or required components are redistributable subject to permission from the owner or author.
    d. Applications may be subject to deployment fees owed to Esri. Licensee shall contact its Esri distributor for details.

17. Licensee may use Business Objects Crystal Reports software only with the ArcView 3.x Software with which it was acquired and subject to the Crystal Reports License Agreement available on the media. Licensee may not use a software program or system to cache or queue report requests.
18. The deployment license is per application per computer.
19. MapObjects—Java Edition contains Java Archive files, which indicate they are authentic Esri-certificated files when used over the Internet. Licensee shall not use Esri certification or reference Esri as a source of trusted content in any modified MapObjects—Java Archive files. Licensee may deploy the unmodified Java class Esri-certified libraries as an integral part of the Licensee's application(s).
20. Licensee may reproduce and deploy the Software provided all the following occur: (a) the Software is reproduced and deployed in its entirety; (b) a license agreement accompanies each copy of the Software that protects the Software to the same extent as the Esri License Agreement, and the recipient agrees to be bound by the terms and conditions of the license agreement; (c) all copyright and trademark attributions/notices are reproduced; and (d) there is no charge or fee attributable to the use of the Software.

21. Licensee shall not withhold any substantial right (e.g., extension of credit) from any individual based solely on the individual's place of residence, as profiled in the Tapestry Segmentation system.
22. (a) ArcGIS Engine Runtime licenses shall not be used for Internet and server development and deployment; (b) an end user must license either ArcGIS Engine Runtime Software or other ArcGIS Desktop Software (ArcView, ArcEditor, or ArcInfo) to obtain the right to run an ArcGIS Engine application on one (1) computer; and (c) the ArcGIS Engine Runtime extensions shall not be used in combination with ArcGIS Desktop Software to run ArcGIS Engine applications. A single user can have multiple applications installed on one (1) computer for use only by that end user.
23. Licensee may redistribute the Data as described in the Redistribution Rights Matrix available at http://www.esri.com/legal/, in the Help system, or in supporting metadata files, subject to the specific attribution descriptions and requirements for the dataset accessed.
24. EDN Software, Web Services, and Data may only be used by one (1) named developer per subscription solely for the purposes of research, development, testing, and demonstration of a prototype application. EDN server Software and Data may be installed on multiple computers for use by any named EDN developer.
25. Use of included third-party owned data shall be subject to the Use of Data Restrictions found at http://www.esri.com/legal/ for the specific Data accessed. The Use of Data Restrictions may be modified by Esri from time to time. If a modification is unacceptable to Licensee, Licensee may cancel a subscription upon written notice to Esri, or discontinue use of the Data or Web Services, as applicable. If Licensee continues to use the Data or Web Services, Licensee will be deemed to have accepted the modification.
26. An ArcSDE Personal Edition geodatabase is restricted to ten (10) gigabytes of Licensee data.
27. ArcGIS Server Web ADF Runtime Software may not be deployed independent of Licensee's ArcGIS Server Enterprise configuration.
28. Use is limited to ten (10) concurrent end users of applications other than ArcGIS Server applications. This restriction includes use of ArcGIS Desktop Software, ArcGIS Engine Software, and third-party applications that connect directly to any ArcGIS Server geodatabase. There are no limitations on the number of connections from web applications.
29. Software can only be used with SQL Server 2005/2008 Express.
30. Use is restricted to a maximum of ten (10) gigabytes of Licensee data.
31. Redundant Software installation(s) for failover operations is allowed but can only be operational during the period the primary site is nonoperational. The redundant Software installation(s) shall remain dormant, except for system maintenance and updating of databases, while the primary site or any other redundant site is operational.
32. No redundant Software installation is permitted.
33. Licensee's access to and use of Cloud Bundle, ArcGIS Online Services, Business Analyst Online, Business Analyst Online API, or Microsoft Bing Maps are conditioned upon Licensee's acceptance of the Esri website and Service Terms of Use Agreement and the terms and conditions specific to Cloud Bundle, ArcGIS Online Services, Business Analyst Online, Business Analyst Online API, or Microsoft Bing Maps found at http://www.esri.com/legal/.
34. Licensee's organization is limited to the number of specified credits, transactions, geography, or number of users as described in the online product description.
35. Licensed end users shall not share the client-side data cache derived from ArcGIS Online Services with other licensed end users or third parties.
36. Licensee's use of Esri Business Analyst (Canadian Edition) Data is subject to the Use of Data Restrictions specific to Esri Business Analyst (Canadian Edition) Data found at http://www.esri.com/legal/.
37. Data provided with StreetMap USA may be used for mapping, geocoding, and routing purposes but is not licensed for dynamic routing purposes. For instance, StreetMap USA may not be used to alert a user about upcoming maneuvers (such as warning of an upcoming turn) or to calculate an alternate route if a turn is missed.
38. The ArcGIS Server 3D extension included with ArcGIS Server Standard (Workgroup or Enterprise) may only be used for generating globe data cache(s) or publishing a globe document as an ArcGIS Globe Service. No other use of the ArcGIS Server 3D extension Software is permitted with ArcGIS Server Standard.
39. Any editing functionality included with ArcGIS Server is not permitted for use with ArcGIS Server Basic (Workgroup or Enterprise).
40. Geospatial Enterprise JavaBeans (EJB) provided with ArcGIS Server (Workgroup or Enterprise) is permitted for use only with ArcGIS Server Advanced.
41. Licensee may only use Data from a single state with the Single State version of ArcGIS Data Appliance. This restriction applies to a large-scale (i.e., scale levels below 1:100,000) street map, transportation layer, boundaries and places layer, and one (1)-meter or better resolution imagery included in the USA Collection. This restriction does not apply to the small-scale (i.e., scale levels above 1:100,000) maps provided in the World Collection, which are intended for display at global and regional scales.
42. Licensee has the right to one (1) desktop deployment of the ArcGIS Server Image extension Service Definition Editor for every four (4) cores of ArcGIS Server Image extension that are licensed.
43. Licensee may develop an unlimited number of applications on a single computer and deliver the applications to end users with or without the ArcGIS Engine Runtime Software.

44. For any operating system environment in which Licensee runs instances of the Concurrent Use License management software, Licensee may run up to the same number of passive failover instances of the Concurrent Use License management software in a separate operating system environment for temporary failover support.
45. Data licensed with Esri Business Analyst and Esri Business Analyst Server is restricted for use only in conjunction with the respective Business Analyst extension.
46. Licensee should not follow any route suggestions that appear to be hazardous, unsafe, or illegal. Licensee assumes all risk of using this navigation Software.
47. Reserved.
48. Licensee may include reports and maps created from the Software or Data in hard-copy or read-only format for presentation packages or marketing studies for subsidiaries and customers. The total content of the Esri reports and maps must be less than twenty percent (20%) of Licensee's total content of the presentation package or marketing study. Full, complete, stand-alone reports or maps created from the Software or Data and not part of a presentation package or marketing study cannot be resold, sublicensed, or otherwise transferred without prior written permission of Esri. Licensee's third-party customer may only receive reports and maps generated by Licensee and may only use the maps and reports received from Licensee for internal purposes. In no case shall Licensee redistribute the Data in digital formats.
49. Esri MapIt Silverlight Web or WPF applications may not be deployed independent of Licensee's MapIt deployment configuration.
50. Licensee has the right to one (1) desktop deployment of Spatial Data Assistant for each Esri MapIt server license.
51. Esri Business Analyst Server Developer and Data may only be installed on one (1) server per license solely for the purposes of research, development, testing, and demonstration of a prototype application.
52. Source code is the intellectual property of Esri. Licensee shall treat any source code file identified as "Software" in a README file or at http://www.esri.com/legal/ as a trade secret for Licensee's own internal use only and not for further redistribution or access by unlicensed third parties. Licensee shall not modify the Software, Documentation, Data, or source code to incorporate, embed, link, or otherwise include any code, libraries, or data licensed or distributed under an open source licensing or distribution models similar to Free Software Foundation's GNU General Public License (GPL) or GPL-compliant licenses, including, without limitation, the Artistic License (e.g., Perl), the Mozilla Public License, the Netscape Public License, and the Sun Community or Industry Standards License, that could require a user to make its proprietary source code available to a requesting third party.
53. Deployment license options are as follows:

    a. A license for web applications is per the principal registered unique domain identifier. Domain is the Internet domain name registered with a domain name registrar. For example, in example.com, example.com is the registered unique domain identifier. Similarly, in example.com.xx, where xx is a registered country code, example.com.xx is the registered unique domain identifier.
    b. A license for desktop applications or SharePoint is per organization. For the purposes of this license, organization is equivalent to a principal registered unique domain identifier (as described above). For example, desktop applications can be used by any employee of the organization with the principal registered unique domain identifier. There is no limit to the number of applications that can be built and deployed within an organization.

54. ArcGIS Mobile is licensed for use with ArcGIS Server Advanced (Enterprise or Workgroup) and ArcGIS Desktop (ArcInfo, ArcEditor, ArcView, and ArcGIS Engine applications).
55. Licensee may develop software or web applications that use the Business Analyst Online API to access, query, create, display, and redistribute Reports and resulting static, electronic maps to end user(s) of Licensee's software or web applications. End user(s) of Licensee's software or web applications may use the Reports and maps for internal purposes only and not for further redistribution. "Report" means any formatted output created by the Business Analyst Online API, which includes PDF, CSV, Excel, HTML, and XML formats. Licensee shall not redistribute any Data in vector formats.
56. For Reports or maps displayed or posted to an external website, or Reports or maps created for Licensee's end user(s), Licensee shall affix an attribution notice to Licensee's online and/or hard-copy output that acknowledges Esri's and its third-party data supplier's intellectual property. These notices are found in the PDF format of each individual Report or as follows: "Source [Esri, Supplier]" or Copyright © [year(s)] [Esri, Supplier]. All rights reserved."
57. Licensee may only display or post any combination of 100 Business Analyst Online Reports and maps on its external websites.
58. Licensee shall order a separate Business Analyst Online subscription for each person who uses Business Analyst Online and shall provide output from the Business Analyst Online subscription only to the e-mail of the individual subscriber.

EXHIBIT 2
TRAINING ADDENDUM
(E207SET 3/11)

Esri, 380 New York St., Redlands, CA 92373-8100 USA • TEL 909-793-2853 • FAX 909-793-5953

ARTICLE 1—TRAINING DESCRIPTION

Esri offers instructor-led training related to the use of its proprietary GIS software. Esri will provide to Licensee a fixed number of training days to use for Instructor-Led Training, as defined in this Small Enterprise Training Package, if purchased. Instructor-Led Training events occur at an Esri Learning Center or via the web in a cloud environment. The Esri software training course(s) to be conducted, location, schedule dates, and registration requirements are set forth in the *Esri Training* catalog located on Esri's Training website (http://training.esri.com). All courses are conducted in substantial conformity with course descriptions outlined on the Esri Training website. Esri reserves the right to modify course content when necessary due to software technical capabilities or limitations.

ARTICLE 2—ESRI'S RESPONSIBILITIES

- Esri will provide an instructor qualified to conduct the course(s) as well as all necessary training materials sufficient for the number of registered participants (hereinafter "Student(s)") on the scheduled dates. Esri will provide each Student with a course manual where applicable.
- Esri will confirm Learning Center training class scheduled dates approximately ten (10) business days prior to the class start date.

ARTICLE 3—LICENSEE'S RESPONSIBILITIES

- Licensee must ensure the protection of Esri's copyrights. Licensee shall neither copy or distribute nor permit a third party to copy or distribute any of Esri's training material(s) unless otherwise required by law.
- Licensee must not resell seat(s) to an Esri training class unless explicitly authorized in writing by Esri.
- Licensee must confirm that all registered Students meet the minimum prerequisites for the applicable class set forth on Esri's Training website.
- Licensee must ensure that all Students have received confirmation from Esri to participate in an Esri training event. Unregistered Students are not permitted to view or participate in a Virtual Classroom training event. Esri reserves the right to disconnect any Student who permits access to unregistered Students.
- Licensee must submit registrations with a confirmed payment commitment at least seven (7) business days before the class start date. If Licensee submits a registration without a confirmed payment, Esri will not confirm the seat reservation. The reservation will be added to the waiting list pending payment confirmation and subject to availability.
- US government export control laws and regulations prohibit US persons from engaging in transactions with certain denied persons found on various US Government Denied Persons lists (e.g., US Department of the Treasury's Specially Designated Nationals List, US Commerce Department's Denied Persons/Entity List, etc.). To meet these export requirements, Licensee must submit to Esri Customer Service a list of the names of Students that are to attend any training class. Any Student that is found on any of the various US Government Denied Persons lists will not be permitted to attend training.
- Licensee is responsible for all Student travel arrangements. Esri assumes no responsibility for losses from nonrefundable travel arrangements resulting from denial of a Student's participation due to US government export regulation requirements, course scheduling changes, or cancellations.
- Licensee must provide written notice to Esri's Customer Service at service@esri.com of any cancellation, rescheduling, or Student substitution requirements and receive confirmation of these change(s) prior to the class start date.
- Licensee is responsible to ensure that it adheres to the course, facility, and equipment requirements for Esri training as found at http://training.esri.com/gateway/index.cfm?fa=trainingOptions.gateway.
- Students may not use audio and/or video recording equipment within the classroom without prior written approval from Esri. Esri reserves the right to record a classroom training event for future rebroadcast.

ARTICLE 4—CANCELLATION AND RESCHEDULING POLICY

- When a Student's place in class is filled by another person from the same organization, a Student substitution is allowed at no cost provided Esri's Customer Service department is notified three (3) business days in advance of the class start date. Should a Student substitution occur without three (3) business days' notification, an additional nonrefundable transfer and data processing fee may be assessed.
- A Student may transfer from one (1) scheduled Esri Learning Center class to another one (1) time at no additional charge provided Esri's Customer Service department is notified three (3) business days in advance of the class start date. Subsequent transfers or transfers that occur without three (3) business days' notification may incur a transfer fee.
- Students may cancel their enrollment in a class provided Esri's Customer Service department is notified three (3) business days in advance. If three (3) business days' notification is not provided, Students may be charged the full Student Seat fee.

If Esri is unable to conduct the training on the scheduled date, Esri will notify Licensee at least three (3) business days before the scheduled date.

If cancellation of a training event is necessary due to Force Majeure, the affected party is released in full from the three (3)-business-day notification. The affected party will either reschedule the training or cancel the order without that affected party incurring any liability.

ARTICLE 5—UNIQUE TERMS FOR THE SMALL ENTERPRISE TRAINING PACKAGE

- To order training, Licensee must include training in the Purchase Order for the ELA or provide a Purchase Order as required and specified within the ELA that matches the Esri quotation.
- Where Licensee submits additional Purchase Orders to purchase training days for additional year(s), any unused training days will automatically roll over.
- A Purchase Order is required annually for each three (3)-year term. Failure to submit annual Purchase Orders will result in the forfeit of unused training days.

- Licensee must assign an individual within its organization to the role of Training Administrator to serve as liaison between Licensee's organization and Esri as well as internally manage and authorize allocated training days.
- The training days are available for a period of twelve (12) months, commencing on the purchase Effective Date, and ending when all training days are consumed, whichever is sooner.
- Esri will invoice for outstanding training expenses where applicable.
- Training days are not transferable and not refundable for any other Esri products or services.

ARTICLE 6—RESERVATION OF OWNERSHIP AND GRANT OF LICENSE

Except as specifically granted in this Agreement, Esri and/or its licensors own and retain all right, title, and interest in software, data, documentation, and training materials.

ARTICLE 7—WARRANTY

7.1 Esri will provide training in a manner consistent with the technical and professional standards of the industry.

7.2 Disclaimer of Warranties. WITH THE EXCEPTION OF THE LIMITED WARRANTY SET FORTH IN THIS ARTICLE, ESRI DISCLAIMS, AND THIS AGREEMENT EXPRESSLY EXCLUDES, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINTERFERENCE, AND NONINFRINGEMENT, AS WELL AS ANY WARRANTIES THAT THE TRAINING IS ERROR FREE.

ARTICLE 8—LIMITATION OF LIABILITY AND EXCLUSIVE REMEDY

EXCEPT FOR INDEMNITY ASSOCIATED WITH CLIENT SITE TRAINING, IN NO EVENT SHALL ESRI BE LIABLE TO LICENSEE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR TRAINING; LOST PROFITS; LOST SALES; BUSINESS EXPENDITURES; INVESTMENTS; BUSINESS COMMITMENTS; LOSS OF ANY GOODWILL; OR ANY INDIRECT, SPECIAL, EXEMPLARY, CONSEQUENTIAL, OR INCIDENTAL DAMAGES ARISING OUT OF, OR RELATED TO, THIS AGREEMENT, HOWEVER CAUSED OR UNDER ANY THEORY OF LIABILITY, EVEN IF ESRI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ESRI'S TOTAL CUMULATIVE LIABILITY HEREUNDER, FROM ALL CAUSES OF ACTION OF ANY KIND, SHALL IN NO EVENT EXCEED THE AMOUNT ACTUALLY PAID BY LICENSEE FOR THE PORTION OF THE TRAINING UNDER THIS AGREEMENT. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

ARTICLE 9—UCC INAPPLICABILITY

Training provided under this Agreement will not be governed by the Uniform Commercial Code (UCC) and will not be deemed "goods" within the definition of the UCC.

2D-7)

City Council Agenda Item

July 19, 2011

TO: Mayor Jay Kramer
Vice Mayor Pilar Turner
Councilmember Brian Heady
Councilmember Craig Fletcher
Councilmember Tracy Carroll

FROM: Monte K. Falls, Interim City Manager MKFalls 7/11

DATE: July 11, 2011

SUBJECT: **Monthly Capital Projects' Status Reports**

REQUESTED BY: Public Works Department

The following is requested as it relates to the above-referenced agenda item:

____ Request Council review and approval based on the attached supporting documentation.

____ Request Council review and possible action.

____ No action required. (Information only)

26th Avenue Drainage Improvements from 14th Street to 16th Street

Prepared By: PROJECT NO. 2010-03

CITY OF VERO BEACH DEPARTMENT OF PUBLIC WORKS

Constructed by COVB Staff For Period 6/6/11 through 7/08/11

Project Description and Background: This project is one of several neighborhood drainage projects initiated by staff in response to drainage complaints. The project was capitalized in the 2009-2014 5-year plan as part of the approved 2009-2010 budget, and the design and required permitting were recently completed. The proposed drainage improvements consist of piping and associated structures as well as stormwater pollution abatement features required by St. Johns River Water Management District (SJRWMD).

Funding: The project is funded under account number 304.9900.541.610003 and the estimated cost is $175,000.

Project History and Current Status:

Construction was authorized to begin by the City Council at their May 3, 2011 meeting.

Construction began on Monday, June 6, 2011.

Pipe connections into the 16th Street ditch have been completed and work progressed southward.

From 16th Street to 15th Street: All drainage is complete is complete including driveways, swales and pipe crossings. Sodding is 50% complete.

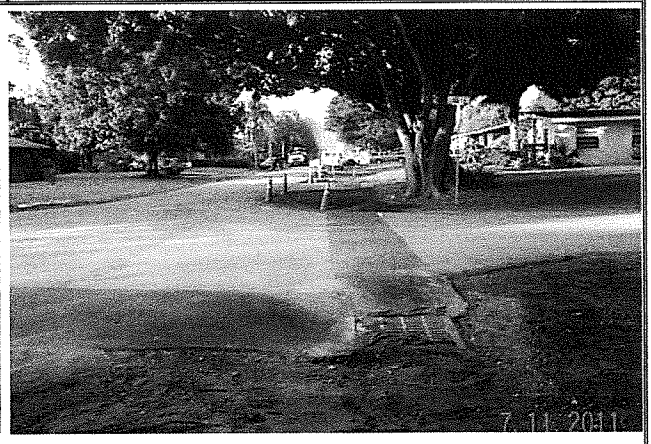
From 15th Street to 14th Street: To date 217' of pipe, 100' of exfiltration trench, and 4 catch basins have been installed.

This is an in-house project being constructed by COVB Public Works Department Crews

ORIGINAL BUDGET AMOUNT	$175,000.00	Percent of Work Complete	60%

11-Jul-11

Completed section of the project looking southward from the 16th Street ditch.



11-Jul-11

Work progressing southward from 15th Street.

3-A)

ORDINANCE NO. 2011 - _____

A ORDINANCE OF THE CITY OF VERO BEACH, FLORIDA, AMENDING SECTION 58-106 OF CHAPTER 58 "PERSONNEL AND RETIREMENT," ARTICLE II, DIVISION 4 OF THE CODE OF ORDINANCES OF THE CITY OF VERO BEACH TO PROVIDE FOR ENHANCED INVESTMENT OPPORTUNITIES; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the current financial environment makes it desirable to provide enhanced investment opportunities for the assets of the City of Vero Beach Police Officers' Retirement Fund; and

WHEREAS, an amendment to the City code is necessary to permit such enhanced investment opportunities; and

WHEREAS, the trustees of the City of Vero Beach Police Officers' Retirement Fund have requested and approved the amendment provided herein as being in the best interests of the participants and beneficiaries and improving the administration of the plan; and

WHEREAS, the City Council has received and reviewed an actuarial impact statement related to this change and attached as such; and

WHEREAS, the City Council deems it to be in the public interest to provide this change to the pension plan for its police officer employees;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VERO BEACH, FLORIDA, THAT:

Section 1. Incorporation of "Whereas" clauses.

The foregoing whereas clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

Section 2. Technical Amendments.

The code sections below are amended as follows, all deletions are depicted by ~~striking over the language~~ and all additions are depicted by underlining.

Section 3. Amendment of Section 58-106.

Section 58-106 of Chapter 58, Article II, Division 4 of the Code of Ordinances of the City of Vero Beach is hereby amended as follows:

Sec. 58-106. Investment of funds—Objective.

~~It shall be the objective of the police officers' retirement trust fund to maximize, through active professional management, the total return on investments for all assets, securities, and other holdings consistent with safety of principal and need for liquidity. In pursuit of this objective, the assets of the fund will be invested primarily in publicly traded instruments of investment grade or higher. Consistent with this objective is the mandate that the fund shall be capable of providing retirement benefits to participants in accordance with the plan benefits as stated in F.S. ch. 185 and this Code.~~

(a) It shall be the objective of the municipal police officers' retirement fund that it be managed, administered, operated, and funded in such a manner as to maximize the protection of the fund while achieving the actuarial required objective return. In pursuit of this objective, the assets of the fund will be invested primarily, but not exclusively, in publicly traded instruments generally considered to be of investment grade or higher, as described in F.S. § 185.07(1). Consistent with this objective is the mandate that the fund will be capable of providing retirement benefits to participants in accordance with the plan benefits as stated in F.S. ch. 185 and this Code.

(b) *Investment guidelines.* The board's investments shall be governed by the investment policy statement and guidelines, which shall be periodically reviewed by the board. The board shall have the authority to invest in all lawful investments, as permitted by Chapter 185 and Section 215.47, Florida Statutes.

Section 4. Repeal of conflicting ordinances.

All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.

Section 5. Severability.

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this resolution are declared severable.

Section 6. Codification.

Authority is granted to codify provisions of this ordinance in the Code of City Ordinances.

Section 7. Effective date.

This ordinance shall take effect upon adoption.

****

This ordinance was read for the first time on the _____ day of _____ 2011, and was advertised in the *Vero Beach Press Journal* on the ____ day of _____ 2011, for a public hearing to be held on the ____ day of _____ 2011, at which time it was moved for adoption by Councilmember _____, seconded by Councilmember _____ and adopted by the following vote:

Mayor Jay Kramer _____

Vice Mayor Pilar E. Turner _____

Councilmember Brian T. Heady _____

Councilmember Tracy M. Carroll _____

Councilmember A. Craig Fletcher _____

ATTEST:

Tammy K. Vock
City Clerk

(CITY SEAL)

CITY OF VERO BEACH, FLORIDA

Jay Kramer
Mayor

Approved as to form and legal sufficiency:

Wayne R. Coment
Acting City Attorney

Approved as conforming to municipal policy:

Monte K. Falls
Interim City Manager

Approved as to technical requirements:

Stephen J. Maillet
Finance Director

Approved as to technical requirements:

Robert Anderson
Human Resources Director

FLA
FREIMAN LITTLE ACTUARIES

May 24, 2011

Board of Trustees
City of Vero Beach Police Officers' Retirement Fund
c/o Heather McCarty
1053 – 20th Place
Vero Beach, FL 32961-1389

Re: Statement of No Impact – Investment of Funds

Dear Trustees:

This letter is being written to provide a statement of no impact with regard to the attached ordinance for the City of Vero Beach Police Officers' Retirement Fund (the Plan) which allows for investments as defined by Florida Statutes Chapter 185 and Section 215.47.

Summary of Changes

Section	Amendment
58-106. Investment of Funds – Objective.	Language found under Section 58-106 is removed. Subsections (a) and (b) are added to clarify permissible investments and to define the investment policy statement and guidelines.

Actuarial Impact

The liability of the Plan is not anticipated to be materially affected by this amendment to Plan provisions as the investment portfolio will continue to target a return greater than or equal to the assumed rate adopted by the Board of Trustees.

Sincerely,

Chad M. Little, ASA, EA
Partner, Consulting Actuary

4105 SAVANNAHS TRAIL, MERRITT ISLAND, FL 32953-8607 · OFFICE (321) 453-6542 · FAX (321) 453-6998 · MOBILE (321) 591-8265 · chad@flactuaries.com · www.flactuaries.com

FLA
FREIMAN LITTLE ACTUARIES

May 24, 2011

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City of Vero Beach Police Officers' Retirement Fund
c/o Heather McCarty
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Chad M. Little, ASA, EA
Partner, Consulting Actuary

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Select Year: 2010 Go

The 2010 Florida Statutes(including Special Session A)

Title XII
MUNICIPALITIES

Chapter 185
MUNICIPAL POLICE PENSIONS

View Entire Chapter

CHAPTER 185
MUNICIPAL POLICE PENSIONS

185.01 Legislative declaration.
185.015 Short title.
185.02 Definitions.
185.03 Municipal police officers' retirement trust funds; creation; applicability of provisions; participation by public safety officers.
185.04 Actuarial deficits not state obligations.
185.05 Board of trustees; members; terms of office; meetings; legal entity; costs; attorney's fees.
185.06 General powers and duties of board of trustees.
185.061 Use of annuity or insurance policies.
185.07 Creation and maintenance of fund.
185.08 State excise tax on casualty insurance premiums authorized; procedure.
185.085 Determination of local premium tax situs.
185.09 Report of premiums paid; date tax payable.
185.10 Department of Revenue and Division of Retirement to keep accounts of deposits; disbursements.
185.105 Police and Firefighters' Premium Tax Trust Fund.
185.11 Funds received by municipalities, deposit in retirement trust fund.
185.12 Payment of excise tax credit on similar state excise or license tax.
185.13 Failure of insurer to comply with chapter; penalty.
185.16 Requirements for retirement.
185.161 Optional forms of retirement income.
185.162 Beneficiaries.
185.18 Disability retirement.
185.185 False, misleading, or fraudulent statements made to obtain public retirement benefits prohibited; penalty.
185.19 Separation from municipal service; refunds.
185.191 Lump-sum payment of small retirement income.
185.21 Death prior to retirement; refunds of contributions or payment of death benefits.
185.221 Annual report to Division of Retirement; actuarial valuations.
185.23 Duties of Division of Retirement; rulemaking authority; investments by State Board of Administration.
185.25 Exemption from tax and execution.
185.30 Depository for retirement fund.
185.31 Municipalities and boards independent of other municipalities and boards and of each other.
185.34 Disability in line of duty.
185.341 Discrimination in benefit formula prohibited; restrictions regarding designation of joint annuitants.
185.35 Municipalities having their own pension plans for police officers.

185.37 Termination of plan and distribution of fund.
185.38 Transfer to another state retirement system; benefits payable.
185.39 Applicability.
185.50 Retiree health insurance subsidy.
185.60 Optional participation.

185.01 Legislative declaration.—

(1) It is hereby found and declared by the Legislature that police officers as hereinafter defined perform both state and municipal functions; that they make arrests for violations of state traffic laws on public highways; that they keep the public peace; that they conserve both life and property; and that their activities are vital to public welfare of this state. Therefore the Legislature declares that it is a proper and legitimate state purpose to provide a uniform retirement system for the benefit of police officers as hereinafter defined and intends, in implementing the provisions of s. 14, Art. X of the State Constitution as they relate to municipal police officers' retirement trust fund systems and plans, that such retirement systems or plans be managed, administered, operated, and funded in such manner as to maximize the protection of police officers' retirement trust funds. Therefore, the Legislature hereby determines and declares that the provisions of this act fulfill an important state interest.

(2) This chapter hereby establishes, for all municipal pension plans now or hereinafter provided for under this chapter, including chapter plans and local law plans, minimum benefits and minimum standards for the operation and funding of such plans, hereinafter referred to as municipal police officers' retirement trust funds. The minimum benefits and minimum standards set forth in this chapter may not be diminished by local ordinance or by special act of the Legislature, nor may the minimum benefits or minimum standards be reduced or offset by any other local, state, or federal plan that may include police officers in its operation, except as provided under s. 112.65.

History.—s. 1, ch. 28230, 1953; s. 1, ch. 86-42; s. 41, ch. 99-1.

185.015 Short title.—This chapter may be cited as the "Marvin B. Clayton Police Officers Pension Trust Fund Act."

History.—s. 3, ch. 2004-21.

185.02 Definitions.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter, the following words and phrases as used in this chapter shall have the following meanings, unless a different meaning is plainly required by the context:

(1) "Average final compensation" means one-twelfth of the average annual compensation of the 5 best years of the last 10 years of creditable service prior to retirement, termination, or death.

(2) "Casualty insurance" means automobile public liability and property damage insurance to be applied at the place of residence of the owner, or if the subject is a commercial vehicle, to be applied at the place of business of the owner; automobile collision insurance; fidelity bonds; burglary and theft insurance; and plate glass insurance. "Multiple peril" means a combination or package policy that includes both property coverage and casualty coverage for a single premium.

(3) "Chapter plan" means a separate defined benefit pension plan for police officers which incorporates by reference the provisions of this chapter and has been adopted by the governing body of a municipality as provided in s. 185.08. Except as may be specifically authorized in this chapter, provisions of a chapter plan may not differ from the plan provisions set forth in ss. 185.01-185.341 and 185.37-185.39. Actuarial valuations of chapter plans shall be conducted by the division as provided by s. 185.221(1)(b).

(4) "Compensation" or "salary" means the total cash remuneration including "overtime" paid by the primary employer to a police officer for services rendered, but not including any payments for extra duty or a special detail work performed on behalf of a second party employer. However, a local law plan may limit the

amount of overtime payments which can be used for retirement benefit calculation purposes, but in no event shall such overtime limit be less than 300 hours per officer per calendar year.

(a) Any retirement trust fund or plan which now or hereafter meets the requirements of this chapter shall not, solely by virtue of this subsection, reduce or diminish the monthly retirement income otherwise payable to each police officer covered by the retirement trust fund or plan.

(b) The member's compensation or salary contributed as employee-elective salary reductions or deferrals to any salary reduction, deferred compensation, or tax-sheltered annuity program authorized under the Internal Revenue Code shall be deemed to be the compensation or salary the member would receive if he or she were not participating in such program and shall be treated as compensation for retirement purposes under this chapter.

(c) For any person who first becomes a member in any plan year beginning on or after January 1, 1996, compensation for any plan year shall not include any amounts in excess of the Internal Revenue Code s. 401(a)(17) limitation (as amended by the Omnibus Budget Reconciliation Act of 1993), which limitation of $150,000 shall be adjusted as required by federal law for qualified government plans and shall be further adjusted for changes in the cost of living in the manner provided by Internal Revenue Code s. 401(a)(17)(B). For any person who first became a member prior to the first plan year beginning on or after January 1, 1996, the limitation on compensation shall be not less than the maximum compensation amount that was allowed to be taken into account under the plan as in effect on July 1, 1993, which limitation shall be adjusted for changes in the cost of living since 1989 in the manner provided by Internal Revenue Code s. 401(a)(17)(1991).

(5) "Creditable service" or "credited service" means the aggregate number of years of service and fractional parts of years of service of any police officer, omitting intervening years and fractional parts of years when such police officer may not have been employed by the municipality subject to the following conditions:

(a) No police officer will receive credit for years or fractional parts of years of service if he or she has withdrawn his or her contributions to the fund for those years or fractional parts of years of service, unless the police officer repays into the fund the amount he or she has withdrawn, plus interest as determined by the board. The member shall have at least 90 days after his or her reemployment to make repayment.

(b) A police officer may voluntarily leave his or her contributions in the fund for a period of 5 years after leaving the employ of the police department, pending the possibility of his or her being rehired by the same department, without losing credit for the time he or she has participated actively as a police officer. If he or she is not reemployed as a police officer with the same department within 5 years, his or her contributions shall be returned to him or her without interest.

(c) Credited service under this chapter shall be provided only for service as a police officer, as defined in subsection (11), or for military service and may not include credit for any other type of service. A municipality may, by local ordinance, provide for the purchase of credit for military service occurring before employment as well as prior service as a police officer for some other employer as long as the police officer is not entitled to receive a benefit for such other prior service as a police officer. For purposes of determining credit for prior service, in addition to service as a police officer in this state, credit may be given for federal, other state, or county service as long as such service is recognized by the Criminal Justice Standards and Training Commission within the Department of Law Enforcement as provided under chapter 943 or the police officer provides proof to the board of trustees that such service is equivalent to the service required to meet the definition of a police officer under subsection (11).

(d) In determining the creditable service of any police officer, credit for up to 5 years of the time spent in the military service of the Armed Forces of the United States shall be added to the years of actual service, if:

1. The police officer is in the active employ of the municipality prior to such service and leaves a position, other than a temporary position, for the purpose of voluntary or involuntary service in the Armed Forces of the United States.

2. The police officer is entitled to reemployment under the provisions of the Uniformed Services

Employment and Reemployment Rights Act.

3. The police officer returns to his or her employment as a police officer of the municipality within 1 year from the date of his or her release from such active service.

(6) "Deferred Retirement Option Plan" or "DROP" means a local law plan retirement option in which a police officer may elect to participate. A police officer may retire for all purposes of the plan and defer receipt of retirement benefits into a DROP account while continuing employment with his or her employer. However, a police officer who enters the DROP and who is otherwise eligible to participate shall not thereby be precluded from participating, or continuing to participate, in a supplemental plan in existence on, or created after, the effective date of this act.

(7) "Division" means the Division of Retirement of the Department of Management Services.

(8) "Enrolled actuary" means an actuary who is enrolled under Subtitle C of Title III of the Employee Retirement Income Security Act of 1974 and who is a member of the Society of Actuaries or the American Academy of Actuaries.

(9) "Local law municipality" is any municipality in which there exists a local law plan.

(10) "Local law plan" means a defined benefit pension plan for police officers or for police officers and firefighters, where included, as described in s. 185.35, established by municipal ordinance or special act of the Legislature, which enactment sets forth all plan provisions. Local law plan provisions may vary from the provisions of this chapter, provided that required minimum benefits and minimum standards are met. Any such variance shall provide a greater benefit for police officers. Actuarial valuations of local law plans shall be conducted by an enrolled actuary as provided in s. 185.221(2)(b).

(11) "Police officer" means any person who is elected, appointed, or employed full time by any municipality, who is certified or required to be certified as a law enforcement officer in compliance with s. 943.1395, who is vested with authority to bear arms and make arrests, and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers, but does not include part-time law enforcement officers or auxiliary law enforcement officers as the same are defined in s. 943.10(6) and (8), respectively. For the purposes of this chapter only, "police officer" also shall include a public safety officer who is responsible for performing both police and fire services. Any plan may provide that the police chief shall have an option to participate, or not, in that plan.

(12) "Police Officers' Retirement Trust Fund" means a trust fund, by whatever name known, as provided under s. 185.03 for the purpose of assisting municipalities in establishing and maintaining a retirement plan for police officers.

(13) "Retiree" or "retired police officer" means a police officer who has entered retirement status. For the purposes of a plan that includes a Deferred Retirement Option Plan (DROP), a police officer who enters the DROP shall be considered a retiree for all purposes of the plan. However, a police officer who enters the DROP and who is otherwise eligible to participate shall not thereby be precluded from participating, or continuing to participate, in a supplemental plan in existence on, or created after, the effective date of this act.

(14) "Retirement" means a police officer's separation from city employment as a police officer with immediate eligibility for receipt of benefits under the plan. For purposes of a plan that includes a Deferred Retirement Option Plan (DROP), "retirement" means the date a police officer enters the DROP.

(15) "Supplemental plan" means a plan to which deposits of the premium tax moneys as provided in s. 185.08 are made to provide extra benefits to police officers, or police officers and firefighters where included, under this chapter. Such a plan is an element of a local law plan and exists in conjunction with a defined benefit plan that meets the minimum benefits and minimum standards of this chapter.

(16) "Supplemental plan municipality" means any local law municipality in which there existed a

supplemental plan as of December 1, 2000.

History.—s. 11, ch. 28230, 1953; s. 1, ch. 29825, 1955; s. 1, ch. 59-320; s. 1, ch. 61-85; s. 7, ch. 79-380; s. 2, ch. 79-388; s. 2, ch. 86-42; s. 43, ch. 91-45; s. 40, ch. 93-193; s. 939, ch. 95-147; s. 14, ch. 95-154; s. 42, ch. 99-1; s. 28, ch. 2000-151; s. 3, ch. 2000-159; s. 2, ch. 2002-66; s. 9, ch. 2009-97.

185.03 Municipal police officers' retirement trust funds; creation; applicability of provisions; participation by public safety officers.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter:

(1) There shall be established a special fund exclusively for the purpose of this chapter, which in the case of chapter plans shall be known as the "Municipal Police Officers' Retirement Trust Fund," in each municipality of this state, heretofore or hereafter created, which now has or which may hereafter have a regularly organized police department, and which now owns and uses or which may hereafter own and use equipment and apparatus of a value exceeding $500 in serviceable condition for the prevention of crime and for the preservation of life and property.

(2) The provisions of this chapter shall apply only to municipalities organized and established pursuant to the laws of the state, and said provisions shall not apply to the unincorporated areas of any county or counties nor shall the provisions hereof apply to any governmental entity whose police officers are eligible to participate in the Florida Retirement System.

(3) No municipality shall establish more than one retirement plan for public safety officers which is supported in whole or in part by the distribution of premium tax funds as provided by this chapter or chapter 175, nor shall any municipality establish a retirement plan for public safety officers which receives premium tax funds from both this chapter and chapter 175.

History.—s. 1, ch. 28230, 1953; s. 2, ch. 29825, 1955; s. 2, ch. 61-119; s. 1, ch. 65-152; s. 7, ch. 79-380; s. 2, ch. 79-388; s. 3, ch. 86-42; s. 43, ch. 99-1.

185.04 Actuarial deficits not state obligations.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter, actuarial deficits, if any, arising under this chapter are not the obligation of the state.

History.—s. 1b, ch. 28230, 1953; s. 44, ch. 99-1.

185.05 Board of trustees; members; terms of office; meetings; legal entity; costs; attorney's fees.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter:

(1) In each municipality described in s. 185.03 there is hereby created a board of trustees of the municipal police officers' retirement trust fund, which shall be solely responsible for administering the trust fund. Effective October 1, 1986, and thereafter:

(a) The membership of the board of trustees for chapter plans consists of five members, two of whom, unless otherwise prohibited by law, must be legal residents of the municipality and must be appointed by the legislative body of the municipality, and two of whom must be police officers as defined in s. 185.02 who are elected by a majority of the active police officers who are members of such plan. With respect to any chapter plan or local law plan that, on January 1, 1997, allowed retired police officers to vote in such elections, retirees may continue to vote in such elections. The fifth member shall be chosen by a majority of the previous four members, and such person's name shall be submitted to the legislative body of the municipality. Upon receipt of the fifth person's name, the legislative body shall, as a ministerial duty, appoint such person to the board of trustees. The fifth member shall have the same rights as each of the other four members appointed or elected, shall serve as trustee for a period of 2 years, and may succeed himself or herself in office. Each resident member shall serve as trustee for a period of 2 years, unless sooner replaced by the legislative body at whose pleasure the member serves, and may succeed himself or herself as a trustee. Each police officer member shall serve as trustee for a period of 2 years, unless he or she sooner leaves the employment of the municipality as a police officer, whereupon a successor shall be chosen in the same manner as an original appointment. Each

police officer may succeed himself or herself in office. The terms of office of the appointed and elected members of the board of trustees may be amended by municipal ordinance or special act of the Legislature to extend the terms from 2 years to 4 years. The length of the terms of office shall be the same for all board members.

(b) The membership of boards of trustees for local law plans shall be as follows:

1. If a municipality has a pension plan for police officers only, the provisions of paragraph (a) shall apply.

2. If a municipality has a pension plan for police officers and firefighters, the provisions of paragraph (a) shall apply, except that one member of the board shall be a police officer as defined in s. 185.02 and one member shall be a firefighter as defined in s. 175.032, respectively, elected by a majority of the active firefighters and police officers who are members of the plan.

3. Any board of trustees operating a local law plan on July 1, 1999, which is combined with a plan for general employees shall hold an election of the police officers, or police officers and firefighters if included, to determine whether a plan is to be established for police officers only, or for police officers and firefighters where included. Based on the election results, a new board shall be established as provided in subparagraph 1. or subparagraph 2., as appropriate. The municipality shall enact an ordinance to implement the new board by October 1, 1999. The newly established board shall take whatever action is necessary to determine the amount of assets which is attributable to police officers, or police officers and firefighters where included. Such assets shall include all employer, employee, and state contributions made by or on behalf of police officers, or police officers and firefighters where included, and any investment income derived from such contributions. All such moneys shall be transferred into the newly established retirement plan, as directed by the board.

With respect to any board of trustees operating a local law plan on June 30, 1986, nothing in this paragraph shall permit the reduction of the membership percentage of police officers or police officers and firefighters.

(c) Whenever the active police officer membership of a closed chapter plan or closed local law plan as provided in s. 185.38 falls below 10, an active police officer member seat may be held by either a retired police officer or an active police officer member of the plan who is elected by the active and retired members of the plan. If there are no active or retired police officers remaining in the plan or capable of serving, the remaining board members may elect an individual to serve in the active police officer member seat. Upon receipt of such person's name, the legislative body of the municipality shall, as a ministerial duty, appoint such person to the board of trustees. This paragraph applies only to those plans that are closed to new members under s. 185.38 (2), and does not apply to any other municipality having a chapter or local law plan.

(d) If the chapter plan or local law plan with an active membership of 10 or more is closed to new members, the member seats may be held by either a retiree, as defined in s. 185.02, or an active police officer of the plan who has been elected by the active police officers. A closed plan means a plan that is closed to new members but continues to operate, pursuant to s. 185.38(2), for participants who elect to remain in the existing plan. This paragraph applies only to those plans that are closed to new members pursuant to s. 185.38(2) and does not apply to any other municipality that has a chapter plan or a local law plan.

(2) The trustees shall by majority vote elect from its members a chair and a secretary. The secretary of the board shall keep a complete minute book of the actions, proceedings, or hearings of the board. The trustees shall not receive any compensation as such, but may receive expenses and per diem as provided by Florida law.

(3) The board of trustees shall meet at least quarterly each year.

(4) Each board of trustees shall be a legal entity that shall have, in addition to other powers and responsibilities contained herein, the power to bring and defend lawsuits of every kind, nature, and description.

(5) In any judicial proceeding or administrative proceeding under chapter 120 brought under or pursuant to the provisions of this chapter, the prevailing party shall be entitled to recover the costs thereof, together with reasonable attorney's fees.

(6) The board of trustees may, upon written request by the retiree of the plan, or by a dependent, if

authorized by the retiree or the retiree's beneficiary, authorize the plan administrator to withhold from the monthly retirement payment funds necessary to pay for the benefits being received through the governmental entity from which the employee retired, to pay the certified bargaining agent of the governmental entity, and to make any payments for child support or alimony. Upon the written request of the retiree of the plan, the board of trustees may also authorize the plan administrator to withhold from the retirement payment those funds necessary to pay for premiums for accident, health, and long-term care insurance for the retiree and the retiree's spouse and dependents. A retirement plan does not incur liability for participation in this permissive program if its actions are taken in good faith.

(7) The provisions of this section may not be altered by a participating municipality operating a chapter or local law plan under this chapter.

History.—s. 2, ch. 28230, 1953; s. 2, ch. 59-320; s. 2, ch. 61-119; s. 4, ch. 86-42; s. 41, ch. 93-193; s. 940, ch. 95-147; s. 45, ch. 99-1; s. 6, ch. 2002-66; s. 8, ch. 2004-21; s. 10, ch. 2009-97.

185.06 General powers and duties of board of trustees.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter:

(1) The board of trustees, subject to the fiduciary standards in ss. 112.656, 112.661, and 518.11 and the Code of Ethics in ss. 112.311-112.3187, may:

(a) Invest and reinvest the assets of the retirement trust fund in annuity and life insurance contracts of life insurance companies in amounts sufficient to provide, in whole or in part, the benefits to which all of the participants in the municipal police officers' retirement trust fund are entitled under this chapter, and pay the initial and subsequent premiums thereon.

(b) Invest and reinvest the assets of the retirement trust fund in:

1. Time or savings accounts of a national bank, a state bank insured by the Bank Insurance Fund, or a savings and loan association insured by the Savings Association Insurance Fund administered by the Federal Deposit Insurance Corporation or a state or federal chartered credit union whose share accounts are insured by the National Credit Union Share Insurance Fund.

2. Obligations of the United States or obligations guaranteed as to principal and interest by the United States.

3. Bonds issued by the State of Israel.

4. Bonds, stocks, or other evidences of indebtedness issued or guaranteed by a corporation organized under the laws of the United States, any state or organized territory of the United States, or the District of Columbia, provided:

a. The corporation is listed on any one or more of the recognized national stock exchanges or on the National Market System of the NASDAQ Stock Market and, in the case of bonds only, holds a rating in one of the three highest classifications by a major rating service; and

b. The board of trustees may not invest more than 5 percent of its assets in the common stock or capital stock of any one issuing company, nor shall the aggregate investment in any one issuing company exceed 5 percent of the outstanding capital stock of the company or the aggregate of its investments under this subparagraph at cost exceed 50 percent of the fund's assets.

This paragraph applies to all boards of trustees and participants. However, if a municipality has a duly enacted pension plan pursuant to, and in compliance with, s. 185.35 and the trustees desire to vary the investment procedures, the trustees of such plan shall request a variance of the investment procedures as outlined herein only through a municipal ordinance or special act of the Legislature; if a special act, or a municipality by ordinance adopted before July 1, 1998, permits a greater than 50-percent equity investment, such municipality is not required to comply with the aggregate equity investment provisions of this paragraph. Notwithstanding any other provision of law, this section may not be construed to take away any preexisting legal authority to make equity investments that exceed the requirements of this paragraph. Notwithstanding any other provision

of law, the board of trustees may invest up to 25 percent of plan assets in foreign securities on a market-value basis. The investment cap on foreign securities may not be revised, amended, repealed, or increased except as provided by general law.

(c) Issue drafts upon the municipal police officers' retirement trust fund pursuant to this act and rules prescribed by the board of trustees. All such drafts shall be consecutively numbered, be signed by the chair and secretary or by two individuals designated by the board who are subject to the same fiduciary standards as the board of trustees under this subsection, and state upon their faces the purposes for which the drafts are drawn. The city treasurer or other depository shall retain such drafts when paid, as permanent vouchers for disbursements made, and no money may otherwise be drawn from the fund.

(d) Finally decide all claims to relief under the board's rules and regulations and pursuant to the provisions of this act.

(e) Convert into cash any securities of the fund.

(f) Keep a complete record of all receipts and disbursements and of the board's acts and proceedings.

(2) Any and all acts and decisions shall be effectuated by vote of a majority of the members of the board; however, no trustee shall take part in any action in connection with his or her own participation in the fund, and no unfair discrimination shall be shown to any individual employee participating in the fund.

(3) The secretary of the board of trustees shall keep a record of all persons receiving retirement payments under the provisions of this chapter, in which shall be noted the time when the pension is allowed and when the pension shall cease to be paid. In this record, the secretary shall keep a list of all police officers employed by the municipality. The record shall show the name, address, and time of employment of such police officer and when he or she ceases to be employed by the municipality.

(4) The sole and exclusive administration of, and the responsibilities for, the proper operation of the retirement trust fund and for making effective the provisions of this chapter are vested in the board of trustees; however, nothing herein shall empower a board of trustees to amend the provisions of a retirement plan without the approval of the municipality. The board of trustees shall keep in convenient form such data as shall be necessary for an actuarial valuation of the retirement trust fund and for checking the actual experience of the fund.

(5)(a) At least once every 3 years, the board of trustees shall retain a professionally qualified independent consultant who shall evaluate the performance of any existing professional money manager and shall make recommendations to the board of trustees regarding the selection of money managers for the next investment term. These recommendations shall be considered by the board of trustees at its next regularly scheduled meeting. The date, time, place, and subject of this meeting shall be advertised in the same manner as for any meeting of the board.

(b) For the purpose of this subsection, the term "professionally qualified independent consultant" means a consultant who, based on education and experience, is professionally qualified to evaluate the performance of professional money managers, and who, at a minimum:

1. Provides his or her services on a flat-fee basis.
2. Is not associated in any manner with the money manager for the pension fund.
3. Makes calculations according to the American Banking Institute method of calculating time-weighted rates of return. All calculations must be made net of fees.
4. Has 3 or more years of experience working in the public sector.

(6) To assist the board in meeting its responsibilities under this chapter, the board, if it so elects, may:

(a) Employ independent legal counsel at the pension fund's expense.

(b) Employ an independent actuary, as defined in s. 185.02(8), at the pension fund's expense.

(c) Employ such independent professional, technical, or other advisers as it deems necessary at the pension fund's expense.

If the board chooses to use the municipality's or special district's legal counsel or actuary, or chooses to use any of the municipality's other professional, technical, or other advisers, it must do so only under terms and conditions acceptable to the board.

(7) Notwithstanding paragraph (1)(b) and as provided in s. 215.473, the board of trustees must identify and publicly report any direct or indirect holdings it may have in any scrutinized company, as defined in that section, and proceed to sell, redeem, divest, or withdraw all publicly traded securities it may have in that company beginning January 1, 2010. The divestiture of any such security must be completed by September 10, 2010. The board and its named officers or investment advisors may not be deemed to have breached their fiduciary duty in any action taken to dispose of any such security, and the board shall have satisfactorily discharged the fiduciary duties of loyalty, prudence, and sole and exclusive benefit to the participants of the pension fund and their beneficiaries if the actions it takes are consistent with the duties imposed by s. 215.473, and the manner of the disposition, if any, is reasonable as to the means chosen. For the purposes of effecting compliance with that section, the pension fund shall designate terror-free plans that allocate their funds among securities not subject to divestiture. No person may bring any civil, criminal, or administrative action against the board of trustees or any employee, officer, director, or advisor of such pension fund based upon the divestiture of any security pursuant to this subsection.

History.—s. 3, ch. 28230, 1953; s. 1, ch. 57-118; s. 3, ch. 59-320; s. 2, ch. 61-119; s. 1, ch. 65-366; ss. 22, 35, ch. 69-106; s. 5, ch. 86-42; s. 941, ch. 95-147; s. 2, ch. 98-134; s. 67, ch. 99-2; s. 18, ch. 99-392; s. 29, ch. 2000-151; s. 11, ch. 2009-97; s. 19, ch. 2010-5.

185.061 Use of annuity or insurance policies.—When the board of trustees of any municipality, chapter plan, local law municipality, or local law plan purchases annuity or life insurance contracts to provide all or part of the benefits promised by this chapter, the following principles shall be observed:

(1) Only those officers who have been members of the retirement trust fund for 1 year or longer may be included in the insured plan.

(2) Individual policies shall be purchased only when a group insurance plan is not feasible.

(3) Each application and policy shall designate the pension fund as owner of the policy.

(4) Policies shall be written on an annual premium basis.

(5) The type of policy shall be one which for the premium paid provides each individual with the maximum retirement benefit at his or her earliest statutory normal retirement age.

(6) Death benefit, if any, should not exceed:

(a) One hundred times the estimated normal monthly retirement income, based on the assumption that the present rate of compensation continues without change to normal retirement date, or

(b) Twice the annual rate of compensation as of the date of termination of service, or

(c) The single-sum value of the accrued deferred retirement income (beginning at normal retirement date) at date of termination of service, whichever is greatest.

(7) An insurance plan may provide that the assignment of insurance contract to separating officer shall be at least equivalent to the return of the officer's contributions used to purchase the contract. An assignment of contract discharges the municipality from all further obligation to the participant under the plan even though the cash value of such contract may be less than the employee's contributions.

(8) Provisions shall be made, either by issuance of separate policies, or otherwise, that the separating officer does not receive cash values and other benefits under the policies assigned to the officer which exceed the present value of his or her vested interest under the retirement plan, inclusive of the officer's contribution to the plan; the contributions by the state shall not be exhausted faster merely because the method of funding adopted was through insurance companies.

(9) The police officer shall have the right at any time to give the board of trustees written instructions designating the primary and contingent beneficiaries to receive death benefit or proceeds and the method of the settlement of the death benefit or proceeds, or requesting a change in the beneficiary, designation or

method of settlement previously made, subject to the terms of the policy or policies on the officer's life. Upon receipt of such written instructions, the board of trustees shall take the necessary steps to effectuate the designation or change of beneficiary or settlement option.

History.—s. 4, ch. 59-320; s. 2, ch. 61-119; s. 942, ch. 95-147; s. 46, ch. 99-1.

185.07 Creation and maintenance of fund.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter:

(1) The municipal police officers' retirement trust fund in each municipality described in s. 185.03 shall be created and maintained in the following manner:

(a) By the net proceeds of the .85-percent excise tax which may be imposed by the respective cities and towns upon certain casualty insurance companies on their gross receipts of premiums from holders of policies, which policies cover property within the corporate limits of such municipalities, as is hereinafter expressly authorized.

(b) Except as reduced or increased contributions are authorized by subsection (2), by the payment to the fund of 5 percent of the salary of each full-time police officer duly appointed and enrolled as a member of such police department, which 5 percent shall be deducted by the municipality from the compensation due to the police officer and paid over to the board of trustees of the retirement trust fund wherein such police officer is employed. No police officer shall have any right to the money so paid into the fund except as provided in this chapter.

(c) By all fines and forfeitures imposed and collected from any police officer because of the violation of any rule adopted by the board of trustees.

(d) By payment by the municipality or other sources of a sum equal to the normal cost and the amount required to fund any actuarial deficiency shown by an actuarial valuation as provided in part VII of chapter 112.

(e) By all gifts, bequests and devises when donated to the fund.

(f) By all accretions to the fund by way of interest or dividends on bank deposits or otherwise.

(g) By all other sources of income now or hereafter authorized by law for the augmentation of such municipal police officers' retirement trust fund.

(2) Member contribution rates may be adjusted as follows:

(a) The employing municipality, by local ordinance, may elect to make an employee's contributions. However, under no circumstances may a municipality reduce the member contribution to less than one-half of 1 percent of salary.

(b) Police officer member contributions may be increased by consent of the members' collective bargaining representative or, if none, by majority consent of police officer members of the fund to provide greater benefits.

Nothing in this section shall be construed to require adjustment of member contribution rates in effect on the date this act becomes a law, including rates that exceed 5 percent of salary, provided that such rates are at least one-half of 1 percent of salary.

History.—s. 4, ch. 28230, 1953; s. 3, ch. 29825, 1955; s. 5, ch. 59-320; s. 2, ch. 61-119; s. 6, ch. 86-42; s. 943, ch. 95-147; s. 5, ch. 95-250; s. 47, ch. 99-1.

185.08 State excise tax on casualty insurance premiums authorized; procedure.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter:

(1) Each incorporated municipality in this state described and classified in s. 185.03, as well as each other city or town of this state which on July 31, 1953, had a lawfully established municipal police officers' retirement trust fund or city fund, by whatever name known, providing pension or relief benefits to police officers as provided under this chapter, may assess and impose on every insurance company, corporation, or other insurer now engaged in or carrying on, or who shall hereafter engage in or carry on, the business of

casualty insurance as shown by records of the Office of Insurance Regulation of the Financial Services Commission, an excise tax in addition to any lawful license or excise tax now levied by each of the said municipalities, respectively, amounting to .85 percent of the gross amount of receipts of premiums from policyholders on all premiums collected on casualty insurance policies covering property within the corporate limits of such municipalities, respectively.

(2) In the case of multiple peril policies with a single premium for both property and casualty coverages in such policies, 30 percent of such premium shall be used as the basis for the .85-percent tax above.

(3) The excise tax shall be payable annually March 1 of each year after the passing of an ordinance assessing and imposing the tax herein authorized. Installments of taxes shall be paid according to the provisions of s. 624.5092(2)(a), (b), and (c).

History.—s. 5, ch. 28230, 1953; s. 2, ch. 61-119; s. 1, ch. 63-196; ss. 13, 35, ch. 69-106; s. 7, ch. 86-42; s. 24, ch. 87-99; s. 15, ch. 88-206; s. 11, ch. 89-167; s. 944, ch. 95-147; s. 48, ch. 99-1; s. 164, ch. 2003-261.

185.085 Determination of local premium tax situs.—

(1)(a) Any insurance company that is obligated to report and remit the excise tax on casualty insurance premiums imposed under s. 185.08 shall be held harmless from any liability, including, but not limited to, liability for taxes, interest, or penalties that would otherwise be due solely as a result of an assignment of an insured property to an incorrect local taxing jurisdiction if the insurance company exercises due diligence in applying an electronic database provided by the Department of Revenue under subsection (2). Insurance companies that do not use the electronic database provided by the Department of Revenue or that do not exercise due diligence in applying the electronic database for tax years on or after January 1, 2006, are subject to a 0.5 percent penalty on the portion of the premium pertaining to any insured risk that is improperly assigned, whether assigned to an improper local taxing jurisdiction, not assigned to a local taxing jurisdiction when it should be assigned to a local taxing jurisdiction, or assigned to a local taxing jurisdiction when it should not be assigned to a local taxing jurisdiction.

(b) Any insurance company that is obligated to report and remit the excise tax on commercial casualty insurance premiums imposed under s. 185.08 and is unable, after due diligence, to assign an insured property to a specific local taxing jurisdiction for purposes of complying with paragraph (a) shall remit the excise tax on commercial casualty insurance premiums using a methodology of apportionment in a manner consistent with the remittance for the 2004 calendar year. An insurance company which makes two contacts with the agent responsible for a commercial casualty insurance application for the purpose of verifying information on the application necessary for the assignment to the appropriate taxing jurisdiction shall be considered to have exercised due diligence. Any insurance company which complies with the provisions of this paragraph shall not be subject to the penalty provided in paragraph (a).

(2)(a) The Department of Revenue shall, subject to legislative appropriation, create as soon as practical and feasible, and thereafter shall maintain, an electronic database that conforms to any format approved by the American National Standards Institute's Accredited Standards Committee X12 and that designates for each street address and address range in the state, including any multiple postal street addresses applicable to one street location, the local taxing jurisdiction in which the street address and address range is located, and the appropriate code for each such participating local taxing jurisdiction, identified by one nationwide standard numeric code. The nationwide standard numeric code must contain the same number of numeric digits, and each digit or combination of digits must refer to the same level of taxing jurisdiction throughout the United States and must be in a format similar to FIPS 55-3 or other appropriate standard approved by the Federation of Tax Administrators and the Multistate Tax Commission. Each address or address range must be provided in standard postal format, including the street number, street number range, street name, and zip code. Each year after the creation of the initial database, the Department of Revenue shall annually create and maintain a database for the current tax year. Each annual database must be calendar-year specific.

(b)1. Each participating local taxing jurisdiction shall furnish to the Department of Revenue all information

needed to create the electronic database as soon as practical and feasible. The information furnished to the Department of Revenue must specify an effective date.

2. Each participating local taxing jurisdiction shall furnish to the Department of Revenue all information needed to create and update the current year's database, including changes in annexations, incorporations, and reorganizations and any other changes in jurisdictional boundaries, as well as changes in eligibility to participate in the excise tax imposed under this chapter. The information must specify an effective date and must be furnished to the Department of Revenue by July 1 of the current year.

3. The Department of Revenue shall create and update the current year's database in accordance with the information furnished by participating local taxing jurisdictions under subparagraph 1. or subparagraph 2., as appropriate. To the extent practicable, the Department of Revenue shall post each new annual database on a website by September 1 of each year. Each participating local taxing jurisdiction shall have access to this website and, within 30 days thereafter, shall provide any corrections to the Department of Revenue. The Department of Revenue shall finalize the current year's database and post it on a website by November 1 of the current year. If a dispute in jurisdictional boundaries cannot be resolved so that changes in boundaries may be included, as appropriate, in the database by November 1, the changes may not be retroactively included in the current year's database and the boundaries will remain the same as in the previous year's database. The finalized database must be used in assigning policies and premiums to the proper local taxing jurisdiction for the insurance premium tax return due on the following March 1 for the tax year 2005. For subsequent tax years, the finalized database must be used in assigning policies and premiums to the proper local taxing jurisdiction for the insurance premium tax return due for the tax year beginning on or after the January 1 following the website posting of the database. Information contained in the electronic database is conclusive for purposes of this chapter. The electronic database is not an order, a rule, or a policy of general applicability.

4. Each annual database must identify the additions, deletions, and other changes to the preceding version of the database.

(3)(a) As used in this section, the term "due diligence" means the care and attention that is expected from and is ordinarily exercised by a reasonable and prudent person under the circumstances.

(b) Notwithstanding any law to the contrary, an insurance company is exercising due diligence if the insurance company complies with the provisions of paragraph (1)(b) or if the insurance company assigns an insured's premium to local taxing jurisdictions in accordance with the Department of Revenue's annual database and with respect to such database:

1. Expends reasonable resources to accurately and reliably implement such method;

2. Maintains adequate internal controls to correctly include in its database of policyholders the location of the property insured, in the proper address format, so that matching with the department's database is accurate; and

3. Corrects errors in the assignment of addresses to local taxing jurisdictions within 120 days after the insurance company discovers the errors.

(4) There is annually appropriated from the moneys collected under this chapter and deposited in the Police and Firefighter's Premium Tax Trust Fund an amount sufficient to pay the expenses of the Department of Revenue in administering this section, but not to exceed $50,000 annually, adjusted annually by the lesser of a 5- percent increase or the percentage of growth in the total collections.

(5) The Department of Revenue shall adopt rules necessary to administer this section, including rules establishing procedures and forms.

(6) Any insurer that is obligated to collect and remit the tax on casualty insurance imposed under s. 185.08 shall be held harmless from any liability, including, but not limited to, liability for taxes, interest, or penalties that would otherwise be due solely as a result of an assignment of an insured risk to an incorrect local taxing jurisdiction, based on the collection and remission of the tax accruing before January 1, 2005, if the insurer collects and reports this tax consistent with filings for periods before January 1, 2005. Further, any insurer that

is obligated to collect and remit the tax on casualty insurance imposed under this section is not subject to an examination under s. 624.316 or s. 624.3161 which would occur solely as a result of an assignment of an insured risk to an incorrect local taxing jurisdiction, based on the collection and remission of such tax accruing before January 1, 2005.

History.—s. 4, ch. 2004-21; s. 2, ch. 2009-20.

185.09 Report of premiums paid; date tax payable.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter, whenever any municipality passes an ordinance establishing a chapter plan or local law plan and assessing and imposing the tax authorized in s. 185.08, a certified copy of such ordinance shall be deposited with the division; and thereafter every insurance company, corporation, or other insurer carrying on the business of casualty insuring, on or before the succeeding March 1 after date of the passage of the ordinance, shall report fully in writing to the division and the Department of Revenue a just and true account of all premiums received by such insurer for casualty insurance policies covering or insuring any property located within the corporate limits of such municipality during the period of time elapsing between the date of the passage of the ordinance and the end of the calendar year. The aforesaid insurer shall annually thereafter, on March 1, file with the Department of Revenue a similar report covering the preceding year's premium receipts. Every such insurer shall, at the time of making such report, pay to the Department of Revenue the amount of the tax heretofore mentioned. Every insurer engaged in carrying on a general casualty insurance business in the state shall keep accurate books of account of all such business done by it within the limits of such incorporated municipality in such a manner as to be able to comply with the provisions of this chapter. Based on the insurers' reports of premium receipts, the division shall prepare a consolidated premium report and shall furnish to any municipality requesting the same a copy of the relevant section of that report.

History.—s. 6, ch. 28230, 1953; s. 2, ch. 61-85; ss. 12, 13, 35, ch. 69-106; s. 42, ch. 93-193; s. 49, ch. 99-1; s. 7, ch. 2000-355.

185.10 Department of Revenue and Division of Retirement to keep accounts of deposits; disbursements.—For any municipality having a chapter plan or local law plan under this chapter:

(1) The Department of Revenue shall keep a separate account of all moneys collected for each municipality under the provisions of this chapter. All moneys so collected must be transferred to the Police and Firefighters' Premium Tax Trust Fund and shall be separately accounted for by the division. The moneys budgeted as necessary to pay the expenses of the division for the daily oversight and monitoring of the police officers' retirement plans under this chapter and for the oversight and actuarial reviews conducted under part VII of chapter 112 are annually appropriated from the interest and investment income earned on the moneys collected for each municipality or special fire control district and deposited in the Police and Firefighters' Premium Tax Trust Fund. Interest and investment income remaining thereafter in the trust fund which is unexpended and otherwise unallocated by law shall revert to the General Revenue Fund on June 30 of each year.

(2) The Chief Financial Officer shall, on or before July 1 of each year, and at such other times as authorized by the division, draw his or her warrants on the full net amount of money then on deposit pursuant to this chapter in the Police and Firefighters' Premium Tax Trust Fund, specifying the municipalities to which the moneys must be paid and the net amount collected for and to be paid to each municipality, respectively. The sum payable to each municipality is appropriated annually out of the Police and Firefighters' Premium Tax Trust Fund. The warrants of the Chief Financial Officer shall be payable to the respective municipalities entitled to receive them and shall be remitted annually by the division to the respective municipalities. In lieu thereof, the municipality may provide authorization to the division for the direct payment of the premium tax to the board of trustees. In order for a municipality and its retirement fund to participate in the distribution of premium tax moneys under this chapter, all the provisions shall be complied with annually, including state acceptance pursuant to part VII of chapter 112.

History.—s. 7, ch. 28230, 1953; s. 2, ch. 29734, 1955; s. 2, ch. 61-119; ss. 13, 35, ch. 69-106; s. 1, ch. 74-297; s. 4, ch. 85-61; s. 8, ch. 86-42; s. 43, ch. 93-193; s. 13, ch. 94-259; s. 1458, ch. 95-147; s. 6, ch. 95-250; s. 50, ch. 99-1; s. 165, ch. 2003-261.

[1]185.105 **Police and Firefighters' Premium Tax Trust Fund.**—The Police and Firefighters' Premium Tax Trust Fund is created, to be administered by the Division of Retirement of the Department of Management Services. Funds credited to the trust fund, as provided in chapter 95-250, Laws of Florida, or similar legislation, shall be expended for the purposes set forth in that legislation.

History.—s. 1, ch. 95-249.

[1]**Note.**—Also published at s. 175.1215.

185.11 **Funds received by municipalities, deposit in retirement trust fund.**—For any municipality, chapter plan, local law municipality, or local law plan under this chapter, all state and other funds received by any municipality under the provisions of this chapter shall be deposited by the municipality immediately, and under no circumstances more than 5 days after receipt, with the board of trustees. In lieu thereof, the municipality may provide authorization to the division for the direct payment of the premium tax to the board of trustees. The board shall deposit such moneys in the Municipal Police Officers' Retirement Trust Fund immediately, and under no circumstances more than 5 days after receipt. Employee contributions, however, which are withheld by the employer on behalf of an employee member shall be deposited immediately after each pay period with the board of trustees of the municipal police officers' retirement trust fund. Employer contributions shall be deposited at least quarterly.

History.—s. 8, ch. 28230, 1953; s. 2, ch. 61-119; s. 9, ch. 86-42; s. 51, ch. 99-1.

185.12 **Payment of excise tax credit on similar state excise or license tax.**—The tax herein authorized shall in nowise be additional to the similar state excise or license tax imposed by part IV, chapter 624, but the payor of the tax hereby authorized shall receive credit therefor on his or her state excise or license tax and the balance of said state excise or license tax shall be paid to the Department of Revenue as provided by law.

History.—s. 9, ch. 28230, 1953; s. 3, ch. 61-85; ss. 13, 35, ch. 69-106; s. 10, ch. 86-42; s. 945, ch. 95-147; s. 52, ch. 99-1.

185.13 **Failure of insurer to comply with chapter; penalty.**—If any insurance company, corporation or other insurer fails to comply with the provisions of this chapter, on or before March 1 in each year as herein provided, the certificate of authority issued to said insurance company, corporation or other insurer to transact business in this state may be canceled and revoked by the Office of Insurance Regulation of the Financial Services Commission, and it is unlawful for any such insurance company, corporation or other insurer to transact any business thereafter in this state unless such insurance company, corporation or other insurer shall be granted a new certificate of authority to transact business in this state, in compliance with provisions of law authorizing such certificate of authority to be issued. The division shall be responsible for notifying the Office of Insurance Regulation regarding any such failure to comply.

History.—s. 10, ch. 28230, 1953; ss. 13, 35, ch. 69-106; s. 53, ch. 99-1; s. 166, ch. 2003-261.

185.16 **Requirements for retirement.**—For any municipality, chapter plan, local law municipality, or local law plan under this chapter, any police officer who completes 10 or more years of creditable service as a police officer and attains age 55, or completes 25 years of creditable service as a police officer and attains age 52, and for such period has been a member of the retirement fund is eligible for normal retirement benefits. Normal retirement under the plan is retirement from the service of the city on or after the normal retirement date. In such event, for chapter plans and local law plans, payment of retirement income will be governed by the following provisions of this section:

(1) The normal retirement date of each police officer will be the first day of the month coincident with or next following the date on which the police officer has completed 10 or more years of creditable service and attained age 55 or completed 25 years of creditable service and attained age 52.

(2) The amount of the monthly retirement income payable to a police officer who retires on or after his or her normal retirement date shall be an amount equal to the number of the police officer's years of credited

service multiplied by 2 percent of his or her average final compensation. However, if current state contributions pursuant to this chapter are not adequate to fund the additional benefits to meet the minimum requirements in this chapter, only increment increases shall be required as state moneys are adequate to provide. Such increments shall be provided as state moneys become available.

(3) The monthly retirement income payable in the event of normal retirement will be payable on the first day of each month. The first payment will be made on the police officer's normal retirement date, or on the first day of the month coincident with or next following the police officer's actual retirement, if later, and the last payment will be the payment due next preceding the police officer's death; except that, in the event the police officer dies after retirement but before receiving retirement benefits for a period of 10 years, the same monthly benefit will be paid to the beneficiary (or beneficiaries) as designated by the police officer for the balance of such 10-year period, or, if no beneficiary is designated, to the estate of the police officer, as provided in s. 185.162. If a police officer continues in the service of the city beyond his or her normal retirement date and dies prior to the date of actual retirement, without an option made pursuant to s. 185.161 being in effect, monthly retirement income payments will be made for a period of 10 years to a beneficiary (or beneficiaries) designated by the police officer as if the police officer had retired on the date on which death occurred, or, if no beneficiary is designated, to the estate of the police officer, as provided in s. 185.162.

(4) Early retirement under the plan is retirement from the service of the city, with the consent of the city, as of the first day of any calendar month which is prior to the police officer's normal retirement date but subsequent to the date as of which the police officer has both attained the age of 50 years and completed 10 years of contributing service. In the event of early retirement, payment of retirement income will be governed as follows:

(a) The early retirement date shall be the first day of the calendar month coincident with or immediately following the date a police officer retires from the service of the city under the provisions of this section prior to his or her normal retirement date.

(b) The monthly amount of retirement income payable to a police officer who retires prior to his or her normal retirement date under the provisions of this section shall be an amount computed as described in subsection (2), taking into account his or her credited service to the date of actual retirement and his or her final monthly compensation as of such date, such amount of retirement income to be actuarially reduced to take into account the police officer's younger age and the earlier commencement of retirement income payments. In no event shall the early retirement reduction exceed 3 percent for each year by which the member's age at retirement preceded the member's normal retirement age, as provided in subsection (1).

(c) The retirement income payable in the event of early retirement will be payable on the first day of each month. The first payment will be made on the police officer's early retirement date and the last payment will be the payment due next preceding the retired police officer's death; except that, in the event the police officer dies before receiving retirement benefits for a period of 10 years, the same monthly benefit will be paid to the beneficiary designated by the police officer for the balance of such 10-year period, or, if no designated beneficiary is surviving, the same monthly benefit for the balance of such 10-year period shall be payable as provided in s. 185.162.

History.—s. 14, ch. 28230, 1953; s. 4, ch. 29825, 1955; s. 6, ch. 59-320; s. 5, ch. 61-85; s. 2, ch. 63-196; s. 1, ch. 70-128; s. 12, ch. 86-42; s. 946, ch. 95-147; s. 56, ch. 99-1.

185.161 Optional forms of retirement income.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter:

(1)(a) In lieu of the amount and form of retirement income payable in the event of normal or early retirement as specified in s. 185.16, a police officer, upon written request to the board of trustees and subject to the approval of the board of trustees, may elect to receive a retirement income or benefit of equivalent actuarial value payable in accordance with one of the following options:

1. A retirement income of larger monthly amount, payable to the police officer for his or her lifetime only.

2. A retirement income of a modified monthly amount, payable to the police officer during the joint lifetime of the police officer and a joint annuitant designated by the police officer, and following the death of either of them, 100 percent, 75 percent, 66⅔ percent, or 50 percent of such monthly amount payable to the survivor for the lifetime of the survivor.

3. Such other amount and form of retirement payments or benefit as, in the opinion of the board of trustees, will best meet the circumstances of the retiring police officer.

(b) The police officer upon electing any option of this section must designate the joint annuitant or beneficiary to receive the benefit, if any, payable under the plan in the event of the police officer's death, and may change such designation but any such change shall be deemed a new election and is subject to approval by the pension committee. Such designation must name a joint annuitant or one or more primary beneficiaries where applicable. If a police officer has elected an option with a joint annuitant or beneficiary and his or her retirement income benefits have commenced, he or she may change the designated joint annuitant or beneficiary but only if the board of trustees consents to such change and if the joint annuitant last designated by the police officer is alive when he or she files with the board of trustees a request for such change. The consent of a police officer's joint annuitant or beneficiary to any such change is not required. The board of trustees may request evidence of the good health of the joint annuitant being removed, and the amount of the retirement income payable to the police officer upon the designation of a new joint annuitant shall be actuarially redetermined taking into account the ages and gender of the former joint annuitant, the new joint annuitant, and the police officer. Each designation must be made in writing on a form prepared by the board of trustees and filed with the board of trustees. If no designated beneficiary survives the police officer, such benefits as are payable in the event of the death of the police officer subsequent to his or her retirement shall be paid as provided in s. 185.162.

(c) Notwithstanding paragraph (b), a retired police officer may change his or her designation of joint annuitant or beneficiary up to two times as provided in s. 185.341 without the approval of the board of trustees or the current joint annuitant or beneficiary. The retiree need not provide proof of the good health of the joint annuitant or beneficiary being removed, and the joint annuitant or beneficiary being removed need not be living.

(2) Retirement income payments shall be made under the option elected in accordance with the provisions of this section and shall be subject to the following limitations:

(a) If a police officer dies prior to his or her normal retirement date or early retirement date, whichever first occurs, no benefit will be payable under the option to any person, but the benefits, if any, will be determined under s. 185.21.

(b) If the designated beneficiary or joint annuitant dies before the police officer's retirement under the plan, the option elected is canceled automatically and a retirement income of the normal form and amount is payable to the police officer upon his or her retirement as if the election had not been made, unless a new election is made in accordance with this section or a new beneficiary is designated by the police officer before his or her retirement and within 90 days after the death of the beneficiary.

(c) If both the retired police officer and the designated beneficiary (or beneficiaries) die before the full payment has been effected under any option providing for payments for a period certain and life thereafter, made pursuant to the provisions of subparagraph (1)(a)3., the board of trustees may, in its discretion, direct that the commuted value of the remaining payments be paid in a lump sum and in accordance with s. 185.162.

(d) If a police officer continues beyond his or her normal retirement date pursuant to the provisions of s. 185.16(1) and dies prior to actual retirement and while an option made pursuant to the provisions of this section is in effect, monthly retirement income payments will be made, or a retirement benefit will be paid, under the option to a beneficiary (or beneficiaries) designated by the police officer in the amount or amounts computed as if the police officer had retired under the option on the date on which death occurred.

(3) No police officer may make any change in his or her retirement option after the date of cashing or

depositing his or her first retirement check.

History.—s. 7, ch. 59-320; s. 13, ch. 86-42; s. 947, ch. 95-147; s. 57, ch. 99-1; s. 12, ch. 2009-97.

185.162 Beneficiaries.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter:

(1) Each police officer may, on a form, provided for that purpose, signed and filed with the board of trustees, designate a choice of one or more persons, named sequentially or jointly, as his or her beneficiary (or beneficiaries) to receive the benefit, if any, which may be payable in the event of the police officer's death, and each designation may be revoked by such police officer by signing and filing with the board of trustees a new designation or beneficiary form.

(2) If no beneficiary is named in the manner provided by subsection (1), or if no beneficiary designated by the member survives him or her, the death benefit, if any, which may be payable under the plan with respect to such deceased police officer shall be paid by the board of trustees to the estate of such deceased police officer, provided that in any of such cases the board of trustees, in its discretion, may direct that the commuted value of the remaining monthly income payments be paid in a lump sum. Any payment made to any person pursuant to this subsection shall operate as a complete discharge of all obligations under the plan with regard to such deceased police officer and shall not be subject to review by anyone, but shall be final, binding and conclusive on all persons ever interested hereunder.

(3) Notwithstanding any other provision of law to the contrary, the surviving spouse of any pension participant member killed in the line of duty shall not lose survivor retirement benefits if the spouse remarries. The surviving spouse of such deceased member whose benefit terminated because of remarriage shall have the benefit reinstated as of July 1, 1994, at an amount that would have been payable had such benefit not been terminated.

History.—s. 7, ch. 59-320; s. 5, ch. 94-171; s. 1459, ch. 95-147; s. 58, ch. 99-1.

185.18 Disability retirement.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter:

(1) A police officer having 10 or more years of credited service, or a police officer who becomes totally and permanently disabled in the line of duty, regardless of length of service, may retire from the service of the city under the plan if he or she becomes totally and permanently disabled as defined in subsection (2) by reason of any cause other than a cause set out in subsection (3) on or after the effective date of the plan. Such retirement shall herein be referred to as disability retirement.

(2) A police officer will be considered totally disabled if, in the opinion of the board of trustees, he or she is wholly prevented from rendering useful and efficient service as a police officer; and a police officer will be considered permanently disabled if, in the opinion of the board of trustees, such police officer is likely to remain so disabled continuously and permanently from a cause other than as specified in subsection (3).

(3) A police officer will not be entitled to receive any disability retirement income if the disability is a result of:

(a) Excessive and habitual use by the police officer of drugs, intoxicants, or narcotics;

(b) Injury or disease sustained by the police officer while willfully and illegally participating in fights, riots, civil insurrections or while committing a crime;

(c) Injury or disease sustained by the police officer while serving in any armed forces;

(d) Injury or disease sustained by the police officer after employment has terminated;

(e) Injury or disease sustained by the police officer while working for anyone other than the city and arising out of such employment.

(4) No police officer shall be permitted to retire under the provisions of this section until examined by a duly qualified physician or surgeon, to be selected by the board of trustees for that purpose, and is found to be disabled in the degree and in the manner specified in this section. Any police officer retiring under this section

may be examined periodically by a duly qualified physician or surgeon or board of physicians and surgeons to be selected by the board of trustees for that purpose, to determine if such disability has ceased to exist.

(5) The benefit payable to a police officer who retires from the service of the city with a total and permanent disability as a result of a disability is the monthly income payable for 10 years certain and life for which, if the police officer's disability occurred in the line of duty, his or her monthly benefit shall be the accrued retirement benefit, but shall not be less than 42 percent of his or her average monthly compensation as of the police officer's disability retirement date. If after 10 years of service the disability is other than in the line of duty, the police officer's monthly benefit shall be the accrued normal retirement benefit, but shall not be less than 25 percent of his or her average monthly compensation as of the police officer's disability retirement date.

(6) The monthly retirement income to which a police officer is entitled in the event of his or her disability retirement shall be payable on the first day of the first month after the board of trustees determines such entitlement. However, the monthly retirement income shall be payable as of the date the board determines such entitlement, and any portion due for a partial month shall be paid together with the first payment. The last payment will be, if the police officer recovers from the disability, the payment due next preceding the date of such recovery or, if the police officer dies without recovering from his or her disability, the payment due next preceding death or the 120th monthly payment, whichever is later. In lieu of the benefit payment as provided in this subsection, a police officer may select an optional form as provided in s. 185.161. Any monthly retirement income payments due after the death of a disabled police officer shall be paid to the police officer's designated beneficiary (or beneficiaries) as provided in ss. 185.162 and 185.21.

(7) If the board of trustees finds that a police officer who is receiving a disability retirement income is no longer disabled, as provided herein, the board of trustees shall direct that the disability retirement income be discontinued. Recovery from disability as used herein shall mean the ability of the police officer to render useful and efficient service as a police officer.

(8) If the police officer recovers from disability and reenters the service of the city as a police officer, his or her service will be deemed to have been continuous, but the period beginning with the first month for which the police officer received a disability retirement income payment and ending with the date he or she reentered the service of the city may not be considered as credited service for the purposes of the plan.

History.—s. 16, ch. 28230, 1953; s. 6, ch. 59-320; s. 6, ch. 61-85; s. 2, ch. 61-119; s. 2, ch. 70-128; s. 14, ch. 86-42; s. 948, ch. 95-147; s. 59, ch. 99-1.

185.185 False, misleading, or fraudulent statements made to obtain public retirement benefits prohibited; penalty.—

(1) It is unlawful for a person to willfully and knowingly make, or cause to be made, or to assist, conspire with, or urge another to make, or cause to be made, any false, fraudulent, or misleading oral or written statement or withhold or conceal material information to obtain any benefit available under a retirement plan receiving funding under this chapter.

(2)(a) A person who violates subsection (1) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) In addition to any applicable criminal penalty, upon conviction for a violation described in subsection (1), a participant or beneficiary of a pension plan receiving funding under this chapter may, in the discretion of the board of trustees, be required to forfeit the right to receive any or all benefits to which the person would otherwise be entitled under this chapter. For purposes of this paragraph, "conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.

History.—s. 60, ch. 99-1.

185.19 Separation from municipal service; refunds.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter:

(1) If any police officer leaves the service of the municipality before accumulating aggregate time of 10 years toward retirement and before being eligible to retire under the provisions of this chapter, such police officer shall be entitled to a refund of all of his or her contributions made to the municipal police officers' retirement trust fund without interest, less any benefits paid to him or her.

(2) If any police officer who has been in the service of the municipality for at least 10 years elects to leave his or her accrued contributions, if contributions are required, in the municipal police officers' retirement trust fund, such police officer upon attaining age 50 years or more may retire at the actuarial equivalent of the amount of such retirement income otherwise payable to him or her, as provided in s. 185.16(4), or, upon attaining age 55 years, may retire as provided in s. 185.16(2).

History.—s. 17, ch. 28230, 1953; s. 6, ch. 59-320; s. 7, ch. 61-85; s. 2, ch. 61-119; s. 949, ch. 95-147; s. 61, ch. 99-1.

185.191 Lump-sum payment of small retirement income.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter, notwithstanding any provision of the plan to the contrary, if the monthly retirement income payable to any person entitled to benefits hereunder is less than $100 or if the single-sum value of the accrued retirement income is less than $2,500 as of the date of retirement or termination of service, whichever is applicable, the board of trustees, in the exercise of its discretion, may specify that the actuarial equivalent of such retirement income be paid in a lump sum.

History.—s. 7, ch. 59-320; s. 62, ch. 99-1.

185.21 Death prior to retirement; refunds of contributions or payment of death benefits.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter:

(1) If a police officer dies before being eligible to retire, the heirs, legatees, beneficiaries, or personal representatives of such deceased police officer shall be entitled to a refund of 100 percent, without interest, of the contributions made to the municipal police officers' retirement trust fund by such deceased police officer or, in the event an annuity or life insurance contract has been purchased by the board on such police officer, then to the death benefits available under such life insurance or annuity contract, subject to the limitations on such death benefits set forth in s. 185.061 whichever amount is greater.

(2) If a police officer having at least 10 years of credited service dies prior to retirement, his or her beneficiary is entitled to the benefits otherwise payable to the police officer at early or normal retirement age.

In the event that a death benefit paid by a life insurance company exceeds the limit set forth in s. 185.061(6), the excess of the death benefit over the limit shall be paid to the municipal police officers' retirement trust fund. However, death benefits as provided pursuant to s. 112.19 or any other state or federal law shall not be included in the calculation of death or retirement benefits provided under this chapter.

History.—s. 19, ch. 28230, 1953; s. 6, ch. 29825, 1955; s. 3, ch. 57-118; s. 6, ch. 59-320; s. 2, ch. 61-119; s. 15, ch. 86-42; s. 6, ch. 90-138; s. 950, ch. 95-147; s. 63, ch. 99-1.

185.221 Annual report to Division of Retirement; actuarial valuations.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter, the board of trustees for every chapter plan and local law plan shall submit the following reports to the division:

(1) With respect to chapter plans:

(a) Each year by February 1, the chair or secretary of each municipal police officers' retirement trust fund operating a chapter plan shall file a report with the division which contains:

1. A statement of whether in fact the municipality is within the provisions of s. 185.03.

2. An independent audit by a certified public accountant if the fund has $250,000 or more in assets, or a certified statement of accounting if the fund has less than $250,000 in assets, for the most recent plan year, showing a detailed listing of assets and methods used to value them and a statement of all income and disbursements during the year. Such income and disbursements shall be reconciled with the assets at the beginning and end of the year.

3. A statistical exhibit showing the total number of police officers on the force of the municipality, the number included in the retirement plan and the number ineligible classified according to the reasons for their being ineligible, and the number of disabled and retired police officers and their beneficiaries receiving pension payments and the amounts of annual retirement income or pension payments being received by them.

4. A statement of the amount the municipality, or other income source, has contributed to the retirement plan for the most recent plan year and the amount the municipality will contribute to the retirement plan for the current plan year.

5. If any benefits are insured with a commercial insurance company, the report shall include a statement of the relationship of the insured benefits to the benefits provided by this chapter. This report shall also contain information about the insurer, basis of premium rates and mortality table, interest rate and method used in valuing retirement benefits.

(b) In addition to annual reports provided under paragraph (a), by February 1 of each triennial year, an actuarial valuation of the chapter plan must be made by the division at least once every 3 years, as provided in s. 112.63, commencing 3 years from the last actuarial valuation of the plan or system for existing plans, or commencing 3 years from the issuance of the initial actuarial impact statement submitted under s. 112.63 for newly created plans. To that end, the chair of the board of trustees for each municipal police officers' retirement trust fund operating under a chapter plan shall report to the division such data as the division needs to complete an actuarial valuation of each fund. The forms for each municipality shall be supplied by the division. The expense of the actuarial valuation shall be borne by the municipal police officers' retirement trust fund established by s. 185.10. The requirements of this section are supplemental to the actuarial valuations necessary to comply with s. 218.39.

(2) With respect to local law plans:

(a) Each year, on or before March 15, the trustees of the retirement plan shall submit the following information to the division in order for the retirement plan of such municipality to receive a share of the state funds for the then-current calendar year:

1. A certified copy of each and every instrument constituting or evidencing the plan. This includes the formal plan, including all amendments, the trust agreement, copies of all insurance contracts, and formal announcement materials.

2. An independent audit by a certified public accountant if the fund has $250,000 or more in assets, or a certified statement of accounting if the fund has less than $250,000 in assets, for the most recent plan year, showing a detailed listing of assets and a statement of all income and disbursements during the year. Such income and disbursements must be reconciled with the assets at the beginning and end of the year.

3. A certified statement listing the investments of the plan and a description of the methods used in valuing the investments.

4. A statistical exhibit showing the total number of police officers, the number included in the plan, and the number ineligible classified according to the reasons for their being ineligible, and the number of disabled and retired police officers and their beneficiaries receiving pension payments and the amounts of annual retirement income or pension payments being received by them.

5. A certified statement describing the methods, factors, and actuarial assumptions used in determining the cost.

6. A certified statement by an enrolled actuary showing the results of the latest actuarial valuation of the plan and a copy of the detailed worksheets showing the computations used in arriving at the results.

7. A statement of the amount the municipality, or other income source, has contributed toward the plan for the most recent plan year and will contribute toward the plan for the current plan year.

When any of the items required hereunder is identical to the corresponding item submitted for a previous year, it is not necessary for the trustees to submit duplicate information if they make reference to the item in the

previous year's report.

(b) In addition to annual reports provided under paragraph (a), an actuarial valuation of the retirement plan must be made at least once every 3 years, as provided in s. 112.63, commencing 3 years from the last actuarial valuation of the plan or system for existing plans, or commencing 3 years from issuance of the initial actuarial impact statement submitted under s. 112.63 for newly created plans. Such valuation shall be prepared by an enrolled actuary, subject to the following conditions:

1. The assets shall be valued as provided in s. 112.625(7).

2. The cost of the actuarial valuation must be paid by the individual police officer's retirement trust fund or by the sponsoring municipality.

3. A report of the valuation, including actuarial assumptions and type and basis of funding, shall be made to the division within 3 months after the date of the valuation. If any benefits are insured with a commercial insurance company, the report must include a statement of the relationship of the retirement plan benefits to the insured benefits, the name of the insurer, the basis of premium rates, and the mortality table, interest rate, and method used in valuing the retirement benefits.

History.—s. 7, ch. 59-320; s. 2, ch. 61-119; ss. 13, 35, ch. 69-106; s. 16, ch. 86-42; s. 44, ch. 93-193; s. 951, ch. 95-147; s. 8, ch. 96-324; s. 64, ch. 99-1; s. 43, ch. 2001-266; s. 16, ch. 2004-305.

185.23 Duties of Division of Retirement; rulemaking authority; investments by State Board of Administration.—

(1) The division shall be responsible for the daily oversight and monitoring for actuarial soundness of the municipal police officers' retirement plans, whether chapter or local law plans, established under this chapter, for receiving and holding the premium tax moneys collected under this chapter, and, upon determining compliance with the provisions of this chapter, for disbursing those moneys to the municipal police officers' retirement plans. The funds to pay the expenses for such administration shall be annually appropriated from the interest and investment income earned on moneys deposited in the trust fund.

(2) The division has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter.

(3) The State Board of Administration shall invest and reinvest the moneys in the trust fund in accordance with ss. 215.44-215.53. Costs incurred by the board in carrying out the provisions of this section shall be deducted from the interest and investment income accruing to the trust fund.

History.—s. 20, ch. 28230, 1953; ss. 13, 35, ch. 69-106; s. 45, ch. 93-193; s. 7, ch. 95-250; s. 13, ch. 98-200; s. 65, ch. 99-1; s. 30, ch. 2000-151.

185.25 Exemption from tax and execution.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter, the pensions, annuities, or any other benefits accrued or accruing to any person under any municipality, chapter plan, local law municipality, or local law plan under the provisions of this chapter and the accumulated contributions and the cash securities in the funds created under this chapter are exempted from any state, county, or municipal tax of the state and shall not be subject to execution or attachment or to any legal process whatsoever and shall be unassignable.

History.—s. 21, ch. 28230, 1953; s. 66, ch. 99-1.

185.30 Depository for retirement fund.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter, all funds of the municipal police officers' retirement trust fund of any municipality, chapter plan, local law municipality, or local law plan under this chapter may be deposited by the board of trustees with the treasurer of the municipality acting in a ministerial capacity only, who shall be liable in the same manner and to the same extent as he or she is liable for the safekeeping of funds for the municipality. However, any funds so deposited with the treasurer of the municipality shall be kept in a separate fund by the municipal treasurer or clearly identified as such funds of the municipal police officers' retirement trust fund. In lieu thereof, the board of trustees shall deposit the funds of the municipal police officers'

retirement trust fund in a qualified public depository as defined in s. 280.02, which depository with regard to such funds shall conform to and be bound by all of the provisions of chapter 280.

History.—s. 26, ch. 28230, 1953; s. 2, ch. 61-119; s. 19, ch. 86-42; s. 3, ch. 88-185; s. 954, ch. 95-147; s. 69, ch. 99-1.

185.31 Municipalities and boards independent of other municipalities and boards and of each other.—In the enforcement and interpretation of the provisions of this chapter for any municipality, chapter plan, local law municipality, or local law plan under this chapter, each municipality shall be independent of any other municipality, and the board of trustees of the municipal police officers' retirement trust fund of each municipality shall function for the municipality which they are to serve as trustees. Each board of trustees shall be independent of each municipality for which it serves as board of trustees to the extent required to accomplish the intent, requirements, and responsibilities provided for in this chapter.

History.—s. 27, ch. 28230, 1953; s. 2, ch. 61-119; s. 20, ch. 86-42; s. 70, ch. 99-1.

185.34 Disability in line of duty.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter, any condition or impairment of health of any and all police officers employed in the state caused by tuberculosis, hypertension, heart disease, or hardening of the arteries, resulting in total or partial disability or death, shall be presumed to be accidental and suffered in line of duty unless the contrary be shown by competent evidence. Any condition or impairment of health caused directly or proximately by exposure, which exposure occurred in the active performance of duty at some definite time or place without willful negligence on the part of the police officer, resulting in total or partial disability, shall be presumed to be accidental and suffered in the line of duty, provided that such police officer shall have successfully passed a physical examination upon entering such service, which physical examination including electrocardiogram failed to reveal any evidence of such condition, and, further, that such presumption shall not apply to benefits payable under or granted in a policy of life insurance or disability insurance. This section shall be applicable to all police officers only with reference to pension and retirement benefits under this chapter.

History.—ss. 1, 2, ch. 57-340; s. 1, ch. 67-580; s. 62, ch. 79-40; s. 21, ch. 86-42; s. 72, ch. 99-1.

185.341 Discrimination in benefit formula prohibited; restrictions regarding designation of joint annuitants.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter:

(1) No plan shall discriminate in its benefit formula based on color, national origin, sex, or marital status.

(2)(a) If a plan offers a joint annuitant option and the member selects such option, or if a plan specifies that the member's spouse is to receive the benefits that continue to be payable upon the death of the member, then, in both of these cases, after retirement benefits have commenced, a retired member may change the designation of joint annuitant or beneficiary only twice.

(b) Any retired member who desires to change the joint annuitant or beneficiary shall file with the board of trustees of his or her plan a notarized notice of such change either by registered letter or on such form as is provided by the administrator of the plan. Upon receipt of a completed change of joint annuitant form or such other notice, the board of trustees shall adjust the member's monthly benefit by the application of actuarial tables and calculations developed to ensure that the benefit paid is the actuarial equivalent of the present value of the member's current benefit. Nothing herein shall preclude a plan from actuarially adjusting benefits or offering options based upon sex, age, early retirement, or disability.

(3) Eligibility for coverage under the plan must be based upon length of service, or attained age, or both, and benefits must be determined by a nondiscriminatory formula based upon:

(a) Length of service and compensation; or

(b) Length of service.

History.—s. 22, ch. 86-42; s. 955, ch. 95-147; s. 73, ch. 99-1.

185.35 Municipalities having their own pension plans for police officers.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter, in order for municipalities with their own

pension plans for police officers, or for police officers and firefighters where included, to participate in the distribution of the tax fund established pursuant to s. 185.08, local law plans must meet the minimum benefits and minimum standards set forth in this chapter:

(1) PREMIUM TAX INCOME.—If a municipality has a pension plan for police officers, or for police officers and firefighters where included, which, in the opinion of the division, meets the minimum benefits and minimum standards set forth in this chapter, the board of trustees of the pension plan, as approved by a majority of police officers of the municipality, may:

(a) Place the income from the premium tax in s. 185.08 in such pension plan for the sole and exclusive use of its police officers, or its police officers and firefighters where included, where it shall become an integral part of that pension plan and shall be used to pay extra benefits to the police officers included in that pension plan; or

(b) May place the income from the premium tax in s. 185.08 in a separate supplemental plan to pay extra benefits to the police officers, or police officers and firefighters where included, participating in such separate supplemental plan.

The premium tax provided by this chapter shall in all cases be used in its entirety to provide extra benefits to police officers, or to police officers and firefighters, where included. However, local law plans in effect on October 1, 1998, shall be required to comply with the minimum benefit provisions of this chapter only to the extent that additional premium tax revenues become available to incrementally fund the cost of such compliance as provided in s. 185.16(2). When a plan is in compliance with such minimum benefit provisions, as subsequent additional tax revenues become available, they shall be used to provide extra benefits. For the purpose of this chapter, "additional premium tax revenues" means revenues received by a municipality pursuant to s. 185.10 which exceed the amount received for calendar year 1997, and the term "extra benefits" means benefits in addition to or greater than those provided to general employees of the municipality and in addition to those in existence for police officers on March 12, 1999. Local law plans created by special act before May 23, 1939, shall be deemed to comply with this chapter.

(2) ADOPTION OR REVISION OF A LOCAL LAW PLAN.—No retirement plan or amendment to a retirement plan shall be proposed for adoption unless the proposed plan or amendment contains an actuarial estimate of the costs involved. No such proposed plan or proposed plan change shall be adopted without the approval of the municipality or, where permitted, the Legislature. Copies of the proposed plan or proposed plan change and the actuarial impact statement of the proposed plan or proposed plan change shall be furnished to the division prior to the last public hearing thereon. Such statement shall also indicate whether the proposed plan or proposed plan change is in compliance with s. 14, Art. X of the State Constitution and those provisions of part VII of chapter 112 which are not expressly provided in this chapter. Notwithstanding any other provision, only those local law plans created by special act of legislation prior to May 23, 1939, shall be deemed to meet the minimum benefits and minimum standards only in this chapter.

(3) Notwithstanding any other provision, with respect to any supplemental plan municipality:

(a) Section 185.02(4)(a) shall not apply, and a local law plan and a supplemental plan may continue to use their definition of compensation or salary in existence on the effective date of this act.

(b) Section 185.05(1)(b) shall not apply, and a local law plan and a supplemental plan shall continue to be administered by a board or boards of trustees numbered, constituted, and selected as the board or boards were numbered, constituted, and selected on December 1, 2000.

(c) The election set forth in paragraph (1)(b) shall be deemed to have been made.

(4) The retirement plan setting forth the benefits and the trust agreement, if any, covering the duties and responsibilities of the trustees and the regulations of the investment of funds must be in writing and copies made available to the participants and to the general public.

History.—s. 7, ch. 59-320; s. 2, ch. 61-119; s. 3, ch. 63-196; ss. 13, 35, ch. 69-106; s. 23, ch. 86-42; s. 47, ch. 93-193; s. 956, ch. 95-147; s. 74, ch. 99-1; s. 7, ch. 2002-66; s. 6, ch. 2004-21.

185.37 Termination of plan and distribution of fund.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter, the plan may be terminated by the municipality. Upon termination of the plan by the municipality for any reason, or because of a transfer, merger, or consolidation of governmental units, services, or functions as provided in chapter 121, or upon written notice to the board of trustees by the municipality that contributions under the plan are being permanently discontinued, the rights of all employees to benefits accrued to the date of such termination or discontinuance and the amounts credited to the employees' accounts are nonforfeitable. The fund shall be distributed in accordance with the following procedures:

(1) The board of trustees shall determine the date of distribution and the asset value required to fund all the nonforfeitable benefits, after taking into account the expenses of such distribution. The board shall inform the municipality if additional assets are required, in which event the municipality shall continue to financially support the plan until all nonforfeitable benefits have been funded.

(2) The board of trustees shall determine the method of distribution of the asset value, whether distribution shall be by payment in cash, by the maintenance of another or substituted trust fund, by the purchase of insured annuities, or otherwise, for each police officer entitled to benefits under the plan, as specified in subsection (3).

(3) The board of trustees shall distribute the asset value as of the date of termination in the manner set forth in this subsection, on the basis that the amount required to provide any given retirement income is the actuarially computed single-sum value of such retirement income, except that if the method of distribution determined under subsection (2) involves the purchase of an insured annuity, the amount required to provide the given retirement income is the single premium payable for such annuity. The actuarial single-sum value may not be less than the employee's accumulated contributions to the plan, with interest if provided by the plan, less the value of any plan benefits previously paid to the employee.

(4) If there is asset value remaining after the full distribution specified in subsection (3), and after payment of any expenses incurred with such distribution, such excess shall be returned to the municipality, less return to the state of the state's contributions, provided that, if the excess is less than the total contributions made by the municipality and the state to date of termination of the plan, such excess shall be divided proportionately to the total contributions made by the municipality and the state.

(5) The board of trustees shall distribute, in accordance with the manner of distribution determined under subsection (2), the amounts determined under subsection (3).

If, after 24 months after the date the plan terminated or the date the board received written notice that the contributions thereunder were being permanently discontinued, the municipality or the board of trustees of the municipal police officers' retirement trust fund affected has not complied with all the provisions in this section, the Department of Management Services shall effect the termination of the fund in accordance with this section.

History.—s. 8, ch. 61-85; s. 2, ch. 61-119; s. 4, ch. 63-196; s. 24, ch. 86-42; s. 48, ch. 93-193; s. 957, ch. 95-147; s. 76, ch. 99-1; s. 13, ch. 2009-97.

185.38 Transfer to another state retirement system; benefits payable.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter:

(1) Any police officer who has a vested right to benefits under a pension plan created pursuant to the provisions of this chapter and who elects to participate in another state retirement system may not receive a benefit under the provisions of the latter retirement system for any year's service for which benefits are paid under the provisions of the pension plan created pursuant to this chapter.

(2) When every active participant in any pension plan created pursuant to this chapter elects to transfer to another state retirement system, the pension plan created pursuant to this chapter shall be terminated and the

assets distributed in accordance with s. 185.37. If some participants in a pension plan created pursuant to this chapter elect to transfer to another state retirement system and other participants elect to remain in the existing plan created pursuant to this chapter, the plan created pursuant to this chapter shall continue to receive state premium tax moneys until fully funded. If the plan is fully funded at a particular valuation date and not fully funded at a later valuation date, the plan shall resume receipt of state premium tax moneys until the plan is once again determined to be fully funded. "Fully funded" means that the present value of all benefits, accrued and projected, is less than the available assets and the present value of future member contributions and future plan sponsor contributions on an actuarial entry age cost funding basis. Effective May 31, 1998, for plans discussed herein, the plan shall remain in effect until the final benefit payment has been made to the last participant or beneficiary and shall then be terminated in accordance with s. 185.37.

History.—s. 25, ch. 86-42; s. 77, ch. 99-1; s. 8, ch. 2002-66.

185.39 Applicability.—This act applies to all municipalities, chapter plans, local law municipalities, or local law plans presently existing or to be created pursuant to this chapter. Those plans presently existing pursuant to s. 185.35 and not in compliance with the provisions of this act must comply no later than December 31, 1999. However, the plan sponsor of any plan established by special act of the Legislature shall have until July 1, 2000, to comply with the provisions of this act, except as otherwise provided in this act with regard to establishment and election of board members. The provisions of this act shall be construed to establish minimum standards and minimum benefit levels, and nothing contained in this act or in chapter 185 shall operate to reduce presently existing rights or benefits of any police officer, directly, indirectly, or otherwise.

History.—s. 26, ch. 86-42; s. 78, ch. 99-1.

185.50 Retiree health insurance subsidy.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter, under the broad grant of home rule powers under the Florida Constitution and chapter 166, municipalities have the authority to establish and administer locally funded health insurance subsidy programs. Pursuant thereto:

(1) PURPOSE.—The purpose of this section is to allow municipalities the option to use premium tax moneys, as provided for under this chapter, to establish and administer health insurance subsidy programs which will provide a monthly subsidy payment to retired members of any municipal police officers' pension trust fund system or plan as provided under this chapter, or to beneficiaries who are spouses or financial dependents entitled to receive benefits under such a plan, in order to assist such retired members or beneficiaries in paying the costs of health insurance.

(2) MUNICIPAL RETIREE HEALTH INSURANCE SUBSIDY TRUST FUNDS; ESTABLISHMENT AND TERMINATION.—

(a) Any municipality having a municipal police officers' pension trust fund system or plan as provided under this chapter may, in its discretion, establish by ordinance a trust fund to be known as the Municipal Police Officers' Retiree Health Insurance Subsidy Trust Fund. This fund may be a separate account established for such purpose in the existing municipal police officers' pension fund, provided that all funds deposited in such account are segregated from, and not commingled with, pension funds or other public moneys and that the account otherwise conforms to the requirements of subsection (8). The trust fund shall be used to account for all moneys received and disbursed pursuant to this section.

(b) Prior to the second reading of the ordinance before the municipal legislative body, an actuarial valuation must be performed by an enrolled actuary as defined in s. 185.02, and copies of the valuation and the proposed implementing ordinance shall be furnished to the division.

(c) The subsidy program may, at the discretion of the municipal governing body, be permanently discontinued by municipal ordinance at any time, subject to the requirements of any applicable collective bargaining agreement, in the same manner and subject to the same conditions established for plan termination and fund distribution under s. 185.37.

(3) FUNDING.—Trust funds established pursuant to this section shall be funded in the following manner:

(a) By payment to the fund of an amount equivalent to one-half of the net increase over the previous tax year in the premium tax funds provided for in this chapter, said amount to be established in the implementing ordinance.

(b) By no less than one-half of 1 percent of the base salary of each police officer, for so long as the police officer is employed and covered by a pension plan established pursuant to this chapter. The municipality, with approval of the board of trustees, may increase member contributions if needed to fund benefits greater than the minimums established in this section.

(c) By payment by the municipality, on at least a quarterly basis, of whatever sum is determined necessary to maintain the actuarial soundness of the fund in accordance with s. 112.64.

Such contributions and payments shall be submitted to the board of trustees of the police officers' pension trust fund, or the plan trustees in the case of local law plans established under s. 185.35, and deposited in the Municipal Police Officers' Retiree Health Insurance Subsidy Trust Fund, in the same manner and subject to the same time constraints as provided under s. 185.11.

(4) ELIGIBILITY FOR RETIREE HEALTH INSURANCE SUBSIDY.—A person who has contributed to the Retiree Health Insurance Subsidy Trust Fund and retires under a municipal police officers' pension trust fund system or plan as provided under this chapter, including any local law plan as provided under s. 185.35, or a beneficiary who is a spouse or financial dependent entitled to receive benefits under such a plan, is eligible for health insurance subsidy payments provided under this section. However, the fund, with approval of the board of trustees and the municipality, may provide coverage to retirees and beneficiaries when the retirees have not contributed to the fund as provided in subsection (3). Payment of the retiree health insurance subsidy shall be made only after coverage for health insurance for the retiree or beneficiary has been certified in writing to the board of trustees of the municipal police officers' pension trust fund.

(5) RETIREE HEALTH INSURANCE SUBSIDY AMOUNT.—Beginning on the effective date established in the implementing ordinance, each eligible retiree, or beneficiary who is a spouse or financial dependent thereof, shall receive a monthly retiree health insurance subsidy payment equal to the aggregate number of years of service with the municipality, as defined in s. 185.02, completed at the time of retirement multiplied by an amount determined in the implementing ordinance, but no less than $3 for each year of service. Nothing herein shall be construed to restrict the plan sponsor from establishing, in the implementing ordinance, a cap of no less than 30 years upon the number of years' service for which credit will be given toward a health insurance subsidy or a maximum monthly subsidy amount.

(6) PAYMENT OF RETIREE HEALTH INSURANCE SUBSIDY.—Beginning on the effective date established in the implementing ordinance, any monthly retiree health insurance subsidy amount due and payable under this section shall be paid to retired members, or their eligible beneficiaries, by the board of trustees of the police officers' pension trust fund, or the plan trustees in the case of local law plans established under s. 185.35, in the same manner as provided by s. 185.06(1)(c) for drafts upon the pension fund.

(7) INVESTMENT OF THE TRUST FUND.—The trustees of the police officers' pension trust fund, or the plan trustees in the case of local law plans established under s. 185.35, are hereby authorized to invest and reinvest the funds of the Municipal Police Officers' Retiree Health Insurance Subsidy Trust Fund in the same manner and subject to the same conditions as apply hereunder to the investment of municipal police officers' pension funds under s. 185.06.

(8) DEPOSIT OF PENSION FUNDS.—All funds of the health insurance subsidy fund may be deposited by the board of trustees with the treasurer of the municipality, acting in a ministerial capacity only, who shall be liable in the same manner and to the same extent as he or she is liable for the safekeeping of funds for the municipality. Any funds so deposited shall be segregated by said treasurer in a separate fund, clearly identified as funds of the health insurance subsidy fund. In lieu thereof, the board of trustees shall deposit the funds of the health insurance subsidy fund in a qualified public depository as defined in s. 280.02, which shall conform to

and be bound by the provisions of chapter 280 with regard to such funds. In no case shall the funds of the health insurance subsidy fund be deposited in any financial institution, brokerage house trust company, or other entity that is not a public depository as provided by s. 280.02.

(9) SEPARATION FROM SERVICE; REFUNDS.—Any police officer who terminates employment with a municipality having a Municipal Retiree Health Insurance Subsidy Trust Fund system or plan as provided under this section shall be entitled to a refund of all employee contributions he or she made to that trust fund, without interest, regardless of whether he or she has vested for purposes of retirement. Any police officer who has vested for purposes of retirement in the service of the municipality, and has contributed to the Municipal Police Officers' Retiree Health Insurance Subsidy Trust Fund for so long as he or she was eligible to make such contributions, may, in his or her discretion, elect to leave his or her accrued contributions in the fund, whereupon, such police officer shall, upon retiring and commencing to draw retirement benefits, receive a health insurance subsidy based upon his or her aggregate number of years of service with the municipality, as defined in s. 185.02.

(10) ADMINISTRATION OF SYSTEM; ACTUARIAL VALUATIONS; AUDITS; RULES; ADMINISTRATIVE COSTS.—The board of trustees of the police officers' pension trust fund, or the plan trustees in the case of local law plans established under s. 185.35, shall be solely responsible for administering the health insurance subsidy trust fund. Pursuant thereto:

(a) As part of its administrative duties, no less frequently than every 3 years, the board shall have an actuarial valuation of the Municipal Police Officers' Retiree Health Insurance Subsidy Trust Fund prepared as provided in s. 112.63 by an enrolled actuary, covering the same reporting period or plan year used for the municipal police officers' pension plan, and shall submit a report of the valuation, including actuarial assumptions and type and basis of funding, to the division.

(b) By February 1 of each year, the trustees shall file a report with the division, containing an independent audit by a certified public accountant if the fund has $250,000 or more in assets, or a certified statement of accounting if the fund has less than $250,000 in assets, for the most recent plan year, showing a detailed listing of assets and methods used to value them and a statement of all income and disbursements during the year. Such income and disbursements shall be reconciled with the assets at the beginning of and end of the year.

(c) The trustees may adopt such rules and regulations as are necessary for the effective and efficient administration of this section.

(d) At the discretion of the plan sponsor, the cost of administration may be appropriated from the trust fund or paid directly by the plan sponsor.

(11) BENEFITS.—Subsidy payments shall be payable under the municipal police officers' retiree health insurance subsidy program only to participants in the program or their beneficiaries. Such subsidy payments shall not be subject to assignment, execution, or attachment or to any legal process whatsoever, and shall be in addition to any other benefits to which eligible recipients are entitled under any workers' compensation law, pension law, collective bargaining agreement, municipal or county ordinance, or any other state or federal statute.

(12) DISTRIBUTION OF PREMIUM TAXES; COMPLIANCE REQUIRED.—Premium tax dollars for which spending authority is granted under this section shall be distributed from the Police and Firefighters' Premium Tax Trust Fund and remitted annually to municipalities in the same manner as provided under this chapter for police officers' pension funds. Once a health insurance subsidy plan has been implemented by a municipality under this section, in order for the municipality to participate in the distribution of premium tax dollars authorized under this section, all provisions of this section, including state acceptance pursuant to part VII of chapter 112, shall be complied with, and said premium tax dollars may be withheld for noncompliance.

History.—s. 2, ch. 92-51; s. 49, ch. 93-193; s. 14, ch. 94-259; s. 1460, ch. 95-147; s. 8, ch. 95-250; s. 80, ch. 99-1.

185.60 Optional participation.—A municipality may revoke its participation under this chapter by

rescinding the legislative act, or ordinance which assesses and imposes taxes authorized in s. 185.08, and by furnishing a certified copy of such legislative act, or ordinance to the division. Thereafter, the municipality shall be prohibited from participating under this chapter, and shall not be eligible for future premium tax moneys. Premium tax moneys previously received shall continue to be used for the sole and exclusive benefit of police officers, or police officers and firefighters where included, and no amendment, legislative act, or ordinance shall be adopted which shall have the effect of reducing the then-vested accrued benefits of the police officers, retirees, or their beneficiaries. The municipality shall continue to furnish an annual report to the division as provided in s. 185.221. If the municipality subsequently terminates the defined benefit plan, they shall do so in compliance with the provisions of s. 185.37.

History.—s. 82, ch. 99-1.

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CHAPTER 2009-97

Committee Substitute for Senate Bill No. 538

An act relating to publicly funded retirement programs; amending s. 121.4501, F.S.; requiring the Trustees of the State Board of Administration to identify and offer at least one terror-free investment product to the Public Employee Optional Retirement Program by a certain date; amending s. 121.591, F.S.; conforming a cross-reference; amending s. 175.032, F.S.; redefining the terms "credible service" and "firefighter"; amending s. 175.061, F.S.; authorizing the terms of office for the board of trustees of the firefighters' pension trust fund to be revised under certain circumstances; authorizing the firefighters' pension trust fund plan administrator to withhold funds to pay for premiums for accident, health, and long-term care insurance for the retiree and the retiree's spouse and dependents; providing an exemption from liability under certain circumstances; amending s. 175.071, F.S.; requiring the board of trustees to perform its powers subject to certain fiduciary standards and ethics provisions; increasing the percentage of assets of the firefighters' pension trust fund that the board of trustees may invest in foreign securities on a market-value basis; authorizing certain individuals to sign drafts issued providing that investment caps on foreign securities may only be amended, repealed, or increased by an act of the Legislature; authorizing certain individuals to sign drafts issued upon the firefighters' pension trust fund; requiring the board of trustees to identify and divest the fund of any scrutinized companies by a certain date; amending s. 175.101, F.S.; clarifying boundaries of a special fire control district for purposes of assessment and imposition of the excise tax on property insurance premiums; amending s. 175.171, F.S.; authorizing retired firefighters to change their designation of joint annuitant or beneficiary up to two times without the approval of the board of trustees or the prior joint annuitant or beneficiary; conforming provisions relating to joint pensioner or beneficiary to reflect joint annuitant or beneficiary; amending s. 175.361, F.S.; revising fund distribution procedures with respect to plan termination; providing that the Department of Management Services shall effect the termination of the fund; amending s. 185.02, F.S.; redefining the term "creditable service" for purposes of determining credit for prior service as a police officer; amending s. 185.05, F.S.; revising municipal police officers' retirement trust fund board of trustee selection procedures; authorizing the terms of office for the board of trustees of the municipal police officers' retirement trust fund to be revised under certain circumstances; authorizing the plan administrator to withhold funds to pay for premiums for accident, health, and long-term care insurance for the retiree and the retiree's spouse and dependents; providing an exemption from liability under certain circumstances; amending s. 185.06, F.S.; requiring the board of trustees to perform its powers subject to certain fiduciary standards and ethics provisions; increasing the percentage of assets of the municipal police officers' retirement trust fund that the board of trustees may invest in foreign securities on a market-value basis;

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

providing that the investment cap on foreign securities may only be amended, repealed, or increased by an act of the Legislature; authorizing certain individuals to sign drafts issued upon the municipal police officers' retirement trust fund; requiring the board of trustees to identify and divest the fund of any scrutinized companies by a date certain; amending s. 185.161, F.S.; authorizing retired police officers to change their designation of joint annuitant or beneficiary up to two times without the approval of the board of trustees or the prior joint annuitant or beneficiary; conforming provisions relating to joint pensioner or beneficiary to reflect joint annuitant or beneficiary; amending s. 185.37, F.S.; revising fund distribution procedures with respect to plan termination; providing that the Department of Management Services shall effect the termination of the fund; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Present paragraphs (d), (e), and (f) of subsection (9) of section 121.4501, Florida Statutes, are redesignated as paragraphs (e), (f), and (g), respectively, and a new paragraph (d) is added to that subsection, to read:

121.4501 Public Employee Optional Retirement Program.—

(9) INVESTMENT OPTIONS OR PRODUCTS; PERFORMANCE REVIEW.—

(d) By March 1, 2010, the board shall identify and offer at least one terror-free investment product that allocates its funds among securities not subject to divestiture as provided in s. 215.473 if the investment product is deemed by the board to be consistent with prudent investor standards. No person may bring a civil, criminal, or administrative action against an approved provider, the state board, or any employee, officer, director, or trustee of such provider based upon the divestiture of any security or the offering of a terror-free investment product as specified in this paragraph.

Section 2. Paragraph (a) of subsection (1) of section 121.591, Florida Statutes, is amended to read:

121.591 Benefits payable under the Public Employee Optional Retirement Program of the Florida Retirement System.—Benefits may not be paid under this section unless the member has terminated employment as provided in s. 121.021(39)(a) or is deceased and a proper application has been filed in the manner prescribed by the state board or the department. The state board or department, as appropriate, may cancel an application for retirement benefits when the member or beneficiary fails to timely provide the information and documents required by this chapter and the rules of the state board and department. In accordance with their respective responsibilities as provided herein, the state board of Administration and the Department of Management Services shall adopt rules establishing procedures for application for retirement benefits and for the cancellation of such application when the required information or documents are not received. The State Board of Administration and the Department of Management Services, as

appropriate, are authorized to cash out a de minimis account of a participant who has been terminated from Florida Retirement System covered employment for a minimum of 6 calendar months. A de minimis account is an account containing employer contributions and accumulated earnings of not more than $5,000 made under the provisions of this chapter. Such cash-out must either be a complete lump-sum liquidation of the account balance, subject to the provisions of the Internal Revenue Code, or a lump-sum direct rollover distribution paid directly to the custodian of an eligible retirement plan, as defined by the Internal Revenue Code, on behalf of the participant. If any financial instrument issued for the payment of retirement benefits under this section is not presented for payment within 180 days after the last day of the month in which it was originally issued, the third-party administrator or other duly authorized agent of the State Board of Administration shall cancel the instrument and credit the amount of the instrument to the suspense account of the Public Employee Optional Retirement Program Trust Fund authorized under s. 121.4501(6). Any such amounts transferred to the suspense account are payable upon a proper application, not to include earnings thereon, as provided in this section, within 10 years after the last day of the month in which the instrument was originally issued, after which time such amounts and any earnings thereon shall be forfeited. Any such forfeited amounts are assets of the Public Employee Optional Retirement Program Trust Fund and are not subject to the provisions of chapter 717.

(1) NORMAL BENEFITS.—Under the Public Employee Optional Retirement Program:

(a) Benefits in the form of vested accumulations as described in s. 121.4501(6) <u>are</u> ~~shall be~~ payable under this subsection in accordance with the following terms and conditions:

1. To the extent vested, benefits <u>are</u> ~~shall be~~ payable only to a participant.

2. Benefits shall be paid by the third-party administrator or designated approved providers in accordance with the law, the contracts, and any applicable board rule or policy.

3. To receive benefits ~~under this subsection~~, the participant must be terminated from all employment with all Florida Retirement System employers, as provided in s. 121.021(39).

4. Benefit payments may not be made until the participant has been terminated for 3 calendar months, except that the board may authorize by rule for the distribution of up to 10 percent of the participant's account after being terminated for 1 calendar month if <u>the</u> ~~a~~ participant has reached the normal retirement requirements of the defined benefit plan, as provided in s. 121.021(29).

5. If a <u>member</u> or former member of the Florida Retirement System receives an invalid distribution from the Public Employee Optional Retirement Program Trust Fund, such person <u>must</u> ~~shall~~ repay the full invalid distribution to the trust fund within 90 days after receipt of final notification

by the state board ~~of Administration~~ or the third-party administrator that the distribution was invalid. If such person fails to repay the full invalid distribution within 90 days after receipt of final notification, the person may be deemed retired from the ~~Public Employee~~ optional retirement program by the state board, as provided pursuant to s. 121.4501(2)(j), and is ~~shall be~~ subject to ~~the provisions of~~ s. 121.122. If such person is deemed retired by the state board, any joint and several liability set out in s. 121.091(9)(c)2. becomes null and void, and the state board, the department ~~of Management Services~~, or the employing agency is not liable for gains on payroll contributions that have not been deposited to the person's account in the ~~Public Employee Optional~~ retirement program, pending resolution of the invalid distribution. The member or former member who has been deemed retired or who has been determined by the board to have taken an invalid distribution may appeal the agency decision through the complaint process as provided under s. 121.4501(9)(g)3. ~~s. 121.4501(9)(f)3.~~ As used in this subparagraph, the term "invalid distribution" means any distribution from an account in the ~~Public Employee~~ optional retirement program which is taken in violation of ~~the provisions of~~ this section, s. 121.091(9), or s. 121.4501.

Section 3. Paragraph (c) of subsection (4) and paragraph (a) of subsection (8) of section 175.032, Florida Statutes, are amended to read:

175.032 Definitions.—For any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter, the following words and phrases have the following meanings:

(4) "Creditable service" or "credited service" means the aggregate number of years of service, and fractional parts of years of service, of any firefighter, omitting intervening years and fractional parts of years when such firefighter may not have been employed by the municipality or special fire control district, subject to the following conditions:

(c) Credited service under this chapter shall be provided only for service as a firefighter, as defined in subsection (8), or for military service and does ~~shall~~ not include credit for any other type of service. A municipality may, by local ordinance, or a special fire control district may, by resolution, provide for the purchase of credit for military service prior to employment as well as for prior service as a firefighter for some other employer as long as a firefighter is not entitled to receive a benefit for such ~~other~~ prior service as a firefighter. For purposes of determining credit for prior service as a firefighter, in addition to service as a firefighter in this state, credit may be given for federal, other state, or county service if the prior service is recognized by the Division of State Fire Marshal as provided under chapter 633, or the firefighter provides proof to the board of trustees that his or her service is equivalent to the service required to meet the definition of a firefighter under subsection (8).

(8)(a) "Firefighter" means any person employed solely by a constituted fire department of any municipality or special fire control district who is certified as a firefighter as a condition of employment in accordance with ~~the provisions of~~ s. 633.35 and whose duty it is to extinguish fires, to protect life,

or to protect property. The term includes all certified, supervisory, and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time firefighters, part-time firefighters, or auxiliary firefighters but does not include part-time firefighters or auxiliary firefighters. However, for purposes of this chapter only, the term ~~"firefighter"~~ also includes public safety officers who are responsible for performing both police and fire services, who are certified as police officers or firefighters, and who are certified by their employers to the Chief Financial Officer as participating in this chapter before ~~prior to~~ October 1, 1979. Effective October 1, 1979, public safety officers who have not been certified as participating in this chapter are ~~shall be~~ considered police officers for retirement purposes and are ~~shall be~~ eligible to participate in chapter 185. Any plan may provide that the fire chief has ~~shall have~~ an option to participate, or not, in that plan.

Section 4. Paragraph (a) of subsection (1) and subsection (7) of section 175.061, Florida Statutes, are amended to read:

175.061 Board of trustees; members; terms of office; meetings; legal entity; costs; attorney's fees.—For any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter:

(1) In each municipality and in each special fire control district there is hereby created a board of trustees of the firefighters' pension trust fund, which shall be solely responsible for administering the trust fund. Effective October 1, 1986, and thereafter:

(a) The membership of the board of trustees for a chapter plan consists ~~shall consist~~ of five members, two of whom, unless otherwise prohibited by law, must ~~shall~~ be legal residents of the municipality or special fire control district and must~~, who shall~~ be appointed by the governing body of the municipality or special fire control district, and two of whom must ~~shall~~ be full-time firefighters as defined in s. 175.032 who are ~~shall be~~ elected by a majority of the active firefighters who are members of such plan. With respect to any chapter plan or local law plan that, on January 1, 1997, allowed retired firefighters to vote in such elections, retirees may continue to vote in such elections. The fifth member shall be chosen by a majority of the previous four members as provided ~~for~~ herein, and such person's name shall be submitted to the governing body of the municipality or special fire control district. Upon receipt of the fifth person's name, the governing body of the municipality or special fire control district shall, as a ministerial duty, appoint such person to the board of trustees ~~as its fifth member~~. The fifth member shall have the same rights as each of the other four members ~~appointed or elected as herein provided~~, shall serve as trustee for a period of 2 years, and may succeed himself or herself in office. Each resident member shall serve as trustee for a period of 2 years, unless sooner replaced by the governing body at whose pleasure he or she serves ~~shall serve~~, and may succeed himself or herself as a trustee. Each firefighter member shall serve as trustee for a period of 2 years, unless he or she sooner leaves the employment of the municipality or special fire control district as a firefighter, whereupon a successor shall be chosen in the same manner as an

original appointment. Each firefighter may succeed himself or herself in office. The terms of office of the appointed and elected members may be amended by municipal ordinance, special act of the Legislature, or resolution adopted by the governing body of the special fire control district to extend the terms from 2 years to 4 years. The length of the terms of office shall be the same for all board members.

(7) The board of trustees may, upon written request of ~~by~~ the retiree of the plan, or by a dependent, if ~~when~~ authorized by the retiree or the retiree's beneficiary, authorize the plan administrator to withhold from the monthly retirement payment ~~those~~ funds that are necessary to pay for the benefits being received through the governmental entity from which the employee retired, to pay the certified bargaining agent of the governmental entity, and to make any payments for child support or alimony. Upon the written request of the retiree of the plan, the board may also authorize the plan administrator to withhold from the retirement payment those funds necessary to pay for premiums for accident, health, and long-term care insurance for the retiree and the retiree's spouse and dependents. A retirement plan does not incur liability for participation in this permissive program if its actions are taken in good faith.

Section 5. Subsection (1) of section 175.071, Florida Statutes, is amended and subsection (8) is added to that section, to read:

175.071 General powers and duties of board of trustees.—For any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter:

(1) The board of trustees, subject to the fiduciary standards in ss. 112.656, 112.661, and 518.11 and the Code of Ethics in ss. 112.311-112.3187, may:

(a) Invest and reinvest the assets of the firefighters' pension trust fund in annuity and life insurance contracts of life insurance companies in amounts sufficient to provide, in whole or in part, the benefits to which all of the participants in the firefighters' pension trust fund are ~~shall be~~ entitled under ~~the provisions of~~ this chapter and pay the initial and subsequent premiums thereon.

(b) Invest and reinvest the assets of the firefighters' pension trust fund in:

1. Time or savings accounts of a national bank, a state bank insured by the Bank Insurance Fund, or a savings, building, and loan association insured by the Savings Association Insurance Fund ~~which is~~ administered by the Federal Deposit Insurance Corporation or a state or federal chartered credit union whose share accounts are insured by the National Credit Union Share Insurance Fund.

2. Obligations of the United States or obligations guaranteed as to principal and interest by the government of the United States.

3. Bonds issued by the State of Israel.

4. Bonds, stocks, or other evidences of indebtedness issued or guaranteed by a corporation organized under the laws of the United States, any state or organized territory of the United States, or the District of Columbia, if provided:

a. The corporation is listed on any one or more of the recognized national stock exchanges or on the National Market System of the NASDAQ Stock Market and, in the case of bonds only, holds a rating in one of the three highest classifications by a major rating service; and

b. The board of trustees may shall not invest more than 5 percent of its assets in the common stock or capital stock of any one issuing company, nor may shall the aggregate investment in any one issuing company exceed 5 percent of the outstanding capital stock of that company or the aggregate of its investments under this subparagraph at cost exceed 50 percent of the assets of the fund.

This paragraph applies shall apply to all boards of trustees and participants. However, if in the event that a municipality or special fire control district has a duly enacted pension plan pursuant to, and in compliance with, s. 175.351, and the trustees thereof desire to vary the investment procedures herein, the trustees of such plan must shall request a variance of the investment procedures as outlined herein only through a municipal ordinance, special act of the Legislature, or resolution by the governing body of the special fire control district; if where a special act, or a municipality by ordinance adopted before prior to July 1, 1998, permits a greater than 50-percent equity investment, such municipality is shall not be required to comply with the aggregate equity investment provisions of this paragraph. Notwithstanding any other provision of law to the contrary, nothing in this section may not be construed to take away any preexisting legal authority to make equity investments that exceed the requirements of this paragraph. Notwithstanding any other provision of law, the board of trustees may invest up to 25 10 percent of plan assets in foreign securities on a market-value basis. The investment cap on foreign securities may not be revised, amended, increased, or repealed except as provided by general law.

(c) Issue drafts upon the firefighters' pension trust fund pursuant to this act and rules and regulations prescribed by the board of trustees. All such drafts must shall be consecutively numbered, be signed by the chair and secretary, or by two individuals designated by the board who are subject to the same fiduciary standards as the board of trustees under this subsection, and state upon their faces the purpose for which the drafts are drawn. The treasurer or depository of each municipality or special fire control district shall retain such drafts when paid, as permanent vouchers for disbursements made, and no money may shall be otherwise drawn from the fund.

(d) Convert into cash any securities of the fund.

(e) Keep a complete record of all receipts and disbursements and of the board's acts and proceedings.

(8) Notwithstanding paragraph (1)(b) and as provided in s. 215.473, the board of trustees must identify and publicly report any direct or indirect

holdings it may have in any scrutinized company, as defined in that section, and proceed to sell, redeem, divest, or withdraw all publicly traded securities it may have in that company beginning January 1, 2010. The divestiture of any such security must be completed by September 30, 2010. The board and its named officers or investment advisors may not be deemed to have breached their fiduciary duty in any action taken to dispose of any such security, and the board shall have satisfactorily discharged the fiduciary duties of loyalty, prudence, and sole and exclusive benefit to the participants of the pension fund and their beneficiaries if the actions it takes are consistent with the duties imposed by s. 215.473, and the manner of the disposition, if any, is reasonable as to the means chosen. For the purposes of effecting compliance with that section, the pension fund shall designate terror-free plans that allocate their funds among securities not subject to divestiture. No person may bring any civil, criminal, or administrative action against the board of trustees or any employee, officer, director, or advisor of such pension fund based upon the divestiture of any security pursuant to this paragraph.

Section 6. Subsection (1) of section 175.101, Florida Statutes, is amended to read:

175.101 State excise tax on property insurance premiums authorized; procedure.—For any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter:

(1) Each municipality or special fire control district in this state described and classified in s. 175.041, having a lawfully established firefighters' pension trust fund or municipal fund or special fire control district fund, by whatever name known, providing pension benefits to firefighters as provided under this chapter, may assess and impose on every insurance company, corporation, or other insurer now engaged in or carrying on, or who shall hereinafter engage in or carry on, the business of property insurance as shown by the records of the Office of Insurance Regulation of the Financial Services Commission, an excise tax in addition to any lawful license or excise tax now levied by each of the municipalities or special fire control districts, respectively, amounting to 1.85 percent of the gross amount of receipts of premiums from policyholders on all premiums collected on property insurance policies covering property within the corporate limits of such municipalities or within the legally defined boundaries of special fire control districts, respectively. Whenever the boundaries of a special fire control district that has lawfully established a firefighters' pension trust fund encompass a portion of the corporate territory of a municipality that has also lawfully established a firefighters' pension trust fund, that portion of the tax receipts attributable to insurance policies covering property situated both within the municipality and the special fire control district shall be given to the fire service provider. For the purpose of this section, the boundaries of a special fire control district include an area that has been annexed until the completion of the 4-year period provided for in s. 171.093(4), or other agreed-upon extension, or if a special fire control district is providing services under an interlocal agreement executed in accordance with s. 171.093(3). The agent shall identify the fire service provider on the

property owner's application for insurance. Remaining revenues collected pursuant to this chapter shall be distributed to the municipality or special fire control district according to the location of the insured property.

This section also applies to any municipality consisting of a single consolidated government which is made up of a former county and one or more municipalities, consolidated pursuant to the authority in s. 3 or s. 6(e), Art. VIII of the State Constitution, and to property insurance policies covering property within the boundaries of the consolidated government, regardless of whether the properties are located within one or more separately incorporated areas within the consolidated government, provided the properties are being provided fire protection services by the consolidated government. This section also applies to any municipality, as provided in s. 175.041(3)(c), which has entered into an interlocal agreement to receive fire protection services from another municipality participating under this chapter. The excise tax may be levied on all premiums collected on property insurance policies covering property located within the corporate limits of the municipality receiving the fire protection services, but will be available for distribution to the municipality providing the fire protection services.

Section 7. Paragraphs (b) and (c) of subsection (1) and paragraph (b) of subsection (2) of section 175.171, Florida Statutes, are amended to read:

175.171 Optional forms of retirement income.—For any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter:

(1) In lieu of the amount and form of retirement income payable in the event of normal or early retirement as specified in s. 175.162, a firefighter, upon written request to the board of trustees and subject to the approval of the board of trustees, may elect to receive a retirement income or benefit of equivalent actuarial value payable in accordance with one of the following options:

(b) A retirement income of a modified monthly amount, payable to the firefighter during the joint lifetime of the firefighter and a joint annuitant ~~pensioner~~ designated by the firefighter, and following the death of either of them, 100 percent, 75 percent, 66 ⅔ percent, or 50 percent of such monthly amounts payable to the survivor for the lifetime of the survivor.

(c) Such other amount and form of retirement payments or benefits as, in the opinion of the board of trustees, will best meet the circumstances of the retiring firefighter.

1. The firefighter upon electing any option of this section must ~~will~~ designate the joint annuitant ~~pensioner~~ or beneficiary ~~(or beneficiaries)~~ to receive the benefit, if any, payable under the plan in the event of his or her death, and may ~~will have the power to~~ change such designation ~~from time to time~~, but any such change shall be deemed a new election and is ~~will be~~ subject to approval by the board of trustees. Such designation must ~~will~~ name a joint annuitant ~~pensioner~~ or one or more primary beneficiaries where applicable. If a firefighter has elected an option with a joint annuitant ~~pensioner~~ or

beneficiary and his or her retirement income benefits have commenced, the firefighter may ~~thereafter~~ change the designated joint annuitant ~~pensioner~~ or beneficiary, but only if the board of trustees consents to such change and if the joint annuitant ~~pensioner~~ last ~~previously~~ designated by the firefighter is alive when the firefighter files with the board of trustees a request for such change.

2. The consent of a firefighter's joint annuitant ~~pensioner~~ or beneficiary to any such change is ~~shall~~ not ~~be~~ required.

3. The board of trustees may request ~~such~~ evidence of the good health of the joint annuitant ~~pensioner~~ that is being removed ~~as it may require~~ and the amount of the retirement income payable to the firefighter upon designation of a new joint annuitant ~~pensioner~~ shall be actuarially redetermined taking into account the age and gender ~~sex~~ of the former joint annuitant ~~pensioner~~, the new joint annuitant ~~pensioner~~, and the firefighter. Each ~~such~~ designation must ~~will~~ be made in writing on a form prepared by the board of trustees and ~~on completion will be~~ filed with the board of trustees. If ~~In the event that~~ no designated beneficiary survives the firefighter, such benefits as are payable in the event of the death of the firefighter subsequent to his or her retirement shall be paid as provided in s. 175.181.

4. Notwithstanding the provisions of this paragraph, a retired firefighter may change his or her designation of joint annuitant or beneficiary up to two times as provided in s. 175.333 without the approval of the board of trustees or the current joint annuitant or beneficiary. The retiree is not required to provide proof of the good health of the joint annuitant or beneficiary being removed, and the joint annuitant or beneficiary being removed need not be living.

(2) Retirement income payments shall be made under the option elected in accordance with the provisions of this section and shall be subject to the following limitations:

(b) If the designated beneficiary ~~(or beneficiaries)~~ or joint annuitant ~~pensioner~~ dies before the firefighter's retirement under the plan, the option elected is ~~will be~~ canceled automatically and a retirement income of the normal form and amount is ~~will be~~ payable to the firefighter upon retirement as if the election had not been made, unless a new election is made in accordance with ~~the provisions of~~ this section or a new beneficiary is designated by the firefighter before ~~prior to~~ retirement and within 90 days after the death of the beneficiary.

Section 8. Section 175.361, Florida Statutes, is amended to read:

175.361 Termination of plan and distribution of fund.—For any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter, the plan may be terminated by the municipality or special fire control district. Upon termination of the plan by the municipality or special fire control district for any reason or because of a transfer, merger, or consolidation of governmental units, services, or functions as provided in chapter 121, or upon written notice by the municipality or special fire control district to the board of

trustees that contributions under the plan are being permanently discontinued, the rights of all employees to benefits accrued to the date of such termination and the amounts credited to the employees' accounts are nonforfeitable. The fund shall be ~~apportioned and~~ distributed in accordance with the following procedures:

(1) The board of trustees shall determine the date of distribution and the asset value required to fund all the nonforfeitable benefits ~~to be distributed,~~ after taking into account the expenses of such distribution. The board shall inform the municipality or special fire control district if additional assets are required, in which event the municipality or special fire control district shall continue to financially support the plan until all nonforfeitable benefits have been funded.

(2) The board of trustees shall determine the method of distribution of the asset value, ~~that is,~~ whether distribution shall be by payment in cash, by the maintenance of another or substituted trust fund, by the purchase of insured annuities, or otherwise, for each firefighter entitled to benefits under the plan as specified in subsection (3).

(3) The board of trustees shall distribute ~~apportion~~ the asset value as of the date of termination in the manner set forth in this subsection, on the basis that the amount required to provide any given retirement income is ~~shall mean~~ the actuarially computed single-sum value of such retirement income, except that if the method of distribution determined under subsection (2) involves the purchase of an insured annuity, the amount required to provide the given retirement income is ~~shall mean~~ the single premium payable for such annuity. The actuarial single-sum value may not be less than the employee's accumulated contributions to the plan, with interest if provided by the plan, less the value of any plan benefits previously paid to the employee.

~~(a) Apportionment shall first be made in respect of each retired firefighter receiving a retirement income hereunder on such date, each person receiving a retirement income on such date on account of a retired (but since deceased) firefighter, and each firefighter who has, by such date, become eligible for normal retirement but has not yet retired, in the amount required to provide such retirement income, provided that, if such asset value is less than the aggregate of such amounts, such amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such asset value.~~

~~(b) If there is any asset value remaining after the apportionment under paragraph (a), apportionment shall next be made in respect of each firefighter in the service of the municipality or special fire control district on such date who has completed at least 10 years of credited service, in the firefighters' pension trust fund for at least 10 years, and who is not entitled to an apportionment under paragraph (a), in the amount required to provide the actuarial equivalent of the accrued normal retirement income, based on the firefighter's credited service and earnings to such date, and each former participant then entitled to a benefit under the provisions of s. 175.211 who has not by such date reached his or her normal retirement date, in the~~

~~amount required to provide the actuarial equivalent of the accrued normal retirement income to which he or she is entitled under s. 175.211; provided that, if such remaining asset value is less than the aggregate of the amounts apportioned hereunder, such latter amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.~~

~~(c) If there is any asset value after the apportionments under paragraphs (a) and (b), apportionment shall lastly be made in respect of each firefighter in the service of the municipality or special fire control district on such date who is not entitled to an apportionment under paragraphs (a) and (b) in the amount equal to the firefighter's total contributions to the plan to date of termination; provided that, if such remaining asset value is less than the aggregate of the amounts apportioned hereunder, such latter amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.~~

(4)~~(d)~~ If ~~In the event that~~ there is asset value remaining after the full distribution ~~apportionment~~ specified in subsection (3), and after the payment of any expenses incurred with such distribution ~~paragraphs (a), (b), and (c)~~, such excess shall be returned to the municipality or special fire control district, less return to the state of the state's contributions, provided that, if the excess is less than the total contributions made by the municipality or special fire control district and the state to date of termination of the plan, such excess shall be divided proportionately to the total contributions made by the municipality or special fire control district and the state.

(5)~~(4)~~ The board of trustees shall distribute, in accordance with ~~the manner of distribution determined under~~ subsection (2), the amounts determined ~~apportioned~~ under subsection (3).

If, after ~~a period of~~ 24 months after the date ~~on which~~ the plan terminated or the date ~~on which~~ the board received written notice that the contributions thereunder were being permanently discontinued, the municipality or special fire control district or the board of trustees of the firefighters' pension trust fund affected has not complied with all the provisions in this section, the Department of Management Services ~~division~~ shall effect the termination of the fund in accordance with this section.

Section 9. Paragraph (c) of subsection (5) of section 185.02, Florida Statutes, is amended to read:

185.02 Definitions.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter, the following words and phrases as used in this chapter shall have the following meanings, unless a different meaning is plainly required by the context:

(5) "Creditable service" or "credited service" means the aggregate number of years of service and fractional parts of years of service of any police officer, omitting intervening years and fractional parts of years when such police officer may not have been employed by the municipality subject to the following conditions:

(c) Credited service under this chapter shall be provided only for service as a police officer, as defined in subsection (11), or for military service and may ~~shall~~ not include credit for any other type of service. A municipality may, by local ordinance, provide for the purchase of credit for military service occurring before ~~prior to~~ employment as well as prior service as a police officer for some other employer as long as the police officer is not entitled to receive a benefit for such other prior service as a police officer. For purposes of determining credit for prior service, in addition to service as a police officer in this state, credit may be given for federal, other state, or county service as long as such service is recognized by the Criminal Justice Standards and Training Commission within the Department of Law Enforcement as provided under chapter 943 or the police officer provides proof to the board of trustees that such service is equivalent to the service required to meet the definition of a police officer under subsection (11).

Section 10. Paragraph (a) of subsection (1) and subsection (6) of section 185.05, Florida Statutes, are amended to read:

185.05 Board of trustees; members; terms of office; meetings; legal entity; costs; attorney's fees.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter:

(1) In each municipality described in s. 185.03 there is hereby created a board of trustees of the municipal police officers' retirement trust fund, which shall be solely responsible for administering the trust fund. Effective October 1, 1986, and thereafter:

(a) The membership of the board of trustees for chapter plans consists ~~shall consist~~ of five members, two of whom, unless otherwise prohibited by law, must ~~shall~~ be legal residents of the municipality and must~~, who shall~~ be appointed by the legislative body of the municipality, and two of whom must ~~shall~~ be police officers as defined in s. 185.02 who are ~~shall be~~ elected by a majority of the active police officers who are members of such plan. With respect to any chapter plan or local law plan that, on January 1, 1997, allowed retired police officers to vote in such elections, retirees may continue to vote in such elections. The fifth member shall be chosen by a majority of the previous four members, and such person's name shall be submitted to the legislative body of the municipality. Upon receipt of the fifth person's name, the legislative body ~~of the municipality~~ shall, as a ministerial duty, appoint such person to the board of trustees ~~as its fifth member~~. The fifth member shall have the same rights as each of the other four members appointed or elected ~~as herein provided~~, shall serve as trustee for a period of 2 years, and may succeed himself or herself in office. Each resident member shall serve as trustee for a period of 2 years, unless sooner replaced by the legislative body at whose pleasure the member serves ~~shall serve~~, and may succeed himself or herself as a trustee. Each police officer member shall serve as trustee for a period of 2 years, unless he or she sooner leaves the employment of the municipality as a police officer, whereupon ~~the legislative body of the municipality shall choose~~ a successor shall be chosen in the same manner as an original appointment. Each police officer may succeed himself or herself in office. The terms of office of the appointed and elected members of the board of trustees may be amended by municipal ordinance or special

act of the Legislature to extend the terms from 2 years to 4 years. The length of the terms of office shall be the same for all board members.

(6) The board of trustees may, upon written request by the retiree of the plan, or by a dependent, if ~~when~~ authorized by the retiree or the retiree's beneficiary, authorize the plan administrator to withhold from the monthly retirement payment ~~those~~ funds ~~that are~~ necessary to pay for the benefits being received through the governmental entity from which the employee retired, to pay the certified bargaining agent of the governmental entity, and to make any payments for child support or alimony. Upon the written request of the retiree of the plan, the board of trustees may also authorize the plan administrator to withhold from the retirement payment those funds necessary to pay for premiums for accident, health, and long-term care insurance for the retiree and the retiree's spouse and dependents. A retirement plan does not incur liability for participation in this permissive program if its actions are taken in good faith.

Section 11. Subsection (1) of section 185.06, Florida Statutes, is amended and subsection (7) is added to that section, to read:

185.06 General powers and duties of board of trustees.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter:

(1) The board of trustees, subject to the fiduciary standards in ss. 112.656, 112.661, and 518.11 and the Code of Ethics in ss. 112.311-112.3187, may:

(a) Invest and reinvest the assets of the retirement trust fund in annuity and life insurance contracts of life insurance companies in amounts sufficient to provide, in whole or in part, the benefits to which all of the participants in the municipal police officers' retirement trust fund are ~~shall be~~ entitled under ~~the provisions of~~ this chapter, and pay the initial and subsequent premiums thereon.

(b) Invest and reinvest the assets of the retirement trust fund in:

1. Time or savings accounts of a national bank, a state bank insured by the Bank Insurance Fund, or a savings and loan association insured by the Savings Association Insurance Fund ~~which is~~ administered by the Federal Deposit Insurance Corporation or a state or federal chartered credit union whose share accounts are insured by the National Credit Union Share Insurance Fund.

2. Obligations of the United States or obligations guaranteed as to principal and interest by the United States.

3. Bonds issued by the State of Israel.

4. Bonds, stocks, or other evidences of indebtedness issued or guaranteed by a corporation organized under the laws of the United States, any state or organized territory of the United States, or the District of Columbia, provided:

a. The corporation is listed on any one or more of the recognized national stock exchanges or on the National Market System of the NASDAQ Stock Market and, in the case of bonds only, holds a rating in one of the three highest classifications by a major rating service; and

b. The board of trustees may ~~shall~~ not invest more than 5 percent of its assets in the common stock or capital stock of any one issuing company, nor shall the aggregate investment in any one issuing company exceed 5 percent of the outstanding capital stock of the company or the aggregate of its investments under this subparagraph at cost exceed 50 percent of the fund's assets.

This paragraph applies ~~shall apply~~ to all boards of trustees and participants. However, if ~~in the event that~~ a municipality has a duly enacted pension plan pursuant to, and in compliance with, s. 185.35 and the trustees ~~thereof~~ desire to vary the investment procedures ~~herein~~, the trustees of such plan shall request a variance of the investment procedures as outlined herein only through a municipal ordinance or special act of the Legislature; if ~~where~~ a special act, or a municipality by ordinance adopted before ~~prior to~~ July 1, 1998, permits a greater than 50-percent equity investment, such municipality is ~~shall~~ not ~~be~~ required to comply with the aggregate equity investment provisions of this paragraph. Notwithstanding any other provision of law ~~to the contrary~~, ~~nothing in~~ this section may not be construed to take away any preexisting legal authority to make equity investments that exceed the requirements of this paragraph. Notwithstanding any other provision of law, the board of trustees may invest up to 25 ~~10~~ percent of plan assets in foreign securities on a market-value basis. The investment cap on foreign securities may not be revised, amended, repealed, or increased except as provided by general law.

(c) Issue drafts upon the municipal police officers' retirement trust fund pursuant to this act and rules ~~and regulations~~ prescribed by the board of trustees. All such drafts shall be consecutively numbered, be signed by the chair and secretary or by two individuals designated by the board who are subject to the same fiduciary standards as the board of trustees under this subsection, and state upon their faces the purposes for which the drafts are drawn. The city treasurer or other depository shall retain such drafts when paid, as permanent vouchers for disbursements made, and no money may ~~shall~~ otherwise be drawn from the fund.

(d) Finally decide all claims to relief under the board's rules and regulations and pursuant to the provisions of this act.

(e) Convert into cash any securities of the fund.

(f) Keep a complete record of all receipts and disbursements and of the board's acts and proceedings.

(7) Notwithstanding paragraph (1)(b) and as provided in s. 215.473, the board of trustees must identify and publicly report any direct or indirect holdings it may have in any scrutinized company, as defined in that section, and proceed to sell, redeem, divest, or withdraw all publicly traded securities

it may have in that company beginning January 1, 2010. The divestiture of any such security must be completed by September 10, 2010. The board and its named officers or investment advisors may not be deemed to have breached their fiduciary duty in any action taken to dispose of any such security, and the board shall have satisfactorily discharged the fiduciary duties of loyalty, prudence, and sole and exclusive benefit to the participants of the pension fund and their beneficiaries if the actions it takes are consistent with the duties imposed by s. 215.473, and the manner of the disposition, if any, is reasonable as to the means chosen. For the purposes of effecting compliance with that section, the pension fund shall designate terror-free plans that allocate their funds among securities not subject to divestiture. No person may bring any civil, criminal, or administrative action against the board of trustees or any employee, officer, director, or advisor of such pension fund based upon the divestiture of any security pursuant to this paragraph.

Section 12. Subsection (1) and paragraph (b) of subsection (2) of section 185.161, Florida Statutes, are amended to read:

185.161 Optional forms of retirement income.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter:

(1)(a) In lieu of the amount and form of retirement income payable in the event of normal or early retirement as specified in s. 185.16, a police officer, upon written request to the board of trustees and subject to the approval of the board of trustees, may elect to receive a retirement income or benefit of equivalent actuarial value payable in accordance with one of the following options:

1. A retirement income of larger monthly amount, payable to the police officer for his or her lifetime only.

2. A retirement income of a modified monthly amount, payable to the police officer during the joint lifetime of the police officer and a joint annuitant ~~pensioner~~ designated by the police officer, and following the death of either of them, 100 percent, 75 percent, 66 ⅔ percent, or 50 percent of such monthly amount payable to the survivor for the lifetime of the survivor.

3. Such other amount and form of retirement payments or benefit as, in the opinion of the board of trustees, will best meet the circumstances of the retiring police officer.

(b) The police officer upon electing any option of this section must ~~will~~ designate the joint annuitant ~~pensioner~~ or beneficiary ~~(or beneficiaries)~~ to receive the benefit, if any, payable under the plan in the event of the police officer's death, and may ~~will have the power to~~ change such designation ~~from time to time~~ but any such change shall be deemed a new election and is ~~will be~~ subject to approval by the pension committee. Such designation must ~~will~~ name a joint annuitant ~~pensioner~~ or one or more primary beneficiaries where applicable. If a police officer has elected an option with a joint annuitant ~~pensioner~~ or beneficiary and his or her retirement income benefits have commenced, he or she may ~~thereafter~~ change the designated joint annuitant ~~pensioner~~ or beneficiary but only if the board of trustees consents to such

change and if the joint annuitant ~~pensioner~~ last ~~previously~~ designated by the police officer is alive when he or she files with the board of trustees a request for such change. The consent of a police officer's joint annuitant ~~pensioner~~ or beneficiary to any such change is ~~shall~~ not ~~be~~ required. The board of trustees may request ~~such~~ evidence of the good health of the joint annuitant ~~pensioner that is~~ being removed ~~as it may require~~ and the amount of the retirement income payable to the police officer upon the designation of a new joint annuitant ~~pensioner~~ shall be actuarially redetermined taking into account the ages and gender ~~sex~~ of the former joint annuitant ~~pensioner~~, the new joint annuitant ~~pensioner~~, and the police officer. Each ~~such~~ designation must ~~will~~ be made in writing on a form prepared by the board of trustees~~,~~ and ~~on completion will be~~ filed with the board of trustees. If ~~In the event that~~ no designated beneficiary survives the police officer, such benefits as are payable in the event of the death of the police officer subsequent to his or her retirement shall be paid as provided in s. 185.162.

(c) Notwithstanding paragraph (b), a retired police officer may change his or her designation of joint annuitant or beneficiary up to two times as provided in s. 185.341 without the approval of the board of trustees or the current joint annuitant or beneficiary. The retiree need not provide proof of the good health of the joint annuitant or beneficiary being removed, and the joint annuitant or beneficiary being removed need not be living.

(2) Retirement income payments shall be made under the option elected in accordance with the provisions of this section and shall be subject to the following limitations:

(b) If the designated beneficiary ~~(or beneficiaries)~~ or joint annuitant ~~pensioner~~ dies before the police officer's retirement under the plan, the option elected is ~~will be~~ canceled automatically and a retirement income of the normal form and amount is ~~will be~~ payable to the police officer upon his or her retirement as if the election had not been made, unless a new election is made in accordance with ~~the provisions of~~ this section or a new beneficiary is designated by the police officer before ~~prior to~~ his or her retirement and within 90 days after the death of the beneficiary.

Section 13. Section 185.37, Florida Statutes, is amended to read:

185.37 Termination of plan and distribution of fund.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter, the plan may be terminated by the municipality. Upon termination of the plan by the municipality for any reason, or because of a transfer, merger, or consolidation of governmental units, services, or functions as provided in chapter 121, or upon written notice to the board of trustees by the municipality that contributions under the plan are being permanently discontinued, the rights of all employees to benefits accrued to the date of such termination or discontinuance and the amounts credited to the employees' accounts are nonforfeitable. The fund shall be ~~apportioned and~~ distributed in accordance with the following procedures:

(1) The board of trustees shall determine the date of distribution and the asset value required to fund all the nonforfeitable benefits ~~to be distributed~~, after taking into account the expenses of such distribution. The board shall

inform the municipality if additional assets are required, in which event the municipality shall continue to financially support the plan until all nonforfeitable benefits have been funded.

(2) The board of trustees shall determine the method of distribution of the asset value, ~~that is,~~ whether distribution shall be by payment in cash, by the maintenance of another or substituted trust fund, by the purchase of insured annuities, or otherwise, for each police officer entitled to benefits under the plan, as specified in subsection (3).

(3) The board of trustees shall distribute ~~apportion~~ the asset value as of the date of termination in the manner set forth in this subsection, on the basis that the amount required to provide any given retirement income is ~~shall mean~~ the actuarially computed single-sum value of such retirement income, except that if the method of distribution determined under subsection (2) involves the purchase of an insured annuity, the amount required to provide the given retirement income is ~~shall mean~~ the single premium payable for such annuity. The actuarial single-sum value may not be less than the employee's accumulated contributions to the plan, with interest if provided by the plan, less the value of any plan benefits previously paid to the employee.

~~(a) Apportionment shall first be made in respect of each retired police officer receiving a retirement income hereunder on such date, each person receiving a retirement income on such date on account of a retired (but since deceased) police officer, and each police officer who has, by such date, become eligible for normal retirement but has not yet retired, in the amount required to provide such retirement income, provided that, if such asset value is less than the aggregate of such amounts, such amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such asset value.~~

~~(b) If there is any asset value remaining after the apportionment under paragraph (a), apportionment shall next be made in respect of each police officer in the service of the municipality on such date who has completed at least 10 years of credited service, in the municipal police officers' retirement trust fund for at least 10 years, and who is not entitled to an apportionment under paragraph (a), in the amount required to provide the actuarial equivalent of the accrued normal retirement income, based on the police officer's credited service and earnings to such date, and each former participant then entitled to a benefit under the provisions of s. 185.19 who has not by such date reached his or her normal retirement date, in the amount required to provide the actuarial equivalent of the accrued normal retirement income to which he or she is entitled under s. 185.19, provided that, if such remaining asset value is less than the aggregate of the amounts apportioned hereunder, such latter amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.~~

~~(c) If there is an asset value after the apportionments under paragraphs (a) and (b), apportionment shall lastly be made in respect of each police officer in the service of the municipality on such date who is not entitled to~~

~~an apportionment under paragraphs (a) and (b) in the amount equal to the police officer's total contributions to the plan to date of termination, provided that, if such remaining asset value is less than the aggregate of the amounts apportioned hereunder, such latter amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.~~

(4)~~(d)~~ If ~~In the event that~~ there is asset value remaining after the full distribution ~~apportionment~~ specified in subsection (3), and after payment of any expenses incurred with such distribution ~~paragraphs (a), (b), and (c)~~, such excess shall be returned to the municipality, less return to the state of the state's contributions, provided that, if the excess is less than the total contributions made by the municipality and the state to date of termination of the plan, such excess shall be divided proportionately to the total contributions made by the municipality and the state.

(5)~~(4)~~ The board of trustees shall distribute, in accordance with the manner of distribution determined under subsection (2), the amounts determined ~~apportioned~~ under subsection (3).

If, after ~~a period of~~ 24 months after the date ~~on which~~ the plan terminated or the date ~~on which~~ the board received written notice that the contributions thereunder were being permanently discontinued, the municipality or the board of trustees of the municipal police officers' retirement trust fund affected has not complied with all the provisions in this section, the Department of Management Services ~~division~~ shall effect the termination of the fund in accordance with this section.

Section 14. This act shall take effect July 1, 2009.

Approved by the Governor June 1, 2009.

Filed in Office Secretary of State June 1, 2009.

~~3~~-c)
4

DEPARTMENTAL CORRESPONDENCE

TO: Monte K. Falls, Interim City Manager
DEPT: City Manager

FROM: William B. Messersmith, PE, Assistant City Engineer WBM 7/12/11
DEPT: Public Works

DATE: July 12, 2011

RE: South Beach Truck Restriction

Received
JUL 2011
City Mgr.'s Office

Recommendation:

- Place this item on the City Council's Agenda for July 19, 2011;
- Adopt the attached Resolution for Truck Restrictions in the South Beach Area as prepared by the City Attorney's office (first and second reading required);
- Authorize staff to install the appropriate signage.

Funding:

Cost for implementation is estimated at less than $800 - eight (8) signs at approximately $100 per sign to post truck restrictions.

Background:

For many years we have received requests from area residents to restrict trucks from using the residential streets between State Road A1A and Ocean Drive in the South Beach area. We have conducted several traffic studies in this area to determine how many trucks are actually using the residential streets and find that, while there are not a lot of trucks using the residential streets (typically less than 10%), the residents still perceive the truck traffic as a problem. (See attached map.)

In 2009, in response to neighborhood concerns about traffic and pedestrian safety, we conducted extensive speed, volume and axle classification studies in the subject area. Those studies show that the number of trucks using the residential streets is relatively low. However, there is a perception that the volume of trucks is high and after additional study we determined there are sufficient alternate routes for the commercial truck traffic serving the commercial establishments on Ocean Drive.

In May 2010 we conducted a poll of the residents regarding both speed limit reduction and truck restrictions, and in March of this year Council approved the speed limit reduction. This is a follow-up to that request for additional traffic calming with respect to truck traffic. Of the respondents to the truck restriction question 70% (96 residents) were in favor of the proposed truck restriction, 30% (41 residents) were opposed or expressed no opinion.

Based on this information the Public Works Department recommends that the resolution providing for the requested truck restrictions be adopted.

If you have any questions please contact us at 978-4870.

Attachments

WBM/ntn

V:\Traffic\Traffic Calming\South Beach Study\Agenda_South Beach Truck Restriction_July 12 2011.docx

RESOLUTION NO. 2011- _____

A RESOLUTION OF THE CITY OF VERO BEACH, FLORIDA, PROHIBITING COMMERCIAL MOTOR VEHICLES FROM USING RESIDENTIAL STREETS WITHIN THE SUBDIVISION AREAS KNOWN AS OCEAN CORPORATION SUBDIVISION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 74-3 of the Code of Ordinances of the City of Vero Beach authorizes the City Council to adopt a resolution prohibiting or regulating the use of certain heavily traveled streets by certain classes of vehicles found to be incompatible with normal and safe traffic movement; and

WHEREAS, said code provision provides that, prior to the adoption of such a resolution, a traffic study be completed and then reviewed by the City Council at a public hearing; and

WHEREAS, a traffic study relating to the use of the streets within the subject subdivision areas dated March 2009 was prepared by the City staff as attached hereto for review by the City Council at a public hearing; and

WHEREAS, the traffic study recommended that City Council take action to prohibit the use of those portions of Ocean Place, Sandpiper Lane, Jasmine Lane, Coquina Lane, Pirate Cove Lane, Turtle Cove Lane and Coral Avenue lying east of SR A1A and west of Ocean Drive by "commercial class" vehicles; and

WHEREAS, the City Council, after reviewing the traffic study, has determined that it is in the public interest to prohibit the use of the streets described above by commercial motor vehicles.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VERO BEACH, FLORIDA, THAT:

1. Commercial motor vehicles, as defined in §3I6.003(66), Florida Statutes, and in addition motor vehicles with three or more axles, shall hereinafter be prohibited from using the following streets, as outlined in the "Truck Prohibition Plan", which is attached hereto and incorporated herein:

All streets within the subject subdivision areas, which are bounded on the north side by East Causeway Boulevard, on the south by Seagull Drive, on the west by State Road A1A and on the east by Ocean Drive;

2. The Public Works Department shall indicate the foregoing by the use of signs at such locations as the Department deems necessary and appropriate.

Section 1 - Effective Date

This Resolution shall become effective upon final passage.

****

This Resolution was moved for adoption by Councilman _____ after public hearing, seconded by Councilman _____, and adopted on the _____ day of _____, 2011, by the following vote:

Mayor Jay Kramer _____

Vice Mayor Pilar E.Turner _____

Councilman Brian T. Heady _____

Councilman A. Craig Fletcher _____

Councilwoman Tracy M. Carroll _____

ATTEST:

_____

Tammy K. Vock
City Clerk

CITY OF VERO BEACH, FLORIDA

_____

Jay Kramer
Mayor

Approved as to form and Legal sufficiency

Wayne R. Coment
Acting City Attorney

Approved as to technical requirements:

Monte K. Falls
Interim City Manager

Approved as to technical Requirements:

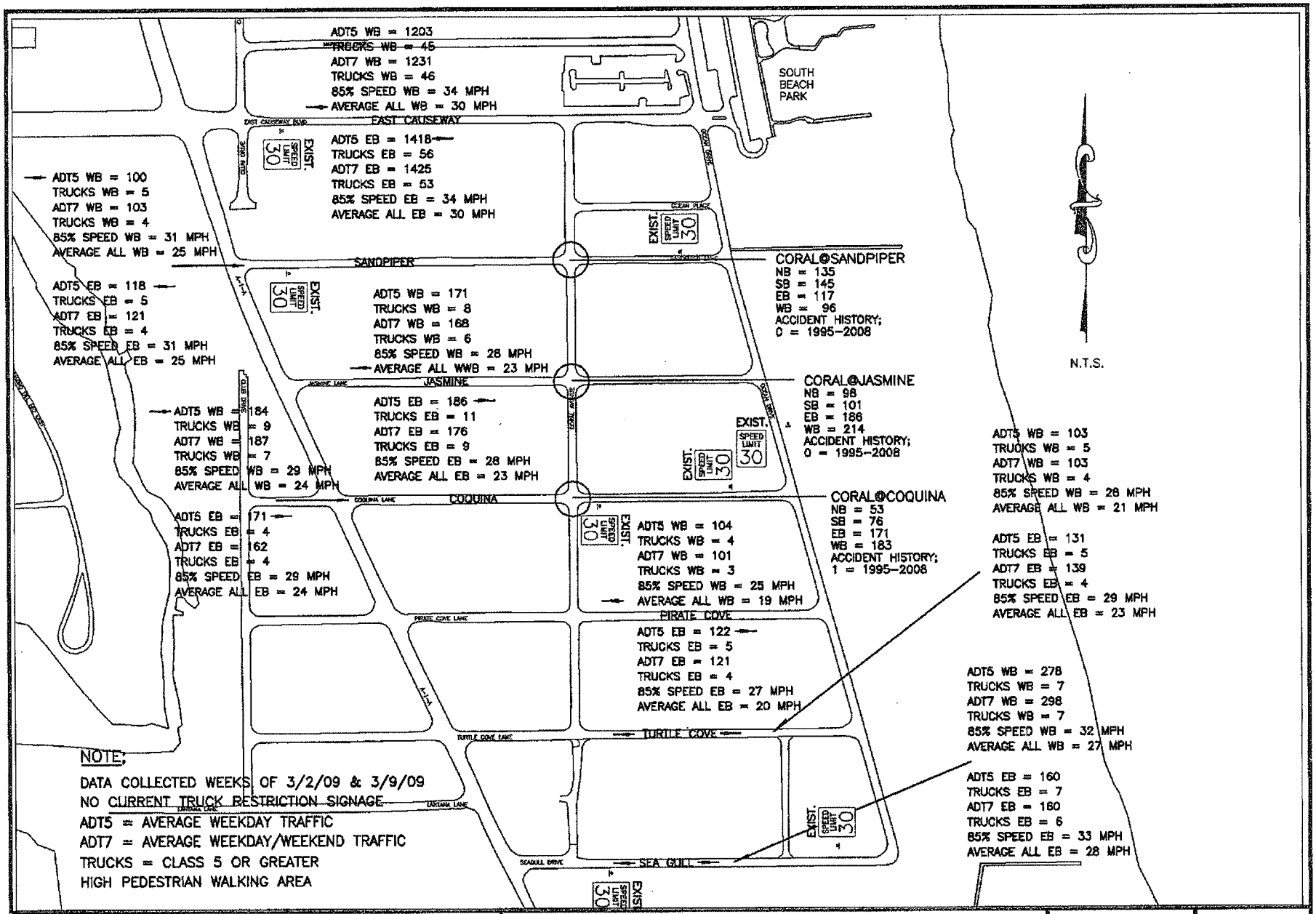
Interim Assistant Director of Public Works

South Beach Truck Restriction Poll

Conducted May 2010

	In Favor*	Opposed*	Total Respondents	Undeliverable/ No Response	Total Polled
Poll Results	96	41	137	490	627
	70%	30%	22%	78%	

* Percentages based on respondents



CITY OF VERO BEACH
DEPARTMENT OF PUBLIC WORKS
AND ENGINEERING
TRAFFIC ENGINEERING SECTION

AXLE CLASSIFICATION/SPEED/ VOLUME STUDIES

EAST CAUSEWAY TO SEA GULL

DRAWN BY: D.L.	DATE: 3/27/09
DESIGN BY: D.L.	
ACAD: SOUTHBEACHAREA2009	
PAGE 1 OF 1	

		Dougs ADT5	Trucks (Class 5 or greater)	% Trucks
Coquina Lane - EB	ADT5	92	6	6.5%
Coquina Lane - EB	ADT7	94	6	6.4%
Coquina Lane - WB	ADT5	108	7	6.5%
Coquina Lane - WB	ADT7	109	7	6.4%
Pirate Cove Lane - EB	ADT5	68	4	5.9%
Pirate Cove Lane - EB	ADT7	67	3	4.5%
Pirate Cove Lane - WB	ADT5	57	4	7.0%
Pirate Cove Lane - WB	ADT7	52	3	5.8%
Sandpiper Lane - EB	ADT5	101	4	4.0%
Sandpiper Lane - EB	ADT7	96	3	3.1%
Sandpiper Lane - WB	ADT5	109	6	5.5%
Sandpiper Lane - WB	ADT7	102	4	3.9%
Seagull Lane - EB	ADT5	99	11	11.1%
Seagull Lane - EB	ADT7	95	10	10.5%
Seagull Lane - WB	ADT5	155	11	7.1%
Seagull Lane - WB	ADT7	172	11	6.4%
Turtle Cove Lane - EB	ADT5	87	8	9.2%
Turtle Cove Lane - EB	ADT7	86	6	7.0%
Turtle Cove Lane - WB	ADT5	50	7	14.0%
Turtle Cove Lane - WB	ADT7	47	5	10.6%
East Causeway Boulevard - EB	ADT5	853	44	5.2%
East Causeway Boulevard - EB	ADT7	990	39	3.9%
East Causeway Boulevard - WB	ADT5	822	74	9.0%
East Causeway Boulevard - WB	ADT7	929	66	7.1%
Jasmine Lane -EB	ADT5	121	3	2.5%
Jasmine Lane -EB	ADT5	120	3	2.5%
Jasmine Lane -WB	ADT7	160	6	3.8%
Jasmine Lane -WB	ADT7	155	5	3.2%

Data collected during week of 7/30 - 8/5/2007

		ADT5	Trucks (Class 5 or greater)	% Trucks
Coquina Lane - EB	ADT5	171	4	2.3%
Coquina Lane - EB	ADT7	162	4	2.5%
Coquina Lane - WB	ADT5	184	9	4.9%
Coquina Lane - WB	ADT7	187	7	3.7%
Pirate Cove Lane - EB	ADT5	122	5	4.1%
Pirate Cove Lane - EB	ADT7	121	4	3.3%
Pirate Cove Lane - WB	ADT5	104	4	3.8%
Pirate Cove Lane - WB	ADT7	101	3	3.0%
Sandpiper Lane - EB	ADT5	118	5	4.2%
Sandpiper Lane - EB	ADT7	121	4	3.3%
Sandpiper Lane - WB	ADT5	100	5	5.0%
Sandpiper Lane - WB	ADT7	103	4	3.9%
Seagull Lane - EB	ADT5	160	7	4.4%
Seagull Lane - EB	ADT7	160	6	3.8%
Seagull Lane - WB	ADT5	278	7	2.5%
Seagull Lane - WB	ADT7	298	7	2.3%
Turtle Cove Lane - EB	ADT5	131	5	3.8%
Turtle Cove Lane - EB	ADT7	139	4	2.9%
Turtle Cove Lane - WB	ADT5	103	5	4.9%
Turtle Cove Lane - WB	ADT7	103	4	3.9%
East Causeway Boulevard - EB	ADT5	1418	56	3.9%
East Causeway Boulevard - EB	ADT7	1425	53	3.7%
East Causeway Boulevard - WB	ADT5	1203	45	3.7%
East Causeway Boulevard - WB	ADT7	1231	46	3.7%
Jasmine Lane -EB	ADT5	186	11	5.9%
Jasmine Lane -EB	ADT5	176	9	5.1%
Jasmine Lane -WB	ADT7	171	8	4.7%
Jasmine Lane -WB	ADT7	168	6	3.6%

Data collected weeks of March 2-9, 2009

CITY OF VERO BEACH FLORIDA - SOUTH BEACH TRUCK RESTRICTIONS

Created by Terry Bishop
City of Vero Beach
Department of Public Works / GIS Division
July 12, 2011

SCALE: 1" = 220'

DISCLAIMER

This material is being supplied pursuant to a public records request and was produced solely for a specific project of the City of Vero Beach, Florida, in connection with the transaction of official municipal business. The City of Vero Beach makes no warranties, express or implied and assumes no responsibility for the use of this material by agencies or individuals other than the City of Vero Beach. Any use of this material is strictly at the risk of the user.

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4-A)

2011-R/E-0383

RESOLUTION NO. 2011 - _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VERO BEACH, FLORIDA, RELEASING FROM ALL CITY EASEMENTS ALL THAT PART OF THE 15 FOOT ALLEY THAT WAS PREVIOUSLY ABANDONED BUT WITH EASEMENT RETAINED LYING SOUTH OF LOTS 3 THROUGH 10 AND LYING NORTH OF LOTS 11 THROUGH 18 IN BLOCK 2, REPLAT OF CONN ADDITION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 2-373 of the Vero Beach Code of Ordinances, City Council is authorized to abandon and/or release utility easements; and

WHEREAS, the City of Vero Beach has an easement over, across, and under the property described hereinbelow and depicted in the sketch attached to this Resolution as Exhibit "A;" and

WHEREAS, the property owner has requested the release of the City-held easement that encumbers its property; and

WHEREAS, the Public Works Department of the City of Vero Beach has determined that the existing easement is no longer needed by the City and that the release would be in the public interest,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VERO BEACH, FLORIDA, THAT:

1. As recommended by the Public Works Department of the City of Vero Beach, Florida, the City Council of the City of Vero Beach, Florida, does hereby abandon all right, title, and interest that it may have in the following easement, being more particularly bounded as shown and described in Exhibit "A" attached hereto and incorporated herein by this reference, as follows:

SEE ATTACHED EXHIBIT "A" (SHEET 1 OF 2) – Legal Description of Easement Property
SEE ATTACHED EXHIBIT "A" (SHEET 2 OF 2) – Sketch of Easement Property Description

2. The release of this easement does not constitute a release nor affect the easement retained lying south of Lots 3 through 10 and lying North of Lots 11 through 18 in said Block 2.

3. The applicant is responsible for all costs associated with the relocation of the existing AT&T utilities.

4. This Resolution shall become effective upon final adoption by the City Council.

This Resolution was heard on the _____ day of _____, 2011, at which time it was moved for adoption by Councilmember _____, seconded by Councilmember _____, and adopted by the following vote:

Mayor Jay Kramer	☐ **Yes**	☐ **No**
Vice Mayor Pilar E. Turner	☐ **Yes**	☐ **No**
Councilmember Brian T. Heady	☐ **Yes**	☐ **No**
Councilmember A. Craig Fletcher	☐ **Yes**	☐ **No**
Councilmember Tracy M. Carroll	☐ **Yes**	☐ **No**

ATTEST:

By: _____
Print: Tammy K. Vock
Title: City Clerk

CITY OF VERO BEACH, FLORIDA:

By: _____
Print: Jay Kramer
Title: Mayor

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this ____ day of _____, 2011 by Jay Kramer, as Mayor, and attested by Tammy K. Vock, as City Clerk of the City of Vero Beach, Florida. They are personally known to me and did not take an oath.

NOTARY PUBLIC

Sign: _____
Print: _____
State of Florida at Large
My Commission No. _____
My Commission Expires: _____

[NOTARY SEAL]

Approved as to form and legal sufficiency:

for: _____
Wayne R. Coment
Acting City Attorney

Approved as conforming to municipal policy:

_____
Monte K. Falls
Interim City Manager

Approved as to technical requirements:

_____
David R. Gay
Chief Surveyor

This document prepared in the
Office of the City Attorney
P.O. Box 1389
Vero Beach, FL 32961-1389

N:\CityAtny\STI\Client Docs\Resolutions\Releases of Easement\Release.2011-R-E-383.Easements.CenterState Bank.Block 2.Replat.Conn.Add.may.2011-msl.doc

EXHIBIT "A"
PROPERTY DESCRIPTION
RELEASE OF EASEMENT #2011-RE-0383
PARCEL #33-39-01-10001-0002-00003.0,
#33-39-01-10001-0002-00014.0,
#33-39-01-10001-0002-00016.0, AND
#33-39-01-10001-0002-00017.0

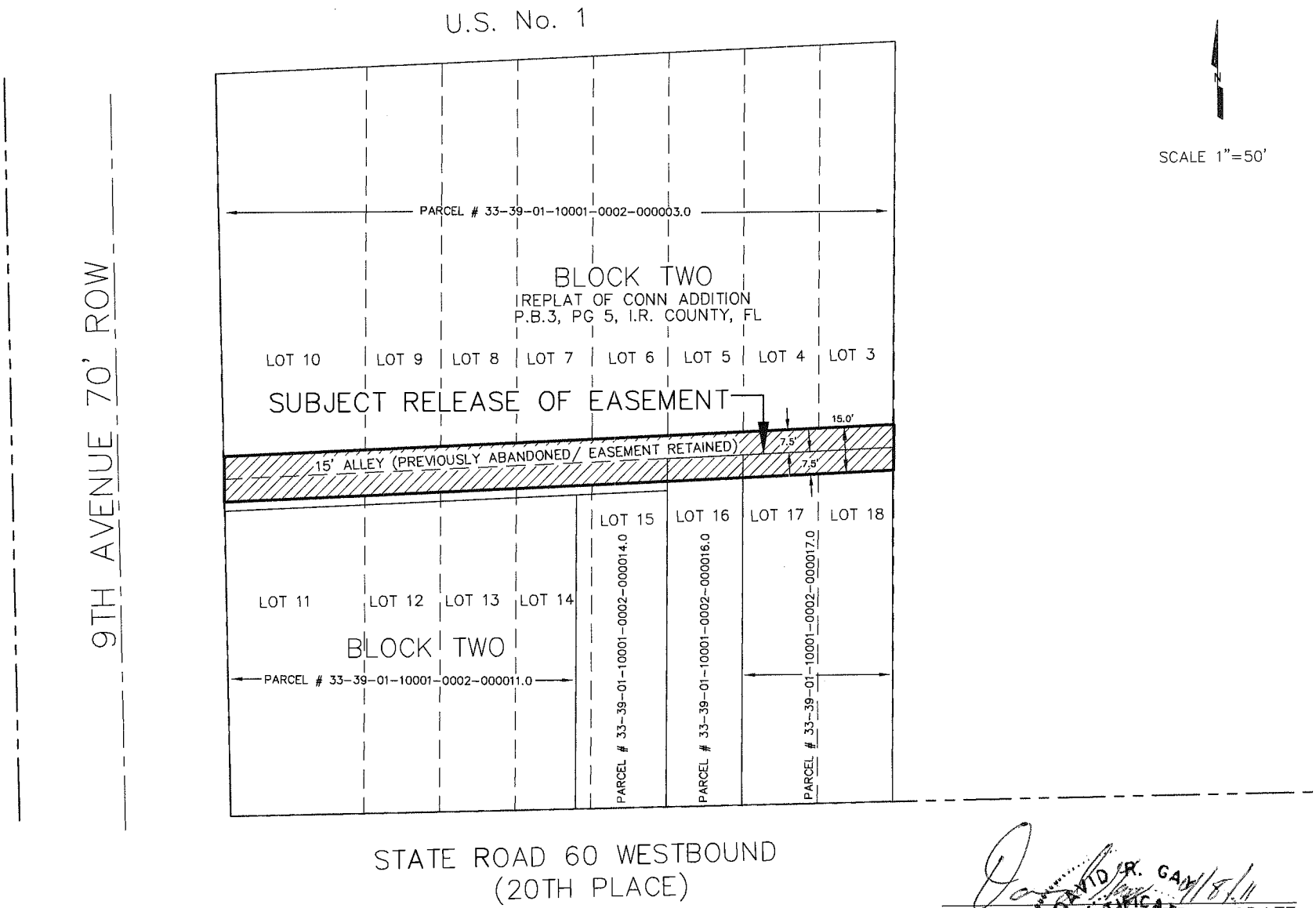
Situated in the State of Florida, County of Indian River, City of Vero Beach, and being a part of Block 2, of the Replat of Conn Addition as Recorded in Plat Book 3, Page 5, of the Public Records of Indian River County, Florida and being more particularly bounded and described as follows:

All that part of the 15 foot alley that was previously abandoned but with easement retained lying South of Lots 3 thru 10 and lying North of Lots 11 thru 18 in said Block 2;

Containing 3,327 square feet more or less.

David R. Gay, BSM #5973

S:\Property Descriptions\2011\2011-RE-0383_CenterState Bank_Apr 6 2011.doc



DAVID G. GAY, PSM #5973 DATE

SHEET 2 OF 2

DAVID R. GAY
CERTIFICATE
NO. 5973
STATE OF FLORIDA
Professional Surveyor & Mapper

THIS SKETCH IS NOT A SURVEY

CITY OF VERO BEACH	SKETCH OF PROPERTY DESCRIPTION	EXHIBIT "A"		REV. NO.	AUTHRZD.BY
DEPARTMENT OF PUBLIC WORKS	RELEASE OF EASEMENT	CITY PROJECT NO. 2011-RE-0383		DRWN.BY	DATE
SURVEY DIVISION	BLOCK 2 OF "REPLAT OF CONN ADDITION"	DATE 04/2011	DRWN BY BMM	CHKD BY DG	DESCRIPTION

DEPARTMENTAL CORRESPONDENCE

TO: Monte K. Falls, Interim City Manager
DEPT: City Manager

FROM: David R. Gay, PSM, Chief Surveyor
DEPT: Public Works

DATE: May 12, 2011

RE: Release of Easement Application #2011-RE-383
CenterState Bank
801 20th Place
Block 2, Replat of Conn Addition

The referenced application has been received for consideration by the City and was routed for review by various City departments, as well as outside utilities. We have attached copies of their responses which were favorable except for AT&T. AT&T is seeking relocation of their affected facilities. The applicant is responsible for all costs associated with the relocation of the existing utilities.

Therefore, we do not object to releasing the following easements:

All of the 15-foot alley that was previously abandoned but with easements lying south of Lots 3 through 10, and lying north of Lots 11 through 18, Block 2, Raplat of Conn Addition.

Please contact us if you have any questions.

Attachments

DRG/ntn

T:\REVIEWS\Release of Easement\2011-RE-0383 CenterState Bank\Recommendation Memo_MFalls_May 12 2011.docx

CITY OF VERO BEACH
DEPARTMENT OF PUBLIC WORKS
(772) 978-4870
(772) 978-4879 FAX

To:

COVB Electrical Engineering	X	AT&T	X
COVB Water & Sewer	X	Comcast Cable	X
COVB Planning & Development	X	Florida City Gas Co.	X

From: David R. Gay, PSM
Chief Surveyor

Date: April 15, 2011

RE: **RELEASE OF EASEMENT REQUEST**

Applicant:	**Center State Bank**
Property Address:	**801 20th Place**
Subdivision:	**Block 2, Replat of Conn Addition**
Parcel No.	**33-39-01-10001-0002-00003.0;** **33-39-01-10001-0002-00014.0;** **33-39-01-10001-0002-00016.0 and**
Application No.	**2010-RE-0381**
Related Project No.	**2011-SP-0002**

The City of Vero Beach Public Works Department is requesting to abandon the drainage/utility easement(s) on the referenced property. A property description and sketch is attached for your information.

Description of requested easement release:

All of the 15-foot alley that was previously abandoned but with easements lying south of Lots 3 thru 10 and lying north of Lots 11 thru 18, Block 2, Replat of Conn Addition.

Please indicate below whether your department/agency approves or disapproves of this action so the information may be considered by the City. Please sign this form and transmit a copy via fax to (772) 978-4879. The original signed form should be returned to the City of Vero Beach Public Works Department at 1053 20th Place, Vero Beach, FL 32960.

DO NOT OBJECT	✓
DO NOT OBJECT WITH CONDITIONS	
OBJECT	

If you OBJECT to this action or DO NOT OBJECT WITH CONDITIONS, please briefly explain why:

Signature of Agency Reviewer: Ted Fletcher
Printed Name: Ted Fletcher
Agency: City of Vero Beach Electric
Date of Review 4-18-11

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APR 19 2011
City of Vero Beach
Public Works Department

CITY OF VERO BEACH
DEPARTMENT OF PUBLIC WORKS
(772) 978-4870
(772) 978-4879 FAX

To:				
	COVB Electrical Engineering	X	AT&T	X
	COVB Water & Sewer	X	Comcast Cable	X
	COVB Planning & Development	X	Florida City Gas Co.	X

From: David R. Gay, PSM
Chief Surveyor

Date: April 15, 2011

RE: **RELEASE OF EASEMENT REQUEST**

Applicant:	**Center State Bank**
Property Address:	**801 20th Place**
Subdivision:	**Block 2, Replat of Conn Addition**
Parcel No.	**33-39-01-10001-0002-00003.0;** **33-39-01-10001-0002-00014.0;** **33-39-01-10001-0002-00016.0 and**
Application No.	**2010-RE-0381**
Related Project No.	**2011-SP-0002**

The City of Vero Beach Public Works Department is requesting to abandon the drainage/utility easement(s) on the referenced property. A property description and sketch is attached for your information.

Description of requested easement release:

All of the 15-foot alley that was previously abandoned but with easements lying south of Lots 3 thru 10 and lying north of Lots 11 thru 18, Block 2, Replat of Conn Addition.

Please indicate below whether your department/agency approves or disapproves of this action so the information may be considered by the City. Please sign this form and transmit a copy via fax to (772) 978-4879. The original signed form should be returned to the City of Vero Beach Public Works Department at 1053 20th Place, Vero Beach, FL 32960.

DO NOT OBJECT	✓
DO NOT OBJECT WITH CONDITIONS	
OBJECT	

If you OBJECT to this action or DO NOT OBJECT WITH CONDITIONS, please briefly explain why:

Signature of Agency Reviewer: [signature]
Printed Name: JERRY GILBERT
Agency: WATER & SEWER
Date of Review 4-20-11

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APR 19 2011
City of Vero Beach
Public Works Department

CITY OF VERO BEACH
DEPARTMENT OF PUBLIC WORKS
(772) 978-4870
(772) 978-4879 FAX

To:				
	COVB Electrical Engineering	X	AT&T	X
	COVB Water & Sewer	X	Comcast Cable	X
	COVB Planning & Development	X	Florida City Gas Co.	X

From: David R. Gay, PSM
Chief Surveyor

Date: April 15, 2011

RE: **RELEASE OF EASEMENT REQUEST**

Applicant:	**Center State Bank**
Property Address:	**801 20th Place**
Subdivision:	**Block 2, Replat of Conn Addition**
Parcel No.	**33-39-01-10001-0002-00003.0; 33-39-01-10001-0002-00014.0; 33-39-01-10001-0002-00016.0 and**
Application No.	**2011-RE-0383**
Related Project No.	**2011-SP-0002**

The City of Vero Beach Public Works Department is requesting to abandon the drainage/utility easement(s) on the referenced property. A property description and sketch is attached for your information.

Description of requested easement release:

All of the 15-foot alley that was previously abandoned but with easements lying south of Lots 3 thru 10 and lying north of Lots 11 thru 18, Block 2, Replat of Conn Addition.

Please indicate below whether your department/agency approves or disapproves of this action so the information may be considered by the City. Please sign this form and transmit a copy via fax to (772) 978-4879. The original signed form should be returned to the City of Vero Beach Public Works Department at 1053 20th Place, Vero Beach, FL 32960.

DO NOT OBJECT	✓
DO NOT OBJECT WITH CONDITIONS	
OBJECT	

If you OBJECT to this action or DO NOT OBJECT WITH CONDITIONS, please briefly explain why:

Signature of Agency Reviewer: [signature]
Printed Name: Timothy J. McCarry
Agency: Planning & Development
Date of Review 5/11/11

RECEIVED
MAY 12 2011
City of Vero Beach
Public Works Department

CITY OF VERO BEACH
DEPARTMENT OF PUBLIC WORKS
(772) 978-4870
(772) 978-4879 FAX

To:				
	COVB Electrical Engineering	X	AT&T	X
	COVB Water & Sewer	X	Comcast Cable	X
	COVB Planning & Development	X	Florida City Gas Co.	X

From: David R. Gay, PSM
Chief Surveyor

Date: April 15, 2011

RE: **RELEASE OF EASEMENT REQUEST**

Applicant:	**Center State Bank**
Property Address:	**801 20th Place**
Subdivision:	**Block 2, Replat of Conn Addition**
Parcel No.	**33-39-01-10001-0002-00003.0; 33-39-01-10001-0002-00014.0; 33-39-01-10001-0002-00016.0 and**
Application No.	**2010-RE-0381**
Related Project No.	**2011-SP-0002**

The City of Vero Beach Public Works Department is requesting to abandon the drainage/utility easement(s) on the referenced property. A property description and sketch is attached for your information.

Description of requested easement release:

All of the 15-foot alley that was previously abandoned but with easements lying south of Lots 3 thru 10 and lying north of Lots 11 thru 18, Block 2, Replat of Conn Addition.

Please indicate below whether your department/agency approves or disapproves of this action so the information may be considered by the City. Please sign this form and transmit a copy via fax to (772) 978-4879. The original signed form should be returned to the City of Vero Beach Public Works Department at 1053 20th Place, Vero Beach, FL 32960.

DO NOT OBJECT	
DO NOT OBJECT WITH CONDITIONS	✓
OBJECT	

If you OBJECT to this action or DO NOT OBJECT WITH CONDITIONS, please briefly explain why:
AT+T has cable located within the easement that requires relocation and all costs for moving them would be the responsibility of the applicant.

Signature of Agency Reviewer: C L Adams
Printed Name: Charles L Adams
Agency: AT&T
Date of Review 5/10/2011

Area Manager C&E
AT&T - Florida

RECEIVED
MAY 10 2011
City of Vero Beach
Public Works Department

CITY OF VERO BEACH
DEPARTMENT OF PUBLIC WORKS
(772) 978-4870
(772) 978-4879 FAX

To:				
	COVB Electrical Engineering	X	AT&T	X
	COVB Water & Sewer	X	Comcast Cable	X
	COVB Planning & Development	X	Florida City Gas Co.	X

From: David R. Gay, PSM
Chief Surveyor

Date: April 15, 2011

RE: **RELEASE OF EASEMENT REQUEST**

Applicant:	**Center State Bank**
Property Address:	**801 20th Place**
Subdivision:	**Block 2, Replat of Conn Addition**
Parcel No.	**33-39-01-10001-0002-00003.0;** **33-39-01-10001-0002-00014.0;** **33-39-01-10001-0002-00015.0 and**
Application No.	**2010-RE-0381**
Related Project No.	**2011-SP-0002**

The City of Vero Beach Public Works Department is requesting to abandon the drainage/utility easement(s) on the referenced property. A property description and sketch is attached for your information.

Description of requested easement release:

All of the 15-foot alley that was previously abandoned but with easements lying south of Lots 3 thru 10 and lying north of Lots 11 thru 18, Block 2, Replat of Conn Addition.

Please indicate below whether your department/agency approves or disapproves of this action so the information may be considered by the City. Please sign this form and transmit a copy via fax to (772) 978-4879. The original signed form should be returned to the City of Vero Beach Public Works Department at 1053 20th Place, Vero Beach, FL 32960.

DO NOT OBJECT	X
DO NOT OBJECT WITH CONDITIONS	
OBJECT	

If you OBJECT to this action or DO NOT OBJECT WITH CONDITIONS, please briefly explain why:

Signature of Agency Reviewer: Ronald C. Stephens
Printed Name: Ronald C. Stephens
Agency: Comcast
Date of Review 4/26/11

RECEIVED
APR 27 2011
City of Vero Beach
Public Works Department

CITY OF VERO BEACH
DEPARTMENT OF PUBLIC WORKS
(772) 978-4870
(772) 978-4879 FAX

To:				
	COVB Electrical Engineering	X	AT&T	X
	COVB Water & Sewer	X	Comcast Cable	X
	COVB Planning & Development	X	Florida City Gas Co.	X

From: David R. Gay, PSM
Chief Surveyor

Date: April 15, 2011

RE: **RELEASE OF EASEMENT REQUEST**

Applicant:	**Center State Bank**
Property Address:	**801 20th Place**
Subdivision:	**Block 2, Replat of Conn Addition**
Parcel No.	**33-39-01-10001-0002-00003.0;** **33-39-01-10001-0002-00014.0;** **33-39-01-10001-0002-00016.0 and**
Application No.	**2010-RE-0381**
Related Project No.	**2011-SP-0002**

The City of Vero Beach Public Works Department is requesting to abandon the drainage/utility easement(s) on the referenced property. A property description and sketch is attached for your information.

Description of requested easement release:

All of the 15-foot alley that was previously abandoned but with easements lying south of Lots 3 thru 10 and lying north of Lots 11 thru 18, Block 2, Replat of Conn Addition.

Please indicate below whether your department/agency approves or disapproves of this action so the information may be considered by the City. Please sign this form and transmit a copy via fax to (772) 978-4879. The original signed form should be returned to the City of Vero Beach Public Works Department at 1053 20th Place, Vero Beach, FL 32960.

DO NOT OBJECT	X
DO NOT OBJECT WITH CONDITIONS	
OBJECT	

If you OBJECT to this action or DO NOT OBJECT WITH CONDITIONS, please briefly explain why:

Signature of Agency Reviewer: Bock Kreinhagen
Printed Name: BOCK KREINHAGEN
Agency: FLORIDA CITY GAS
Date of Review 4-27-2011

RECEIVED
APR 29 2011
City of Vero Beach
Public Works Department

4-B)

2011-R/E-0382

RESOLUTION NO. 2011 - _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VERO BEACH, FLORIDA, RELEASING FROM ALL CITY EASEMENTS THE FOLLOWING PROPERTIES:

NO. 1: THE SOUTH 5.00 FEET OF LOTS 24 THROUGH 34, BLOCK 21, ROYAL PARK PLAT NO. 4; TOGETHER WITH THE NORTH 5.00 FEET OF LOTS 36 AND 37, BLOCK 21, ROYAL PARK PLAT NO. 4;

NO. 2: THE NORTH 5.00 FEET OF LOTS 38 THROUGH 55, BLOCK 21, ROYAL PARK PLAT NO. 5; TOGETHER WITH THE NORTH 5.00 FEET OF THE EAST 10 FEET OF LOT 56, BLOCK 21, ROYAL PARK PLAT NO. 5;

NO. 3: ALL OF THE EASEMENTS OF THE PREVIOUSLY ABANDONED ALLEY RETAINED AND GRANTED LYING BETWEEN:

LOTS 24 THROUGH 33, BLOCK 21, ROYAL PARK PLAT NO. 4 AND LOTS 38 THROUGH THE EAST 10 FEET OF LOT 56, BLOCK 21, ROYAL PARK PLAT NO. 5; TOGETHER WITH LOT 37, BLOCK 21, ROYAL PARK PLAT NO. 4 AND LOT 38, BLOCK 21, ROYAL PARK PLAT NO. 5;

NO. 4: THE WEST 15 FEET OF LOT 47, BLOCK 21, ROYAL PARK PLAT NO. 5;

NO. 5: THE EAST 3 FEET OF LOT 24, BLOCK 21, ROYAL PARK PLAT NO. 4; TOGETHER WITH THE EAST AND WEST 3 FEET OF LOTS 25 TO 37, BLOCK 21, ROYAL PARK PLAT NO. 4; TOGETHER WITH THE EAST AND WEST 3 FEET OF LOTS 38 TO 55, BLOCK 21, ROYAL PARK PLAT NO. 5; TOGETHER WITH THE EAST 3 FEET OF LOT 56, BLOCK 21, ROYAL PARK PLAT NO. 5; AND,

PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 2-373 of the Vero Beach Code of Ordinances, City Council is authorized to abandon and/or release utility easements; and

WHEREAS, the City of Vero Beach has easements over, across, and under the property described hereinbelow and depicted in the sketches attached to this Resolution as Exhibit "A;" and

WHEREAS, the property owner has requested the release of the City-held easements that encumber its property; and

WHEREAS, the Public Works Department of the City of Vero Beach has determined that the existing easements are no longer needed by the City and that the release would be in the public interest,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VERO BEACH, FLORIDA, THAT:

1. As recommended by the Public Works Department of the City of Vero Beach, Florida, the City Council of the City of Vero Beach, Florida, does hereby abandon all right, title, and interest that it may have in the following easements, being more particularly bounded as shown and described in Exhibit "A" attached hereto and incorporated herein by this reference, as follows:

SEE ATTACHED EXHIBIT "A" (SHEETS 1 & 2 OF 5) – Legal Descriptions of Easement Property

SEE ATTACHED EXHIBIT "A" (SHEETS 3 - 5 OF 5) – Sketches of Easement Property Descriptions

2. This Resolution shall become effective upon final adoption by the City Council.

This Resolution was heard on the _____ day of _____, 2011, at which time it was moved for adoption by Councilmember _____, seconded by Councilmember _____, and adopted by the following vote:

Mayor Jay Kramer	☐ **Yes**	☐ **No**
Vice Mayor Pilar E. Turner	☐ **Yes**	☐ **No**
Councilmember Brian T. Heady	☐ **Yes**	☐ **No**
Councilmember A. Craig Fletcher	☐ **Yes**	☐ **No**
Councilmember Tracy M. Carroll	☐ **Yes**	☐ **No**

ATTEST:

Sign: _____
Print: Tammy K. Vock
Title: City Clerk

CITY OF VERO BEACH, FLORIDA:

Sign: _____
Print: Jay Kramer
Title: Mayor

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by Jay Kramer, as Mayor, and attested by Tammy K. Vock, as City Clerk of the City of Vero Beach, Florida. They are personally **known to me** and **did not** take an oath.

NOTARY PUBLIC

Sign: _____
Print: _____
State of Florida at Large
My Commission Number: _____
My Commission Expires: _____

[NOTARY SEAL]

Approved as to form and legal sufficiency:

Margaret S. Lyon
Assistant City Attorney

Approved as conforming to municipal policy:

Monte K. Falls
Interim City Manager

Approved as to technical requirements:

David R. Gay
Chief Surveyor

This document was prepared in
The Office of the City Attorney
Post Office Box 1389
Vero Beach, Florida 32961-1389

EXHIBIT "A"
PROPERTY DESCRIPTION
RELEASE OF EASEMENT #2011-RE-0382
BLOCK 21 OF ROYAL PARK PLAT NO. 4 AND
BLOCK 21 OF ROYAL PARK PLAT NO. 5
PARCEL #33-39-01-00005-0210-00032.0

Situated in the State of Florida, County of Indian River, City of Vero Beach and being a part of Block 21 of Royal Park Plat No. 4 as Recorded in Plat Book 5, Page 30, of the Public Records of St. Lucie County, said lands now lying and being in Indian River County, and part of Block 21 of Royal Park Plat No. 5 as Recorded in Plat Book 1, Page 2 of the Public Records of Indian River County, Florida and being more particularly bounded and described as follows:

Release of Easement No.1:

The South 5.00 feet of Lots 24 through 34, Block 21, Royal Park Plat No. 4;

Together with:
The North 5.00 feet of Lots 36 and 37, Block 21, Royal Park Plat No. 4;

Containing 2,620 square feet more or less.

Release of Easement No. 2:

The North 5.00 feet of Lots 38 through 55, Block 21, Royal Park Plat No. 5;

Together with:
The North 5.00 feet of the East 10 feet of Lot 56, Block 21, Royal Park Plat No. 5;

Containing 2,270 square feet more or less.

Release of Easement No. 3:

All of the easements of the previously abandoned alley retained and granted lying between:

Lots 24 through 33, Block 21, Royal Park Plat No. 4 and Lots 38 through the east 10 feet of Lot 56, Block 21, Royal Park Plat No. 5;

Together with:
Lot 37, Block 21, Royal Park Plat No. 4 and Lot 38, Block 21, Royal Park Plat No. 5;

Containing 11,760 square feet more or less.

Release of Easement No. 4:

The West 15 feet of Lot 47, Block 21, Royal Park Plat No. 5;

Containing 1,480 square feet more or less.

Release of Easement No. 5:

The East 3 feet of Lot 24, Block 21, Royal Park Plat No. 4;

Together with:
The East and West 3 feet of Lots 25 to 37, Block 21, Royal Park Plat No. 4;

Together with:
The East and West 3 feet of Lots 38 to 55, Block 21, Royal Park Plat No. 5;

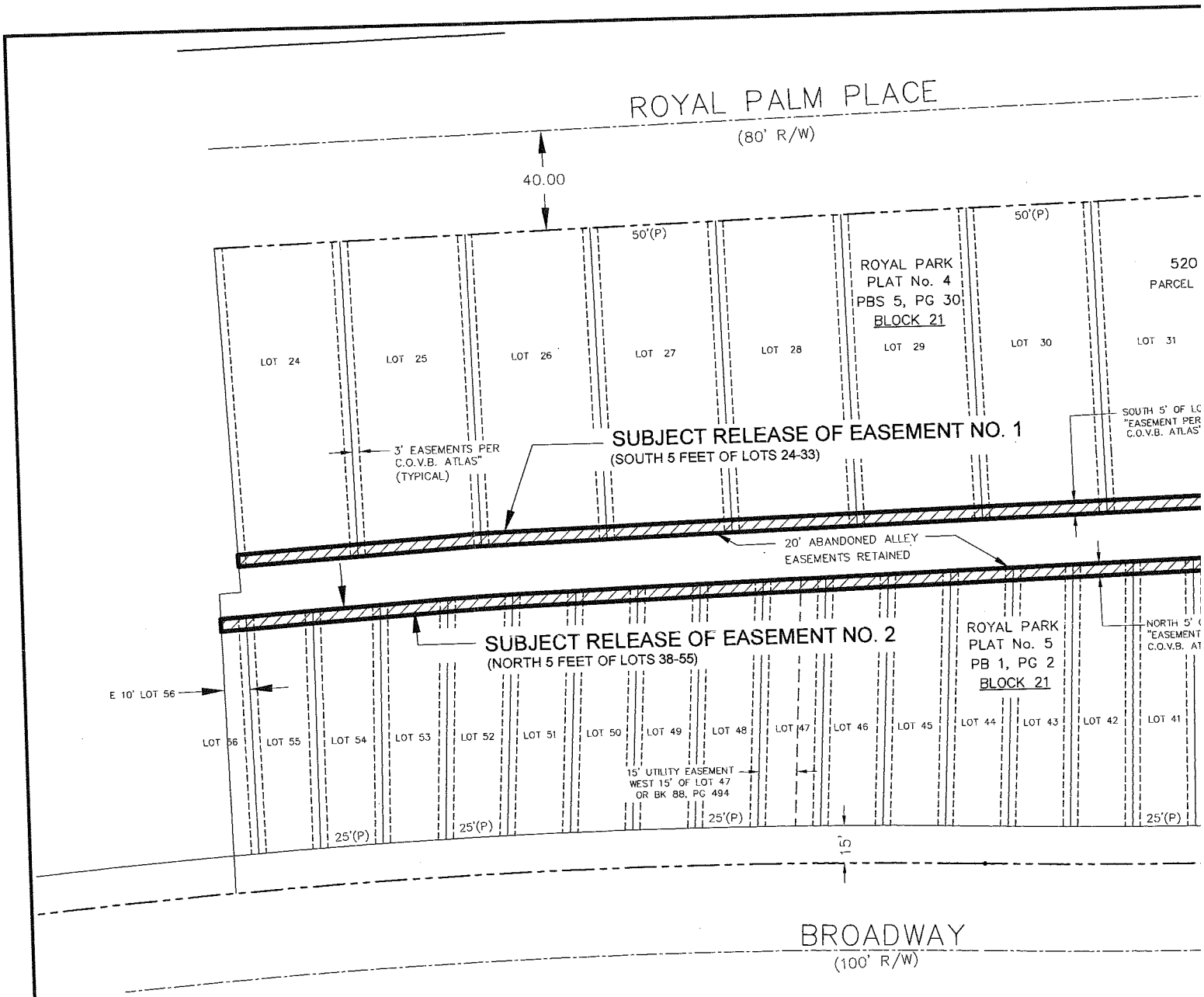
Together with:
The East 3 feet of Lot 56, Block 21, Royal Park Plat No. 5;

Containing 21,100 square feet more or less.

David R. Gay, PSM #5973

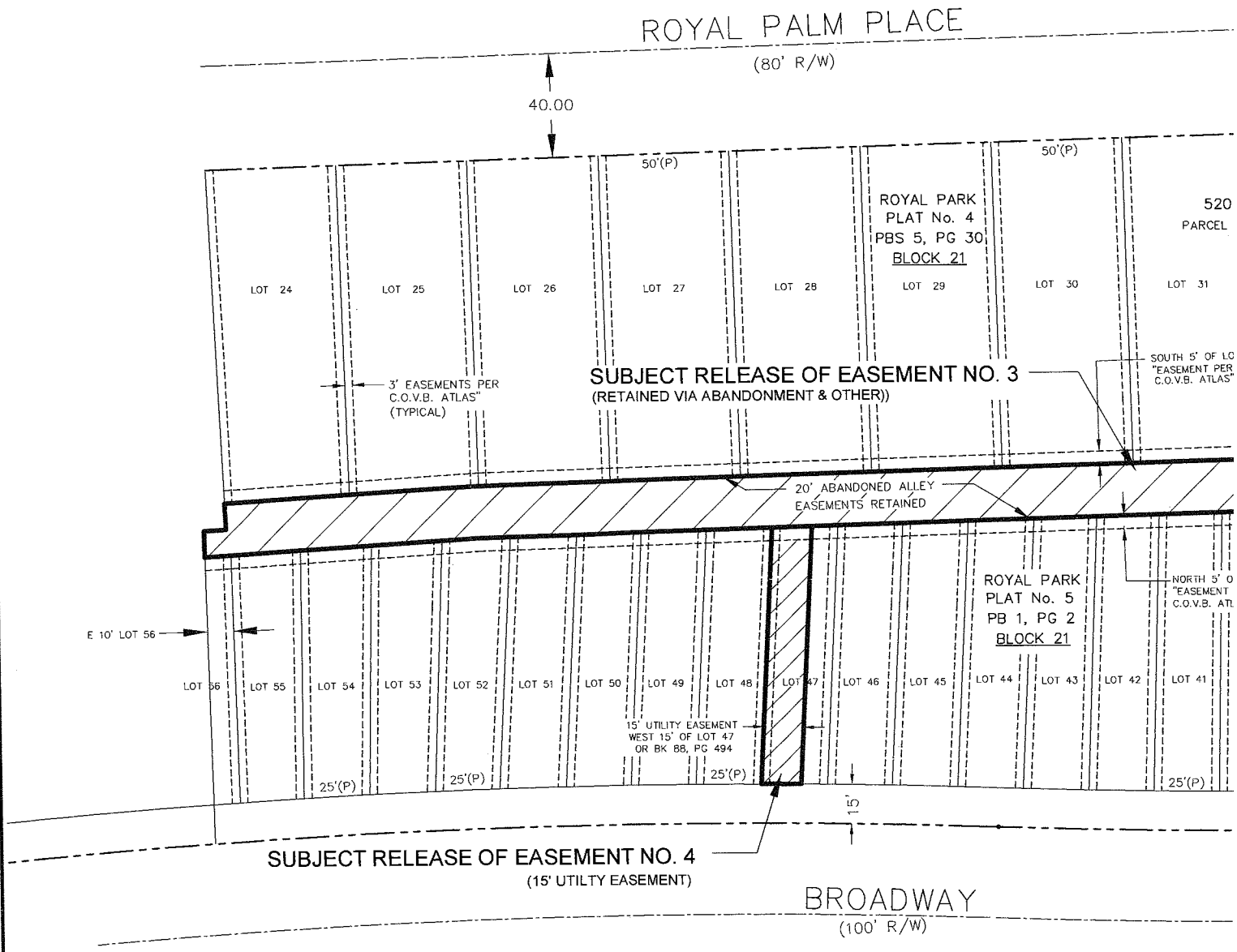
DAVID R. GAY CERTIFICATE NO. 5973 STATE OF FLORIDA Professional Surveyor & Mapper

S:\Property Descriptions\2011\2011-RE-0382_First Presbyterian Church_Apr 8 2011.doc



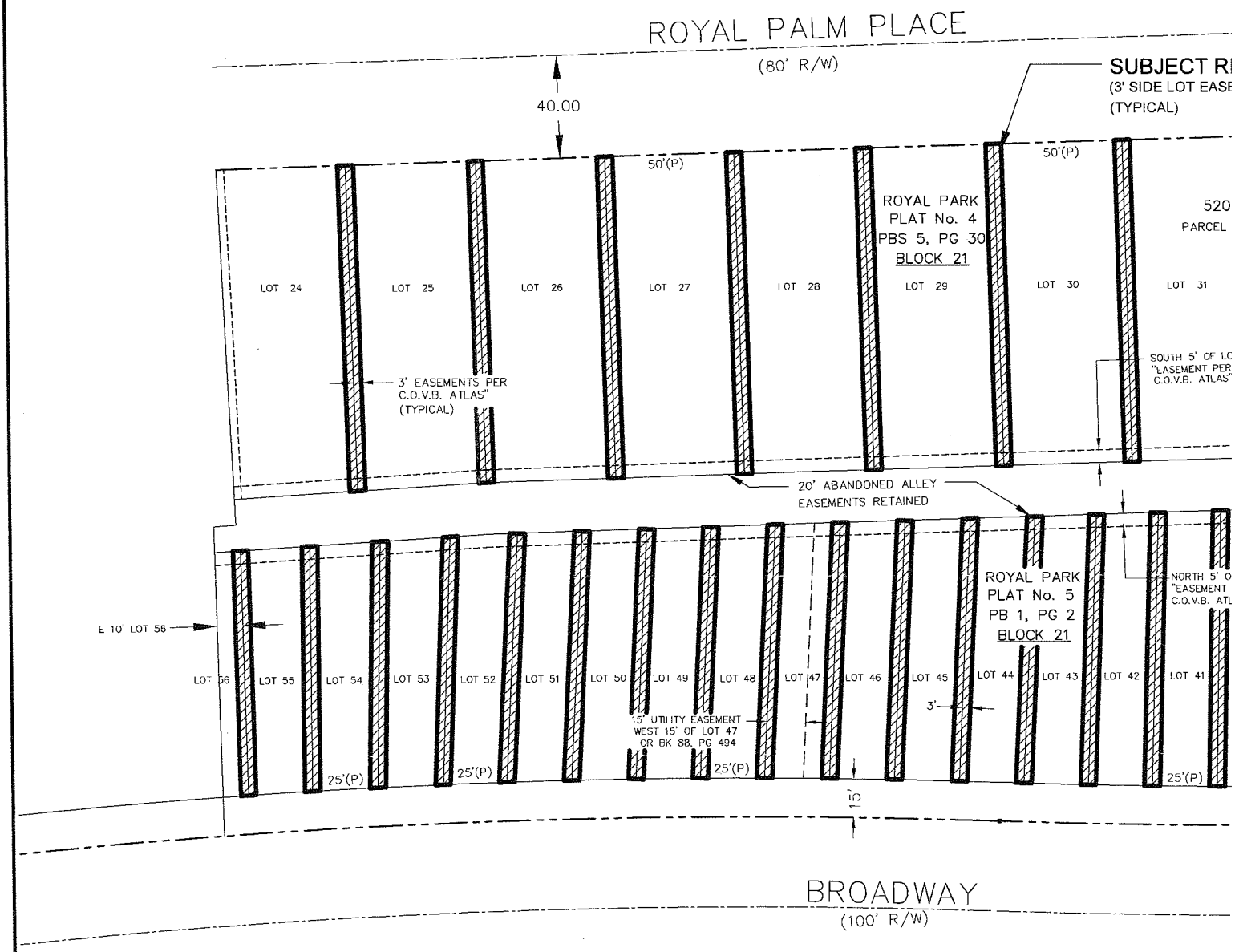
THIS SKETCH IS NOT A SURVEY

CITY OF VERO BEACH	SKETCH OF PROPERTY DESCRIPTIO
DEPARTMENT OF PUBLIC WORKS	RELEASE OF EASEMENTS FIRST PRESBYTERIAN CHURCH
SURVEY DIVISION	BLOCK 21, ROYAL PARK PLATS No. 4



THIS SKETCH IS NOT A SURVEY

CITY OF VERO BEACH	SKETCH OF PROPERTY DESCRIPTIO
DEPARTMENT OF PUBLIC WORKS	RELEASE OF EASEMENTS FIRST PRESBYTERIAN CHURCH
SURVEY DIVISION	BLOCK 21, ROYAL PARK PLATS No. 4



THIS SKETCH IS NOT A SURVEY

CITY OF VERO BEACH	SKETCH OF PROPERTY DESCRIPTION
DEPARTMENT OF PUBLIC WORKS	RELEASE OF EASEMENTS FIRST PRESBYTERIAN CHURCH
SURVEY DIVISION	BLOCK 21, ROYAL PARK PLATS No. 4

DEPARTMENTAL CORRESPONDENCE

TO: Monte K. Falls, Interim City Manager
DEPT: City Manager

FROM: David R. Gay, PSM, Chief Surveyor
DEPT: Public Works

DATE: May 11, 2011

RE: Release of Easement Application #2011-RE-382
First Presbyterian Church of Vero Beach
520 Royal Palm Boulevard
Block 21, Royal Park Plat No. 4 and
Block 21, Royal Park Plat No. 5

The referenced application has been received for consideration by the City and was routed for review by various City departments, as well as outside utilities. We have attached copies of their responses which were favorable except for AT&T. AT&T is seeking relocation of their affected facilities. The applicant is responsible for all costs associated with the relocation of the existing utilities.

Therefore, we do not object to releasing the following easements:

Easement No. 1: The south 5' of Lots 24 thru 34 and the north 5' of Lots 36 & 37, Block 21, Royal Park Plat No. 4.

Easement No. 2: The north 5' of Lots 38 thru 55 and the north 5' of the east 10' of Lot 56, Block 21, Royal Park Plat No. 5.

Easement No. 3: All of the easements located in the previously abandoned alley between Lots 24 thru 33, Block 21, Royal Park No. 4 and Lots 38 thru the east 10' of Lot 56, Block 21, Royal Park Plat No. 5; Lot 37, Block 21, Royal Park Plat No. 4 and Lot 38, Block 21, Royal Park Plat No. 5.

Easement No. 4: The west 15' of Lot 47, Block 21, Royal Park Plat No. 5.

Easement No. 5: The East 3' of Lot 24; The east and west 3' of Lots 25 to 37 of Block 21, Royal Park Plat No. 4; together with the east and west 3' of Lots 38 to 55 and the east 3' of Lot 56, Block 21, Royal Park Plat No. 5.

Please contact us if you have any questions.

Attachments

DRG/ntn

CITY OF VERO BEACH
DEPARTMENT OF PUBLIC WORKS
(772) 978-4870
(772) 978-4879 FAX

To:				
	✓COVB Electrical Engineering	X	AT&T	X
	COVB Water & Sewer	X	Comcast Cable	X
	COVB Planning & Development	X	Florida City Gas Co.	

From: David R. Gay, PSM
Chief Surveyor

Date: April 12, 2011

RE: **RELEASE OF EASEMENT REQUEST**

Applicant:	**First Presbyterian Churchof Vero Beach**
Property Address:	**520 Royal Palm Boulevard**
Subdivision:	**Block 21, Royal Park Plat No. 4 and Block 21, Royal Park Plat No. 5**
Parcel No.	**33-39-01-00005-0210-00032.0**
Application No.	**2011-RE-0382**
Related Project No.	**2010-SP-0002**

The City of Vero Beach Public Works Department is requesting to abandon the drainage/utility easement(s) on the referenced property. A property description and sketch is attached for your information.

Description of requested easement release:

Easement No. 1: The south 5' of Lots 24 thru 34 and the north 5' of Lots 36 & 37, Block 21, Royal Park Plat No. 4.

Easement No. 2: The north 5' of Lots 38 thru 55 and the north 5' of the east 10' of Lot 56, Block 21, Royal Park Plat No. 5.

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Please indicate below whether your department/agency approves or disapproves of this action so the information may be considered by the City. Please sign this form and transmit a copy via fax to (772) 978-4879. The original signed form should be returned to the City of Vero Beach Public Works Department at 1053 20th Place, Vero Beach, FL 32960.

DO NOT OBJECT	✓
DO NOT OBJECT WITH CONDITIONS	
OBJECT	

If you OBJECT to this action or DO NOT OBJECT WITH CONDITIONS, please briefly explain why:

Signature of Agency Reviewer:	Ted Fletcher
Printed Name:	Ted Fletcher
Agency:	City of Vero Beach Electric
Date of Review	4-14-11

RECEIVED
APR 15 2011
City of Vero Beach
Public Works Department

CITY OF VERO BEACH
DEPARTMENT OF PUBLIC WORKS
(772) 978-4870
(772) 978-4879 FAX

To:				
	COVB Electrical Engineering	X	AT&T	X
	COVB Water & Sewer	X	Comcast Cable	X
	COVB Planning & Development	X	Florida City Gas Co.	

From: David R. Gay, PSM
Chief Surveyor

Date: April 12, 2011

RE: **RELEASE OF EASEMENT REQUEST**

Applicant:	**First Presbyterian Churchof Vero Beach**
Property Address:	**520 Royal Palm Boulevard**
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DO NOT OBJECT	✓
DO NOT OBJECT WITH CONDITIONS	
OBJECT	

If you OBJECT to this action or DO NOT OBJECT WITH CONDITIONS, please briefly explain why:

Signature of Agency Reviewer: Todd A. Young
Printed Name: TODD A. YOUNG
Agency: CITY OF VERO BEACH WATER & SEWER DEPT.
Date of Review 4/21/2011

RECEIVED
APR 21 2011
City of Vero Beach
Public Works Department

CITY OF VERO BEACH
DEPARTMENT OF PUBLIC WORKS
(772) 978-4870
(772) 978-4879 FAX

To:				
	COVB Electrical Engineering	X	AT&T	X
	COVB Water & Sewer	X	Comcast Cable	X
	COVB Planning & Development	X	Florida City Gas Co.	

From: David R. Gay, PSM
Chief Surveyor

Date: April 12, 2011

RE: **RELEASE OF EASEMENT REQUEST**

APR 2011 City of Vero Beach Planning Dept.

Applicant:	**First Presbyterian Churchof Vero Beach**
Property Address:	**520 Royal Palm Boulevard**
Subdivision:	**Block 21, Royal Park Plat No. 4 and Block 21, Royal Park Plat No.**
Parcel No.	**33-39-01-00005-0210-00032.0**
Application No.	**2011-RE-0382**
Related Project No.	**2010-SP-0002**

The City of Vero Beach Public Works Department is requesting to abandon the drainage/utility easement(s) on the referenced property. A property description and sketch is attached for your information.

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DO NOT OBJECT	✓
DO NOT OBJECT WITH CONDITIONS	
OBJECT	

If you OBJECT to this action or DO NOT OBJECT WITH CONDITIONS, please briefly explain why:

Signature of Agency Reviewer: [signature]
Printed Name: Timothy J. McGarry
Agency: Planning & Development
Date of Review 4/18/11

RECEIVED
APR 19 2011
City of Vero Beach
Public Works Department

CITY OF VERO BEACH
DEPARTMENT OF PUBLIC WORKS
(772) 978-4870
(772) 978-4879 FAX

To:				
	COVB Electrical Engineering	X	AT&T	X
	COVB Water & Sewer	X	Comcast Cable	X
	COVB Planning & Development	X	Florida City Gas Co.	

From: David R. Gay, PSM
Chief Surveyor

Date: April 12, 2011

RE: **RELEASE OF EASEMENT REQUEST**

Applicant:	**First Presbyterian Churchof Vero Beach**
Property Address:	**520 Royal Palm Boulevard**
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Application No.	**2011-RE-0382**
Related Project No.	**2010-SP-0002**

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DO NOT OBJECT	
DO NOT OBJECT WITH CONDITIONS	✓
OBJECT	

If you OBJECT to this action or DO NOT OBJECT WITH CONDITIONS, please briefly explain why:
AT+T has cable in the easements that require relocation. The cost of moving the cables would be the applicants responsibility.

Signature of Agency Reviewer: R Adams
Printed Name: Charles L Adams
Area Manager C&E
AT&T - Florida
Agency: AT+T
Date of Review 5/10/2011

RECEIVED
MAY 10 2011
City of Vero Beach
Public Works Department

CITY OF VERO BEACH
DEPARTMENT OF PUBLIC WORKS
(772) 978-4870
(772) 978-4879 FAX

To:				
	COVB Electrical Engineering	X	AT&T	X
	COVB Water & Sewer	X	Comcast Cable	X
	COVB Planning & Development	X	Florida City Gas Co.	

From: David R. Gay, PSM
Chief Surveyor

Date: April 12, 2011

RE: **RELEASE OF EASEMENT REQUEST**

Applicant:	**First Presbyterian Churchof Vero Beach**
Property Address:	**520 Royal Palm Boulevard**
Subdivision:	**Block 21, Royal Park Plat No. 4 and Block 21, Royal Park Plat No. 5**
Parcel No.	**33-39-01-00005-0210-00032.0**
Application No.	**2011-RE-0382**
Related Project No.	**2010-SP-0002**

The City of Vero Beach Public Works Department is requesting to abandon the drainage/utility easement(s) on the referenced property. A property description and sketch is attached for your information.

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DO NOT OBJECT	X
DO NOT OBJECT WITH CONDITIONS	
OBJECT	

If you OBJECT to this action or DO NOT OBJECT WITH CONDITIONS, please briefly explain why:

Signature of Agency Reviewer: Donald C. Stephens
Printed Name: Donald C. Stephens
Agency: Comcast
Date of Review 4/26/11

RECEIVED
APR 27 2011
City of Vero Beach
Public Works Department

5-A)

DEPARTMENTAL CORRESPONDENCE

TO: Monte K. Falls, PE
Interim City Manager

FROM: Timothy J. McGarry, AICP
Director of Planning and Development

DATE: July 6, 2011

SUBJECT: **First Reading of Ordinance Amending Chapter 62, Article III, Commercial Districts to Allow "Recreation and Park Areas" as a Permitted Use in C-1B, B-1, and C-1 Commercial Districts (#Z11-000002-TXT)**

Overview

The Planning and Development Department staff requests that the attached draft ordinance be placed on the City Council's agenda for First Reading on July 19, 2011.The proposed ordinance amends the City's Land Development Regulations to allow "recreation and park areas" as permitted uses in the C-1B, B-1, and C-1 Commercial Districts. Parks and recreation areas are presently allowed in the C-1A District.

Background

The need for this amendment came to light when City staff met with representatives from Northern Trust Bank regarding possible conversion of its property located at the southeast corner of East Causeway Boulevard and Highway A-1-A from an ATM facility to a "pocket park." Northern Trust Bank intends to transfer ownership of this commercial property, which will adversely impacted by the widening of turn lanes on SR A1A at 17th Street, to the Indian River Land Trust.

The subject property is located within the C-1 district, which does not permit recreational areas and parks. Therefore, ordinarily the property would need to be rezoned to allow a recreation and park use. However, this, which would be costly, time consuming and make little practical planning sense due to the small size of the property (less than 5,400 square feet).

After reviewing the City Code, the staff suggested that a more practical and effective approach, and one that would benefit the entire City, would be to amend the regulations governing uses in Commercial Districts to allow "recreation and park areas" in all Commercial Districts rather than limiting such use to only the C-1A District. Therefore, staff agreed to sponsor a text amendment to Section 62.35 to allow "recreation and park areas" in C-1B, B-1 and C-1 Districts.

Proposed Amendment

The attached draft ordinance amends Section 62.35 of Article III, Commercial Districts by adding language to make "recreation and park areas" as a listed use in the C-1B, B-1, and C-1 Districts.

Analysis

The proposed amendment will:

- Eliminate the inconsistencies between the various commercial zoning districts, where "recreation and park areas" are only allowed as a permitted use in the C-1A District; and
- Support the mixed use policies of the City's adopted Vision Plan by the inclusion of a category of use that will both complement and positively enhance nearby commercial properties.

Findings

The staff finds the proposed text amendment meets the requirements and standards of Section 62.25 (i)(2)-(3) of the City Code and is warranted to meet the continued changing needs of the community.

Planning and Zoning Board Action

On June 16, 2011, the Planning and Zoning Board conducted a public hearing on the attached draft ordinance and unanimously recommended its consideration and approval by the City Council.

[Please Note: The draft ordinance considered by the Planning and Zoning Board also contained language adding parking requirements for "recreation and park areas," which was missing from the Commercial District regulations; however, the proposed ordinance to comprehensively amend the City's parking regulations has made this additional language moot. Therefore, this amendment language has been removed from the final draft ordinance to be considered by the City Council.]

Recommendation

The Planning and Development Department staff recommends City Council approval of the scheduling and advertising of the draft ordinance for public hearing.

TJM/tf
Attachment

ORDINANCE NO. 2011 – _____

AN ORDINANCE OF THE CITY OF VERO BEACH, FLORIDA, AMENDING CHAPTER 62, ARTICLE III, COMMERCIAL DISTRICTS OF THE CITY OF VERO BEACH CODE; AMENDING SECTION 62.35 TO ADD RECREATION AND PARK AREAS AS A PERMITTED USE IN THE C-1B, B-1 AND C-1 DISTRICTS; PROVIDING FOR CONFLICT AND SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the purpose and intent of this ordinance is to authorize recreation and park areas as permitted principal uses in the C-1B, B-1 and C-1 Commercial Districts; and

WHEREAS, the current zoning code does not specifically list recreation and park areas as a permitted use in the aforementioned districts; and

WHEREAS, proposed text amendments were drafted to address an existing deficiency in the City's zoning regulations that permits recreation and park areas only in one commercial district (C-1A) by adding such use to the C-1, C-1B, and B-1 commercial districts; and

WHEREAS, the City Council of the City of Vero Beach believes that these amendments are in the public interest of the City of Vero Beach and consistent with the standards of Section 65.22(i)(2)-(3);

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VERO BEACH, FLORIDA, THAT:

Section 1. Amendment to Section 62.35. Permitted Uses.

Section 62.35 is hereby amended to add "Recreation and Park Areas" as a permitted use in the C-1B, B-1 and C-1 Commercial Districts as follows:

CODING: Words underlined are additions

	Zoning Districts			
Uses	*C-1A*	*C-1B*	*B-1*	*C-1*
Recreation and Park Areas	P	P	P	P

P = Permitted Use

Section 2. Conflict and Severability

In the event any provision of this ordinance conflicts with any provision of the Code or any other ordinance or resolution of the City of Vero Beach on the subject matter of this ordinance, the more strict provision shall apply and supersede. If any provision of this ordinance is held to be invalid, unconstitutional, or unenforceable for any reason by a court of competent jurisdiction, such invalidity shall not affect the validity of the remaining portions of this ordinance, which shall be deemed separate, distinct, and independent provisions enforceable to the fullest extent possible.

Section 3. Effective Date

This ordinance shall become effective upon final passage.

****

This Ordinance was read for the first time on the _____day of _____, 2011, and was advertised in the Press Journal on the ____ day of _____, 2011, for a first public hearing which was held on the _____ day of _____, 2011 and was advertised in the Press Journal on _____ day of _____, 2011 for a second public hearing which was held on the _____ day of _____, 2011, at the conclusion of which hearing it was moved for adoption by Councilmember _____, seconded by Councilember _____, and adopted by the following vote:

Mayor Jay Kramer	☐ **Yes**	☐ **No**
Vice Mayor Pillar E. Turner	☐ **Yes**	☐ **No**
Councilmember Brian T. Heady	☐ **Yes**	☐ **No**
Councilmember Craig Fletcher	☐ **Yes**	☐ **No**
Councilmember Tracy M. Carroll	☐ **Yes**	☐ **No**

ATTEST:

Tammy K. Vock
City Clerk

CITY OF VERO BEACH, FLORIDA

Jay Kramer
Mayor

Approved as to form and legal sufficiency:

Wayne R. Coment
Acting City Attorney

Approved as conforming to municipal policy:

Monte Falls
Interim City Manager

Approved as to technical requirements:

Timothy J. McGarry, AICP
Planning and Development Director

CODING: Words underlined are additions

5-B)

DEPARTMENTAL CORRESPONDENCE

TO: Monte K. Falls, PE
Interim City Manager

FROM: Timothy J. McGarry, AICP
Director of Planning and Development

DATE: July 6, 2011

SUBJECT: **First Reading of an Ordinance to Amend Chapter 73, Article I, Floodplain Damage Protection of the City Code (#Z11-000003-TXT)**

Overview

The Planning and Development staff requests that the attached draft ordinance be placed on the City Council's agenda for First Reading on July 19, 2011. The draft ordinance is intended to bring the City's floodplain regulations into full compliance with the National Flood Insurance Program's rules and regulations.

Background

Last year the City adopted comprehensive revisions to its floodplain regulations based on recommendations by the Floodplain Management Office of the Florida Division of Emergency Management. The adopted ordinance was approved by the Floodplain Management Office.

However, that agency conducted further review of local governments' floodplain regulations, including Vero Beach's, earlier this year. The Floodplain Management Office's review identified specific additions to be included in the City's floodplain regulations and enacted by November 15, 2011 (date new flood insurance rating maps will be available).

Summary of Revisions

Except as noted below, the revisions are minor in nature and either add further information or clarify existing text. The only revision of any substance is to Section 73.10 which identifies the "Planning Director" rather than the "City Manager" as the City Floodplain Administrator. [It should be noted that FDEM has no problem with either the City Manager or Planning Director being designated as the Floodplain Administrator.]

This change reflects the actual "day-to-day" responsibilities of the Planning Director for administrating the floodplain regulations along with other elements of the City's Land Development Regulations. Records are unavailable, but the responsibility for floodplain administration was apparently delegated by a previous City Manager to the Planning Director at the time, or sometime after the initial floodplain ordinance was adopted.

Identifying the Planning Director as the Floodplain Administrator eliminates confusion for public regarding which City official to contact regarding floodplain permitting question or issue. Additionally, it eliminates delays in routing of information or inquiries to the appropriate responsible City official from FEMA or FDEM regarding the City's floodplain regulations.

With the proposed change in the designation of the floodplain administrator, Section 73.19 needs to be revised to reflect that appeals of the Planning Director's decisions would be heard by the Planning and Zoning Board rather than the City Council.

Planning and Zoning Board Action

On June 16th, the Planning and Zoning Board conducted a public hearing on the attached draft ordinance and unanimously recommended its consideration and approval by the City Council.

Recommendation

The Planning and Development Department staff recommends City Council approval of the scheduling and advertising of the draft ordinance for public hearing.

TJM/tf
Attachment

ORDINANCE NO. 2011 – _____

AN ORDINANCE OF THE CITY OF VERO BEACH, FLORIDA, AMENDING CHAPTER 73, ARTICLE I, FLOOD DAMAGE PREVENTION OF THE CITY OF VERO BEACH CODE; PROVIDING FOR NEW DEFINITIONS AND TEXT REVISIONS TO BRING FLOODPLAIN MANAGEMENT REGULATIONS INTO FULL COMPLIANCE WITH NATIONAL FLOOD INSURANCE PROGRAM RULES AND REGULATIONS; PROVIDING FOR CONFLICT AND SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, as a requirement for participation in the National Flood Insurance Program, a local governing body must adopt and enforce regulations governing development within flood prone areas;

WHEREAS, the City Council adopted Ordinance 15-1984 enacting a flood damage prevention ordinance compliant with the criteria for participation in the National Flood Insurance Program, which has been subsequently amended on three separate occasions; and

WHEREAS, the Florida Division of Emergency Management (FDEM) reviewed the City's floodplain management regulations on May 3, 2011, and found several items that required to be addressed to bring the City's ordinance into full compliance with the rules and regulations of the National Flood Insurance Program; and

WHEREAS, in response to the FDEM's review comments, the Planning and Development Department staff has prepared this Ordinance amending Chapter 73, Article 1, Flood Damage Prevention of the Code, using the State of Florida's "Model Flood Damage Prevention Ordinance" as a reference; and

WHEREAS, the FDEM has reviewed a draft of this Ordinance and has determined that the Ordinance complies fully with the rules and regulations of the National Flood Insurance Program;

WHEREAS, the City Council finds that the adoption of this Ordinance amending Chapter 73, Article I, is in the public interest and would bring the City's floodplain management regulations into full compliance with the rules and regulatory standards of the National Flood Insurance Program;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VERO BEACH, FLORIDA, THAT:

Section 1. Amendment of Chapter 73, Article I, Flood Damage Prevention.

Chapter 73, Article I, Flood Damage Prevention, is hereby amended as follows:

ARTICLE I. FLOOD DAMAGE PREVENTION

Sec. 73.01. Statutory authorization.

The Legislature of the State of Florida has authorized and delegated in Chapter 166, Florida Statutes, the responsibility of local government units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the City Council of the City of Vero Beach does hereby adopt the following floodplain management regulations.

Sec. 73.01.1 Statement of policy.

The City of Vero Beach contains within its boundaries areas that are subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment to tax base, all of which adversely affect the public health, safety, and general welfare. These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by property uses vulnerable to floods or hazardous to other

lands which are inadequately elevated, floodproofed, or otherwise unprotected from flood damages.

Specifically it is the intent of this article with respect to flood hazard areas to:

(a) Restrict or prohibit property uses which result in damaging increases in erosion hazards or which result in damaging increases in flood heights or velocities;

(b) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

(c) Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of floodwaters;

(d) Control filling, grading, dredging, and other development which may increase erosion or flood damage; and,

(e) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

Sec. 73.02. Definitions.

For purposes of this article, the following terms shall have the definitions indicated:

Area of special flood hazard ~~is~~ <u>means</u> the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year.

Base flood means the flood having a one percent chance of being equaled or exceeded in any given year.

Basement means any part of a building where all sides of the floor are located below ground level.

Breakaway wall means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific

lateral loading forces without causing damage to the elevated portion of the building or the supporting foundation system.

Coastal high hazard area means the area subject to high velocity waters caused by, but not limited to, hurricane wave wash or tsunamis. This area is designated on a Flood Insurance Rate Map ("FIRM") as Zone V1-V30, VE, or V.

Development means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations.

Elevated building means a non-basement building built to have the lowest floor elevated above the ground level by foundation walls, posts, piers, columns, pilings, or shear walls.

Existing construction means, for the purposes of floodplain management, structures for which "the start of construction" commenced before July 3, 1984. Existing construction, means for the purposes of determining rates, structures for which the "start of construction" commenced before December 15, 1982. This term may also be referred to as "existing structures".

Existing manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before July 3, 1984.

Expansion to an existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Finished living space means any space usable for living purposes, which includes inhabiting, residing, sleeping, cooking, eating, or any combination thereof.

Finishing materials means anything beyond basic wall construction pursuant to FEMA Technical Bulletin, which is normally associated with habitable space. Finishing

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materials include, but are not limited to ceiling mold, trim, baseboards, decorative finish work, wainscoting, and textured woods.

Flood hazard boundary map (FHBM) means an official map of a community, issued by the Federal Emergency Management Agency (FEMA), where the boundaries of the areas of special flood hazard have been defined as only Approximate Zone A.

Flood Insurance Rate Map (FIRM) means the official map prepared by the Federal Emergency Management Agency and any revision thereto, which delineates both the areas of special flood hazard within, and the risk premium zones applicable to, the city.

Flood insurance study ~~is~~ means the official hydrology and hydraulics report provided by the Federal Emergency Management Agency. The report contains flood profiles, as well as the flood boundary-floodway map and the water surface elevation of the base flood.

Floodproofing means any combination of structural and nonstructural additions, changes, or adjustments to structures, which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Highest adjacent grade means the highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a structure.
Historic structure means any structure that is:

(a) Listed individually in the national Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(b) Certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(c) Individually listed on the Florida inventory of historic places, which has been approved by the Secretary of the Interior; or

d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

1. By the approved Florida program as determined by the Secretary of the Interior; or

2. Directly by the Secretary of the Interior.

Limited storage means the storage of items not generally subject to damage by water or exposure to the elements such as outdoor furniture, lawn mowers, rakes, wheelbarrows, and similar outdoor equipment. Limited storage does not apply to household items, indoor furniture, tools, or other equipment vulnerable to damage by floodwaters.

Lowest floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure usable solely for parking vehicles, building access, or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this article.

Manufactured home means a building, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term also includes park trailers, travel trailers, and similar transportable structures placed on a site for 180 consecutive days or longer and intended to be improved property.

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Mean sea level means the average height of the sea for all stages of the tide. It is used as a reference for establishing various elevations within the floodplain. For purposes of this title, the term is synonymous with National Geodetic Vertical Datum (NGVD) or North American Vertical Datum (NAVD).

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North American Vertical Datum (NAVD) of 1988, means a vertical control used as a reference for establishing varying elevations within the floodplain.

National Geodetic Vertical Datum (NGVD) of 1929 means a vertical control used as a reference for establishing varying elevations within the floodplain.

New construction means any structure for which the "start of construction" commenced ~~after the effective date of this ordinance~~ on or after July 3, 1984.

New manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after ~~the effective date of the first floodplain management code, ordinance or standard~~ July 3, 1984.

Recreational vehicle means a vehicle that is:

(a) Built on a single chassis;

(b) Four hundred square feet or less when measured at the largest horizontal projection;

(c) Designed to be self-propelled or permanently towable by a light duty truck; and

(d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Special flood hazard area (SFHA) means the area having a one percent or greater chance of being flooded in any given year.

Start of construction includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the state of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the

installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main building. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure means, for floodplain management purposes, a walled and roofed building, including gas or liquid storage tank that is principally above ground, as well as a manufactured home.

Substantial damage means damage of any origin sustained by a structure when the cost of restoring the building to its pre-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial improvement means any repair, construction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure prior to improvement or repair. This term includes structures which have incurred "substantial damage," regardless of the actual repair work performed. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions This term does not include any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure and for which a variance has been granted pursuant to this article.

Violation means the failure of a structure or other development to be fully compliant with the provisions of this ordinance. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this article is presumed to be in violation until such time that documentation is provided.

Sec. 73.03. Applicability.

This article shall apply to all areas of special flood hazard within the jurisdiction of the City of Vero Beach identified by the FEMA in its Flood Insurance Study and Flood

Insurance Rate Map ("FIRM"), dated ~~December 15, 1982 (revised)~~ May 4, 1989, for Indian River County, Florida and incorporated areas. The FIRM and any revision thereto are adopted by reference and declared to be part of this article.

Sec. 73.04. Development approval required.

Development approval pursuant to chapter 64, article I, development review of this Code, shall be required in conformance with the provisions of this article prior to the commencement of any development activities.

Sec. 73.05. Compliance.

No structure, including manufactured homes, shall hereafter be located, extended, converted, or structurally altered without full compliance with the terms of this article and other applicable regulations.

Sec. 73.06. Abrogation and greater restrictions.

This article is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this article and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

Sec. 73.07. Interpretation.

In the interpretation and application of this article, all provisions shall be considered as minimum requirements, liberally construed in favor of the governing body, and deemed neither to limit nor repeal any other powers granted under state statutes.

Sec. 73.08. Warning and disclaimer of liability.

The degree of flood protection required by this article is considered the minimum reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This article does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This article shall not create liability on the part of the City of Vero Beach or any officer or employee thereof for any flood damages that

result from reliance on this article or any administrative decision lawfully made thereunder.

Sec. 73.09. Floodplain compliance procedures.

(a) *Application stage.* Prior to any development activities, an application for development approval shall be submitted to the planning and development department pursuant to section 64.03 of this Code, including a nonrefundable fee of $75.00 in addition to the development application fee to defray the costs of ensuring compliance with this article. The application may include, but need not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question, existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

(1) Elevation datum in NGVD or NAVD of the proposed lowest floor (including basement) of all structures;

(2) Elevation datum in NGVD or NAVD to which any nonresidential structure will be floodproofed;

(3) Elevation datum in NGVD or NAVD of the bottom of the lowest horizontal structural member of the lowest floor;

(4) A certificate from a licensed professional engineer or architect that the nonresidential floodproofed structure meets the floodproofing criteria in this article; and

(5) A description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

(b) *Construction stage.* Within 21 days of the placement of the lowest floor, or flood-proofing by whatever construction means, or bottom of the lowest horizontal structural member, the permit holder shall submit to the Indian River County building department with a copy to the planning and development department a completed Elevation Certificate, FEMA Form 81-31, as amended, that certifies the as-built elevation of the lowest floor or flood-proofed elevation, or elevation of the bottom of the lowest horizontal structural member of the lowest floor, whichever is applicable, using elevation datum in NGVD or NAVD. Said certification shall be prepared by or under the

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direct supervision of a licensed land surveyor or licensed professional engineer and certified by the same. When floodproofing is used for a particular building, the certification shall be prepared by or under the direct supervision of a licensed professional engineer or architect and so sealed. Any work done prior to submission of the certification shall be at the permit holder's risk. The ~~city manager~~ planning director shall review the flood elevation survey data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to further progressive work on the project. Failure to submit the survey or failure to make required corrections shall be cause to issue a stop work order for the project.

(c) *Project completion stage*. Upon completion of the building construction and prior to the issuance of a certificate of occupancy, the permit holder shall submit to the planning and development department a completed Elevation Certificate, FEMA Form 81-31, as amended, that certifies the as-built building elevation datum in NGVD or NAVD. Said certification shall be prepared by or under the direct supervision of a licensed land surveyor or licensed engineer and certified by the same. If floodproofing is used, a Floodproofing Certificate pursuant to section 73.13 (b) shall be also provided. The city manager shall review the elevation survey data in the submitted Elevation Certificate and Floodproofing Certificate. If the completed project is found compliant with the provisions of this article, the ~~city manager~~ planning director shall issue a certificate of floodplain compliance. If found noncompliant with this article, the city manager shall issue a written finding of non-compliance to the permit holder that identifies the specific deficient items that require correction. A certificate of occupancy for the building shall not be issued without a certificate of floodplain compliance.

Sec. 73.10. Duties and powers of ~~city manager~~ floodplain administrator.

~~The city manager shall have the duty and power to:~~ The planning director is hereby designated as floodplain administrator. The duties and responsibilities of the floodplain administrator shall include, but are not limited to:

(1) Review all development orders and building permits to assure sites are reasonably safe from flooding and to ensure that the requirements of this article have been satisfied~~;~~ including receiving copies of additional federal and state permits as required by section 64.03 of this Code.

(2) Notify adjacent communities and the department of community affairs prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the FEMA;

(3) Ensure that maintenance is provided within the altered or relocated portion of the watercourse so that the flood-carrying capacity is not diminished;

(4) Verify and record the actual elevation (NGVD or NAVD) of the lowest floor (including basement) of all new or substantially improved structures;

(5) Verify and record the actual elevation (NGVD or NAVD) to which the new or substantially improved structures have been floodproofed;

(6) Obtain certification from a licensed professional engineer or architect that the structure is securely anchored to adequately anchored pilings or columns in order to withstand high velocity floodwaters and hurricane wave wash in coastal high hazard areas;

(7) Review plans for the adequate breakaway walls in coastal high hazard areas;

(8) Obtain certification from a licensed professional engineer or architect that all requirements of this chapter have been met when floodproofing is utilized for a particular structure;

(9) Make any necessary interpretation as to the exact location of the boundaries of the area of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions); the person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided below; and

(10) Obtain, review, and reasonably use any base flood elevation data available from a federal, state, or other source when base flood elevation data has not been provided, in order to administer the provisions of this article.

(11) Notify FEMA within 6 months when new technical or scientific data becomes available to the community concerning physical changes affecting flooding conditions so that risk premium rates and flood plain management requirements will be based on current data.

(12) Maintain records for all variance actions, including justification for their issuance or denial, and report such variances in the community's National

Flood Insurance Program Biennial Report or upon request to FEMA and the State of Florida, Department of Emergency Management.

(13) Maintain records for all appeal actions.

Sec. 73.11. Variance procedures.

The following procedures shall apply to variances:

(1) The ~~board of adjustment~~ planning and zoning board shall hear and decide requests for variances from the requirements of this article.

(2) Applications and procedures for variance requests shall be in accordance with section 66.01 of this Code.

(3) Variances may be issued for the reconstruction, rehabilitation, or restoration of historic structures meeting the definition in this article, upon receipt of written determination from the state historic preservation office or state-certified local historic preservation commission that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure. Any variance must be the minimum necessary to preserve the historic character and designation of the structure.

(4) In passing upon applications, the ~~board of adjustment~~ planning and zoning board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this article, and the following additional factors:

a. The danger that materials may be swept onto other lands to the injury of others;

b. The danger of life and property due to flooding or erosion damage;

c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

d. The importance of the services provided by the proposed facility to the community;

e. The necessity to the facility of a waterfront location, where applicable;

f. The availability of alternative locations not subject to flooding or erosion damage;

g. The compatibility of the proposed use with existing and anticipated development;

h. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

i. The safety of access to the property in times of flood for ordinary and emergency vehicles;

j. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and

k. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical systems, water systems, and streets and bridges.

(5) Upon consideration of the factors listed above and the purposes of this article, the ~~board of adjustment~~ planning and zoning board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this article.

(6) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge will result.

(7) Variances shall not be issued for any construction within a special flood hazard that was commenced prior to obtaining a permit for such work.

(~~7~~8) Conditions for variances shall be as follows:

a. Variances shall be issued only upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

b. Variances shall be issued only upon showing of good and sufficient cause, a determination that failure to grant the variance would result in exceptional hardship to the applicant, and a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, creation of a nuisance, fraud on, or victimization of the public, or a conflict with existing local laws or ordinances.

c. Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation to which the structure is to be built and stating that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

~~d. The city manager shall maintain the records of all appeal actions and report any variances to the FEMA upon request.~~

Sec. 73.12. General standards in areas of special flood hazards.

The following general standards shall apply in areas of special flood hazards:

(1) All new construction and all substantial improvements to existing structures shall be anchored to prevent flotation, collapse, or lateral movement of the structure or improvements.

(2) All new manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

(3) All new construction and all substantial improvements shall be constructed with materials resistant to flood damage.

(4) All new construction and all substantial improvements shall be constructed by methods and practices that minimize flood damage.

(5) All new or replacement water supply systems shall be designed to eliminate infiltration of floodwaters into the system.

(6) New or replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.

(7) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(8) Any alteration, repair, reconstruction, or improvements to a structure which is in compliance with the provisions of this article shall meet the requirements of "new construction" as contained in this article.

(9) All electrical, heating, ventilation, plumbing fixtures, and air conditioning equipment and other services facilities, <u>including duct work,</u> shall be elevated above base flood elevation to prevent water from entering or accumulating within the components.

(10) When proposed new construction and substantial improvements are partially located in an area of special flood hazard, the entire structure shall meet the standards of new construction.

Sec. 73.13. Specific standards for Zones AE, A1-30, and AH.

(a) *Residential construction*. New construction or substantial improvement of any residential structure, including manufactured homes, shall have the lowest floor, together with all mechanical and electrical equipment, and including any basement and/or ductwork installed below the lowest floor, elevated to or above base flood elevation, 18 inches above the crown of the nearest adjoining improved street or streets or no less than five feet above mean sea level, whichever is the higher elevation. No area below the lowest floor shall be used in any way for human habitation or finished living space.

(b) *Nonresidential construction*. New construction or substantial improvement of any commercial, industrial, or other nonresidential building (including manufactured home) shall have the lowest floor, together with all mechanical and electrical equipment, and including any basement and/or ductwork installed below the lowest floor, elevated

to or above base flood elevation, 18 inches above the crown of the nearest adjoining improved street, or five feet above mean sea level, whichever is the higher elevation. Buildings located in all A-zones may be floodproofed to an elevation of one foot above the required lowest floor elevation noted above in lieu of being elevated. Floodproofing requires that all areas of the building below the required elevation are watertight, with walls substantially impermeable to the passage of water, and structural components have the capability of resisting hydrodynamic loads and effect of buoyancy associated with the base flood. A licensed professional engineer or architect shall certify the floodproofing standards of this subsection are satisfied. Such certification shall be provided to the official as set forth in section 73.10, using the FEMA Floodproofing Certificate, FEMA Form 81-65, as amended.

(c) *Enclosures below the lowest floor.* Notwithstanding any other language in this article to the contrary, new construction or substantial improvements of elevated buildings that include fully enclosed areas formed by foundation and other exterior walls below flood elevation shall be designed to allow for entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls.

(1) Designs for complying with this requirement must be certified by a licensed professional engineer or architect or meet the following minimum criteria:

a. Provide a minimum of two openings having a total net area of not less than one square inch for every space foot of enclosed area subject to flooding;

b. The bottom of all openings shall be no higher than one foot above grade; and

c. Openings may be equipped with screens, louvers, valves or other coverings, or devices provided they permit the automatic flow of floodwaters in both directions.

(2) Fully enclosed areas below base flood elevation are limited to parking, building access, and limited storage incidental to use of the building. Access to the enclosed area shall be minimum necessary to allow for parking of vehicles (garage door), limited storage of maintenance equipment used in connection with the premises (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of

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such enclosed area shall not be finished or partitioned into separate rooms.

(d) *Manufactured homes and recreational vehicles.*

(1) All manufactured homes that are placed, or substantially improved within Zones A1-30, AH, and AE, on sites (i) outside of an existing manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision, (iii) in an expansion to an existing manufactured home park or subdivision, or (iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood, that lowest floor be elevated on the permanent foundation to no lower than the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(2) All manufactured homes to be placed, or substantially improved in an existing manufactured home park or subdivision that are not subject to the provisions of subparagraph (d)(1) of this section, must be elevated so that either:

a. The lowest floor of the manufactured home is elevated to no lower than one foot above the base flood elevation; or

b. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least an equivalent strength that are no less than 36 inches in height above the grade and securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(3) All recreational vehicles must either:

a. Be on the site for fewer than 180 consecutive days;

b. Be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions); or

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c. Meet all the requirements for new construction, including anchoring and elevation standards in accordance with Article 1, Section 73.13 (e) (1) and (2).

(e) *No street surface abutting the proposed construction.* Where a finished street surface does not exist abutting proposed construction, the building official shall obtain from the city engineer a projected grade for the finished surface of the street in question in order that a correct construction grade can be established and the elevation of such construction abutting upon such street shall conform to the grade so established.

Sec. 73.14. Coastal high hazard areas (Zones V1-30, VE, or V with base flood elevation).

Located within the areas of special flood hazard are areas designated as coastal high hazard areas. These areas have special flood hazards associated with wave wash; therefore, the following provisions shall apply:

(1) All buildings or structures shall be located a minimum of 50 feet landward of the reach of the mean high tide.

(2) All new construction and substantial improvements must be elevated on pilings and columns subject to the following conditions:

a. The bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings and columns) and electrical equipment, heating equipment, ventilation equipment, plumbing equipment, air conditioning equipment and other service facilities, including ductwork, are elevated no lower than 18 inches above the base flood elevation. For all structures located seaward of the Coastal Construction Line, the bottom of the lowest horizontal structural member of the lowest floor shall be elevated to base flood elevation established by the Florida Department of Environmental Protection or the base flood elevation plus 18 inches, whichever is higher.

b. The pile or column foundation and structure attached thereto must be anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Wind and water loading values shall each

have a one percent chance of being equaled or exceeded in any given year (100-year mean recurrence interval).

c. A licensed professional engineer or architect shall develop or review the structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of a. and b. above.

(3) All new construction and substantial improvements shall have the space below the lowest floor either free of obstruction or constructed with nonsupporting breakaway walls, open wood latticework, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. For the purposes of this section, a breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Use of breakaway walls which exceed a design safe loading resistance of 20 pounds per square foot if required by state regulations may be permitted only if a licensed professional engineer or architect certifies that the designs proposed meet the following conditions:

a. Breakaway wall collapse shall result from a water load less than that which would occur during the base flood; and

b. The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and nonstructural). Maximum wind and water loading values to be used in this determination shall each have one percent chance of being equaled or exceeded in any given year (100-year mean recurrence interval). Such enclosed space shall be useable solely for parking of vehicles, building access, or storage.

(4) There shall be no fill used as structural support.

(5) Nonstructural fill shall not be placed in a V zone except with a hydrological analysis prepared and certified by a licensed professional engineer.

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(6) Beach dune type fill may be placed beneath the structure provided that the fill would not enhance erosion on neighboring property and is designed to be compatible with surrounding topography and does not result in lateral forces for which the foundation has not been designed.

(7) There shall be no alteration of sand dunes or mangrove stands.

(8) Placement of manufactured homes or recreational vehicles is prohibited, except in an existing mobile home park or existing home subdivision.

(9) No enclosure below the lowest floor shall be constructed with finishing materials.

(10) Fully enclosed areas below the lowest floor are limited to parking, building access, and limited storage incidental to use of the building. Access to the enclosed area shall be minimum necessary to allow for parking of vehicles (garage door), limited storage of maintenance equipment used in connection with the premises (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be finished or partitioned into separate rooms.

Sec. 73.15. Standards for areas of shallow flooding (AO Zones).

Located within the areas of special flood hazard are areas designated as shallow flooding. These areas have special flood hazards associated with base flood depths of one to three feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate; therefore, the following provisions apply:

(1) All new construction and substantial improvements to existing residential structures shall have the lowest floor, including basement, elevated to the depth number specified on the FIRM, in feet, above the highest adjacent grade. If no depth number is specified, the lowest floor, including basement, shall be elevated at least two feet above the highest adjacent grade.

(2) All new construction and substantial improvements to existing nonresidential structures shall:

a. Have the lowest floor, including basement, elevated to the depth number specified on the flood insurance rate map, in feet, above the highest adjacent grade. If no depth number is specified, the lowest floor, including basement, shall be elevated at least two feet above the highest adjacent grade; or

b. Together with attendant utility and sanitary facilities be completely floodproofed to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

(3) Adequate drainage paths around structures shall be provided on slopes to guide water away from structures.

(4) Fully enclosed areas below the lowest floor that are subject to flooding shall meet the non-elevation design requirements of section 73.13(c).

Sec. 73.16. Standards for subdivision and other development proposals.

The following are standards for subdivision and other development proposals, including manufactured home parks or subdivisions, in addition to other standards and requirements of this Code:

(1) All proposals shall be consistent with the need to minimize flood damage.

(2) All proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.

(3) All proposals shall have adequate drainage provided to reduce exposure to flood hazards.

Sec. 73.17. Standards for small streams.

Structures located within the areas of special flood hazard where small streams exist, but where no base flood data has been provided, or where no floodways have been provided, shall be subject to the following provisions:

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(1) No encroachments, including fill material or structures, shall be located within a distance of the stream bank equal to five times the width of the stream at the top of bank or 20 feet on each side from top of bank, whichever is greater, unless certification by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

(2) New construction or substantial improvements of structures shall be elevated or floodproofed in accordance with elevations established in this article.

Sec. 73.18. Federal standards incorporated.

Notwithstanding any requirement of this article to the contrary, the floodplain management standards of the National Flood Insurance Program (NFIP) regulations are incorporated by reference in this article.

Sec. 73.18. Federal standards incorporated.

Notwithstanding any requirement of this article to the contrary, the floodplain management standards of the National Flood Insurance Program (NFIP) regulations are incorporated by reference in this article.

Sec. 73.19. Appeals.

(a) *Appeals of ~~city manager's~~ floodplain administrator's decisions*. The applicant or any person aggrieved by the ~~city manager's~~ floodplain administrator's decision may appeal the decision within ten days of the decision to the ~~city council~~ planning and zoning board pursuant to the procedures and standards for appeals of ~~major site plans~~ administrative decisions in section ~~64.08~~ 64.04 of this Code.

(b) *Appeals of variances*. Appeals of variance decisions by the ~~board of adjustment~~ planning and zoning board shall be in accordance with section 66.05 of this Code.

Section 2 - Conflict and Severability.

In the event any provision of this ordinance conflicts with any provision of the Code or any other ordinance or resolution of the City of Vero Beach on the subject matter of this

ordinance, the more strict provision shall apply and supersede. If any provision of this ordinance is held to be invalid, unconstitutional, or unenforceable for any reason by a court of competent jurisdiction, such invalidity shall not affect the validity of the remaining portions of this ordinance, which shall be deemed separate, distinct, and independent provisions enforceable to the fullest extent possible.

Section 3 - Effective Date.

This ordinance shall become effective upon final adoption by the City Council.

****

This Ordinance was read for the first time on the _____day of _____, 2011, and was advertised in the Indian River Press Journal on the _____ day of _____, 2011, as being scheduled for a public hearing to be held on the ____ day of _____, 2011, at the conclusion of which hearing it was moved for adoption by Councilmember _____, seconded by Councilmember _____, and adopted by the following vote:

Mayor Jay Kramer	☐ **Yes**	☐ **No**
Vice Mayor Pilar E. Turner	☐ **Yes**	☐ **No**
Councilmember Brian T. Heady	☐ **Yes**	☐ **No**
Councilmember A. Craig Fletcher	☐ **Yes**	☐ **No**
Councilmember Tracy M. Carroll	☐ **Yes**	☐ **No**

ATTEST:

Tammy K. Vock
City Clerk

CITY OF VERO BEACH, FLORIDA

Jay Kramer
Mayor

Approved as to form and legal sufficiency:

Wayne R. Coment
Acting City Attorney

Approved as conforming to municipal policy:

Monte K. Falls
Interim City Manager

Approved as to technical requirements:

Timothy J. McGarry, AICP
Planning and Development Director

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

5-c)

DEPARTMENTAL CORRESPONDENCE

TO: Monte K. Falls, PE
Interim City Manager

FROM: Timothy J. McGarry, AICP
Director of Planning and Development

DATE: July 7, 2011

SUBJECT: **First Reading of an Ordinance to Comprehensively Revise the City's Off-Street Parking and Loading Regulations by Amending Parking Regulations in Chapters 61 (Residential Districts), 62 (Nonresidential Districts), and 63 (Off-Street Parking and Loading) [#Z11-000004-TXT]**

Overview

The Planning and Development Department staff requests that the attached draft ordinance be placed on the City Council's agenda for First Reading on July 19, 2011. The draft ordinance is intended to comprehensively revise the City's off-street parking and loading regulations.

Background

The need for such a comprehensive review was called for in the City's adopted Vision Plan (2005) and more recently in the adopted Evaluation and Appraisal Report (2010) for the Comprehensive Plan. Parking and transportation experts recommend that a municipality's parking regulations should be routinely evaluated every 3 to 5 years.

The City's parking regulations have not been comprehensively reviewed or amended in over 20 years and contain numerous inconsistencies and omissions. The regulations have not kept up with changes that have occurred in the parking needs of various land uses and do not reflect the urbanized setting of the City of Vero Beach as compared to the more suburban setting upon which most of the City's parking regulations are based.

The existing regulations require more parking than needed in many cases resulting in excessive parking areas, characterized by aesthetically undesirable "seas of concrete" that further contribute to increase stormwater flows, degraded surface water quality, and higher development costs. Few incentives are provided in the current code for encouraging mixed use, pedestrian-oriented development as called for in the City's adopted Vision Plan or promoting alternative modes of transportation.

In recognition of these aforementioned issues, the City staff in conjunction with the Planning and Zoning Board has prepared the attached draft ordinance that comprehensively revises the City's parking regulations. In preparing the proposed amendments, the staff reviewed the parking

regulations of Indian River County and other Florida coastal cities in addition to consulting numerous technical documents and articles regarding parking regulations. A list of the technical references is provided in Exhibit 1.

Purpose of Revisions

In preparing these comprehensive revisions to the City's parking regulations, the staff intended to achieve the following objectives:

- Improvement in the clarity and conciseness of the text to make it easier to understand and administer.
- Elimination of out-of-date language.
- Elimination of the numerous inconsistencies in the current regulations relocating most parking requirements in each individual zoning district to Chapter 63, Off-Street Parking and Loading Requirements, of the City Code.
- Provision of off-street parking requirements that better reflect the actual parking needs of development within the City of Vero Beach, to limit the needless expansion of impervious surface areas that increases the costs of development, both in terms of increased pavement and stormwater management facilities, and the degradation of the visual landscape with expansive parking areas.
- Provision of increased flexibility in applying parking regulations to meeting vehicle parking and loading demand needs.

Substantive Revisions

A summary of the substantive revisions to the parking regulations are presented in Exhibit 1 to this report. The summary includes, where appropriate, commentary or rationale for some of the changes.

Exhibit 2 provides a comparison of the existing parking ratios and those proposed in the draft ordinance for selected land uses. Only those parking ratios that are proposed for a substantial change are shown.

Planning and Zoning Board Action

The Planning and Zoning Board conducted two public workshops on May 19th and June 2nd to discuss changes in the City's off-street parking and loading regulations proposed by staff. At a public hearing on July 7th, the Planning and Zoning Board unanimously recommended the consideration and approval of the attached draft ordinance by the City Council.

Recommendation

The Planning and Development Department staff recommends City Council approval of the scheduling and advertising of the draft ordinance for public hearing.

TJM/tf
Attachments

EXHIBIT 1
SUMMARY OF SUBSTANTIVE
PROPOSED CHANGES TO
OFF-STREET PARKING AND LOADING REQUIREMENTS

Chapter 61, Articles I-V (Residential Zoning Districts) and Chapter 62 (Nonresidential Zoning Districts)

Parking requirements for individual uses in each zoning district have been removed and consolidated in Section 63.04 of Chapter 63, Off-Street Parking and Loading Requirements.

[*Commentary:* In several instances in the current regulations, parking requirements for specific land use categories vary for no apparent reason different between districts. Some parking requirements are missing for uses permitted in the zoning district. Relocating parking requirements to the Off-Street Parking and Loading Requirements eliminates this problem and makes it both easier for staff to administer these regulations and for the public to understand what is required.]

Chapter 63, Off-Street Parking and Loading Requirements.

Section 63.01. Intent.

The intent section has been completely rewritten eliminating references to zoning districts that no longer exist.

[*Commentary:* The new intent language includes references to the City's Comprehensive Plan and other adopted policies (e.g. Vision Plan) to promote mixed-use, pedestrian oriented development patterns.]

Section 63.02. Required Off-Street Parking and Loading/Unloading.

1. Existing subsection (a) which contained confusing and misleading language related to restoration of demolished or damage buildings has been eliminated. New subsections (a) and (b) provides specific and clear language on how parking regulations are to be applied to new development and redevelopment of existing uses. It vests existing lawfully established uses from parking requirements as long as any deficit in number of parking spaces is not increased.

   [*Commentary:* The existing language in subsection (a), which the staff believes was unintended, goes far beyond the scope of vesting parking requirements for damaged or destroyed development, by vesting such uses from the use, bulk, and dimensional requirements of the current code.]

2. A new requirement to provide parking for bicycles is provided in subsection (e). Any nonresidential project requiring 20 or more parking spaces would be required to provide one bicycle parking space per 20 parking spaces.

   [*Commentary:* This new requirement promotes alternative transportation modes and is a significant element for any strategy to promote mixed use, pedestrian oriented development.]

3. A new requirement to provide motorcycle spaces is included in subsection (f). Any nonresidential project requiring 100 or more parking spaces would be required to provide one motorcycle space per 25 required parking spaces. Any required motorcycle parking would not be in addition to required parking spaces.

   [*Commentary:* Motorcycle parking requirements based on recommendations in the report entitled *Development of Motorcycle Parking Design Guidelines* prepared by Wayne Cottrell, Associate Professor at California State Polytechnic University for inclusion in the proceedings of the 87th Annual Meeting of the Transportation Research Board, January 13-17, 2008.]

4. As an incentive to provide motorcycle parking, subsection (g) allows nonresidential projects requiring at least 50 parking spaces to substitute one required vehicle parking space with 4 motorcycle parking spaces.

<u>Section 63.03, Computation of Parking Spaces.</u>

1. Subsection (b) provides an example of how parking requirements are to be calculated where a development has been previously approved under different parking requirements.

2. Subsection (c) has been revised to include provisions that require outdoor space under temporary or permanent covered space to be considered as floor area except for the first 200 square feet under an arcade, awning, porch, building overhang or similar structure attached to the building approved under a site plan for dining or retail display areas.

   [*Commentary:* Outdoor dining and retail areas approved under a site plan would have no parking requirements, except for areas with more than 200 square feet under cover. The current code never specifically addresses off-street parking requirements for outdoor dining areas; however, historically such outdoor areas have been calculated as floor area for meeting parking requirements and are considered floor area for impact fees.]

3. Subsection (g) provides that the number of off-street parking spaces is to be reduced by the number of off-street parking spaces abutting the property lines of the lot or parcel.

   [*Commentary:* This proposal recognizes that available on-street parking, especially where durational parking limits are posted, handle a greater parking demand than private on-site parking due to higher turnover. Therefore, if such on-street parking is available, it reduces the need for off-street parking.]

Section 63.04. Parking Ratios

The required parking for uses is presented in this section. A comparison of existing and proposed parking ratios for selected uses is presented in Exhibit 2.

[*Commentary:* The parking ratios were based on a comprehensive review of the City's current regulations, parking regulations of the County and other jurisdictions, and the following resource documents:

- *Shared Parking* (2005), Urban Land Institute
- *21st Century Land Development Code* (2008), American Planning Association
- *Planning and Urban Design Standards* (2006), American Planning Association
- *Parking Standards* (2002, PAS 510/511), American Planning Association
- *Model Shared Parking Ordinance* from *Model Smart Land Development Regulations* (2006, Interim PAS Report), American Planning Association]

The most significant changes to the parking requirements are as follows:

- *Banks and Financial Institutions*: A 20% reduction in parking requirements for establishment without drive-thru facilities and a 50% reduction for establishments with drive-thru facilities.

  [*Commentary:* This significant reduction reflects the changes in the banking industry practices including on-line banking. The staff's recent experience in the approval of the new Center State Bank confirmed the need for this type of change in the parking regulations.]

- *Retail and Personal Services:* A 30% reduction in parking requirements.

  [*Commentary:* This change reflects industry recommendations for mixed-used, pedestrian oriented development projects and urbanized areas.]

- *Restaurants:* A 25% reduction in parking requirement for restaurants that only serve no alcoholic beverage, beer and wine only or have a 4COP license with a SRX modifier which limits the serving of alcohol only if food service is available and establishes limits as to number of seats, square footage, etc.

  [*Commentary:* Restaurants that have a 4COP license with no SRX modifier would still be required to meet the current parking requirements for restaurants. This difference in parking requirements reflects the fact such establishments generally have less turnover than restaurants that serve no alcoholic beverages, serve beer and wine only, or have more restrictions on sale of alcoholic beverages.]

- *Telemarketing/Call Centers:* A 37% increase in parking requirements.

  [*Commentary:* The current code treats telemarketing call centers as a professional office use, which caused significant off-site parking issues while such a business was in existence in Royal Palm Pointe.]

- *Places of Worship:* A 14% increase in parking requirements.

  [*Commentary:* This change brings places of worship in line with the requirements for places of public assembly.]

Section 63.05. Shared Parking Options.

Shared parking options available for meeting off-street parking requirements are identified with specific procedures and eligibility criteria presented in this section. The current code provides broad authority for the Planning and Zoning Board to approve flexible parking techniques, but provides little guidance.

The proposed revision provides authority for approving such shared parking options to the planning director and identifies the following specific options:

- Shared parking for on-site uses with different hours of operation based on a "shared parking calculations matrix" in Table 1 (page 21).

- Shared parking based on the Urban Land Institute (ULI) methodology, if development has at least 20,000 square feet of floor area.

- Shared parking using surplus or otherwise parking spaces off-site subject to an approved parking agreement or site plan approval.

- Shared parking using off-street public parking facilities and spaces subject to City Council approval.

- Shared parking under a unified site plan not utilizing the shared parking calculation in Table 1 or ULI methodology.

Section 63.06. Parking Agreements.

This section sets forth the content and approval procedures for parking agreements.

[*Commentary:* This section codifies procedures developed by the Planning Director and Acting City Attorney to address such agreements.]

Section 63.07. Valet Parking.

New provisions for accommodating valet parking to meet parking requirements are set forth in this section. To utilize this option, a "valet parking plan" would be required to be submitted and approved by the Planning Director. Valet parking plan would also be required for public or private off-street parking facilities utilizing a garage or parking lot attendant.

[*Commentary:* Valet parking allows a property owner to more efficiently meet parking requirements as such parking may be addressed through on- or off-site tandem parking or valet parking areas that can accommodate more vehicles than a self-service parking lot.]

Section 63.08. Tandem Parking.

This new provision provides for "tandem" or "stacked" parking. Tandem parking, which allows a maximum of two vehicles to be parked end-to-end, would be available for "employee only" parking spaces and "valet parking." Specific standards are proposed for the approval and design of such parking. Such parking for "employees" would be limited to one tandem parking space or the number of spaces to accommodate 20 percent of required parking spaces, whichever is greater.

Section 63.09. Guidelines for Parking and Loading Areas.

1. The specific dimensional requirements for parking spaces are included in this subsection and graphically shown in Tables 2, 3, and 4.

2. In subsection (b)(3) and (4), wheelstops have been eliminated as a requirement, except that wheelstops, curbing, wheel or bumper guards are required to protect landscaping.

   [*Commentary:* The current requirement for wheelstops creates safety and liability problems; therefore, wheelstops or similar devices would now only be required to protect landscaped areas.]

3. The amount of compact parking that may be allowed is proposed for a reduction from 30% to 20% in subsection (b)(5). The authority to allow a higher percentage of compact spaces if approved by the Planning and Zoning Board has been eliminated. Additionally, no more than 8 compact spaces may be contiguous and such parking must be located away from high turnover areas near business entrances.

   [*Commentary:* It was the consensus of the Planning and Zoning Board and staff that with the reduction in most parking requirements the number of compact spaces that may be allowed should be reduced. Compact spaces generally are not efficiently utilized, as non-compact vehicles tend to use these spaces which limit the number of actual available spaces. Limitations on number of contiguous compact spaces and location of compact parking are also intended to address these types of issues.]

4. In subsection (d), the authority for modification of certain parking dimensional requirements has been retained, except that the Planning Director is now given authority to modify the required number of loading spaces.

5. Subsection (e) details signage standards for designated parking spaces. Some signs such as "tandem parking" and "loading zones" would be required to have freestanding signs of a certain height and size. Signage for other spaces may be freestanding, painted on wheelstops or marked on the pavement.

Section 63.10. Surfacing Requirements for Parking and Loading Spaces.

This section has been completely rewritten to eliminate overly detailed technical specifications and incorporate more general construction and design criteria based on accepted industry standards and manufacturer's standards and specifications. The City Engineer, rather than the Planning Director as in the current regulations, would have primary responsibility for assuring parking lot constructions meets technical specifications.

EXHIBIT 2
COMPARISON OF EXISTING PARKING RATIOS AND PROPOSED PARKING RATIOS FOR SELECTED USES

Use	Existing	Proposed
Retirement, independent living or adult congregate living facilities	1 sp./3 beds	1 sp./unit
Nursing homes, skilled nursing, intermediate care facilities and assisted living centers	1 sp./3 beds	1 sp./room
Financial and banking services		
Without drive-thru facilities	1 sp./200 sq. ft.	1 sp./250 sq. ft.
With drive-thru facilities	1 sp./200 sq. ft.	1 sp./400 sq. ft.
Business and professional offices	1 sp./300 sq. ft. plus 3 spaces	1 sp/300 sq. ft. or 4 spaces, whichever is greater
Hotels/Motels		
Hotels and motels	1.3 sp./room	1 sp./room plus 1 sp./20 rooms
Accessory uses to hotel	one-half of ratio	½ of ratio, if entry thru lobby or ¾ of ratio
Retail Sales and Personal Services	1 sp./175 sq. ft.	1 sp./250 sq. ft.
Gasoline Service Stations	1 sp./service bay	1 sp./375 sq. ft. of non-retail area plus 1 sp./250 sq. ft.
Restaurants		
With 4COP without SRX modifier	1 sp./75 sq. ft.	1 sp./75 sq. ft.
Take out only restaurants	1 sp./175 sq. ft.	1 sp./200 sq. ft.
All other restaurants	1 sp./75 sq. ft.	1 sp./100 sq. ft.
Telemarketing/call centers	1 sp./300 sq. ft. plus 3 spaces	1 sp./100 sq. ft.

Use	**Existing**	**Proposed**
Manufacturing, warehousing, et.al.	3 sp. plus 1 sp./600 sq. ft.	1 sp./600 sq. ft. or 4 spaces whichever is greater
Places of Worship	1 sp./3.5 seats	1 sp./3 fixed seats or 1 sp./100 sq. ft. of floor
Cultural, civic activities, and Community Centers	1 sp./200 sq. ft.	1 sp./200 sq. ft, or 1 sp./3 fixed seats or 1 sp./100 sq. ft. of public assembly area, whichever is greater

ORDINANCE NO. 2011 – _____

AN ORDINANCE OF THE CITY OF VERO BEACH, FLORIDA, COMPREHENSIVELY AMENDING THE FOLLOWING PARKING REGULATIONS OF THE CITY OF VERO BEACH LAND DEVELOPMENT REGULATIONS: CHAPTER 61, RESIDENTIAL ZONING DISTRICTS, SECTIONS 61.07, 61.43, 61.65, 61.87, AND 61.102; CHAPTER 62, NONRESIDENTIAL DISTRICTS, SECTIONS 62.09, 62.29, 62.39, 62.55, 62.74, 62.91, 62.101, 62.191, 62.212, 62.310, 62.411, AND 62.422; AND CHAPTER 63, OFF-STREET PARKING AND LOADING REQUIREMENTS; PROVIDING FOR CONFLICT AND SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the purpose of this Ordinance is to ensure adequate off-street parking and loading requirements are provided in a manner that protects public safety and the capacity of the road system, reduces adverse impacts on adjacent uses, encourages flexible parking approaches through shared use of parking spaces, and complements and encourages the establishment of mixed use pedestrian-oriented commercial areas; and

WHEREAS, transportation and planning experts recommend that parking regulations be revised every three to five years due to changing conditions and technologies; and

WHEREAS, the City's off-street parking and loading regulations have not been comprehensively revised in more than 20-years and contain numerous inconsistencies; and

WHEREAS, these regulations have not kept up with changes that have occurred in the parking needs of various land uses and do not reflect the urbanized setting of the City of Vero Beach as compared to more suburban settings, the basis upon which most of the City's parking requirements are based; and

WHEREAS, the existing regulations require more parking than needed in many cases resulting in excessive parking areas characterized by aesthetically undesirable "seas of concrete" that further contribute to increased stormwater flows, degraded surface water quality and higher development costs; and

WHEREAS, the current parking regulations provide few incentives for encouraging mixed-use, pedestrian-oriented development as envisioned in the City's adopted Vision Plan or promoting alternative modes of transportation; and

WHEREAS, based on input from the Planning and Zoning Board provided at two public workshops, the Planning and Development Department staff has prepared this Ordinance to comprehensively revise the City's parking regulations; and

WHEREAS, the City Council finds that the adoption of this Ordinance is in the public interest, is consistent with the standards of Section 62.22(i)(2)-(3), and will result in flexible and efficient parking standards to support and complement the City's efforts to encourage and support infill and mixed use development;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VERO BEACH, FLORIDA, THAT:

1. Amendment of Chapter 61, Article I (Single-Family Residential Districts), Section 61.07, Parking Regulations.

Section 61.07 is hereby amended as follows:

Sec. 61.07. Parking regulations.

Off-street parking spaces shall be provided in accordance with chapter 63 of this title. ~~the requirements for specific uses set forth below:~~

~~*Use*~~	~~*Spaces Required*~~
~~Single-family home~~	~~2 spaces.~~
~~Place of worship~~	~~1 space for each 3.5 seats in the main auditorium.~~
~~Private or public elementary school~~	~~1 space/10 seats in the main auditorium or 2 spaces per classroom, whichever is greater.~~
~~Private or public high school or private college~~	~~1 space/8 seats in the main auditorium or 3 seats per classroom, whichever is greater.~~
~~Community center~~	~~1 space/100 sq. ft.~~
~~Library or museum~~	~~1 space/400 sq. ft.~~
~~Live theater or auditorium~~	~~1 space/3 seats.~~

~~Exhibition or assembly hall without fixed seats~~	~~1 space/100 sq. ft.~~
~~Golf course country clubs~~	~~4 spaces/hole plus 1 space/100 sq. ft. for the clubhouse.~~
~~Day care facility~~	~~1 1/2 spaces/staff person required for the licensed capacity of the facility pursuant to local or state agency staff ratio requirements.~~

2. Amendment of Chapter 61, Article III (RM-8 and RM-10 Multiple-Family Residential Districts), Section 61.43, Parking Regulations.

Section 61.43 is hereby amended as follows:

Sec. 61.43. Parking regulations.

Off-street parking spaces shall be provided in accordance with chapter 63 of this title. ~~the requirements for specific uses set forth below:~~

~~*Use*~~	~~*Spaces Required*~~
~~Single-family home~~	~~2 spaces.~~
~~Duplex~~	~~2 spaces/unit.~~
~~Multiple-family dwelling~~	~~2 spaces/unit.~~
~~Places of worship~~	~~1 space for each 3.5 seats in the main auditorium.~~
~~Private or public elementary school~~	~~1 space/10 seats in the main auditorium or 2 spaces per classroom, whichever is greater.~~
~~Private or public high school or college~~	~~1 space/8 seats in the main auditorium or 3 spaces for each classroom, whichever is greater.~~
~~Golf course and country clubs~~	~~4 spaces/hole plus 1 space/100 sq. ft. for the clubhouse.~~

~~Day care facility~~	~~1 1/2 spaces/staff person required for the licensed capacity of the facility pursuant to local or state agency staff ratio requirements.~~
~~Community center~~	~~1 space/100 sq. ft.~~
~~Library or museum~~	~~1 space/400 sq. ft.~~
~~Live theater or auditorium~~	~~1 space/3 seats.~~
~~Exhibition or assembly hall without fixed seats~~	~~1 space/100 sq. ft.~~
~~Adult congregate living facilities~~	~~1 space/2 beds if 8 beds or less, or 1 space/3 beds if more than 8 beds.~~
~~Nursing homes~~	~~1 space/1.5 beds.~~

3. Amendment of Chapter 61, Article IV (RM-10/12 Multiple-Family District), Section 61.65, Parking Regulations.

Section 61.65 is hereby amended as follows:

Sec. 61.65. Parking regulations.

Off-street parking spaces shall be provided in accordance with chapter 63 of this title. ~~the requirements for specific uses set forth below:~~

~~*Use*~~	~~*Spaces Required*~~
~~Single-family home~~	~~2 spaces.~~
~~Duplex~~	~~2 spaces/unit.~~
~~Multiple-family dwelling~~	~~2 spaces/unit.~~
~~Places of worship~~	~~1 space for each 3.5 seats in the main auditorium.~~
~~Private or public elementary school~~	~~1 space/10 seats in the main auditorium or 2 spaces per classroom, whichever is greater.~~

~~Private or public high school or college~~	~~1 space/8 seats in the main auditorium or 3 spaces for each classroom, whichever is greater.~~
~~Community center~~	~~1 space/100 sq. ft.~~
~~Library or museum~~	~~1 space/400 sq. ft.~~
~~Live theater or auditorium~~	~~1 space/3 seats.~~
~~Business and professional office~~	~~3 spaces plus 1 space/300 sq. ft.~~
~~Medical office or clinic~~	~~1 space/150 sq. ft.~~
~~Golf course and country clubs~~	~~4 spaces/hole plus 1 space/100 sq. ft. for the clubhouse.~~
~~Day care facility~~	~~1 1/2 spaces/staff person required for the licensed capacity of the facility pursuant to local or state agency staff ratio requirements.~~
~~Cultural activities~~	~~1 space per 200 sq. ft.~~
~~Adult congregate living facilities~~	~~1 space/2 beds if 8 beds or less, or 1 space/3 beds if more than 8 beds.~~
~~Nursing home~~	~~1 space/1.5 beds.~~

4. Amendment of Chapter 61, Article V (RM-13 Multiple-Family District), Section 61.87, Parking Regulations.

Section 61.87 is hereby amended as follows:

Sec. 61.87. Parking regulations.

Off-street parking spaces shall be provided in accordance with chapter 63 of this title. ~~the requirements for specific uses set forth below:~~

~~*Uses*~~	~~*Spaces Required*~~
~~Single-family home~~	~~2 spaces.~~
~~Congregate multiple-family housing for the elderly~~	~~0.5 space/room or unit.~~

~~Duplex~~	~~2 spaces/unit.~~
~~Multiple-family dwelling~~	~~2 spaces/unit.~~
~~Places of worship~~	~~1 space for each 3.5 seats in the main auditorium.~~
~~Private or public elementary school~~	~~1 space/10 seats in the main auditorium or 2 spaces per classroom, whichever is greater.~~
~~Private or public high school or college~~	~~1 space/8 seats in the main auditorium or 3 spaces per each classroom, whichever is greater.~~
~~Library or museum~~	~~1 space/400 sq. ft.~~
~~Live theater or auditorium~~	~~1 space/3 seats.~~
~~Golf course and country club~~	~~4 spaces/hole plus 1 space per 100 sq. ft.~~
~~for~~	~~the clubhouse.~~
~~Day care facility~~	~~1 1/2 spaces/staff person required for the licensed capacity of the facility pursuant to local or state agency staff ratio requirements.~~
~~Cultural activities~~	~~1 space per 200 sq. ft.~~
~~Adult congregate living facilities~~	~~1 space/2 beds if 8 beds or less, or 1 space/3 beds if more than 8 beds.~~
~~Nursing home~~	~~1 space/1.5 beds.~~

5. Amendment of Chapter 61, Article VI (MPZ Master Plan Zone), Section 61.102, Parking.

Section 61.102 is hereby amended as follows:

Sec. 61.102. Parking regulations.

~~All uses proposed in the MPZ shall provide parking as follows:~~

Off-street parking spaces shall be provided in accordance with chapter 63 of this title.

~~Residential use~~	~~2 spaces per dwelling unit~~
~~Golf course (including club house)~~	~~4 spaces per golf hole~~
~~Dining room (including kitchen)~~	~~1 space per 100 square feet~~
~~Other nonresidential uses~~	~~A maximum of 25 percent of parking spaces required for the most similar use in other zoning districts~~
~~Accessory uses~~	~~The same number of spaces required for the most similar use in other zoning districts~~

6. Amendment of Chapter 62, Article I (Park Districts), Section 62.09, Parking.

Section 62.09 is hereby amended as follows:

Sec. 62.09. Parking regulations.

Off-street parking spaces shall be provided in accordance with chapter 63 of this title. ~~Parking space shall be provided for off-street parking for users of the park but shall not occupy more than 25 percent of the park area in accordance with the following requirements:~~

~~*Use*~~	~~*Spaces Required*~~
~~Accessory restaurant~~	~~1 space/150 sq. ft.~~
~~Community center~~	~~1 space/100 sq. ft.~~
~~Library or museum~~	~~1 space/400 sq. ft.~~
~~Community theater, stadium or auditorium~~	~~1 space/3 seats.~~
~~Exhibition or assembly hall without fixed seats~~	~~1 space/100 sq. ft.~~
~~Skating rink~~	~~1 space/200 sq. ft.~~
~~Health club~~	~~1 space/200 sq. ft.~~
~~Swimming pool not within an enclosed building~~	~~1 space for each 200 sq. ft. of pool area.~~
~~Amusement arcade or other similar recreational building~~	~~1 space/200 sq. ft.~~

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

~~Racquet ball or tennis court~~	~~3 spaces/court.~~
~~Public, private or commercial boat ramp~~	~~20 spaces for a car and trailer ramp lane.~~
~~Golf course~~	~~4 spaces/hole.~~

7. Amendment of Chapter 62, Article II (POI District), Section 62.29, Parking Regulations.

Section 62.29 is hereby amended to read as follows:

Sec. 62.29. Parking regulations.

Off-street parking spaces shall be provided in accordance with chapter 63 of this title. ~~the requirements for specific uses set forth below:~~

~~*Use*~~	~~*Spaces Required*~~
~~Single-family home~~	~~2 spaces.~~
~~Church or place of worship~~	~~1 space/for each 3.5 seats in the main auditorium.~~
~~Banking and savings and loan institutions~~	~~1 space/200 sq. ft.~~
~~Business and professional office~~	~~3 spaces plus 1 space/300 sq. ft.~~
~~Medical office or clinic~~	~~1 space/150 sq. ft.~~
~~Day care facility~~	~~1 1/2 spaces/staff person required for the licensed capacity of the facility pursuant to local or state agency staff ratio requirements.~~
~~Nursing homes and adult congregate living facilities~~	~~1 space/1.5 beds~~
~~Drive-up windows:~~	
~~Banks and savings and loan associations~~	~~4 spaces/window~~
~~Public & private utility~~	~~1 space/1,000 square feet of floor area~~
~~Health and fitness club~~	~~1 space/200 sq. ft.~~

8. Amendment of Chapter 62, Article III (Commercial Districts), Section 62.39, Parking Regulations.

Section 62.39 is hereby amended as follows:

Sec. 62.39. Parking regulations.

Off-street parking spaces shall be provided in accordance with chapter 63 of this title. ~~the requirements for specific uses set forth below.~~

~~*Use*~~	~~*Spaces Required*~~
~~Multiple-family dwelling~~	~~2 spaces/unit.~~
~~Church or place of worship~~	~~1 space for each 3.5 seats in the main auditorium.~~
~~Community center~~	~~1 space/100 sq. ft.~~
~~Library or museum~~	~~1 space/400 sq. ft.~~
~~Hospital or sanitarium~~	~~2 spaces/bed.~~
~~Skilled nursing facility, intermediate care facility or adult congregate living facility~~	~~1 space/1 1/2 beds.~~
~~Live theater or auditorium~~	~~1 space/3 seats.~~
~~Hotel, motel or guest house~~	~~1.3 spaces/sleeping room.~~
~~Hotel, apartment hotel and motel, including accessory uses~~	~~1.3 spaces shall be provided for each sleeping room for hotels, apartment hotels, and motels. In addition to sleeping rooms, if there are other accessory uses provided therein, additional off-street parking shall be provided for those accessory uses at the rate of 50 percent of the requirements for such uses as provided in subsections thereof.~~
~~Banking and savings and loan institutions~~	~~1 space/200 sq. ft.~~
~~Business and professional office~~	~~3 spaces plus 1 space/300 sq. ft.~~
~~Medical office or clinic~~	~~1 space/150 sq. ft.~~

~~Restaurant or cafeteria~~	~~1 space/75 sq. ft.~~
~~Retail store and personal service establishment~~	~~1 space/175 sq. ft.~~
~~Furniture or appliance store, wholesale establishment, machinery and equipment sales and service, trades or services~~	~~1 space/400 sq. ft.~~
~~Manufacturing or industrial establishment, research, and testing laboratory, creamery, bottling plant, warehouse or similar establishment, excluding direct sales to the public.~~	~~3 spaces plus 1 space/600 sq. ft.~~
~~Self-service storage facility~~	~~3 parking spaces located in the proximity of the office. A minimum 24-foot drive aisle shall be provided contiguously along the side of the self-service storage facility containing the access points or doors to the individual storage areas. Parking shall not be designed and located where blockage or access points or doors or the driveway aisle would occur.~~
~~Skating rinks~~	~~1 space/200 sq. ft.~~
~~Health club~~	~~1 space/200 sq. ft.~~
~~Swimming pool not within an enclosed building~~	~~1 space for each 200 sq. ft. of pool area~~
~~Amusement arcade or other similar recreational building~~	~~1 space/200 sq. ft.~~

~~Racquet ball or tennis court~~	~~3 spaces/court.~~
~~Automotive, boat and trailer sales~~	~~1 space/500 sq. ft. of building area plus 1 space/2,500 sq. ft. of outside display area.~~
~~Day care facility~~	~~1 1/2 spaces/staff person required for the licensed capacity of the facility pursuant to local or state agency staff ratio requirements.~~
~~Veterinary hospitals or boarding kennels~~	~~1 space/300 sq. ft.~~
~~Gasoline service stations~~	~~1 space/service bay.~~
~~Mortuary or funeral home~~	~~1 space/100 sq. ft. plus stacking lanes~~ to ~~accommodate 25 cars.~~
~~Plant nurseries and landscape services~~	~~1 space/200 sq. ft. of gross enclosed floor space and 1 space for each 400 sq. ft. of open nursery area~~.
~~Drive-up windows:~~	
~~Banks and savings and loan associations~~	~~4 spaces/window.~~
~~Cultural or civic activities~~	~~1 space per 200 square feet~~
~~Fire Stations~~	~~1 space/500 sq. ft. of gross floor area.~~

9. Amendment of Chapter 62, Article IV (Industrial District), Section 62.55, Parking Regulations.

Section 62.55 is hereby amended as follows:

Sec. 62.55. Parking regulations.

Off-street parking spaces shall be provided in accordance with chapter 63 of this title. ~~the requirements for specific uses set forth below:~~

~~*Use*~~	~~*Spaces Required*~~
~~Business and professional office~~	~~3 spaces plus 1 space/300 sq. ft.~~
~~Crematoriums~~	~~1 space/300 sq. ft.~~
~~Retail store and personal service~~	~~1 space/175 sq. ft.~~

~~establishment~~	
~~Furniture or appliance store, lawn and garden supplies, and agricultural and feed stores, wholesale establishment, machinery and equipment sales and service, trades or services~~	~~1 space/400 sq. ft.~~
~~Manufacturing or industrial establishment, research and testing laboratory, creamery, bottling plant, warehouse or similar establishment, excluding direct sales to the public~~	~~3 spaces plus 1 space/600 sq. ft.~~
~~Amusement arcade or other similar recreational building~~	~~1 space/200 sq. ft.~~
~~Automotive, boat and trailer sales~~	~~1 space/500 sq. ft. of building area plus 1 space/2,500 sq. ft. of outside display area~~.
~~Veterinary hospitals or boarding kennels~~	~~1 space/300 sq. ft.~~
~~Gasoline service stations~~	~~1 space/service bay.~~
~~Plant nurseries and landscape services~~	~~1 space/200 sq. ft. of gross enclosed floor space and 1 space for each 400 sq. ft. of open nursery area.~~
~~Self-storage warehouse~~	~~1 loading zone per building storage unit.~~
~~Educational institutions~~	~~1 space/10 seats in the main auditorium or 2 spaces per classroom, whichever is greater.~~
~~Self-service storage facility~~	~~3 parking spaces located in the proximity of the office. A minimum 24-foot drive aisle~~

	~~shall be provided contiguously along the side of the self-service storage facility containing the access points or doors of the individual storage areas. Parking shall not be designed and located where blockage or access points or doors or the driveway aisle would occur.~~
~~Clubs~~	~~1 space/100 sq. ft.~~
~~Funeral homes~~	~~1 space/100 sq. ft. plus stacking lanes to accommodate 25 cars.~~
~~Fire Stations~~	~~1 space/500 sq. ft. of gross floor area.~~

10. Amendment of Chapter 62, Article V (C-1M Marina District), Section 62.74, Parking Regulations.

Section 62.74 is hereby amended as follows:

Sec. 62.74. Parking regulations.

Off-street parking spaces shall be provided in accordance with chapter 63 of this title. ~~the requirements for specific uses set forth below:~~

~~*Use*~~	~~*Spaces Required*~~
~~Clubs~~	~~1 space/100 sq. ft.~~
~~Motel~~	~~1.3 spaces/sleeping room.~~
~~Motel, including accessory uses~~	~~1.3 spaces shall be provided for each sleeping room for hotels, apartment hotels, and motels. In addition to sleeping rooms, if there are other accessory uses provided therein, additional off-street parking shall be provided for those accessory uses at the rate of 50 percent of the requirements for~~

	~~such uses as provided in subsections thereof.~~
~~Restaurant or cafeteria~~	~~1 space/75 sq. ft.~~
~~Marina~~	~~1 space/3 dry dock stalls, wetslips, or moorings.~~
~~Public, private or commercial boat ramp~~	~~20 spaces for a car and trailer ramp lane.~~
~~Automotive, boat, and trailer sales~~	~~1 space/500 sq. ft. of building area plus 1 space/2,500 sq. ft. of outside display area.~~
~~Fire Stations~~	~~1 space/500 sq. ft. of gross floor area.~~
~~Business and professional office~~	~~3 spaces plus 1 space/300 sq. ft.~~
~~Retail store and personal services establishment~~	~~1 space/175 sq. ft.~~

11. Amendment of Chapter 62, Article VI (C-2M Marina and Yacht Club District), Section 62.91, Parking Regulations.

Section 62.91 is hereby amended as follows:

Sec. 62.91. Parking regulations.

Off-street parking spaces shall be provided in accordance with chapter 63 of this title. ~~There shall be provided a parking area equal to the minimum requirements below. However, if a restaurant is provided as a part of the marina or club facilities, then an area equal to the permanent seating capacity shall be provided and a minimum of 150 parking spaces of the required parking shall be paved.~~

~~*Use*~~	~~*Spaces Required*~~
~~Guest House~~	~~1.3 spaces/guest room~~
~~Private club, country club, or golf clubhouse~~	~~1 space/100 sq. ft.~~
~~Restaurant or cafeteria~~	~~1 space/75 sq. ft.~~
~~Marina~~	~~1 space/3 drydock stalls, wetslips, or moorings.~~

~~Swimming pool not within an enclosed building~~	~~1 space for each 200 sq. ft. of pool area.~~
~~Racquet ball or tennis court~~	~~3 spaces/court.~~
~~Public, private, or commercial boat ramp~~	~~20 spaces for a car and trailer ramp lane.~~
~~Fire Stations~~	~~1 space/500 sq. ft. of gross floor area.~~

12. Amendment of Chapter 62, Article VII (Airport Master Plan Land Use Zones), Section 62.101, Parking Regulations.

Section 62.101 is hereby amended as follows:

Sec. 62.101. Parking regulations.

Off-street parking spaces shall be provided in accordance with chapter 63 of this title. ~~Parking shall be provided as described below:~~

~~*Use*~~	~~*Spaces Required*~~
~~Manufacturing~~	~~3 spaces plus 1 space/600 sq. ft.~~
~~Professional and business offices~~	~~3 spaces plus 1 space/300 sq. ft.~~
~~Manufacturing~~	~~3 spaces plus 1 space/600 sq. ft.~~
~~Professional and business offices~~	~~3 spaces plus 1 space/300 sq. ft.~~
~~Financial institution~~	~~1 space/200 sq. ft.~~
~~Fire stations~~	~~1 space/500 sq. ft. gross floor area~~
~~Personal service~~	~~1 space/175 sq. ft.~~
~~Retail stores~~	~~1 space/175 sq. ft.~~
~~Restaurant~~	~~1 space/75 sq. ft.~~
~~Hotel/motel~~	~~1.3 spaces shall be provided for each sleeping room for hotels, apartment hotels, and motels. In addition to sleeping rooms, if there are accessory uses provided therein, additional off-street parking shall be provided for those accessory uses at the rate of 50 percent of the requirements for such uses.~~

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~~Aeronautical student dormitory~~	~~1.3 spaces for each sleeping room. In addition to sleeping rooms, if there are accessory uses provided, additional off-street parking shall be provided for those accessory uses at the rate of 50 percent of the requirements for such uses.~~
~~Private club or golf clubhouse~~	~~1 space/100 sq. ft.~~
~~Aeronautical schools~~	~~3 spaces/classroom~~
~~Golf course~~	~~4 spaces/hole~~
~~Racquet ball or tennis court~~	~~3 spaces/court~~
~~Health club~~	~~1 space/200 sq. ft. of pool area~~
~~Mobile home~~	~~2 spaces~~
~~T-hangar~~	~~1 space/5 hangars or tie-downs except for manufacturing inventories or pilot training aircraft~~
~~Conventional hangar (excluding commercial or employment generating activities)~~	~~1 space/1,000 sq. ft. up to 10,000~~ ~~1 space/2,000 sq. ft. thereafter~~
~~Trades and services~~	~~1 space/400 sq. ft.~~
~~Educational institutions~~	~~1 space/10 seats in the main Auditorium or 2 spaces per class-room, whichever is greater~~
Self~~-storage facility~~	~~3 space, which shall be located in proximity to the business office. A minimum 24-foot driveway aisle shall be provided contiguously along the side of the self-storage facility containing the various where blockage of access points or doors or the driveway aisle would occur.~~
~~Vehicular sales, rental and service~~	~~1 space/500 sq. ft. of building area Plus 1 space/2,500 sq. ft. of outside display area.~~
~~Vehicular service and maintenance~~	~~1 space/service bay~~

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~~Funeral homes~~	~~1 space/100 sq. ft. plus stacking lanes to accommodate 25 cars~~
~~Commercial amusements~~	~~1 space per 200 sq. ft.~~
~~Multi-family residences~~	~~2 spaces/unit~~
~~Recreation and park areas~~	~~Pursuant to 62.09~~

~~Parking for uses not specifically listed will be determined by using the parking requirements for the use most closely related.~~

13. Amendment of Chapter 62, Article VIII (Hospital and Institutional District), Section 62.191, Parking Regulations.

Section 62.191 is hereby amended as follows:

Sec. 62.191. Parking regulations.

Off-street parking spaces shall be provided in accordance with chapter 63 of this title. ~~the requirements for specific uses set forth below:~~

~~*Use*~~	~~*Spaces Required*~~
~~Multiple-family dwelling~~	~~2 spaces/unit.~~
~~Private club, country club, or clubhouse~~	~~1 space/100 sq. ft.~~
~~Private or public elementary school~~	~~1 space/10 seats in the main auditorium or 2 spaces per classroom, whichever is greater.~~
~~Private or public high school [or] college~~	~~1 space/8 seats in the main auditorium or 3 spaces for each classroom, whichever is greater.~~
~~Community center~~	~~1 space/100 sq. ft.~~
~~Library or museum~~	~~1 space/400 sq. ft.~~
~~Hospital or sanitarium~~	~~2 spaces/bed.~~
~~Skilled nursing facility, intermediate care facility, or adult congregate living facility~~	~~1 space/1 1/2 beds.~~

~~Business and professional office 3 spaces plus 1 space/300 sq. ft.~~

~~Medical office or clinic 1 space/150 sq. ft.~~

14. Amendment of Chapter 62, Article IX (Mixed Use District), Section 62.212, Parking Regulations.

Section 62.212 is hereby amended as follows:

Sec. 62.212. Parking regulations.

Off-street parking shall be provided in accordance with chapter 63 of this title except for the following: ~~Off-street parking shall not occur in the front yard or between a building and any street. Off-street parking spaces shall be provided in accordance with the requirements for specific uses set forth below:~~

Use	*Spaces Required*
~~Efficiency (maximum of 500 sq. ft.)~~	~~1 space~~
~~Single-family home~~	~~2 spaces~~
~~Duplex~~	~~2 spaces/unit~~
~~Multiple-family dwelling~~	
~~1 bedroom~~	~~1.5 spaces/unit~~
~~2 or more bedrooms~~	~~2 spaces/unit~~
~~Community center~~	~~1 space/100 sq. ft.~~
~~Live theater or auditorium~~	~~1 space/3 seats~~
~~Library or museum~~	~~1 space/400 sq. ft.~~
~~Cultural or civic activities~~	~~1 space/200 sq. ft.~~
~~Private or public elementary~~	~~1 space/10 seats in the main school auditorium or 2 spaces per classroom, whichever is greater~~
~~Private or public high school~~	~~1 space/8 seats in the main or college auditorium or 3 seats for each classroom, whichever is greater~~
Medical office	1 space/300 sq. ft.

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~~Church or place of worship~~	~~1 space for each 3.5 seats in the main auditorium~~
Business and professional office	~~3 spaces plus~~ 1 space/600 sq. feet or 4 spaces, whichever is greater
~~Nursing home~~	~~1 space/1.5 beds~~
Retail or personal service establishment	1 space/350 sq. feet
~~Day care service~~	~~1.5 spaces/staff person required for the licensed capacity of the facility pursuant to local or state agency staff ratio requirements~~.
One residential unit/permitted business combination	~~2 spaces plus~~ 1 space ~~per~~/600 sq. feet of business use or 3 spaces whichever is greater

15. Amendment of Chapter 62, Article X (Downtown District), Section 62.310, Parking Regulations.

Section 62.310 is hereby amended as follows:

Sec. 62.310. Parking regulations.

(a) Required parking ~~must~~ shall be located in the rear of buildings or be provided through redesign and construction of public or on-street parking areas.

(b) Off-street parking spaces shall be provided in accordance with chapter 63 of this title except as provided for in this section.

(~~b~~c) Existing nonresidential uses and use changes and improvements which do not increase floor area are exempt from parking requirements.

(d) New nonresidential construction or redevelopment that increase floor area is exempt from providing parking for the first 30 spaces that would be required by ~~the Code in other nonresidential zoning districts~~ chapter 63 of this title. Parking shall be provided at one-half the required applicable ~~rate~~ parking ratio in chapter 63 of this title for projects exceeding the 30 space exemption ~~requirements~~.

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~~(d) Off-street parking spaces for residential uses shall be provided as follows:~~

~~*Use*~~	~~*Spaces Required*~~
~~Efficiency (maximum of 500 sq. ft.)~~	~~1 space~~
~~Single-family home~~	~~2 spaces~~
~~Duplex~~	~~2 spaces/unit~~
~~Multiple-family dwelling:~~	
~~1 bedroom~~	~~1.5 spaces/unit~~
~~2 or more bedrooms~~	~~2 spaces/unit~~
~~Fire Stations~~	~~1 space/500 sq. ft. of gross floor area~~

16. Amendment of Chapter 62, Article XI (RCLO District), Section 62.411, Parking Regulations. Section 62.411 is hereby amended as follows:

Sec. 62.411. Parking regulations.

(a) Off-street parking shall not be permitted in the front yard or between a building and any street.

(b) Off-street parking shall be provided in accordance with chapter 63 of this title, except for the following ~~the requirements for specific uses set forth below~~:

Use	*Spaces Required*
~~Single-family home~~	~~2 spaces~~
~~Duplex home~~	~~2 spaces/unit~~
~~*Multifamily dwelling:*~~	
~~1 bedroom~~	~~1.5 spaces/unit~~
~~2 or more bedrooms~~	~~2 spaces/unit~~
~~Cultural or civic activity~~	~~1 space/200 sq. ft.~~
~~Places of worship~~	~~1 space for each 3.5 seats in the main auditorium~~
~~Day care services~~	~~1.5 spaces/staff person required for licensed capacity of the facility pursuant to local or state staff ratio requirements~~

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~~ACLFs~~	~~1 space/3 beds~~
~~Nursing homes~~	~~1 space/3 beds~~
~~Community residential homes~~	~~1 space/3 beds~~
~~Community center~~	~~1 space/200 sq. ft.~~
~~Public or private school~~	~~1 space/10 seats in the main auditorium or 2 spaces per classroom, whichever is greater~~
Business and professional offices	1 space/600 sq. ft. or 4 spaces, whichever is greater
Medical office	1 space/300 sq. ft.
Personal service	1 space/350 sq. ft.

17. Amendment of Chapter 62, Article XII (Government Use District), Section 62.422, Parking Regulations.

Section 62.422 is hereby amended as follows:

Sec. 62.422. Parking regulations.

Off-street parking spaces shall be provided in accordance with chapter 63 of this title. ~~the requirements for specific uses set forth below:~~

~~*Use*~~	~~*Spaces required*~~
~~Government use~~	~~3 spaces plus 1 space/300 sq. ft.~~
~~Hospital~~	~~2 spaces/bed.~~
~~Public health service~~	~~1 space/150 sq. ft.~~
~~Educational institution~~	~~1 space/10 seats in the main auditorium or 2 spaces per classroom, whichever is greater.~~

18. Amendment of Chapter 63, Off-Street Parking and Loading Requirements, Sections 63.01 through 63.05.

Chapter 63, Off-Street Parking and Loading Requirements, Sections 63.01 through 63.05, is amended as follows:

Sec. 63.01. Intent.

It is the intent of this chapter to ensure that adequate off-street parking and loading spaces are provided to serve the majority of the traffic generated by development in a manner that protects public safety, protects the capacity of the road system, reduces potential adverse impacts on adjacent uses, encourages flexible approaches to meeting parking needs through shared use of parking spaces, and complements and furthers the establishment of mixed use pedestrian-oriented commercial areas within the city as identified in the comprehensive plan and other city policies.

~~Parking shall be provided in all districts at the time any building or structure is constructed, reconstructed, enlarged or increased in capacity by a change of use or the addition of dwelling units, floor area, or seats, as applicable, which substantially increases parking demand as stated in this section, except as modified in specific zoning districts, including C-2A (Downtown Central Business District) and the Beach Business District as the boundary limits exist on the effective date of this ordinance [February 17, 1987] on the official zoning district map of the City of Vero Beach. Furthermore all new C-2A districts created after the above-stated date shall be required to conform to the applicable regulations, including parking, at that time. Further notwithstanding any requirements under this section or any other section or ordinance to the contrary, it is the intent of this chapter to provide for the parking needs of the community while promoting the most flexible possible use of existing buildings and structures for the purpose of maintaining and enhancing their economic utility, historical character, and the viability of the business community~~.

Sec. 63.02. ~~Existing buildings~~ Required off-street parking and loading/unloading.

~~(a) *Damage.* Any permitted building existing on the effective date of this ordinance (March 5, 1985) may be restored to its previous use and square footage, regardless of the amount of damage sustained. Voluntary demolition and removal~~

~~constitutes reconstruction and shall be subject to parking requirements as applicable in this ordinance.~~

(a) *Off-street parking spaces required.* Every use shall be provided with on-site parking in accordance with this title and chapter, except as expressly permitted herein. Such parking facilities shall be provided in the following situations pursuant to the requirements of this chapter:

(1) For construction of any new building;

(2) For any enlargement or addition to an existing building;

(3) For any new use of land or expansion of the use of land required to have off-street parking pursuant to this title and chapter; or

(4) For any change in the occupancy of an existing building or use of land that would create need for a greater number of parking spaces pursuant to this title.

(b) *Existing buildings and uses.* Notwithstanding subsection (a) above, any lawfully established use that is nonconforming as to the number of off-street parking spaces required pursuant to this title and chapter, may continue, expand and/or change the approved use without coming into full compliance with the off-street parking provisions as long as all the following criteria are met:

(1) The deficit in the number of required off-street parking spaces is not increased;

(2) The off-street parking requirements for the proposed expansion or change of use have been met to the maximum extent practical as determined in the professional opinion of the planning director;

(3) The site plan or other development approval for the project is compliant with all other provisions of this title and part.

(c) *Loading space required.* Every building or part thereof erected or occupied by retail, service, manufacturing, storage, hotel, funeral home, or other uses

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similarly involving the receipt or distribution of materials or merchandise by vehicles, shall provide and maintain loading spaces in accordance with the following criteria:

(1) Loading spaces are optional for buildings of 5,000 or less square feet in floor area.

(2) One loading space shall be provided for each 10,000 square feet or fraction thereof of floor area for buildings over 5,000 square feet in floor area.

~~(b) *Additions to buildings.* Whenever a building is enlarged so as to create a need for a greater number of parking spaces, such additional spaces to accommodate that enlargement only will be provided in accordance with this chapter.~~

~~(c) *Change of use.* Whenever a use is intensified so as to create a need for a greater number of parking spaces, such additional parking spaces to accommodate the intensification only will be provided in accordance with this chapter; provided, however, upon demonstration by the applicant that parking requirements could be mitigated or that insufficiencies would not be detrimental to the public welfare, parking less than that required by this chapter, but sufficient to serve the actual needs of the activity, may be allowed by the planning and zoning board.~~

(d) *Accessible parking spaces required.* Accessible parking spaces designed for use by persons with disabilities shall be required and provided pursuant to the applicable provisions of the Florida Building Code. Such spaces shall not be in addition to, but shall substitute for required parking.

(e) *Bicycle parking requirements.* Bicycle parking facilities shall be provided in a designated area by a fixed or stationery bike rack for any nonresidential project that requires 20 or more parking spaces. One bicycle parking space shall be required for every 20 parking spaces.

(f) *Motorcycle parking requirements.* Motorcycle parking facilities shall be provided in designated spaces at a ratio of one motorcycle space per 25 required

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parking spaces for any nonresidential project that requires 100 or more parking spaces. Required motorcycle parking spaces shall not be in addition to, but shall substitute for required parking on a basis of 4 motorcycle spaces per one vehicle parking space.

(g) *Motorcycle parking (optional).* For any nonresidential project requiring at least 50 parking spaces, 4 motorcycle parking spaces as specified in subsection (f) above, may be provided as a substitute for one required vehicle parking space.

(h) *Location of off-street parking.*

(1) All required parking spaces for single family, duplex, and multi-family residential uses shall be located on the same lot or parcel they are intended to serve.

(2) Required parking for all other uses shall be located on the same lot as the principal use they are intended to serve or upon another lot in accordance with subsection (i) below.

(i) *Off-site parking facilities.*

(1) Notwithstanding the definition of accessory use in chapter 60 of this title, accessory parking for an eligible principal use may be located off-site, if approved pursuant to this chapter.

(2) The location of the off-site parking area may be no more than 500 feet walking distance, as measured by the shortest route of effective pedestrian access of a public entrance to the structure or land area to be served, if approved by the planning director.

(3) The location of the off-site parking area may be more than 500 feet walking distance, as measured by the shortest route of effective pedestrian access of a public entrance to the structure or land area to be served, if approved by the planning and zoning board.

(4) A parking agreement may be required for off-site parking pursuant to section 63.06.

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(5) Any off-site parking area shall not be located within a residential zoning district except for an approved conditional use located within the same residential zoning district as the off-site parking.

(6) Any off-site parking area located within a different zoning district than the principal use it is intended to serve shall meet at least one of the following provisions in addition to the requirements above:

a. The zoning district in which the off-site parking is located allows parking lots and garages as a principal use; or,

b. The zoning district in which the off-site parking is located allows the principal use intended to be served by the off-site parking and the proposed off-site parking is occupied by a lawfully established principal use; or

c. The off-site parking is off-street public parking spaces in a non-residential zoning district, subject to a parking agreement approved by city council.

(j) *Use of parking areas.* Required off-street parking areas shall be used for vehicular parking only with no sales, rental, dead storage (including boat and trailer storage), repair work, dismantling or servicing of any kind, unless authorized on a temporary basis pursuant to an approved special events permit.

(k) *Parking in yard areas.* Except for required landscape and buffer areas and as may be restricted elsewhere in this title and part, side yard, rear and front yard areas may be used for required off-street parking areas.

Sec. 63.03~~02~~. Computation of parking spaces.

In computing the number of required parking spaces, the following procedures and rules shall govern:

(a) Off-street parking space requirements shall be pursuant to the schedule for uses presented in this chapter, except as may be modified elsewhere in this title under the individual zoning districts.

(b) Where existing buildings and uses were approved under the parking requirements of a previous ordinance that required less parking than this title, the parking requirements of the less restrictive code shall be applied to those uses and floor area approved under the superseded parking regulations in any change in use or expansion of floor area. This parking computation is to be done on a use by use and floor area by floor area basis. For example, an existing 10,000 square foot building containing 5,000 square feet of retail use and 5,000 square feet of restaurant is to be expanded and redeveloped into a 12,000 square foot building with 3,000 square feet of retail use, a 6,000 square foot restaurant, and 3,000 square feet of office use. The 3,000 square feet of retail use would be calculated using the parking regulations under which retail use was approved. 5,000 square feet of the restaurant would be calculated using the parking regulations under it was approved with the remaining 1,000 square foot under the current regulations. All the office space would be calculated under the current regulations.

~~(a)~~(c) ~~Floor area, as defined in Chapter 60, shall be used to calculate required parking spaces which are based on square footage.~~ The number of off-street required parking spaces shall be calculated based on the following:

(1) Floor area, as defined in chapter 60 of this title.

(2) Temporary or permanent covered space, such as under an arcade, awning, porch, building overhang or similar structure attached to the building, approved under a site plan for dining or retail display areas, except that the first 200 square feet of such area shall be exempt from such calculation.

(3) Outdoor uses and sales displays pursuant to section 63.04.

(~~b~~ d) Where fractional spaces result, the number of spaces required shall be construed to be the next highest whole number.

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(~~c~~ e) The parking requirement for any use not specified shall be the same as that required for a use of a similar nature as recognized herein. ~~or w~~Where not recognized herein, ~~shall be based on criteria published by the American Society of Planning Officials and approved by the planning and zoning board.~~ the parking requirement, subject to approval by the planning director, shall be based on criteria in the most current edition of *Parking Generation* published by the Institute of Transportation Engineers or the *21st Century Land Development Code* published by the American Planning Association or other appropriate reference document, or a specialized parking study prepared by an applicant for a specific use and site. The specialized parking study shall be prepared by a licensed professional engineer or transportation planner certified by the American Planning Association.

(~~d~~ f) In the case of ~~mixed uses~~ 2 or more separate uses are on site, the parking spaces shall be equal to the sum of the several uses computed separately, except when a shared parking calculation option is used to determine the number of parking spaces pursuant to section 63.05.

(g) The required number of off-street parking spaces shall be reduced by the number of off-street parking spaces abutting the property lines of the lot or parcel.

~~(e) All parking spaces required herein shall be located on the same lot with the building or use served, or within five hundred (500) feet, through administrative approval by staff. Parking beyond 500 feet (satellite, remote, or shared parking) must be approved by the planning and zoning board. Distances will be measured along lines of public access from the building to be served.~~

~~(f) Jointly used spaces. Shared use of existing parking spaces, public or private, due to variation in typical hours of operation may be provided~~

~~with the approval of the planning and zoning board. This paragraph shall not apply to residential districts, unless there is an outstanding conditional use related to the shared use.~~

~~Written agreement. In any case where the required parking spaces are not located on the same lot which the structure or use serves, or where such spaces are jointly or collectively provided and used, or where the building or use served and the parking spaces are not in common ownership, a written agreement reserving the area for such off-street parking purposes shall be drawn and executed by the parties concerned, recorded, and made part of the land records and shall be filed with the application for site plan approval. Off-site parking agreements may include private and/or public parking spaces and shall provide for the city to be notified 60 days prior to the termination or cancellation of any such arrangement. This written agreement shall be a covenant running with the land.~~

~~(g) Any existing structure, use, or change of use within the existing C-2A or Beach Business districts, as reflected on area maps available in the city clerk's office, which cannot provide the required parking on-site may provide the required parking by use of satellite parking facilities, as provided for in subsection (e).~~

Sec. 63.04. Parking ratios.

(a) *Applicability.* The required off-street parking requirements in subsection (b) shall apply to all zoning districts, except where expressly stated otherwise in this title.

(b) The following are the required parking ratios by use:

Residential Uses	*Required Parking*
Single family	2 spaces

Duplexes	2 spaces/unit
Efficiency (< 500 sq. ft. of floor area)	One space/unit
Mobile homes	2 spaces/unit
Multiple family One bedroom Two or more bedrooms	 1.5 spaces/unit 2.0 spaces/unit
Community Residential	One space/ 3 beds
Independent living or adult congregate living facilities	One space/unit
Commercial and Service Uses	*Required Parking*
Boarding Houses	One space/room plus 2 spaces
Financial and banking services With drive-thru facilities Without drive-thru facilities	 One space/ 400 sq. ft. of floor area and stacking for 4 vehicles per drive-thru window or automatic teller machine One space/250 sq. ft. of floor area
Business and professional offices	One space/ 300 sq. ft. of floor area or 4 spaces, whichever is greater
Hotels/motels	One space/rentable room plus one space/20 rentable rooms; one-half of the standard parking ratio for each accessory retail or restaurant use where entry is through the hotel lobby; three-fourths of the standard parking ratios for all other retail or restaurant accessory uses
Retail sales and services	One space/250 sq. ft. of floor area
Automobile, boat, & trailer sales	One space/500 sq. ft. of floor area plus one space/2,500 sq. ft. of outdoor sales area
Veterinary hospitals, boarding kennels	One space/300 sq. ft. of floor area
Automobile repair, automobile body, and diagnostic shops	One space/400 sq. ft. of floor area including service bays or 6 spaces whichever is greater; service bays are not included as parking spaces.

Automobile tire and parts stores	One space/400 sq. ft. of floor area including service bays and retail sales/display area; service bays are not included as parking spaces.
Gasoline service stations	One space/375 sq. ft of non-retail floor area, including service bays and car tunnels plus 1 space/250 sq. ft. of retail floor area
Furniture and appliance stores, lawn and garden supplies, wholesale establishments, building supplies machinery, and equipment sales and service	One space/400 sq. ft. of floor area
Contractor's offices	One space/400 sq. ft. or 2 spaces, whichever is greater
Art galleries	One space/400 sq. ft. of floor area
Restaurants With 4COP alcoholic beverage license without SRX modifier Take out only All other restaurants With Drive-thru facilities	 One space/75 sq. ft. of floor area One space/200 sq. ft. of floor area One space/100 sq. ft. of floor area Stacking lane(s) for a minimum of 8 cars in addition to uses above
Mortuaries or funeral homes	One space/200 sq. ft. of floor area and one space/3 fixed seats or one space/100 square feet in public assembly areas ,if no fixed seats plus stacking lanes for a minimum of 25 cars
Crematoria	One space/300 sq. ft. of floor area
Marina	One space/3 dry storage, wet slip or mooring, plus one-half of standard parking ratio for accessory retail uses and one space/ 300 sq. ft. of administrative space
Self-service storage facilities	3 spaces and a 24 ft. wide drive/ access aisle to each individual storage unit
Social and Country Clubs	One space/100 sq. ft. of floor area for clubhouse and dining facilities, plus required parking spaces for each associated use or structure creating user parking demand.

Telemarketing/call centers if the amount of floor area is less than 100 square feet per employee per shift	One space/100 sq. ft. of floor area
Trade and service repair uses	One space/400 sq. ft. of floor area or 2 spaces whichever is greater
Plant nurseries and landscaping services	One space/ 150 sq. ft. of gross floor area of enclosed buildings where merchandise is displayed and transactions occur [Note: Pole barns, mist houses, shade houses, and accessory structures shall not be included for purposing of determining parking requirements.]
Industrial and Whole Trade Uses	*Required Parking*
Manufacturing or industrial establishments, research and testing laboratories, creameries, bottling plants, warehouse or similar establishments, excluding direct sales to the public	One space/600 sq. ft. of floor area or 4 spaces, whichever is greater
Wholesale establishments, excluding direct sales to the public	One space/400 sq. ft. of floor area
Public Assembly Structures/Uses	*Required Parking*
Libraries and museums	One space/400 sq. ft. of floor area
Auditoriums, places of worship, live theaters, motion pictures theaters, community centers; stadiums, and other places of public assembly	One space/ 3 fixed seats or one space/ 100 sq. ft. of floor area in public assembly area, if no fixed seats
Commercial amusements (enclosed)	One space/ 200 sq. ft. of floor area
Racquet ball or tennis courts	3 spaces/court
Skating rinks	One space/200 sq. ft. of floor area
Swimming pool (outdoor)	One space/ 200 sq. ft. of pool area
Golf course	4 spaces/hole and one space/100 sq. ft. of floor area for club and pro shop
Health and exercise clubs	One space per 200 sq. ft. of floor area

Public parks and outdoor recreation uses	2 spaces per gross acre of land generating user parking demand; 40 spaces per acre of public beach; one space/100 sq. ft. of floor area for associated support buildings; plus required parking for other recreational uses and structures specified in this section
Public, private, or commercial boat ramps	6 spaces per ramp; all spaces shall be 14' by 55' to accommodate trailers and oversized vehicles
Airport Uses and Structures	*Required Parking*
Aeronautical student dormitory	One space/sleeping room plus one space/20 rooms; plus one-half of the standard parking ratio for each accessory use
Aeronautical schools	3 spaces/classroom
T-hangers	One space/5 hangers or tie-downs except for manufacturing inventories or pilot training aircraft
Conventional hangers (excluding commercial or employment generating activities	One space/1,000 sq. ft. of floor area up to 10,000 sq. ft and one space/2,000 sq. ft. thereafter
Institutional and Community Facilities and Uses	*Required Parking*
Hospitals	2 spaces/bed
Day care facilities	1.5 spaces/licensed employee
Medical offices and clinics	One space/175 sq. ft. of floor area

Government administrative offices	One space/300 sq. ft. of floor area
Fire station	One space/500 sq. ft. of floor area
Private colleges, universities, and technical/vocational schools	One space/ 2 seats of classroom seating capacity plus parking standards for accessory uses specified in this section
Private and charter high schools	One space/8 seats in the main auditorium or 3 spaces for each classroom, whichever is greater
Private and charter elementary schools	One space/10 seats in the main auditorium or 2 spaces for each classroom, whichever is greater
Public educational facilities	As set by the State Department of Education or School District
Public health services	One space/ 175 sq. ft. of floor area
Nursing homes , skilled nursing, intermediate care facilities and assisted living centers	One space/3 beds
Cultural and civic activities and community centers	One space/ 200 sq. ft. of floor area or 1 space/ 3 fixed seats or 1 space /100 sq. ft. of auditorium, meeting room or place of public assembly without fixed seats, whichever is greater

Sec. 63.05. Shared parking options.

(a) *Purpose.* The purpose of shared parking is to allow for a reduction in the total number of on-site parking spaces which would otherwise be required on-site and to provide for meeting off-street parking requirements through use of off-street parking facilities of another use or site.

(b) *Applicability.* Unless specifically limited by other provisions of this title, a shared parking option pursuant to this section may be used to meet the required minimum number of off-street parking spaces where there are 2 or more establishments or uses with different hours of operation or different hours of peak parking demand, or in situations where surplus parking space is available off-site.

(c) *General provisions.*

(1) Any shared parking using off-site parking spaces to meet parking requirements shall comply with the standards for off-site parking in section 63.02.

(2) Site plans utilizing any shared parking option based on stipulations in the development order regarding uses, floor area and hours of operation, shall have conditions placed on the approved site plan to ensure compliance with the parking requirements of this title and chapter. Any change in these conditions shall require an amendment to the site plan pursuant to this chapter and title.

(d) *Shared parking options.* The following shared parking options shall be available to meet parking requirements of this title and chapter:

(1) Shared parking for on-site uses with different hours of operation based on the shared parking calculation matrix set forth in subsection (e) below.

(2) Shared parking for on-site uses based on preparation of a shared parking study prepared in accordance with the methodology recommended in

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the *Shared Parking 2nd Edition* or latest edition, published by the Urban Land Institute (ULI).

(3) Shared parking using surplus or otherwise available parking spaces off-site.

(4) Shared parking using public parking facilities and spaces.

(5) Shared parking under a unified site plan without using the shared parking calculation matrix in Table 1 or the ULI methodology.

(e) *Shared parking using shared parking calculation matrix.* The shared parking calculation matrix shown in Table 1 may be applied to calculate the minimum parking requirements in accordance with the following procedures:

(1) Each individual use and floor per use is identified and the minimum parking requirements per use is calculated based on parking standards of this title.

(2) The minimum parking requirements for each individual use is then multiplied by the appropriate percentage set forth in the table below for each of the 5 designated time periods.

(3) The resulting calculations for each of the 5 vertical columns in the table are summed.

(4) The minimum parking space requirement is the highest sum among the 5 vertical columns resulting from the calculation in subparagraph (3) above. Time periods not covered in the matrix below are ignored for purposes of calculating shared parking.

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TABLE 1

SHARED PARKING CALCULATIONS MATRIX

Use	Weekday			Weekend	
	Night	Day	Evening	Day	Evening
	Midnight-6 A.M.	9 A.M. to 4 P.M.	6 P.M. to Midnight	9 A.M. to 4 P.M.	6 P.M. to Midnight
Residential	100%	60%	90%	80%	90%
Business & Professional Office[1]	5%	100%	10%	10%	5%
Retail Sales & Services	5%	70%	90%	100%	70%
Hotel	80%	75%	100%	75%	100%
Restaurant	10%	50%	100%	50%	100%
Entertainment[2]	10%	40%	100%	80%	100%
All Others	100%	100%	100%	100%	100%

Notes:

1. Includes medical offices and clinics; banks and savings and loan institutions and similar uses.

2. Theaters, bowling alleys, meeting halls, places of assembly and similar uses.

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(f) *Shared parking using the ULI shared parking option.* The required minimum parking may be calculated by following the methodology, principles and standards in *Shared Parking, 2nd Edition or* latest edition, published by the ULI. A non-refundable fee in addition to any application fees under chapter 64 of this title shall be required to process and review the submitted shared parking study under this alternative. The use of this alternative is subject to the following standards:

(1) The development proposed for use of this alternative shall contain a minimum of 20,000 square feet of floor area;

(2) The parking ratios (spaces/unit for visitors and customers) for land uses used in *Shared Parking* shall be followed in applying this alternative and not the parking requirements of this title or chapter; and

(3) Such shared parking study shall be prepared by an engineer licensed in the State of Florida or transportation planner certified by the American Planning Association (APA).

(4) Such shared parking study shall require approval by the planning director.

(g) *Shared parking using off-site parking facilities.* Shared parking using off-site parking spaces, available either due to a surplus of parking spaces or due to variations in the hours of operation of businesses on the supplying site may be used to meet the minimum parking requirements subject to the following provisions:

(1) If the property supplying the parking and the property requiring the property are under separate ownership, an approved parking agreement shall be required pursuant to section 63.06; or

(2) If the property supplying the parking and the property needing the parking are under a single ownership, the supplying and needing properties shall require approval of these arrangements through approvals of the individual site plans for the participating properties pursuant to chapter 64 of this title.

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(h) *Shared parking using off-street public parking facilities.* Shared parking at city-owned off-street parking facilities may be used to meet the minimum parking requirements of this title, subject to the provisions of this chapter and the city council entering into a lease agreement with the applicant for the shared parking. To approve this shared parking for use of the public parking spaces, the applicant shall be required to demonstrate that the use of the spaces will not conflict with other users of parking. To approve shared parking in a city-owned park, the city council shall be required to make a finding that the parking needed for the off-site use will not adversely impact public access and use and enjoyment of the park where the parking is located.

(i) *Shared parking under a unified site plan.* When uses on a site, subject to approval under a unified site plan, have differing hours of operation, the approving authority for the site plan may grant relief from the parking requirements of this chapter by allowing the double counting of parking spaces. Any such site plan approval shall have a specific condition limiting the hours of operation of the affected businesses to ensure that adequate parking spaces are available.

Sec. 63.06. Parking agreements.

(a) *Applicability.* An approved parking agreement, executed by all parties having a legal interest in properties covered by the agreement, shall be required for any off-site parking involving two different property owners. The form of the parking agreement shall be prescribed by the planning director and approved by the city attorney.

(b) *General provisions.*

(1) The parking agreement shall be approved by the planning director and as to legal sufficiency by the city attorney. The agreement shall provide the City with the right of enforcement both through code enforcement proceedings and a court of competent jurisdiction.

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(2) The parking agreement shall be binding upon the executed parties and shall continue in full force and effect for perpetuity. It may only be terminated by approval of the planning director, if replacement parking is obtained or the parking is no longer needed by the needing property.

(3) The planning director and all parties to the parking agreement shall be given notification by registered mail 60 days prior to the termination or cancellation of the parking agreement.

(4) If the parking agreement is no longer in force, parking shall be provided as otherwise required by this chapter.

(5) Any executed parking agreement approved by the planning director and recorded in the city's clerk's records and shall only be changed or modified pursuant to this chapter with the approval of the planning director.

(6) The parking agreement shall be a condition of site plan or development approval for the site requiring shared parking to meet the minimum parking requirements of this title and chapter.

(c) *Approval process and recordation.*

(1) The parking agreement providing for the shared use of parking, executed by all parties involved, shall be submitted to the planning and development department for review and approval along with nonrefundable fee for processing and reviewing the agreement in addition to any application fees pursuant to chapter 64 of this title.

(2) The executed parking agreement shall be approved by the planning director if the following conditions are met:

a. The parking agreement is consistent with the approved shared parking application.

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b. The parking agreement is consistent with the approved site plan or other development approval.

c. The parking agreement is properly executed by all parties and is approved as to legal form and sufficiency by the city attorney.

(3) The executed parking agreement shall be recorded by the planning director in the city clerk's records with a copy retained in the planning and development department's records. Executed copies of the recorded agreement shall be submitted to all parties to the agreement.

Sec. 63.07. Valet parking.

(a) *Applicability.* The off-street parking requirements of this title and chapter may be met through utilization of valet parking authorized by an approved valet parking plan. A valet parking plan shall be required where parking attendants are used during business hours to park vehicles on or off-site to meet parking requirements of this title and chapter.

(b) *Valet parking plan.* In conjunction with submittal of a site plan application pursuant to chapter 64 of this title, a proposed valet parking plan shall be submitted for approval by the planning director that contains the following:

(1) A detailed description of the valet parking service operation including its hours and days of operation.

(2) A site plan showing the location of the parking, the spaces or areas available to the valet service, the area for drop-off, location and layout of any valet parking spaces or areas, and a pedestrian circulation plan.

(3) A signage plan identifying the valet service and, if appropriate, the valet parking spaces or areas only available for valet service. Valet parking space and area signs shall be in accordance with standards in section 63.09. Notwithstanding the prohibition against sandwich board ('v') signs in chapter 38, article I of this part, one temporary sandwich board sign

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may be placed at a vehicle drop-off or pick-up location; however, said sign shall be no larger than 2 feet in width and 3 feet in height as measured from grade and shall be removed and stored during the hours the valet service is not in operation.

(4) In calculating the number of valet parking available in valet parking areas designated which are not identified as single or tandem parking spaces, the valet parking capacity shall be calculated at one vehicle per 160 square feet of area, excluding access aisles and driveways.

(c) *Off-site valet parking.* If any parking of vehicles will be off-site, the applicable requirements of sections 63.02 and 63.05 shall be met.

(d) *Approved valet parking plan.*

(1) An approved valet parking plan shall be a condition of site plan approval and shall only be changed or modified in conjunction with an amendment to the approved site plan.

(2) An approved valet parking plan may be terminated by the property owner only through an amendment to the approved site plan that meets the minimum parking requirements of this title and chapter.

(3) Failure to maintain the valet parking service and operations pursuant to the approved valet parking plan and site plan shall constitute a violation of this Code.

Sec. 63.08. Tandem parking.

(a) *Applicability.* Tandem parking to meet off-street parking requirements may be approved by the planning director in the following situations:

(1) For parking restricted for use by employees of the on-site businesses; or,

(2) As part of an approved valet parking plan pursuant to section 63.07.

(b) *Tandem parking standards.* Tandem parking approved pursuant to this section shall be required to meet and maintain the following standards in addition to design and signage requirements of section 63.09:

(1) No more than 2 vehicles shall be parked in a tandem parking space, so that no more than one vehicle has to move to allow egress of another.

(2) Provision shall be made on-site for shifting of vehicles without the movement of vehicles on to public streets.

(3) For tandem parking restricted for use by employees not subject to a valet parking plan, the following requirements shall apply:

a. The number of tandem parking spaces shall not exceed one space or the number of spaces to accommodate 20 percent of required off-street parking spaces, whichever is greater; and

b. Each tandem parking space shall only be used by employees of the same business establishment.

(4) Any reasonable conditions that the planning director finds are necessary to ensure compliance with this chapter and ensure such parking does not adversely affect the use of the site or create safety issues.

Sec. 63.09~~04~~. Guidelines for parking and loading areas.

~~(a) *Stalls and aisles.* Parking stalls and aisles shall be provided. Table I and Diagrams ST-24, ST-25, ST-26, ST-27, and ST-2.3 are appended to illustrate, though not limit, engineering standards.~~

~~The following design criteria is applicable to all parking spaces, except single family homes and duplexes:~~

~~(1) Each parking stall shall be accessible from an aisle or driveway and designed so that no automobile shall back into a public street in order to exit a parking stall. The internal design of the parking lot shall be~~

~~designed to facilitate vehicular circulation and avoid conflict between pedestrian and vehicular movements.~~

~~(2) No door or pedestrian entrance at ground level shall open directly upon any driveway or access aisle unless the doorway or pedestrian entrance is at least three feet from said driveway or access aisle.~~

~~(3) All parking spaces shall have lines between spaces to indicate individual stalls, and each stall shall be provided with wheel stops approved by the planning and zoning board.~~

~~a. Wheel stops for stalls adjacent to landscaped strips shall be located 2 1/2 feet from the front end of the stall to prevent encroachment into required landscaped areas. The front 2 feet of the stall may be kept as a maintained vegetative ground cover area although no credit will be extended toward the open space or landscape ordinance requirements.~~

~~b. Wheel stops for stalls not adjacent to landscaped strips shall be located 3 1/2 feet from the front end of the stall. The front 3 feet of the stall may be kept as a maintained vegetative ground cover area although no credit will be extended toward the open space or landscape ordinance requirements.~~

~~(4) Thirty percent of the required number of parking spaces may be designated for compact cars. Additional compact spaces may be granted by the planning and zoning board. Such compact car stalls shall be 7 1/2 feet wide by 15 feet long and shall be marked for compact cars only and located on the site so as to meet the approval of the department of planning.~~

(a) *Specifications for spaces and aisles.*

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(1) All regular vehicular parking spaces and aisles shall be provided pursuant to the minimum dimensional specifications in Table 2 at the conclusion of this chapter and in accordance with accepted engineering standards approved by the city engineer.

(2) All compact parking spaces shall be at least 7.5 feet wide by 15 feet long.

(3) All motorcycle parking shall be angled 90^0 and in accordance with the dimensional requirements of Table 3 at the conclusion of this chapter.

(4) All tandem parking spaces shall be angled 90^0 and in accordance with the minimum dimensional requirements of Table 4 at the conclusion of this chapter and comply with the standards of section 63.08.

(5) All bicycle parking spaces shall be at least 2.5 feet in width and 6 feet in length with a minimum overhead clearance of 7 feet. The bicycle rack or similar device for the bicycle parking spaces shall be located within 50 feet of building entrance and shall be securely affixed to the ground to allow the bicycle to be locked and chained. The design and location of bicycle racks shall be submitted with the site plan application and shall require approval by the city engineer.

(b) *Parking design criteria.* The following design criteria apply to all non-bicycle parking spaces, except for single-family homes and duplexes:

(1) Each parking space shall be accessible from an aisle or driveway and designed so that no vehicle shall back into a public street in order to exit a parking space. The internal design of the parking lot shall be designed to facilitate vehicular circulation and avoid conflict between pedestrian and vehicular movements.

(2) No door or pedestrian entrance at ground level shall open directly upon any driveway or access aisle unless the doorway or pedestrian entrance is at least three feet from said driveway or access aisle.

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(3) All parking spaces shall have lines between spaces or other types of surface treatment approved by the city engineer to indicate individual or tandem spaces, except for non-paved parking spaces.

(4) Wheelstops, wheel or bumper guards, or continuous curbing shall be provided to protect landscape and pedestrian areas from vehicle encroachment. Designs may be approved by the city engineer to allow up to 2 feet of vehicle overhang into landscape areas if such overhang would not interfere with landscaping. Vehicle overhang in pedestrian areas may be allowed if such overhang allows for a clear pedestrian path of 4 feet.

(5) Up to 20% of the required number of parking spaces may be designated for compact cars. Such spaces shall be designated "Compact" in accordance with the signage standards in subsection (e) below. Compact cars shall be concentrated in groupings of no more than 8 contiguous compact parking spaces and shall not be located in high vehicle turnover areas which are in close proximity to the main building entrances.

(6) Where motorcycle parking spaces are provided, such spaces shall be designated "Motorcycles" in accordance with the signage standards in subsection (e) below.

(7) Where tandem parking spaces are provided, they shall be designated "Employees Only" or "Valet Parking Only," as applicable, in accordance with the signage standards in subsection (e) below. If any of the designated spaces are for a specific business establishment on a site with multiple business establishments, the name or corporate logo of that business shall be included on the sign.

(8) Access from one section of an on-site parking lot to another on-site parking area shall be provided on-site.

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~~(b) *Loading spaces.* Every building or part thereof erected or occupied by retail businesses, service, manufacturing, storage, hotel, funeral home, or other uses similarly involving the receipt or distribution of materials or merchandise by vehicles, shall provide and maintain loading spaces in accordance with the following formula:~~

~~(1) Loading spaces are optional for buildings of 5,000 or less square feet.~~

~~(2) One loading space shall be provided for each 10,000 square feet or fraction thereof of floor area for buildings over 5,000 square feet.~~

~~(3) Each loading space shall be not less than 12 feet in width, 35 feet in depth, and 14 feet in height.~~

(c) *Loading spaces.* Each required loading space shall not be less than 12 feet in width and 35 feet in depth. If the loading space is covered, it shall have a minimum height clearance of 14 feet from the top of the grade to the ceiling or cover. All loading spaces shall be marked with lines on the pavement and designated "No Parking, Loading Zone" in accordance with the signage standards in subsection (e) below unless otherwise approved by the planning director.

(~~c~~d) *Modifications.* The ~~director of~~ planning director may approve, in consultation with the city engineer, modifications to the specifications set forth in this chapter relating to ~~size of~~ the dimensional requirements for parking and loading spaces, ~~and~~ aisle widths, and loading space requirements upon a demonstrated need by the applicant. In considering modifications to the specifications required by this section, the director shall be guided by ~~*Architectural Graphic Standards,* latest edition, by Ramsey and Sleeper~~ *Planning and Urban Design Standards*, latest edition, published by the APA. However, other than expressly permitted by this chapter, no modification in the required number of parking ~~or loading~~ spaces ~~for new construction~~ shall be ~~granted~~ approved except by the planning and zoning board through the granting of a special exception.

(~~d~~e) *Signage for designated parking spaces.* Signs intended or required by this chapter to designate parking spaces for use by patrons or employees of a particular tenant, loading spaces, and valet, tandem, compact and motorcycles parking spaces are exempt from regulations outlined in ~~C~~chapter 38, article I ~~Signs~~ of this part; however, ~~the~~ such signs shall comply with the following:

(1) The signs ~~may~~ shall be located only ~~at a multiuse commercial office complex~~ in parking facilities for multi-family and nonresidential uses.

(2) The location of such signs shall be ~~included on a site plan for new developments or a minor change for existing developments~~ depicted on the approved site plan or amendment to a site plan.

(3) The signs shall not be located in the required landscape area ~~or within the required parking space~~.

(4) Signs for designating regular parking spaces for patrons and employees, valet parking or spaces for compact vehicles and motorcycles shall be freestanding, painted on wheel stops, or marked on the pavement with lettering of a minimum size of 6 inches. If freestanding, such signs shall not exceed 1.5 square feet in area and 2.5 feet in height as measured from the top of the sign to grade.

(5) Signs for tandem parking spaces and loading zones shall be freestanding only, unless otherwise approved by the planning director. The signs shall not exceed 1.5 square feet in area and shall be 5 feet in height as measured from the top of the sign to grade.

(6) Where exclusive patron, employee, or valet parking is concentrated in specific parking areas with limited or controlled access to entry, the planning director may approve the placement of one freestanding area sign at each entry point to the parking area. Such sign may substitute for individual signage required in subsection (b) above for certain parking

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spaces, if approved by the planning director. The freestanding sign shall meet the height and size requirements for tandem parking spaces.

(7) All freestanding signs pursuant to this section shall be in accordance with the guidelines in the latest edition of the *Manual on Uniform Traffic Control Devices* published by the Federal Highway Administration unless otherwise approved by the city engineer.

~~(4) The signs shall not exceed one square foot in size.~~

~~(5) The top of the signs shall not exceed 2.5 feet in height.~~

~~(6) Signs painted on wheel stops shall be exempt from this section.~~

Sec. 63.10~~5~~. Surfacing requirements for parking and loading spaces.

~~In all zoning districts, surfacing of all off-street parking areas and drives, except in R-1AA, R-1A and R-1 zones, shall be as follows:~~

(a) *Applicability.* Except for single family uses and as authorized by this section, all off-street parking areas and driveways shall be required to be surfaced to minimize nuisance from dust and soil erosion. Such parking surfaces shall be constructed with rock, gravel, concrete, brick, asphalt, turf block, or other surfaces of comparable durability approved by the city engineer and in accordance with accepted industry practices.

(b) *Drainage and surfacing.* Parking and loading areas shall be properly graded for drainage; surfaced with durable materials in accordance with accepted industry standards approved by the city engineer; and maintained in good condition free of weeds, dust, trash, and debris.

(c) *Permeable surfaces.* The city engineer may approve the use of permeable surfaces that comply with sound engineering practices for parking spaces and loading areas subject to the following conditions:

(1) The permeable surface parking and loading areas shall be designed by a professional engineer licensed in the State of Florida, who shall submit in

the site plan application sealed construction drawings and other information, such as sub-surface soil testing, required by the city engineer to demonstrate compliance with this subsection and stormwater management provisions of this part.

(2) The permeable surface parking and loading areas shall be designed to accepted industry and manufacturer's standards and specifications.

(3) The permeable pavement shall be maintained by the property owner pursuant to a continuing maintenance program approved by the city engineer.

(d) *Non-paved parking.* Fully sodded or otherwise stabilized parking may be approved by the city engineer for projects subject to infrequent daily uses, such as churches or overflow parking for public assembly uses, except that any required accessible parking shall be paved in accordance with the Florida Building Code. Non-paved parking shall be required to meet the following requirements and standards:

(1) In addition to other requirements of this chapter, any application for site plan approval proposing the use of non-paved parking shall include supporting information certified by an engineer licensed by the State of Florida that demonstrates the use and adequacy of the unpaved "infrequent use" parking surface. The information to be provided with the site plan application shall be prescribed by the city engineer.

(2) The following standards shall be met in any approved non-paved parking spaces:

a. The materials cross-section and load bearing capabilities in relation to the intended use shall be approved by the city engineer.

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b. Where used in conjunction with paved spaces, the non-paved spaces shall be located so as to be used less often than paved spaces.

c. Non-paved parking spaces shall be directly accessed from a paved parking aisle for all uses except very infrequent uses with an annual average usage of no more than one use per week.

(3) Wheel stops or similar devices may be required in all or some portion of the unpaved parking area, if in the professional opinion of the planning director that such a condition is reasonable to ensure that parking spaces to be made available adequately handle required off-street parking needs.

~~(a) *Surface materials specifications.* All parking areas and approaches thereto, as herein defined, shall require a minimum surfacing material of four-inch reinforced concrete, or six inches of lime rock, after compaction or a comparable material and one inch minimum asphaltic topping. Unreinforced concrete may be used in accordance with the *Municipal Concrete Pavement Manual* as published by the American Concrete Paving Association.~~

~~(b) *Porous surfacing.* Porous parking surfaces may be used on specific sites within the City of Vero Beach after the suitability of such use has been demonstrated by the land owner or his designated agent, and approved by the director of planning as an alternative to the surface requirements of this chapter.~~

~~(1) Supportive Information: In addition to other requirements of this chapter, any application for site plan approval which incorporates the use of a porous parking surface shall include the following which shall be certified by a registered engineer:~~

~~a. A cross section of the structural section to be used on the parking area, certified as appropriate, based on natural characteristics of~~

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~~the site, traffic generating characteristics, and load bearing requirements of proposed use, anticipated surface water runoff, and durability and porosity of proposed surface.~~

~~b. Detailed drainage plan.~~

~~c. Percolation tests in appropriate areas of site to describe any varied soil permeability conditions present on-site.~~

~~d. Estimated location of the groundwater table during wettest season.~~

~~e. Description of existing soils on parking area to a minimum depth of five feet below the bottom of the structural section or to the water table.~~

~~f. Description of the traffic-generating characteristics of the site, including frequency of use, turn over, type of vehicles using surface, and anticipated load-bearing requirements in pounds per square inch.~~

~~g. Test profile of proposed construction material including structural number of section, density, stability of materials, and water absorption. The stability of the proposed improved surface shall not be less than 50 pounds per square inch, Florida-bearing capacity or its equivalent, for a depth of not less than 8 inches.~~

~~h. A maintenance program directed toward achieving orderly and neat appearance, maintenance of grassed areas and replacement of dead plant material, and repair of surface damage or clogging of subsurface base.~~

~~i. Any other information that may be required by the director of planning.~~

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

~~(2) Continuing Maintenance: A continuing maintenance program shall be required to be carried out by the land owner in all cases where a porous parking surface is approved by the director of planning. Such maintenance program shall include maintenance of neat and orderly appearance, maintenance of grassed areas and other vegetation, replacement of dead plant material, and repair of surface damage or clogging of subsurface base. Violation of such maintenance program shall be subject to penalties as provided in the Code of Ordinances.~~

[THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK.]

19. Amendment of Chapter 63, Off-Street Parking and Loading Requirements, Table I.

Table 1 is hereby amended as follow:

TABLE ~~I~~ 2

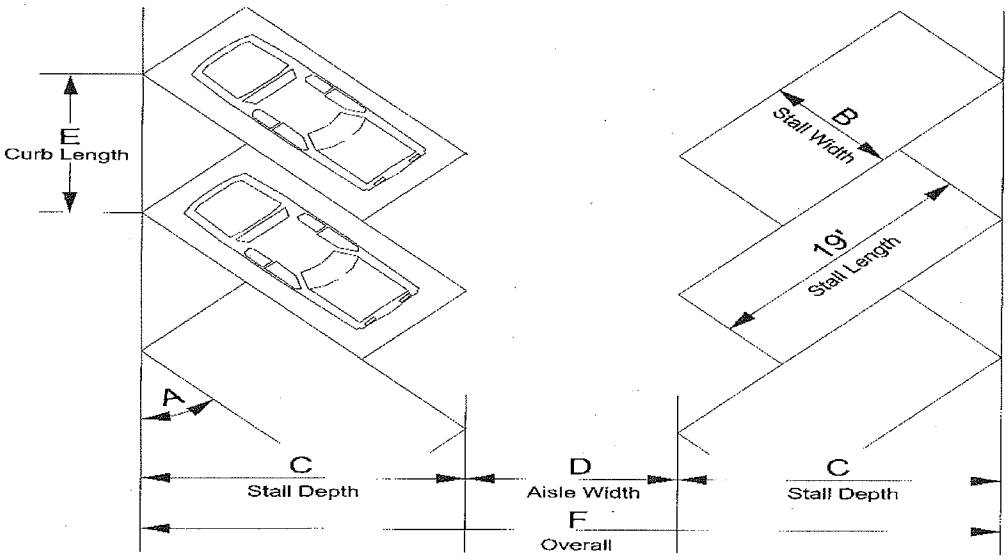
MINIMUM SPACE AND DIMENSIONAL REQUIREMENTS

~~at~~

~~VARIOUS PARKING ANGLES FOR SELF-PARKING FACILITIES~~

FOR OFF-STREET SELF-PARKING FACILITIES

A	B	C	D	E	F
Parking Angle	*Stall Width*	*Stall Depth*	*Aisle Width*	*Curb Length*	*Overall*
0^0	8.0'	8.0'	12.0'	23.0'	28.0'
20^0	9.0'	15.0'	11.0'	26.3'	41.0'
30^0	9.0'	17.3'	11.0'	18.0'	45.6'
40^0	9.0'	19.1'	12.0'	14.0'	50.2'
45^0	9.0'	19.8'	13.0'	12.7'	52.6'
50^0	9.0'	20.4'	15.0'	11.7'	55.8'
60^0	9.0'	21.0'	18.0'	10.4'	60.0'
70^0	9.0'	21.0'	19.0'	9.6'	61.0'
80^0	9.0'	20.3'	24.0'	9.1'	64.3'
90^0	9.0'	19.0'	24.0'	9.0'	62.0'



CODING: Words ~~stricken~~ are deletions; words underlined are additions.

20. Amendment of Chapter 63, Off-Street Parking and Loading Requirements, ST-24, ST-25, ST-26, ST-27, and ST 2.3.

Illustrations ST-24, ST-25, ST-26, ST-27, and ST 2.3 are hereby deleted and replaced with the following:

TABLE 3

MINIMUM MOTORCYCLE PARKING SPACE DIMENSIONS

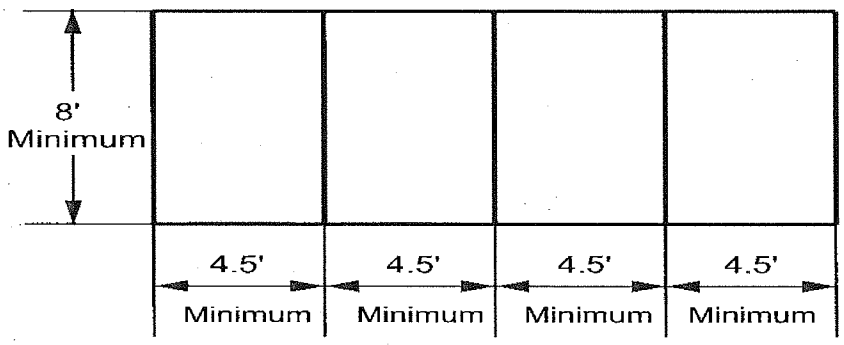
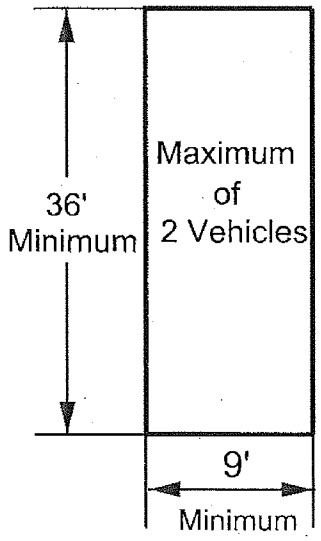


TABLE 4

MINIMUM TANDEM PARKING SPACE DIMENSIONS



Section 21. Conflict and Severability.

In the event any provision of this ordinance conflicts with any other provision of this Code or any other ordinance or resolution of the City of Vero Beach on the subject matter of this ordinance, the more strict provision shall apply and supersede. If any provision of this article is held to be invalid, unconstitutional, or unenforceable for any reason by a court of competent jurisdiction, such invalidity shall not affect the validity of the remaining portions of this article, which shall be deemed separate, distinct, and independent provisions enforceable to the fullest extent possible.

Section 22. Effective Date.

This ordinance shall become effective upon final adoption by the City Council.

****

This Ordinance was read for the first time on the _____day of _____, 2011, and was advertised in the Indian River Press Journal on the ____ day of _____, 2011, as being scheduled for a public hearing to be held on the ____ day of _____, 2011, at the conclusion of which hearing it was moved for adoption by Councilmember _____, seconded by Councilmember _____, and adopted by the following vote:

Mayor Jay Kramer	☐ **Yes**	☐ **No**
Vice Mayor Pilar E. Turner	☐ **Yes**	☐ **No**
Councilmember Brian T. Heady	☐ **Yes**	☐ **No**
Councilmember Craig Fletcher	☐ **Yes**	☐ **No**
Councilmember Tracy M. Carroll	☐ **Yes**	☐ **No**

ATTEST:

Tammy K. Vock
City Clerk

CITY OF VERO BEACH, FLORIDA

Jay Kramer
Mayor

Approved as to form and legal sufficiency:

Wayne R. Coment
Acting City Attorney

Approved as conforming to municipal policy:

Monte K. Falls
Interim City Manager

Approved as to technical requirements:

Timothy J. McGarry, AICP
Planning and Development Director

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

5-D)

DEPARTMENTAL CORRESPONDENCE

TO: Monte K. Falls, Interim City Manager
DEPT: City Manager

FROM: Donald H. Dexter, Jr., Interim Assistant Director
DEPT: Public Works

DATE: July 11, 2011

RE: Residential Neighborhood Traffic Management Program For Speed and Traffic Control

Recommendation:

Place this item on the City Council's agenda for First Reading on July 19, 2011.

Background:

The attached Traffic Calming Policy has been developed to address traffic issues that are brought to the City's attention by residents who are concerned about various traffic related conditions on their neighborhood streets. This policy will provide a process and guidelines for the City's staff and citizens to follow as traffic related conditions are analyzed and addressed.

The Traffic Calming Policy includes:

- Program Objectives;
- Citizen Reporting Process;
- Criteria for Data Collection and Analysis;
- Neighborhood Consensus;
- Residents Cost Sharing;
- Staff and City Council Review;
- Implementation Process and Review

Once this policy has been adopted the City can then begin to implement various traffic calming measures as requested and required throughout various neighborhoods.

Attachment

DHD:MKF/ntn

V:\Traffic\Traffic Calming\Agenda_ First Reading TC Policy_Jul 11 2011.docx

RESOLUTION NO. 2011 - _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VERO BEACH, FLORIDA, ADOPTING A RESIDENTIAL NEIGHBORHOOD TRAFFIC MANAGEMENT PROGRAM FOR SPEED AND TRAFFIC CONTROL; ESTABLISHING SHARE OF COST; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Vero Beach is committed to promoting the safety and livability of residential neighborhoods; and

WHEREAS, the City has determined that to attain this objective a standardized policy needs to be adopted to help control vehicle speeds and traffic flow; and

WHEREAS, this policy shall provide a process for identifying and addressing problems related to speeding, traffic volumes, and safety on city-maintained residential streets; and

WHEREAS, the City has determined that adoption of such a policy will enhance street environment to create more attractive and safe residential streets and will mitigate the adverse impacts of motor vehicles on the quality of life and value of property in residential neighborhoods;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VERO BEACH, FLORIDA, THAT:

Section 1 – Adoption of Residential Neighborhood Traffic Management Program for Speed and Traffic Control.

The Residential Neighborhood Traffic Management Program for Speed and Traffic Control attached hereto as Exhibit "A" is hereby adopted and shall be implemented as the policy of the City of Vero Beach.

Section 2 – Effective Date.

This Resolution shall become effective upon adoption.

This Resolution was read for the first time on the _____ day of _____, 2011, and was advertised in the Vero Beach Press Journal on the _____ day of _____, 2011, for a public hearing to be held on the _____ day of _____, 2011, at which time it was moved for adoption by Councilmember _____, seconded by Councilmember _____, and adopted on the _____ day of _____, 2011, by the following vote:

Mayor Jay Kramer _____

Vice Mayor Pilar E. Turner _____

Councilmember Brian T. Heady _____

Councilmember A. Craig Fletcher _____

Councilmember Tracy M. Carroll _____

ATTEST:

_____
Tammy K. Vock
City Clerk

CITY OF VERO BEACH, FLORIDA

_____
Jay Kramer
Mayor

Approved as to form and legal sufficiency:

Wayne R. Coment
Acting City Attorney

Approved as conforming to municipal policy:

Monte K. Falls
Interim City Manager

Approved as to technical requirements:

Donald H. Dexter, Jr.
Interim Assistant Director

N:\CityAtny\STI\Client Docs\Resolutions\Public Works\PW.Residential Neighborhood Traffic Program.7.11-wrc.doc

CITY OF
VERO BEACH, FLORIDA

Residential Neighborhood
Traffic Management Program
For
Speed and Traffic Control

ADOPTED BY:
CITY OF VERO BEACH CITY COUNCIL
ON _____

Exhibit "A"

INTRODUCTION

The Residential Neighborhood Traffic Management Program represents a commitment by the City of Vero Beach to promote the safety and livability of residential neighborhoods. The Residential Neighborhood Traffic Management Program provides a process for identifying and addressing problems related to speeding, traffic volumes, and safety on City-maintained residential streets. Based on this policy, proper actions can be taken depending on the severity of the problem.

PROGRAM OBJECTIVES

- Reduce vehicle speeds where traffic is operating at excessive speed.
- Maintain neighborhood street use, to the greatest extent possible, within its defined function under the City's street classification system (i.e., minor streets, local streets, subcollector and collector streets).
- Increase safety and the perception of safety for non-motorized users.
- Increase access for all modes of transportation to promote pedestrian, cycle and transit use.
- Reduce the need for police traffic enforcement.
- Enhance street environment to create more attractive and safe residential streets and to mitigate the adverse impacts of motor vehicles on the quality of life and value of property in residential neighborhoods.
- Base expenditure of public resources on need and the demonstrated commitment from affected residents for traffic calming improvements.
- Foster a collaborative working relationship between City staff and neighborhood residents in the development of traffic calming measures.

PROCESS AND REQUIREMENTS

This section describes the process and requirements of the Vero Beach Residential Neighborhood Traffic Management Program.

STEP 1: Report the Problem

If a resident believes there is a speeding or traffic problem on a residential street, the first step is to report the problem to the City of Vero Beach Public Works Department staff at 978-4870, or by e-mail to pweng@covb.org.

City staff will note the concern and in conjunction with the citizen complete a Traffic Calming Request Form. This form is available in Attachment A. When the form is submitted City staff will evaluate the complaint to determine the nature of the problem and make sure that the location meets the first traffic calming criteria in that the street is a city-maintained, residential street.

The City will not implement traffic calming measures or conduct traffic calming studies on arterial streets or on streets that are under the jurisdiction of another governmental agency (e.g., FDOT or Indian River County) or that are privately maintained. Staff can work with you to identify other actions if your street is not a city-maintained, residential street.

STEP 2: Data Collection

After reviewing the complaint City staff will collect traffic volume and speed data over a 1 week period and evaluate other traffic conditions on the street using the following criteria:

Traffic Calming Criteria

Criteria	Application	Points
Traffic Volume	*Criteria* — 5 points for every 20% of volume that exceeds the expected number of vehicles per day (vpd) on the street, based on the function of the street (350 vpd for local streets, 750 vpd for minor streets, and 1500 vpd for subcollector and collector streets).	
85th *Percentile Speed*	*Criteria* — 2 points for every mph that the 85th percentile speed exceeds the legal speed limit.	

Pedestrian Volume	*Criteria* — 1 point for every 10 pedestrians if the street has a sidewalk, 5 points per 10 pedestrians if no sidewalk. Counts are made in either the peak traffic hour or the hour when students are traveling to or from school	
Bicycle Volume	*Criteria* — 1 point for every 10 cyclists if the street has bike lanes, 3 points per 10 cyclists if no bike lanes. Counts are made in either the peak traffic hour or the hour when students are traveling to or from school	
School & IRTA Bus Stops	*Criteria* —2 points for each bus stop on the street	
Proximity to Pedestrian Generator (Retail and Parks)	*Criteria* —5 points if within 0 to 0.2 miles; 3 points if within 0.21 to 0.4 miles; 1 point if within 0.41 to 0.6 miles. Points will be cumulative for multiple generators.	

Additional Consideration: In some situations the residents' concern is for a few drivers greatly exceeding the speed limit. In this case City staff would also review the 95th percentile speed on the street.

STEP 3: City Staff Review

The street will be scored based on the aforementioned criteria. Using this score and reviewing additional considerations City staff will recommend whether the street is eligible for Stage 1 Traffic Calming alone or both Stage 1 and Stage 2 Traffic Calming. The City may conduct neighborhood informational meetings to advise the residents within the neighborhood of the data collection results and recommendations for traffic control.

In general, streets that receive up to 25 points are eligible for Stage 1 traffic calming only. Streets that receive a combined total of at least 12 points in the "Traffic Volume" and "85th Percentile Speed" criteria, and more than 25 points total will be eligible for both Stage 1 and Stage 2 traffic calming. However, streets with less than 350 vpd will not be considered for Stage 2 traffic calming measures.

For streets eligible for both Stage 1 and Stage 2 traffic calming, City staff may recommend that Stage 1 traffic calming measures be implemented prior to implementing Stage 2 measures. Approximately three to six months after Stage 1 traffic calming measures are implemented City staff will collect traffic speed and volume data and evaluate other traffic conditions on the street. The data would then be analyzed using the Traffic Calming Criteria to determine if the Stage 1 traffic calming measures

were successful. If the measures were successful then the traffic calming process will end at this point. Otherwise, City staff will move on to analyze and recommend possible Stage 2 traffic calming methods as follows.

STEP 4: Neighborhood Consensus

After the initial data is reviewed and before proceeding with Stage II Traffic Calming City staff will request a petition from residents in the neighborhood to verify that there is a widespread concern for the speeding or traffic issue. The petition form is available in Attachment B.

City staff will identify an "area of influence" in the neighborhood. The area of influence will include properties abutting the street and properties on intersecting streets within a reasonable distance of the problem street. The Public Works Department will provide a map and addresses for the area of influence.

The petition must be signed by at least 75 percent (75%) of the owners or residents of properties within the "area of influence". Each property is entitled to one signature. Valid signatures include those from (1) a property owner or spouse; (2) an adult head of household; or (3) an adult renting the property. This may require a financial response from the resident or owner.The 75% majority will be based on the number of actual respondents.

After the petition is received it will be reviewed by City staff. The City staff will request that the neighborhood designate someone to serve as the primary contact person between the City and the neighborhood.

STEP 5: Staff Recommendation and City Council Approval

City staff will develop a recommendation of actions to be taken. This recommendation will be forwarded to the primary contact person of the neighborhood. The following information will be included, as appropriate:

- Information on upcoming City Council meetings at which the staff recommendation will be discussed;
- A discussion of proposed Stage 1 education and enforcement measures;
- For Stage 2 traffic calming the number, location, and dimensions of proposed traffic calming devices displayed on a map of the neighborhood;
- A photograph of proposed traffic calming devices and directions to a nearby street with a similar device, if applicable;
- Information about the traffic calming device's effects on speeds and traffic volumes.

The City Council makes the final decision concerning actions to be taken. The City Council will review the residents' petition, the staff analysis and recommendation, and public comments. The Council may choose to hold a public hearing on the recommendation.

STEP 6: Follow-up Evaluation

Following the implementation of traffic calming measures a follow-up evaluation should be performed to ensure that the measures are effective. City staff will wait approximately three to six months then collect traffic speed and volume data and evaluate other traffic conditions on the street.

This space left intentionally blank.

Traffic Calming Action Options

Stage 1

Stage 1 Traffic Calming does not involve the use of physical controls or impediments on the roadway system, but are primarily education and enforcement measures. These measures include:

Neighborhood Awareness Campaigns and Education: Many people drive too fast in their own neighborhoods. "Speeders" are not always bad guys from somewhere else. Many are neighbors and friends, responsible people who want safe, peaceful neighborhoods. Several creative methods of reducing traffic problems in neighborhoods can be undertaken by residents to remind their neighbors to pay attention to driving habits:

- Write letters to local newspapers or publish articles in neighborhood newsletters;
- Hold a "slow down" block party to get people to think about their driving habits;
- Walk the neighborhood with door hangers and talk to neighbors about neighborhood traffic safety.

Radar Speed Trailer Deployment: This is a temporary device that is primarily used to remind motorists that they may be exceeding the posted speed limit. The trailer uses radar to monitor speeds and a reader board to show drivers how fast they are going but does not photograph vehicles. The use of trailers is contingent on availability.

Traffic Enforcement Actions: This is traditional enforcement activity on the part of the Police Department's traffic enforcement officers. The intent is to modify behavior to result in a safer situation for all drivers and neighbors.

Traffic Signs and Pavement Marking: City staff will review the traffic signing and pavement markings in the area. If necessary, staff will modify or add traffic signing and pavement markings.

Reduce Speed Limit: Some streets and or neighborhoods may benefit by the reduction of the speed limit to 25 mph. Staff will evaluate the data and may recommend this as an option. If this is recommended, the City will conduct a poll of the neighborhood/area of influence and will require a 55% majority of those responding. The City Council must approve a resolution before implementation.

Alternative Transportation Modes: One of the goals of the City of Vero Beach is to promote and provide facilities for alternative transportation modes (sidewalks for walking, and bike lanes for bicycling)..

Stage 2

Stage 2 traffic calming methods involve physical modifications to the street which are intended to control traffic speeds. Possible Stage 2 modifications might include the following:

- Bulb-outs / Curb Extensions
- Center island medians
- Chicanes
- Landscape Treatments
- Mid-block Chokers
- Neighborhood Traffic Circles
- Pedestrian Refuge Islands
- Raised Crosswalks
- Realigned Intersections
- Roundabouts
- Sidewalks
- Speed Humps
- Speed Tables.

City staff members are available to discuss traffic calming measures with residents. In addition, several publications and websites provide definitions, descriptions, costs and design guidelines for traffic calming measures. Residents who are interested in learning more about traffic calming on their own may make use of resources on the internet. For example, the website for the Institute of Transportation Engineers (ITE) contains excellent information and several links concerning traffic calming at: http://www.ite.org/traffic/index.html.

The following criteria apply to Stage 2 traffic calming measures:

1. The construction and installation of some traffic calming devices may be expensive, therefore, when Stage 2 measures are selected the applicant(s) will be responsible for 50% share of all costs to implement the plan. The least costly form of traffic calming should be considered as the primary modification in any specific case. The City Finance Department will establish an escrow account specific for the project so that residents in the project area may make contributions for the required 50% residential cost share. Depending on the scope of the project an assessment process may be required and costs will be shared by properties in the "area of influence". When traffic calming devices are approved the neighborhood may need to wait an extended time for installation based on the availability of City funds for its 50% share in the cost. Once the actual date of installation is determined the primary contact person will be notified in writing.

2. The design of traffic calming devices will follow recommended Institute of Transportation Engineers (ITE) or other national recommended guidelines, if

available.

3. Emergency vehicle access within and through neighborhoods will be carefully considered in the evaluation process and selection of traffic calming devices. Certain traffic calming devices may result in increased emergency response times on some streets and these impacts should be carefully considered.

4. Once installed, traffic calming devices will stay in place for a minimum of three (3) years unless residents pay the full cost of removal. If the City has no concerns with the project but the neighborhood itself decides that the traffic calming measures should be removed or significantly altered, a petition must be signed by at least 75 percent (75%) of the owners or residents of properties within the "area of influence" and funds must provided by the petitioners to the City to pay for the full cost of removal and restoration of the site. An escrow account will be set up by the City Finance Department into which these traffic calming device removal funds will be deposited. The City Council will review petitions requesting removal or significant alteration and will be provided a staff analysis. However, at any time following construction completion, if it is determined that traffic calming measures should be removed for public health and safety reasons the City Council will be requested to authorize the removal of one or more traffic calming measures upon notification of the neighborhood representatives.

ATTACHMENT A – TRAFFIC CALMING REQUEST FORM

This form is used to report a speeding or traffic problem on a residential street. When this form is submitted, City staff will evaluate the complaint to determine the nature of the problem and make sure that the location is a City-maintained, residential street. After the initial report City staff will explain how residents may put together a petition to verify that there is a widespread concern for the speeding or traffic issue.

1. Contact Information:

   Name (please print): _____

   Address, City, and Zip: _____

   Phone Number: _____

   Email: _____

2. Please describe the location of the traffic concern. Attach a map or picture if necessary:

   _____
   _____
   _____
   _____

3. Please describe the nature of the neighborhood traffic problem you are concerned with (attach additional sheets if necessary):

   _____
   _____
   _____
   _____
   _____

4. Please list possible solutions to the problem that you would like the City of Vero Beach to consider:

   _____
   _____
   _____
   _____
   _____

Please fill out this form and return to:

City of Vero Beach
Public Works Department
1053 20th Place
Vero Beach, FL 32960
(772) 978-4879 FAX

ATTACHMENT B – NEIGHBORHOOD PETITION FORM (PAGE 1)

Please complete this form and return with attached sheets to:

City of Vero Beach
Public Works Department
PO Box 1389
Vero Beach, FL 32961-1389
(772) 978-4879 Fax

THE UNDERSIGNED AGREE TO THE FOLLOWING:

1. All persons signing this petition do hereby certify that they own property or reside within the following area:

   _____

   _____

   _____

2. All persons signing this petition do hereby agree to the following problem in the defined area:

   _____

   _____

   _____

3. All persons signing this petition do hereby agree that the following contact person(s) represents the neighborhood in matters pertaining to items 1 and 2 above:

Name of key contact person #1 (please print): _____

Address, City, and Zip Code: _____

Telephone (day): _____ Fax: _____ E-mail: _____

Name of key contact person #2 (please print): _____

Address, City, and Zip Code: _____

Telephone (day): _____ Fax: _____ E-mail: _____

Please attach additional pages if necessary to discuss the request.

Date Submitted _____

Attachment B – Neighborhood Petition Form (Page 2)

This petition is provided so that residents in a neighborhood may verify that there is a widespread concern for a speeding or traffic issue.

City staff will identify an "area of influence" in the neighborhood. The area of influence includes properties abutting the street and properties on intersecting streets within a reasonable distance of the problem street. The Public Works Department will provide a map and addresses for the area of influence.

The petition must be signed by at least 75 percent (75%) of the owners or residents of properties within the "area of influence." Each property is entitled to one signature. Valid signatures include those from (1) a property owner or spouse, (2) an adult head of household, or (3) an adult renting the property.

Printed Name	Signature	Address of Property	Date

Addendum to the City Council Meeting Agenda __ New Business

6-A)

Author: Pilar Turner
Priority 3 of 4

Council Meeting Date: June 21, 2011

Title: City Manager Objectives

Summary of your points for discussion: Request all Council members to prepare a ranked list of objectives for our new city manager.

All agenda Additions – Public need or issue addressed: Establish priorities for City Staff.

Statement of the proposed solution to the public need or issue: Assemble all objectives for discussion at next council meeting.

New Business Only - Relevant City Charter, code references, legal: None

Backup - additional attached documentation includes: Individual Council members objectives for City Manager

Old Business Only - Dates of past discussions / decisions by Council relevant to the issue: Council agreed at June 7 meeting to submit their response with agenda items for June 21 meeting.

MEMORANDUM

TO: Mayor Jay Kramer and
City Councilmembers

FROM: Pilar Turner
Vice-Mayor

DATE: June 15, 2011

SUBJECT: City Manager Objectives

---

1. Hire a Finance Director.

2. Conclude the sale of Vero Beach Electric Utility to FPL for the benefit of the City and ratepayers. Direct, monitor, and control activities and costs of the GAI consultant. Provide monthly updates to Council.

3. Prepare a strategic plan for Water & Sewer Utility evaluating the regionalization of services.

4. Review all aspects of City government to streamline, improve efficiency, and reduce costs.

5. Maintain and operate the City within the approved budget. Hold quarterly reviews of the City performance versus budget with City Council providing a description of variances +/- 20% or $10,000.00 or more and proposed remedies.

6. Support all Staff requests with financial analysis.

7. Implement annual employee performance appraisals.

8. Manage the City personnel policy to eliminate substantiated lawsuits.

9. Revisit the 2007 Vision Plan. Establish an implementation schedule.

PT/rh

City Manager's Goals

1. Implement a City wide Annual review program for Managers and for Managers to implement for their employees.

2. Generate a projected schedule of events/meetings for the FPL/VERO talks. Currently it is an open ended issue. Set a projected complication date. Not a hard deadline but a rough order of magnitude for closeout. There needs to be a goal.

3. Referendum, do we need one, define the language,

4. Develop a plan, A white paper for the W&S merger with the County or other players.

6-B)

MEMORANDUM

TO: Mayor Jay Kramer and
City Councilmembers

FROM: Tammy K. Vock, MMC Tammy
City Clerk

DATE: July 7, 2011

SUBJECT: August 16, 2011 City Council Meeting

There has been some confusion as to whether or not the August 16th City Council meeting will be held at 6:00 p.m. or 9:30 a.m. Please provide me with some direction as to what time that you wish to hold the meeting on August 16, 2011.

Thank you for your help in this matter.

/tv

7-A)

City Council Agenda Item
Meeting of July 19, 2011

TO: Mayor Jay Kramer
Vice Mayor Pilar Turner
Councilmember Brian Heady
Councilmember Craig Fletcher
Councilmember Tracy Carroll

FROM: Monte K. Falls, P.E. - Interim City Manager MKFalls 7/13/11

DATE: July 13, 2011

SUBJECT: **Live Oak Road Paving and Drainage Improvements**
Recommendation of Award
City of Vero Beach Project No. 2005-09
Bid No. 150-11/JV

REQUESTED BY: Assistant City Engineer

The following is requested as it relates to the above-referenced agenda item:

✓ Request Council review and approval based on the attached supporting documentation.

____ Request Council review and possible action.

____ No action required. (Information only)

DEPARTMENTAL CORRESPONDENCE

TO: Monte K. Falls, Interim City Manager
DEPT: City Manager

VIA: William B. Messersmith, PE, Assistant City Engineer WBM 7/13/11
DEPT: Public Works

FROM: Scott R. Sanders, PE, Civil Engineer III SRS 7/13/11
DEPT: Public Works

DATE: July 13, 2011

Received JUL 2011 City Mgr.'s Office

RE: Live Oak Road Paving and Drainage Improvements
Recommendation of Award
City of Vero Beach Project No. 2005-09
Bid No. 150-11/JV

Recommendation:

- Place this item on the agenda for the July 19, 2011 meeting of the City Council;
- Award the contract to Don Luchetti Construction, Inc. of Melbourne, Florida in the amount of $354,053.90.

Funding:

Funding for this project will be from account number 304.9900.541.607007.

Background:

This project is to raise the current elevation of Live Oak Road between Mockingbird Drive and State Road A1A and to install new underground stormwater treatment and conveyance system facilities in order to improve the drainage in the area.

Included in the bid is an alternate to construct a sidewalk along the south side of Live Oak Road which will provide a much needed connection between the existing sidewalks on Mockingbird Drive and SR A1A. A poll of the neighbors on the portion of Live Oak that will experience the construction was conducted and showed a majority is in favor of the proposed sidewalk. However, a new poll will be conducted over a larger portion of the neighborhood and will be discussed at future community meetings dealing with traffic calming measures that will also be instituted in the area.

On May 19, 2011 bids were received from four contractors for this project. The lowest base bid was from Don Luchetti Construction, Inc. in the amount of $333,693.90. The bid price to include construction of the sidewalk is an additional $20,360, which brings the total to $354,053.90. Copies of the bid tabulation and bid summary are attached. It is staff's recommendation to award the contract with the sidewalk portion included as an alternate that staff can direct the contractor to perform at any time during the duration of the contract term. The sidewalk was originally included in the design of the project because of safety concerns for the pedestrians who currently use Live Oak Road. Correspondence between several citizens and staff are included for your review.

Don Luchetti Construction, Inc. was very favorably recommended by the Cities of Satellite Beach and Melbourne, as well as Chesapeake Construction, a large commercial site developer.

This project was originally scheduled for award at the June 7, 2011 City Council meeting, however residents from the Live Oak/Indian River Drive corridor presented a petition requesting modifications to the roadway design to address traffic concerns. As a result of that request the contract award was tabled pending a resolution of the overall roadway design question. Staff has since met with the residents and is preparing a traffic calming plan in accordance with the City's proposed traffic calming policy. The proposed traffic calming plan does not require modification to the construction plans for this contract, and staff therefore recommends award of the construction contract to Don Luchetti Construction, Inc. in the amount of $354,053.90.

Attachments

Cc: Steve Maillet, Finance Director
John O'Brien, Purchasing Manager
Don Luchetti, President, Don Luchetti Construction, Inc.

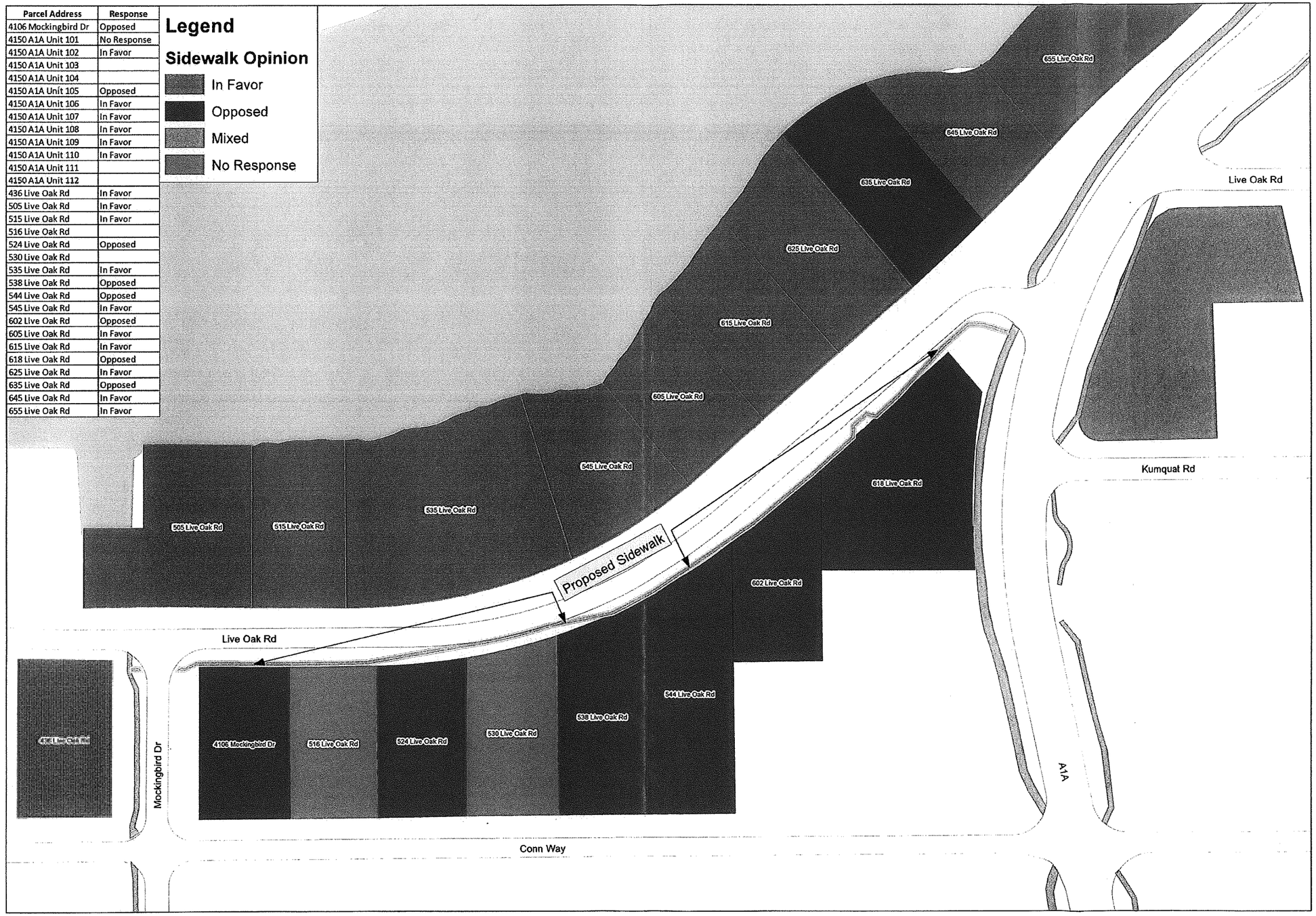
SRS:WBM/ntn

V:\LAND_PROJECTS\2005\2005-09 Live Oak Rd Drainage\Docs\Agenda_Recommend Award_MFalls_July 8 2011.docx

Live Oak Sidewalk Survey

City of Vero Beach

Parcel Address	Response
4106 Mockingbird Dr	Opposed
4150 A1A Unit 101	No Response
4150 A1A Unit 102	In Favor
4150 A1A Unit 103	
4150 A1A Unit 104	
4150 A1A Unit 105	Opposed
4150 A1A Unit 106	In Favor
4150 A1A Unit 107	In Favor
4150 A1A Unit 108	In Favor
4150 A1A Unit 109	In Favor
4150 A1A Unit 110	In Favor
4150 A1A Unit 111	
4150 A1A Unit 112	
436 Live Oak Rd	In Favor
505 Live Oak Rd	In Favor
515 Live Oak Rd	In Favor
516 Live Oak Rd	
524 Live Oak Rd	Opposed
530 Live Oak Rd	
535 Live Oak Rd	In Favor
538 Live Oak Rd	Opposed
544 Live Oak Rd	Opposed
545 Live Oak Rd	In Favor
602 Live Oak Rd	Opposed
605 Live Oak Rd	In Favor
615 Live Oak Rd	In Favor
618 Live Oak Rd	Opposed
625 Live Oak Rd	In Favor
635 Live Oak Rd	Opposed
645 Live Oak Rd	In Favor
655 Live Oak Rd	In Favor



Created By: Marcus Bradley
City of Vero Beach
Department of Public Works
GIS Division
April 25, 2011

1 in = 60 ft

Disclaimer:
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N
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Neighborhood Meeting

March 22, 2011
6:00 p.m.

LIVE OAK ROAD DRAINAGE IMPROVEMENTS

City of Vero Beach Public Works Project No. 2005-09

NAME	ADDRESS	PHONE NUMBER
Joe Candler	505 LIVEOAK	231 2962
Scott Sanders	COVB	978-4870
Bill Messersmith	COVB	978-4813
Marilyn Richardson	538 Live Oak Rd	231-2865
Linda Badgley	524 Live Oak Rd	234-6315
Bill Gurley	436 Live Oak Rd	234-3194
Jan Jeffery	615 Live Oak Rd	234-8636
" "	625 Live Oak Rd	" "
" "	545 " " "	" "
John Carroll	422 Live Oak Rd	231-3713
Tracy Carroll	" "	" "
Jan Jeffery	615 Live Oak Rd	234-8636

City of Vero Beach
Monte Falls, *City Manager*
1053 20th Place, PO Box 1389
Vero Beach, FL 32961-1389

April 6, 2011

Dear City Manager Falls,

I am writing this letter as a Vero Beach resident for more than 35 years living in the same residence on Live Oak Road. I understand that there is a six month drainage project scheduled for Live Oak that possibly involves putting in a sidewalk on the south side of the street.

I strongly oppose the proposed construction of a side walk on the south side of Live Oak between Mockingbird and A1A. Live Oak Road has always been a local "short cut" for one to get to A1A from Barber Bridge or vice versa. In the late 70's, my husband and I and other Live Oak property owners petitioned to change the east end of the road at the intersection of A1A to eliminate the straight shot that promoted speeding. The city did make changes as an attempt to discourage traffic on this residential road, but it remained heavily trafficked to this day. The proposed sidewalk would only promote more traffic, possibly decreasing property values and incurring liability and maintenance for property owners.

Historically, when a neighborhood sidewalk has been added in Vero Beach, it was because the property owners petitioned for it, but not in this case. In addition, those property owners across the streets of the sidewalks were never given the chance to vote because the sidewalk did not immediately impact them. If this proposal unfortunately came down to a vote, it should only include those residents that would be impacted. That clearly would only involve the eight property owners on the south side of Live Oak Road. Those living on the north side would not see any impact except the benefit of omitting any liability and having the pedestrians farther away from their homes and yards.

I and many other south side Live Oak Road property owners (see attached petition) call upon you to help us in our opposition to this proposal in all of your official capacities and functions.

Thank you very much for your consideration.

Sincerely,

Marilyn Richardson

Marilyn Richardson
538 Live Oak Road property owner

RECEIVED
APR 11 2011
City of Vero Beach
Public Works Department

cc. Scott R. Sanders

P.S. Seven of the eight property owners on the south side have signed the enclosed petition.

We, the undersigned, as residents of properties on the south side of Live Oak Road between Mockingbird and A1A strongly oppose the construction of a sidewalk as proposed in the plans for drainage and raising Live Oak Road. We would like to register this petition as our votes on any subsequent solicitation from the town.

Marilyn Richardson 538 Live Oak Rd ✓

Linda Badgley-Smith 524 Live Oak Road ✓

[illegible] 530 Live OAK ROAD

[illegible] 4106 MOCKINGBIRD DR ✓

[illegible] 635 Live Oak Rd north side ✓

[illegible] 544 LIVE OAK ✓

[illegible] 516 Live Oak Rd

We, the undersigned, as residents of properties on the south side of Live Oak Road between Mockingbird and A1A strongly oppose the construction of a sidewalk as proposed in the plans for drainage and raising Live Oak Road. We would like to register this petition as our votes on any subsequent solicitation from the town.

Marilyn Richardson 538 Live Oak Rd. south side

Linda Badgley-Smith 524 Live Oak Road

Linda Mingwell 530 Live OAK ROAD

James R. Rush 4106 MOCKINGBIRD DR.

Wesley Dick 602 Live Oak Road

From: Sanders, Scott
To: Nichols, Nancy
Cc: Messersmith, Bill
Subject: FW: Sidewalk poll results
Date: Thursday, May 05, 2011 9:56:13 AM

Just for the file. Let's not forget to bring things like this up when we go to Council for award of contract.

From: Bill Gurley [mailto:wdg32cr@gmail.com]
Sent: Thursday, May 05, 2011 9:55 AM
To: Sanders, Scott
Subject: Re: Sidewalk poll results

Scott,
Thanks. Final results are not that close.
I will not be in Vero Beach for the June council meeting, nor will Kevin Howell be able to attend.
Jan Jelmby will be in attendance and represents our position on the sidewalk.
In past emails I have offered our view, focusing on the concern of safety for pedestrians and cyclist.
Kevin indicated he too has made his opinion and concerns clear to you.
I trust those concerns will be relayed to the Council as they consider the matter.

I was working in my front yard yesterday. A lady was walking on the stretch of Live Oak under consideration. Two opposing cars were passing each other next to her. The solution for one was to "lay on their horn" until the lady stepped off of the road into one of the yards. A sight you would have to have seen to believe! Scared the poor lady nearly to death. Time for the sidewalk.
Regards,
Bill
On May 4, 2011, at 8:05 AM, Sanders, Scott wrote:

Good morning. I thought you might be interested in the official results.

From: Baker, Jennifer
Sent: Wednesday, May 04, 2011 8:05 AM
To: Sanders, Scott
Cc: Nichols, Nancy
Subject: RE: Sidewalk poll results

Scott:

There are 15 in favor and 9 opposed.

Jen

From: Sanders, Scott
Sent: Tuesday, May 03, 2011 2:42 PM
To: Nichols, Nancy; Baker, Jennifer
Subject: Sidewalk poll results

Nancy/Jen,

What is the final tally on the sidewalk poll on Live Oak?

Scott R. Sanders, P.E.
Civil Engineer III
Public Works
City of Vero Beach

Please Note: Florida has a very broad Public Records Law. Most written communications to or from State and Local Officials and agencies regarding State or Local business are public records available to the public and media upon request. Your email communications, including your email address, may therefore be subject to public disclosure.

From:	Sanders, Scott
To:	"Kevin Howell"; jan@helmethouseconstruction.com; wdg32cr@comcast.net
Cc:	Nichols, Nancy
Subject:	RE: Re: Fw: Final Sidewalk Survey Graphic
Date:	Friday, May 06, 2011 10:39:32 AM

Mr. Howell,

We have your vote for the sidewalk in our file and we will make Council aware of the support over and above the citizens that were polled. As I told Mr. Gurley, staff is strongly in favor of the sidewalk project and we will recommend approval to Council of the sidewalk portion of the Live Oak project. Ultimately it will be Council's decision on whether or not to award, but staff will present the safety and liability arguments to them when they vote, which should take place June 7. I have encouraged everyone in support of the sidewalk to contact their Councilmen in the days leading up to the meeting, and then to attend the meeting to ensure their voices are not ignored.

I will keep you and everyone informed of the happenings between now and then. The bids will be opened on May 19th, and we will immediately begin preparing our recommendation and we will get it to Council as soon as possible, so they will have plenty of time to review it and talk with the residents.

Thank you for your interest.

Scott Sanders

From: Kevin Howell [mailto:howellk@verizon.net]
Sent: Friday, May 06, 2011 10:27 AM
To: Sanders, Scott; jan@helmethouseconstruction.com; wdg32cr@comcast.net
Subject: Fwd: Re: Fw: Final Sidewalk Survey Graphic

Scott I live at 431 Live Oak Road, please see the exchange below. Although I do not appear to be counted I have previously sent in my vote for 431 Live Oak. I live across from the Gurleys and am very much in favor of the sidewalk since I think it is a safety issue. If the COVB does not put in that sidewalk and someone is hit or killed walking or riding a bike on that road then I am certain COVB has some liability. There are landscape trucks parked regularly on the road impeding visability for both drivers and pedestrians and as you will know Vero has lots of older drivers who may have eyesight impediments, judgement impediments etc. This sidewalk is an absolute requirement in my mind and it is foolhardy toignore these safety issues.

Kevin Howell 431 Live Oak Road I also own 605 Live Oak and 655 Live Oak.

From: Kevin Howell

Date: May 6, 2011 10:19:56 AM

Subject: Re: Fw: Final Sidewalk Survey Graphic

To: jan@helmethouseconstruction.com

Thanks Jan I sent in a document to the city regarding my choice with a notation specifically for 431, so they have it. If they choose not to count it I am not sure what I can do, but I certainly sent in my vote with explanation of what I felt were safety issues that should require it. Since I am not immediately on the route they may not be counting me. Thanks. Kevin

On 05/06/11, Jan Jelmby<jan@helmethouseconstruction.com> wrote:
Hi Kevin,
Did you see by attached survey that the home you are living in right now was not counted a positive vote to the Live Oak Rd. improvement project???
You might want to get in touch with Scott right-a-way and straighten this issue out, as we need to be in great majority for the improvements to take place in order to get the Council to vote positively.
Jan
----- Original Message -----
From: Bill Gurley
To: Jan Jelmby ; Kevin E. Howell Jr.
Sent: Thursday, May 05, 2011 7:32 PM
Subject: Fwd: Final Sidewalk Survey Graphic

fyi,
Bill

Begin forwarded message:

From: "Sanders, Scott" <SSanders@covb.org>
Date: May 5, 2011 1:42:20 PM EDT
To: 'Bill Gurley' <wdg32cr@gmail.com>
Subject: Final Sidewalk Survey Graphic

Mr. Gurley,

Here is the final results shown on a map of the neighborhood. We will still approach the Council the same way, but I thought you might just like to have this.

Thanks.

Scott Sanders

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fyi,
Bill

Begin forwarded message:

> From: "Sanders, Scott" <SSanders@covb.org>
> Date: May 5, 2011 1:42:20 PM EDT
> To: 'Bill Gurley' <wdg32cr@gmail.com>
> Subject: Final Sidewalk Survey Graphic
>
> Mr. Gurley,
>
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>
> Thanks.
>
> Scott Sanders
>
>
>
> _____
>
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>

From:	Sanders, Scott
To:	Messersmith, Bill
Cc:	Nichols, Nancy
Subject:	FW: Final Sidewalk Survey Graphic - Speed bump
Date:	Wednesday, May 11, 2011 7:42:21 AM

Bill,

I got this email and wanted you to see it. Do we want to address a reduced speed zone here after construction, or maybe speed tables? I am against speed bumps. We could pay for speed tables with the Additional Asphalt item (it's paid per ton).

Scott

From: DON LEWAND [mailto:salesor@msn.com]
Sent: Tuesday, May 10, 2011 9:12 AM
To: JAN JELMBY; Sanders, Scott
Subject: RE: Final Sidewalk Survey Graphic

Jan & Scott,
I had a thought this morning while walking. We also have a problem with fast moving traffic on a local road. What is done here is speed bumps to slow down the cars.
Traffic coming off A1A is fast and they continue at that same high rate down Live Oak.
If the street changes could include a few speed bumps right off A1A it would slow down the traffic.
Don

From: jan@helmethouseconstruction.com
To: salesor@msn.com
Subject: Re: Final Sidewalk Survey Graphic
Date: Mon, 9 May 2011 09:34:03 -0400

Don and Anna,
Thank you for your response to this issue. It really will enhance our neighborhood instead as there is a lot of neighbors enjoying the quaintness of taking a morning or evening stroll as Rhoda and I actually do every evening.
It boils down to a safety issue, and because there is quite some traffic on our street as people from North A1A use this as a short cut into town and the street actually curves quite a bit by your place, I see people jumping into the grass all the time to avoid being run over by the cars.

As this sidewalk is proposed to be on the opposite side of our properties, it will give better visibility to the pedestrian-vehicle issue, plus that we do not have to be concerned about the encroachment of a sidewalk on our side of the right-a-way.

Therefore it would mean a lot if you could send in to Scott at the City a revision of you initial thoughts, and instead being in favor as it is now not a sure vote if it will be a sidewalk or not which we have wished for many years. I will also forward a note from our other neighbor, for you to see his response to this issue.

Thank you for your consideration and support.

Best Regards/Jan

| ----- Original Message -----

From: DON LEWAND
To: JAN JELMBY
Sent: Monday, May 09, 2011 8:28 AM
Subject: RE: Final Sidewalk Survey Graphic

Hi Jan,
I am sorry we did not discuss this with you before voting to see what you thought. As a long time resident you have a better understanding of the situation there.
Our reason for voting no was that we felt that the sidewalk would take away the rural nature of Live Oak and make it more like a city.
If you feel it worth having than we would defer to your judgement and change our vote to be in favor of it.
Don

From: jan@helmethouseconstruction.com
To: salesor@msn.com
Subject: Fw: Final Sidewalk Survey Graphic
Date: Fri, 6 May 2011 09:17:25 -0400

Good Morning Don,
In regards to the City's proposed improvement of our street with new and larger drainage, raised street level (so all the puddle water in front of Benders and your home will be gone) and a new sidewalk across the street from us, I was surprised to see that you guys had voted against this? Knowing you, I assume that a mistake has been made, so I wanted you to be aware and hoping that you would support this improvement instead?
This is going to come up on June the 7th for a Council vote and I will be there to support this as it will really improve our street.

Best Regards/Jan
----- Original Message -----
From: Bill Gurley
To: Jan Jelmby ; Kevin E. Howell Jr.
Sent: Thursday, May 05, 2011 7:32 PM
Subject: Fwd: Final Sidewalk Survey Graphic

fyi,
Bill

Begin forwarded message:

From: "Sanders, Scott" <SSanders@covb.org>
Date: May 5, 2011 1:42:20 PM EDT
To: 'Bill Gurley' <wdg32cr@gmail.com>
Subject: Final Sidewalk Survey Graphic

Mr. Gurley,

Here is the final results shown on a map of the neighborhood. We will still approach the Council the same way, but I thought you might just like to have this.

Thanks.

Scott Sanders

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fyi,
Bill

Begin forwarded message:

> From: "Sanders, Scott" <SSanders@covb.org>
> Date: May 5, 2011 1:42:20 PM EDT
> To: 'Bill Gurley' <wdg32cr@gmail.com>
> Subject: Final Sidewalk Survey Graphic
>
> Mr. Gurley,
>
> Here is the final results shown on a map of the neighborhood. We will still approach the Council the same way, but I thought you might just like to have this.
>
> Thanks.
>
> Scott Sanders
>
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>

From: Sanders, Scott
To: Nichols, Nancy; Messersmith, Bill
Subject: FW: Live Oak sidewalk on the north side versus the south
Date: Friday, May 20, 2011 7:25:32 AM

For the file.

From: Bill Gurley [mailto:wdg32cr@gmail.com]
Sent: Thursday, May 19, 2011 6:07 PM
To: Sanders, Scott
Cc: 'DON LEWAND'; jan@helmethouseconstruction.com; 'Kevin Howell'
Subject: Re: Live Oak sidewalk on the north side versus the south

Scott,
The sidewalk is needed for all of the reason we have previously noted. If it is on the north or south side does not matter to me.

Having said that:
1. From a planning and engineering perspective the south side was chosen for reasons I assume were based upon sound technical judgement and overall project cost. If your question is actually, would we be OK with the sidewalk on the north side of the street but the storm drain will still be installed on the south side, then for cost and disruption reasons I have a problem with that. But, if that is the only way to get the sidewalk, so be it.
2. I have not asked the basis upon which the polling is conducted. But I assumed that all "votes" (those that received a letter and responded) were weighted equally. Yes, there is a split, but the ratio is two to one in favor of the sidewalk and some on the south side are in favor just as some on the north are opposed.
3. I understand there are longer term plans to complete a sidewalk from Mockingbird west to the new sidewalk near Fiddlewood on IR Dr. East. In that case I anticipate the walk will someday bisect my front yard. I believe our home is as close to Live Oak as any of those east of us. The answer remains we need sidewalks on Live Oak.

If the sidewalk is not approved there must be some action taken to insure the safety of pedestrians on Live Oak. Is there such a designation as "closed to pedestrian traffic"?

We will be unable to attend the council meeting. My various emails have clearly stated our views. If it comes to a vote at the meeting, I understand Mr. Jelmby will be in attendance and can represent the view of the Gurley household.

Regards,
Bill
On May 19, 2011, at 8:07 AM, Sanders, Scott wrote:

As you all know, we will be presenting the Live Oak project to Council and will be asking for direction on the sidewalk. The polling results were basically split between the residents on the north side of the road being for the sidewalk and the south side of the road being against the sidewalk. Just to make sure we can answer all of Council's potential questions, what would be your opinion if the sidewalk was proposed on the north side of the road instead of on the south side of the road as it is shown in the exhibit?

Thank you for your input.

Scott Sanders
City of Vero Beach

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From: Sanders, Scott
To: Nichols, Nancy
Cc: Messersmith, Bill
Subject: FW: Live Oak sidewalk on the north side versus the south
Date: Thursday, May 19, 2011 8:53:32 AM

Just for the file.

From: Kevin Howell [mailto:howellk@verizon.net]
Sent: Thursday, May 19, 2011 8:58 AM
To: Sanders, Scott
Subject: Re: Live Oak sidewalk on the north side versus the south

I think we need a sidewalk which ever side it is on Kevin Howell 431 Live Oak, 655 Live Oak, 605 Live Oak
thanks

On 05/19/11, Sanders, Scott<SSanders@covb.org> wrote:
As you all know, we will be presenting the Live Oak project to Council and will be asking for direction on the sidewalk. The polling results were basically split between the residents on the north side of the road being for the sidewalk and the south side of the road being against the sidewalk. Just to make sure we can answer all of Council's potential questions, what would be your opinion if the sidewalk was proposed on the north side of the road instead of on the south side of the road as it is shown in the exhibit?

Thank you for your input.

Scott Sanders
City of Vero Beach

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Nichols, Nancy

From: Messersmith, Bill
Sent: Tuesday, May 24, 2011 7:54 AM
To: Sanders, Scott
Cc: Nichols, Nancy
Subject: RE: Live Oak sidewalks - Costs

Looks good Scott. I think we will just keep this information so that if and/or when they ask why we picked the south side for the sidewalk, we will have some sound reasons – cost being just one of them.

From: Sanders, Scott
Sent: Monday, May 23, 2011 3:52 PM
To: Messersmith, Bill
Cc: Nichols, Nancy
Subject: FW: Live Oak sidewalks - Costs

Bill,

The cost of construction for the sidewalk on the north side of Live Oak versus the south side of Live Oak is as follows:

North side:

Sidewalk –	4,055 sf @ $4.00/sf =	$16,220.00
Truncated Domes -	40 sf @ $30.00/sf =	$1,200.00
Striped Crosswalks –	2 ea @ $60.00/ea =	$120.00
Total		$17,540.00

South side:

Sidewalk -	4,079 sy @ $4.00/sy =	$16,316.00
Truncated Domes -	20 sf @ $30.00/sf =	$600.00
Striped Crosswalks -	1 ea @ $60.00/ea =	$60.00
Total		$16,976.00

Note that constructing the sidewalk on the north side of Live Oak would still require crossing Mockingbird first and then crossing Live Oak because of the existing sidewalk's alignment with the driveway and catch basin on the north side. The sidewalk areas are reflective of the sidewalk being constructed between driveways and the driveway areas not being included. The sidewalk on the north side would involve a few more challenges because of less right-of-way to work with, thus putting the sidewalk closer to the edge of the road. The south side of Live Oak does have some trees that we must maneuver around, but we can do so without compromising a 6' roadside recovery area for traffic.

We can discuss.

Scott

From: Webber, Stephen
Sent: Monday, May 23, 2011 2:29 PM
To: Sanders, Scott
Subject: Live Oak sidwalks

North Sidewalk... 4055 sf

South Sidewalk... 4079 sf

July 8, 2011

To: Vero Beach City Council

Subject: **Proposed Sidewalk on Live Oak Rd. between Mockingbird and A1A**

Background:
Eva and I reside at 436 Live Oak Rd., our domicile. As Florida residents we have participated in each election since becoming homeowners on Live Oak. Our home is located at the southwest corner of the intersection of Live Oak and Mockingbird.

Although we are in Vero Beach on less than a full time basis, we walk the subject section of road more frequently than any other homeowner. Reasons we do so are not relevant to the discussion.
We have personally experienced multiple occurrences where vehicles would have hit us had we not stepped completely off of the road into homeowners' yards. I have witnessed a lady, walking with a child, forced off of the road by a driver passing another car while honking their horn. She lifted her child and stepped into the swale in a yard to avoid being struck. When walking you must frequently flee into a yard as vehicles pass. Mailboxes do offer a measure of protection if you are near one.

New large homes are continuing to be built on Live Oak. Those homes logically attract some larger families with (small) children. By observation we note that parents currently do not permit children to walk or bike on this section of road.

We understand there have been a number of other homeowners involved in this general discussion. Plans have been proposed and considered to alleviate the broader issues of traffic and speeding on Live Oak Rd. Although we support those efforts, this communication is intended to narrowly address the Subject issue. We understand the July 19 meeting of the City Council will make the decision on this specific matter.

Situation:
Why is this particular section of road considered to be so dangerous?

The road is narrow. White lines on each side abut lawns.
There are no shoulders on which to walk or paths for biking.
The road handles a very substantial volume of traffic for reasons widely documented.
The road has curves creating blind spots for both vehicular traffic and pedestrians.
The road direction is generally east west. Sun glare is a problem for one direction or the other during high traffic periods in the morning and afternoon.
Landscape firms and delivery/service vehicles park on the road blocking an entire lane. This compounds effects of other problems.
Although speed of vehicles is excessive, the combination of above factors is more serious, in our opinion.
We and other homeowners have highlighted these contributing factors over the past few months with a common concern for pedestrian safety. The number of such communications must total twenty or more. City staff can document the actual total.

Questions for Council:
We plan to attend the July 19 Council meeting. Never having previously attended a Council meeting we are not aware of the procedure to address the Council. We provide the following questions in advance to insure both effective use of your time and opportunity to consider appropriate responses:

1. The degreed, licensed professional city engineer who is also a licensed general contractor included a sidewalk in the site plans. The Assistant City Engineer with comparable qualifications peer reviewed the project. The sidewalk is optional subject to Council approval but our understanding is that city engineering is recommending inclusion of the sidewalk. What is the engineering basis for inclusion of a sidewalk?

2. A polling process was conducted for homeowners on the Subject section of Live Oak. Please confirm the final results of that process and what resulting conclusions have been reached?

3. Are there opinions that safety is any less of a concern than has been expressed by homeowners?

4. Original site plans upon which budget approval was obtained included the estimated cost of the sidewalk. Are cost estimates for the sidewalk in line with final bids?

5. Considering city engineers included a sidewalk in the original site plans and support its inclusion in the project; a substantial majority of polled homeowners support inclusion of the sidewalk; cost for the sidewalk has been accurately budgeted; and particular pedestrian safety issues have been well documented are any other factors under consideration by the council relative to inclusion of the sidewalk in the scheduled project?

Recommendation:
Some say there are many similar situations (narrow roads making pedestrian and bike traffic problematic) throughout Vero Beach. Why should this particular instance receive priority? The answer is in part the engineering determination that storm drainage requires improvement including a new drain line and raising the grade of road. Work including disruption to homeowners and traffic is going to be done so why not cost effectively solve multiple problems? Additionally, not all of the above stated problems apply to other situations in Vero Beach. Finally, this particular safety problem has been identified, budgeted, and broadly discussed. Budget constraints and logistical issues prevent all such situations throughout Vero Beach from being concurrently addressed. Why not start/continue with this specific project?

We respectfully request your approval of the inclusion of the sidewalk on this section of Live Oak Road.

Regards,

Bill and Eva Gurley
436 Live Oak Rd.
Vero Beach, FL. 32963

Live Oak Road Paving Drainage Improvements

				Engineers Estimate		Don Luchetti Construction, Inc.		Timothy Rose Contracting, Inc.		Jobear Warden Construction		Sunshine Land Design, Inc.	
PAY ITEM NO.	DESCRIPTION	UNIT	PROJECT QUANTITY	UNIT COST	PROJECT COST	UNIT COST	PROJECT COST	UNIT COST	PROJECT COST	UNIT COST	PROJECT COST	UNIT COST	PROJECT COST
1	Clearing & Grubbing	LS	1	$ 8,000.00	$ 8,000.00	$12,754.00	$12,754.00	$13,400.00	$ 13,400.00	$ 10,000.00	$ 10,000.00	$ 17,820.00	$ 17,820.00
2	Unclassified Excavation (including but not limited to removal of existing drainage structures, pipe, and concrete)	LS	1	$ 9,000.00	$ 9,000.00	$3,220.00	$3,220.00	$10,970.00	$ 10,970.00	$ 14,108.00	$ 14,108.00	$ 27,000.00	$ 27,000.00
3	Excavation and Disposal of Existing Asphalt	CY	200	$ 10.00	$ 2,000.00	$70.00	$14,000.00	$27.00	$ 5,400.00	$ 15.00	$ 3,000.00	$ 21.60	$ 4,320.00
4	Additional Fill (borrow for backfilling as required)	CY	1560	$ 20.00	$ 31,200.00	$7.80	$12,168.00	$9.40	$ 14,664.00	$ 14.00	$ 21,840.00	$ 15.12	$ 23,587.20
5	Earthwork (includes cut & fill, swale grading, and final grade)	LS	1	$ 1,000.00	$ 1,000.00	$5,715.00	$5,715.00	$5,945.00	$ 5,945.00	$ 26,400.00	$ 26,400.00	$ 16,200.00	$ 16,200.00
6	Roadway												
a.	Limerock Base (8")	SY	1,815	$ 12.00	$ 21,780.00	$10.75	$19,511.25	$11.00	$ 19,965.00	$ 16.25	$ 29,493.75	$ 11.68	$ 21,199.20
b.	Subgrade Preparation	SY	1,900	$ 3.50	$ 6,650.00	$2.00	$3,800.00	$2.00	$ 3,800.00	$ 6.00	$ 11,400.00	$ 7.46	$ 14,174.00
Alt 1 c.	Asphalt Stabilized Base (8")	SY	1815	$ 10.00	$ 18,150.00	$3.50	$6,352.50	$9.70	$ 17,605.50	$ 14.50	$ 26,317.50	$ 3.15	$ 5,717.25
Ald 1 d.	Asphalt Emulsion (AE 200H)	GAL	2500	$ 3.00	$ 7,500.00	$3.10	$7,750.00	$3.10	$ 7,750.00	$ 3.00	$ 7,500.00	$ 6.02	$ 15,050.00
e.	Asphalt Pavement (1½" FDOT Type S-I)	SY	1725	$ 12.00	$ 20,700.00	$13.25	$22,856.25	$10.00	$ 17,250.00	$ 11.20	$ 19,320.00	$ 10.92	$ 18,837.00
f.	Asphalt Pavement (1" FDOT Type S-III)	SY	1725	$ 10.75	$ 18,543.75	$10.40	$17,940.00	$6.70	$ 11,557.50	$ 8.96	$ 15,456.00	$ 8.36	$ 14,421.00
g.	Temporary Asphalt (1")	SY	150	$ 10.50	$ 1,575.00	$25.00	$3,750.00	$130.00	$ 19,500.00	$ 20.00	$ 3,000.00	$ 8.36	$ 1,254.00
h.	Additional S-III Asphalt	TN	10	$ 125.00	$ 1,250.00	$150.00	$1,500.00	$150.00	$ 1,500.00	$ 68.90	$ 689.00	$ 216.00	$ 2,160.00
i.	S-III Aspahlt Overlay	SY	50	$ 12.50	$ 625.00	$10.40	$520.00	$6.90	$ 345.00	$ 10.00	$ 500.00	$ 21.60	$ 1,080.00
7	Drainage Pipe:												
a.	12" RCP	LF	326	$ 35.00	$ 11,410.00	$19.00	$6,194.00	$38.40	$ 12,518.40	$ 51.15	$ 16,674.90	$ 29.02	$ 9,460.52
Alt 1 b.	12" CAP	LF	326	$ 24.00	$ 7,824.00	$22.60	$7,367.60	$29.88	$ 9,740.88	$ 54.00	$ 17,604.00	$ 25.56	$ 8,332.56
c.	15" RCP	LF	219	$ 40.00	$ 8,760.00	$19.60	$4,292.40	$28.17	$ 6,169.23	$ 51.15	$ 11,201.85	$ 20.01	$ 4,382.19
Alt 1 d.	15" CAP	LF	219	$ 35.00	$ 7,665.00	$23.65	$5,179.35	$30.59	$ 6,699.21	$ 56.72	$ 12,421.68	$ 27.87	$ 6,103.53
e.	18" RCP	LF	142	$ 45.00	$ 6,390.00	$23.00	$3,266.00	$30.60	$ 4,345.20	$ 54.50	$ 7,739.00	$ 27.10	$ 3,848.20
Alt 1 f.	18" CAP	LF	142	$ 42.00	$ 5,964.00	$31.20	$4,430.40	$33.00	$ 4,686.00	$ 59.67	$ 8,473.14	$ 37.16	$ 5,276.72
g.	24" RCP	LF	73	$ 50.00	$ 3,650.00	$32.25	$2,354.25	$46.00	$ 3,358.00	$ 60.47	$ 4,414.31	$ 41.45	$ 3,025.85
h.	30" RCP	LF	182	$ 70.00	$ 12,740.00	$42.50	$7,735.00	$42.46	$ 7,727.72	$ 81.85	$ 14,896.70	$ 60.50	$ 11,011.00
i.	36" RCP	LF	172	$ 80.00	$ 13,760.00	$56.00	$9,632.00	$96.00	$ 16,512.00	$ 169.00	$ 29,068.00	$ 79.36	$ 13,649.92
j.	24" x 38" RCP	LF	152	$ 85.00	$ 12,920.00	$59.50	$9,044.00	$82.00	$ 12,464.00	$ 103.55	$ 15,739.60	$ 121.90	$ 18,528.80
k.	29" x 45" RCP	LF	26	$ 95.00	$ 2,470.00	$131.00	$3,406.00	$139.00	$ 3,614.00	$ 195.33	$ 5,078.58	$ 204.16	$ 5,308.16
l.	24" Perforated CAP wrapped completely with filter fabric	LF	125	$ 50.00	$ 6,250.00	$34.50	$4,312.50	$49.30	$ 6,162.50	$ 64.30	$ 8,037.50	$ 53.25	$ 6,656.25
Alt 1 m.	36" ADS N-12	LF	172	$ 80.00	$ 13,760.00	$39.25	$6,751.00	$82.00	$ 14,104.00	$ 157.00	$ 27,004.00	$ 69.72	$ 11,991.84
8	Drainage Structures												
a.	Type A-4 Catch Basin	EA	10	$ 2,500.00	$ 25,000.00	$2,350.00	$23,500.00	$1,858.00	$ 18,580.00	$ 2,100.00	$ 21,000.00	$ 2,189.77	$ 21,897.70
b.	Type A-5 Catch Basin	EA	2	$ 2,500.00	$ 5,000.00	$3,650.00	$7,300.00	$2,652.00	$ 5,304.00	$ 2,890.00	$ 5,780.00	$ 4,120.21	$ 8,240.42
c.	Flapgate	EA	1	$ 5,000.00	$ 5,000.00	$3,700.00	$3,700.00	$7,140.00	$ 7,140.00	$ 4,210.00	$ 4,210.00	$ 17,794.30	$ 17,794.30
d.	Sediment Control Box	EA	1	$ 35,000.00	$ 35,000.00	$44,725.00	$44,725.00	$56,834.00	$ 56,834.00	$ 41,400.00	$ 41,400.00	$ 53,179.20	$ 53,179.20
e.	Modify Existing Structures (connect new pipe to existing structures)	EA	1	$ 200.00	$ 200.00	$500.00	$500.00	$700.00	$ 700.00	$ 1,200.00	$ 1,200.00	$ 1,296.00	$ 1,296.00
9	#57 Stone (Includes pipe bedding, structure bedding, and between utilities as directed by the engineer.)	CY	20	$ 28.00	$ 560.00	$50.00	$1,000.00	$32.28	$ 645.60	$ 40.00	$ 800.00	$ 81.00	$ 1,620.00
10	Sawcutting	LF	320	$ 0.75	$ 240.00	$0.50	$160.00	$2.00	$ 640.00	$ 2.00	$ 640.00	$ 4.32	$ 1,382.40
11	Driveway Restoration												
a.	Asphalt	SY	150	$ 35.00	$ 5,250.00	$41.75	$6,262.50	$22.00	$ 3,300.00	$ 55.00	$ 8,250.00	$ 21.60	$ 3,240.00
b.	Concrete	SY	155	$ 45.00	$ 6,975.00	$36.25	$5,618.75	$32.00	$ 4,960.00	$ 38.00	$ 5,890.00	$ 58.32	$ 9,039.60
c.	Brick Paver (Re-lay existing)	SY	210	$ 35.00	$ 7,350.00	$36.00	$7,560.00	$67.00	$ 14,070.00	$ 93.00	$ 19,530.00	$ 38.88	$ 8,164.80
d.	White Rock	SY	30	$ 25.00	$ 750.00	$10.00	$300.00	$13.00	$ 390.00	$ 50.00	$ 1,500.00	$ 12.96	$ 388.80
e.	Unpaved	SY	10	$ 5.00	$ 50.00	$5.00	$50.00	$11.00	$ 110.00	$ 35.00	$ 350.00	$ 10.80	$ 108.00
12	Sod												
a.	Argentine Bahia	SY	400	$ 1.50	$ 600.00	$2.28	$912.00	$1.67	$ 668.00	$ 1.75	$ 700.00	$ 2.43	$ 972.00
b.	St. Augustine Floratam	SY	1000	$ 2.50	$ 2,500.00	$3.00	$3,000.00	$2.45	$ 2,450.00	$ 2.72	$ 2,720.00	$ 3.40	$ 3,400.00
c.	Zoysia (535 Live Oak)	SY	500	$ 3.50	$ 1,750.00	$4.14	$2,070.00	$3.25	$ 1,625.00	$ 4.00	$ 2,000.00	$ 7.29	$ 3,645.00
13	Miscellaneous Irrigation Repair	LS	1	$ 1,500.00	$ 1,500.00	$1,500.00	$1,500.00	$2,000.00	$ 2,000.00	$ 6,000.00	$ 6,000.00	$ 5,940.00	$ 5,940.00
14	Concrete												

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Certified By:

Live Oak Road Paving Drainage Improvements

a.	Extra Concrete	CY	10	$ 150.00	$ 1,500.00	$250.00	$2,500.00	$170.00	$ 1,700.00	$ 150.00	$ 1,500.00	$ 486.00	$ 4,860.00
Alt 2 b.	5' Concrete Sidewalk (6" thickness)	SF	5000	$ 3.50	$ 17,500.00	$4.00	$20,000.00	$3.60	$ 18,000.00	$ 3.40	$ 17,000.00	$ 3.24	$ 16,200.00
Alt 2 c.	ADA Detectable Warning Mats	SF	10	$ 50.00	$ 500.00	$30.00	$300.00	$25.50	$ 255.00	$ 108.00	$ 1,080.00	$ 27.00	$ 270.00
15	Remove and Replace Unsuitable Material	CY	40	$ 15.00	$ 600.00	$10.00	$400.00	$30.00	$ 1,200.00	$ 25.00	$ 1,000.00	$ 37.80	$ 1,512.00
16	Rock Removal	CY	10	$ 30.00	$ 300.00	$10.00	$100.00	$50.00	$ 500.00	$ 50.00	$ 500.00	$ 54.00	$ 540.00
17	Maintenance of Traffic/Traffic Control (Includes temporary removal and replacement of existing permanent traffic control devices)	LS	1	$ 5,000.00	$ 5,000.00	$17,800.00	$17,800.00	$17,880.00	$ 17,880.00	$ 7,500.00	$ 7,500.00	$ 16,200.00	$ 16,200.00
18	Striping												
a.	Centerline (Double Lines)	LF	1000	$ 1.70	$ 1,700.00	$0.75	$750.00	$1.46	$ 1,460.00	$ 2.40	$ 2,400.00	$ 5.44	$ 5,440.00
b.	Edge of Road	LF	2000	$ 0.85	$ 1,700.00	$0.38	$760.00	$1.73	$ 3,460.00	$ 1.19	$ 2,380.00	$ 2.59	$ 5,180.00
c.	Stop Bars	EA	1	$ 80.00	$ 80.00	$25.00	$25.00	$78.00	$ 78.00	$ 100.00	$ 100.00	$ 116.64	$ 116.64
d.	Crosswalks	EA	1	$ 150.00	$ 150.00	$60.00	$60.00	$178.00	$ 178.00	$ 220.00	$ 220.00	$ 259.20	$ 259.20
e.	Reflective Pavement Markers (RPMs)	EA	50	$ 8.00	$ 400.00	$5.75	$287.50	$5.00	$ 250.00	$ 4.40	$ 220.00	$ 5.18	$ 259.00
19	Dewatering (Includes necessary permits and labor to install, as well as well points, pump, header pipe, stone, and any other material or apparatus necessary to accomplish dry working conditions.)	LF	750	$ 6.50	$ 4,875.00	$10.00	$7,500.00	$25.66	$ 19,245.00	$ 10.00	$ 7,500.00	$ 12.96	$ 9,720.00
20	Asphalt Milling	SY	1200	$ 2.50	$ 3,000.00	$5.00	$6,000.00	$3.75	$ 4,500.00	$ 7.65	$ 9,180.00	$ 5.40	$ 6,480.00
21	Outfall (Includes coring the existing concrete seawall)	LS	1	$ 5,600.00	$ 5,600.00	$2,500.00	$2,500.00	$1,450.00	$ 1,450.00	$ 4,000.00	$ 4,000.00	$ 5,940.00	$ 5,940.00
22	Install 8-Inch Ductile Iron Water Main (PR350 Cement Lined)	LF	40	$ 35.00	$ 1,400.00	$55.00	$2,200.00	$45.00	$ 1,800.00	$ 67.25	$ 2,690.00	$ 38.40	$ 1,536.00
23	Remove Existing 8-Inch Cast Iron Water Main (Item to include all existing valves, fittings, service saddles, etc.)	LF	35	$ 35.00	$ 1,225.00	$9.50	$332.50	$10.00	$ 350.00	$ 15.00	$ 525.00	$ 21.60	$ 756.00
24	Install 8-Inch Linestop (Item to include Tapping Saddle, Tap, Pressure Test, etc.)	EA	2	$ 3,000.00	$ 6,000.00	$3,800.00	$7,600.00	$2,800.00	$ 5,600.00	$ 5,750.00	$ 11,500.00	$ 10,936.51	$ 21,873.02
25	Furnish and Install Resilient Seat Gate Valve (Includes furnishing and installing retainer glands, bolts, and gaskets for each side of valve for Ductile Iron or PVC Pipe)	EA	2	$ 685.00	$ 1,370.00	$1,175.00	$2,350.00	$1,520.00	$ 3,040.00	$ 1,338.00	$ 2,676.00	$ 1,980.74	$ 3,961.48
26	Install 8-Inch Ductile Iron Fittings (C-153 Compact Fittings) (Cement Lined Interior) (Item to include installation of retainer glands, bolts, and gaskets for all sides of fitting for D.I. & PVC pipe)												
a.	45 Bend M.J.	EA	4	$ 250.00	$ 1,000.00	$225.00	$900.00	$392.00	$ 1,568.00	$ 370.00	$ 1,480.00	$ 373.12	$ 1,492.48
b.	Sleeves M.J. (Long Body)	EA	1	$ 500.00	$ 500.00	$260.00	$260.00	$420.00	$ 420.00	$ 340.00	$ 340.00	$ 415.82	$ 415.82
27	Install Megalug Bell Restraints (Series 1100HD) on Existing Slip-on Joint Cast Iron Pipe	EA	11	$ 160.00	$ 1,760.00	$100.00	$1,100.00	$252.00	$ 2,772.00	$ 767.00	$ 8,437.00	$ 356.11	$ 3,917.21
28	Adjust Existing 2-inch HDPE Water Service pipe to construct new storm drainage	EA	8	$ 400.00	$ 3,200.00	$300.00	$2,400.00	$400.00	$ 3,200.00	$ 430.00	$ 3,440.00	$ 486.00	$ 3,888.00
29	Install Temporary Water Service for 525 Live Oak Rd.	EA	1	$ 700.00	$ 700.00	$1,500.00	$1,500.00	$1,564.00	$ 1,564.00	$ 2,565.00	$ 2,565.00	$ 1,794.29	$ 1,794.29
30	Install & Remove Temporary Bacteriological Sample Point	EA	1	$ 225.00	$ 225.00	$300.00	$300.00	$2,950.00	$ 2,950.00	$ 1,700.00	$ 1,700.00	$ 1,676.70	$ 1,676.70
	Total Bid				$ 419,546.75		$391,884.75		$ 470,589.74		$ 579,280.51		$ 544,991.25
	Total Base Bid				$340,683.75		$333,753.90		$391,749.15		$461,880.19		$476,049.35
	Total Alternate 1 Bid				$346,556.75		$334,521.10		$405,536.91		$484,691.01		$475,457.14
	Total Alternate 2 Bid				$358,683.75		$354,053.90		$410,004.15		$479,960.19		$492,519.35

Denotes Mathematical Correction

05/23/2011
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Certified By:

CITY OF VERO BEACH
PUBLIC WORKS AND ENGINEERING
LIVE OAK ROAD PAVING AND DRAINAGE IMPROVEMENTS, PROJECT NO. 2005-09
OPENED: 05/19/11
COVB BID #150-11/JV

Description	Don Luchetti Construction	Timothy Rose Contracting	Jobear/Warden Construction	Sunshine Land Design, Inc.
Total Cost Base Bid	340,504.90	405,853.15	461,880.19	484,981.19
Total Cost Alternate 1 Bid	334,521.10	405,536.91	484,691.01	472,397.14
Total Cost Alternate 2 Bid	360,804.90	424,108.15	479,960.19	501,451.19
Certification Receipt Addendum #1	√	√	√	√
Bid Bond	√	√	√	√
Drug Free	√	√	√	√
Questionnaire	√	√	√	√
Local Business Certification Form	N/A	√	N/A	√
Certification of Nonsegregated Facilities	√	√	√	√
Equal Opportunity Report Statement	√	√	√	√
Trench Safety Act	√	√	√	√
Certification - Debarment, Etc.	√	√	√	√
Noncollusion Affidavit	√	√	√	√

Purchasing Division

7-B)

City Council Agenda Item
Meeting of July 19, 2011

TO: Mayor Jay Kramer
Vice Mayor Pilar Turner
Councilmember Brian Heady
Councilmember Craig Fletcher
Councilmember Tracy Carroll

FROM: Monte K. Falls, Interim City Manager MKFalls 7/12/11

DATE: July 12, 2011

SUBJECT: **Proposed Sewer Use Ordinance Amendments for Submittal to FDEP**

REQUESTED BY: Assistant Director of Water and Sewer

The following is requested as it relates to the above-referenced agenda item:

✓ Request Council review and approval based on the attached supporting documentation.

____ Request Council review and possible action.

____ No action required. (Information only)

DEPARTMENTAL CORRESPONDENCE
WATER AND SEWER DEPARTMENT

Received
JUL 2011
City Mgr's Office

To: Monte Falls, Interim City Manager

From: John Ten Eyck, Assistant Director

Date: July 13, 2011

RE: Proposed Sewer Use Ordinance Amendments for Submittal to FDEP

The U.S. Environmental Protection Agency and the Florida Department of Environmental Protection (FDEP) have recently revised their regulations relating to industrial waste pretreatment programs. As a result, the City of Vero Beach, as the control authority of an approved industrial waste pretreatment program, is now required to update its sewer use ordinance to incorporate these changes. In addition, it is my understanding that the City Council wishes to transfer the duties of the Board of Adjustment to the Planning and Zoning Board. The Board of Adjustment is included in our current sewer use ordinance as an appellate board for matters related to industrial wastewater discharge permits and enforcement actions. Sections of the ordinance that now refer to the Board of Adjustment must therefore be changed to refer to the Planning and Zoning Board instead.

I have attached a draft of proposed revisions to our ordinance designed to modify it to comply with both the new FDEP requirements and the Council's objective. The revisions are basically technical changes and are not expected to have any impact on our permitted industrial users. The draft has been reviewed by our City Attorney's office. I am now requesting that you submit this draft to the City Council for review of the proposed changes and for the Council's direction on submitting the amended ordinance to the FDEP for comments and preliminary review. After review by the FDEP, the proposed ordinance with any FDEP recommended amendments will be brought back to the City Council for first reading and public hearing.

Background

State regulations require any public utility that provides reclaimed water to a public access reclaimed water system to have a FDEP approved industrial waste pretreatment program. The requirements that must be met for a program to be approved are contained in Chapter 62-625 F.A.C. The City of Vero Beach, as a reclaimed water provider, has had such an approved pretreatment program since 1992.

Whenever changes are made to federal and state industrial waste pretreatment requirements the City is required to update its sewer use ordinance to incorporate those changes. The FDEP pretreatment program has a formal procedure to be followed when an approved pretreatment

program, such as ours, proposes to update its legal authority (ordinance). This procedure requires us to first submit a draft of our proposed ordinance changes to the FDEP for their preliminary review. If the FDEP does not object to any of our proposed changes then the modified ordinance can go to our Council for enactment following our standard procedures. After being enacted, the final ordinance must then be submitted to the FDEP as a "request for approval of a substantial modification to a pretreatment program". If the enacted ordinance that is submitted at this stage is the same as the draft version that was submitted earlier for preliminary review then the FDEP will approve the change, publish a public notice, and wait for public comments. If no comments are received then the changes go into effect at the end of the comment period. However, if any significant changes are made to the draft ordinance after it has been preliminarily reviewed by the FDEP, the FDEP may (and most likely will) reject the Council enacted ordinance. This will significantly delay the approval process.

To help avoid possible rejection of the proposed modified ordinance by FDEP and speed up the approval process, it would be beneficial to know if any Councilmember has any questions or concerns about the proposed changes before the draft is submitted to FDEP. These concerns can then be addressed and changes made to the draft before it is submitted for preliminary review.

ARTICLE III. SANITARY SEWER SYSTEM

DIVISION 1. GENERALLY

Sec. 78-61. Purpose and policy.

(a) This article sets forth uniform requirements for users of the domestic wastewater facility (WWF) of the city and enables the city to comply with all applicable state and federal laws, including the Clean Water Act (33 USC 1251 et seq.), the General Pretreatment Regulations (40 CFR 403) and the state department of environmental protection's pretreatment requirements in F.A.C. 62-625. The objectives of this article are:

(1) To prevent the introduction of pollutants into the wastewater facility that will interfere with its operation, including interferences with its use or disposal of domestic wastewater residuals;

(2) To prevent the introduction of pollutants into the wastewater facility that will pass through the water reclamation facility, inadequately treated, into receiving waters, or otherwise be incompatible with the water reclamation facility;

(3) To protect both the general public and wastewater facility personnel who may be affected by wastewater and sludge in the course of their employment;

(4) To improve opportunities to reclaim and recycle wastewater and sludge from the wastewater facility;

(5) To enable the city to comply with its wastewater discharge/reuse permit conditions, sludge use and disposal requirements, and any other federal, state, or local laws to which the wastewater facility is subject.

(b) This article authorizes the issuance of wastewater discharge permits; establishes effluent limits; requires pretreatment; authorizes monitoring, compliance and enforcement activities; requires industrial user reporting; establishes administrative review procedures; and provides for the setting of fees for the equitable distribution of costs resulting from the program established in this article.

(c) This article shall apply to persons within the city and to persons outside the city who are, by contract or agreement with the city, users of the city's wastewater facility.

Sec. 78-62. Administration.

Except as otherwise provided in this article, the director shall administer, implement, and enforce the provisions of this article. Any powers granted to or duties imposed upon the director may be delegated by the director to other city personnel.

Sec. 78-63. Definitions.

(a) *Generally.* The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Approval authority means the state department of environmental protection.

Authorized representative of the industrial user means:

(1) The president, vice-president, secretary, or treasurer of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation;

(2) A general partner or proprietor if the industrial user is a partnership or sole proprietorship, respectively;

~~(3) A director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or his designee if the industrial user is a federal, state or local governmental facility; or~~

(3) The manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for individual wastewater discharge permit requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

(4) A director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or his designee if the industrial user is a federal, state or local governmental facility; or

~~(4)~~(5) A duly authorized representative of the person designated in subsections (1), (2), (3), or ~~(3)~~ (4) of this definition if such authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facilities from which the discharge originates, and the written authorization is submitted to the city.

Best Management Practices or BMPs means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in Sec. 78-86. (a). BMPs include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

Biosolids means treated wastewater sludge that can be beneficially recycled.

BOD and *biochemical oxygen demand* mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20 degrees Celsius, expressed in concentration as milligrams per liter (mg/l).

Building drain means that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five feet outside of the inner surface of the building wall.

Building sewer means the extension from the building drain to the point of connection with the public sewer or other place of disposal; also called a house connection, which conveys wastewater from the premises of a user to the public sewer.

Bypass means the intentional diversion of wastewater streams from any portion of an industrial user's treatment facility.

Categorical industrial user means an industrial user subject to categorical pretreatment standards.

Categorical pretreatment standard means any regulation containing pollutant discharge limits promulgated by the United States Environmental Protection Agency in accordance with sections 307(b) and (c) of the Federal Water Pollution Control Act which applies to a specific category of industrial users and which appears in 40 CFR chapter I, subchapter N, parts 405--471, as amended.

CFR means the Code of Federal Regulations.

City means the City of Vero Beach

City manager means the city manager and any of his authorized designees.

Compatible pollutant means biochemical oxygen demand, total suspended solids, pH, oil and grease, fecal coliform bacteria and any additional pollutants identified in the wastewater facility's discharge/reuse permit for which the wastewater facility is designed to treat and does remove to a substantial degree; also called "conventional pollutant."

Composite sample means a sample resulting from the combination of individual wastewater samples taken at selected intervals based on an increment of either flow or time.

Constituents means the particles and dissolved substances which exist in wastewater.

Control authority means the city.

Cooling water means the water discharged from uses such as air conditioning, cooling or refrigeration, of which the only pollutant added is heat; also called "noncontact cooling water."

Daily average values means the average of all sample values for any one given day.

Dilution means any addition to a wastewater discharge for the purpose of, but not limited to, making weaker, less potent, mixing, dispersing, or thinning, so as to alter the physical, chemical or biological properties, other than what is defined as pretreatment.

Direct discharge means the discharge of treated or untreated wastewater directly to waters of the state.

Director means the city administrative official in charge of the department of water and sewer, or his designee, authorized deputy, agent, or representative.

Discharge means the introduction of pollutants into a wastewater facility.

Domestic wastewater means water-carried wastes of human origin, as opposed to wastes from commercial or industrial activities.

Effluent means the wastewater or other liquid that flows out of a basin, treatment process, or treatment plant.

Environmental Protection Agency means the United States Environmental Protection Agency, or where appropriate the term may also be used as a designation for the administrator or other duly authorized official of such agency.

Existing source means any source of discharge, the construction or operation of which commenced prior to the publication of proposed categorical pretreatment standards which will

be applicable to the source if the standard therefor is promulgated in accordance with section 307 of the Federal Water Pollution Control Act.

FDEP means the Florida Department of Environmental Protection

Flow proportional composite sample means a sample consisting of several individual portions in which each portion of the sample is proportional to the flow and combined to form a representative sample.

Four-day average values means the average of daily values for four consecutive monitoring days.

Garbage means solid waste from the preparation, cooking and dispensing of food, and from handling, storage and sale of produce.

Governmental agency means an official, officer, commission, authority, council, committee, department, division, bureau, board, section, or other unit or entity of government, including a county, municipality, or other regional or local governmental entity.

Grab sample means a sample which is collected from a wastestream over a period of time not exceeding 15 minutes, with no regard to the flow in the waste stream.

Incompatible pollutant means all pollutants other than compatible pollutants as defined in this section.

Industrial user means any person discharging industrial wastes to the public sewers.

Industrial wastes means pollutants from industrial or other nondomestic processes.

Instantaneous maximum allowable discharge limit means the maximum concentration (or loading) of a pollutant allowed to be discharged at any time, determined from the analysis of any grab or composite sample collected, independent of the industrial flow rate and the duration of the sampling event.

Interference means a discharge which, alone or in conjunction with a discharge or discharges from other sources, both:

(1) Inhibits or disrupts the wastewater facility, its treatment processes or operations, or its domestic wastewater residuals processes, use or disposal; and

(2) Is a cause of a violation of any requirement of the wastewater facility's permit (including an increase in the magnitude or duration of a violation) or prevents use or disposal of domestic wastewater residuals in compliance with local regulations or rules of the state department of environmental protection and F.S. ch. 403.

May is permissive. (See *Shall.*)

Medical waste means isolation wastes, infectious agents, human blood and blood byproducts, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes and dialysis wastes.

Minor user means a noncategorical user which has the potential to discharge a nondomestic process wastestream but whose discharge may not significantly impact the wastewater facility, degrade receiving water quality and/or contaminate sludge.

National pollutant discharge elimination system and *NPDES permit* mean a permit for discharge of pollutants from point or nonpoint sources into the navigable waters, the contiguous zone and the oceans pursuant to section 402 of the Federal Water Pollution Control Act (33

USC 1342).

Natural outlets means any outlet into a watercourse, pond, ditch, lake or other body of surface water or groundwater.

New source means:

(1) Any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which is commenced after the publication of proposed pretreatment standards prescribed under section 307(c) (33 USC 1317) of the Federal Water Pollution Control Act which will be applicable to such source, of the standards are thereafter promulgated in accordance with that section, provided that:

a. The building, structure, facility or installation is constructed at a site at which no other source is located;

b. The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

c. The production or wastewater generating processes of the building, structure or facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent factors such as the extent to which the new facility is integrated with the existing plant and the extent to which the new facility is engaged in the same general type of activity as the existing source will be considered.

(2) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of subsections (1)b or c of this definition but otherwise alters, replaces, or adds to existing process or production equipment.

(3) Construction of a new source as defined under this subsection has commenced if the owner or operator has:

a. Begun, or caused to begin as part of a continuous on-site construction program:

(i) Any placement, assembly or installation of facilities or equipment; or

(ii) Significant site preparation work, including clearing, excavation or removal of existing buildings, structures or facilities which is necessary for the placement, assembly or installation of new source facilities or equipment; or

b. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this subsection.

Oil and grease means a group of substances including fats, waxes, free fatty acids, soaps, and certain other nonfatty materials which are from animal or vegetable source and biodegradable. This excludes petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin.

Oil water separator means any tank, box, sump or other container in which any petroleum or grease product thereof, floating on or entrained or contained in water entering the tank, box, sump or other container, is physically separated and removed from the water prior to outfall, drainage, or recovery of the water; also called "grease trap."

Pass-through means a discharge which exits the wastewater facility into the waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of violation of any requirement of the city's discharge/reuse permit (including an increase in the magnitude or duration of a violation).

Person means any individual, partnership, firm, company, corporation, association, governmental entity, or any other legal entity.

pH means the ~~logarithm (base 10)~~measure of the ~~reciprocal~~acidity or alkalinity of ~~the concentration of hydrogen ions~~a solution, expressed in ~~gram moles per liter of solution~~standard units.

Pollutant means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, municipal, agricultural and industrial wastes, and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, BOD, toxicity or odor).

Pollution means the manmade or man-induced alteration of the chemical, physical, biological, or radiological integrity of water.

Pretreatment means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater to an approved, less harmful state prior to discharging such pollutants into the wastewater facility.

Pretreatment standards means any regulation containing pollutant discharge limitations promulgated by the United States Environmental Protection Agency or a successor agency or established by state or local laws or regulations.

Priority pollutant means any toxic pollutant regulated under categorical pretreatment standards.

Private wastewater collection system means a system for the collection, pumping, and conveying of wastewater installed, maintained, operated, and owned by persons other than the city and connected to the public sewer.

Private wastewater disposal system means a system for the collection, treatment, and disposal of wastewater installed, maintained, operated, and owned by persons other than the city and not connected to the public sewer.

Prohibited discharge standards and *prohibited discharges* mean the absolute prohibition against the discharge of certain substances.

Property owner means the owner of any homes, buildings, or properties used for human occupancy, employment, recreation, or other purposes situated within the city.

Public sewer means a sewer controlled by the city. In general, the public sewer shall

include the main sewer in the street, and the service branch from the main sewer to the curb or property line.

Receiving waters means that body of water, or watercourse receiving the discharge waters from the water reclamation facility or formed by the waters discharged from the water reclamation facility.

Sanitary sewer means a sewer that carries wastewater and to which stormwater, surface waters and groundwaters are not intentionally admitted.

Self-monitoring means sampling, analysis and monitoring by an industrial user of his regulated discharge at the expense of the user.

Septic tank means a subsurface impervious tank designed to temporarily retain sewage or similar waterborne wastes together with:

(1) A sewer line constructed with solid pipe, with joints sealed, connecting the impervious tank with a plumbing stub out; and

(2) A subsurface system of piping to drain the clarified discharge from the tank and distribute it underground to be absorbed or filtered.

Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

Sewage means human excrement and gray water (household showers, dishwashing operations, etc.).

Sewer means a pipe or conduit for carrying wastewater.

Shall is mandatory. (See *May*.)

Significant industrial user and *SIU* mean:

(1) Any industrial user of the city's wastewater treatment and disposal system who is subject to categorical pretreatment standards under F.A.C. 62-625.410 and 40 CFR chapter I, subchapter N ~~which has been adopted by reference in F.A.C. 62-660~~; and/or

(2) Any other industrial user who (i) discharges an average of 25,000 gallons per day or more of process wastewater to the wastewater facility (excluding domestic wastewater, noncontact cooling and boiler blowdown wastewater), or (ii) contributes a process waste stream which makes up five percent or more of the average dry weather hydraulic or organic capacity of the treatment plant, or (iii) is designated as significant by the control authority on the basis that the industrial user has a reasonable potential for adversely affecting the wastewater facility's operation or violating any pretreatment standard or requirement.

(3) Upon finding that an industrial user meeting the criteria in subsection (2) of this definition has no reasonable potential for adversely affecting the wastewater facility's operation or for violating any pretreatment standard or requirement, the control authority may at any time, on its own initiative or in response to a request received from an industrial user, and in accordance with F.A.C. 62-625.500(2)(e), determine that the industrial user is not a significant industrial user.

Significant noncompliance and *SNC* mean one or all of the following:

(1) Violations of wastewater discharge limits:

a. Chronic violations. _Sixty-six percent or more of all the measurements ~~exceed~~for the same ~~daily maximum limit or the same average limit in~~pollutant parameter taken during a six-month period ~~(~~exceed (by any magnitude~~ of exceedance).~~) a numeric pretreatment standard or requirement, including instantaneous limits.

b. Technical review criteria (TRC) violations. Thirty-three percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the ~~daily maximum limit~~numeric pretreatment standard or ~~the average limit~~requirement including instantaneous limits, multiplied by the applicable ~~TRC (TRC =~~ criteria (1.4 for BOD, TSS, total oil and grease, and 1.2 for all other pollutants except pH.)

c. Any other violation of ~~an effluent limit (~~a pretreatment standard or requirement (Daily Maximum, long-term average~~ or daily maximum,~~ instantaneous limit, or narrative standard) that the control authority ~~believes~~determines has caused, alone or in combination with other discharges, interference or pass-through, including endangering the health of wastewater facility personnel or the general public.

d. Any discharge of a pollutant that has caused imminent endangerment to human health, safety or welfare or to the environment and has resulted in the control authority's exercise of its emergency authority to halt or prevent such discharge.

(2) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in ~~a~~an individual wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance.

(3) Failure to provide, within ~~30~~45 days after the due date, required reports such as baseline monitoring reports, ~~90-day~~reports on compliance ~~reports~~with categorical pretreatment standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules.

(4) Failure to accurately report noncompliance.

(5) Any other violation~~ or group~~(s), including but not limited to, a violation of ~~violations~~Best Management Practices, that the control authority determines will adversely affect the operation or implementation of the local pretreatment program.

Sludge means the accumulated settleable solids separated from liquids, such as water or wastewater, during processing.

Slug means any discharge of wastewater at a flow rate or concentration which could cause a violation of the prohibited discharge standards or any discharge of a nonroutine, episodic nature including, but not limited to, an accidental spill or a noncustomary batch discharge.

State department of environmental protection means a component of the executive

branch of the state authorized by F.S. § 20.261.

Storm sewer and *storm drain* mean a sewer which carries stormwater and surface water and drainage, but excludes wastewater.

Total suspended solids and *TSS* mean solids that either float on the surface of or are in suspension in water, sewage, or other liquids and which are removable by laboratory filtering.

Toxic pollutant means any pollutant or combination of pollutants listed as toxic in regulations promulgated by the administrator of the Environmental Protection Agency under the provision of the Clean Water Act 307(a), and any amendments to such act, or other federal or state acts.

Upset means an exceptional incident in which there is unintentional and temporary noncompliance with pretreatment standards due to factors beyond the reasonable control of the industrial user.

User means any person who contributes, causes or permits the contribution of wastewater into the city's wastewater facility.

Waste means sewage and any and all other waste substances, liquid, solid, gaseous or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing or processing operations of whatever nature, including the waste placed within containers of whatever nature prior to, and for the purpose of disposal.

Wastewater means liquid and water-carried industrial wastes and domestic waste from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, together with any stormwaters, surface waters or groundwaters which may be present, which are discharged into the public sewer or contributed to the wastewater facility.

Wastewater discharge permit means a permit for a user to discharge wastewater to the wastewater facility.

Wastewater facility and *WWF* mean structures, equipment and processes owned and maintained by the city that are required to collect, carry away, and treat domestic wastewater or industrial wastewater and dispose of the effluent. For the purposes of this article, the term "wastewater facility" shall also include any sewers that convey wastewater to the city's wastewater facility from persons outside the city wastewater service area who are, by contract or agreement with the city, users of the city's wastewater facility.

Water reclamation facility means that portion of a wastewater facility which is designed to provide treatment (including recycling and reclamation) of domestic and industrial wastewater.

(b) *Abbreviations.* As used in this article, the following abbreviations shall have the meanings ascribed in this subsection:

gpd: Gallons per day

mg/l: Milligrams per liter

ppb: Parts per billion

Sec. 78-64. Connection with sewer system.

(a) Connection with and use of the services and facilities of the sanitary sewer system is

required whenever required by F.S. § 381.272 or the Florida Administrative Code as they now exist or may be amended, and, in addition, shall be required for any lot or parcel or combination thereof within the city limits, the use of which:

(1) Produces less than an estimated wastewater flow of 600 gallons per day, if a sewer line exists in a public easement or right-of-way which abuts the property, and if gravity flow can be maintained from the building drain to the sewer line. Generally, a flow of less than 600 gallons per day reflects a single-family residence;

(2) Produces more than an estimated wastewater flow of 600 gallons per day, if a sewer line exists in a public easement or right-of-way which abuts the property or is within 100 feet of the property; or

(3) Requires site plan approval. In such instances, connection with the sewer system shall be a condition of site plan approval.

(b) The city manager shall have authority to grant variances to the requirements of this section; provided, however, no variance shall be granted to the requirements of the state statutes, Florida Administrative Code, or for commercial or industrial development.

Secs. 78-65--78-80. Reserved.

DIVISION 2. SEWER USE RESTRICTIONS

Sec. 78-81. General regulations.

(a) No person shall discharge into any natural outlet within the city or in any area under the jurisdiction of the city or into the wastewater facility any wastewater or other polluted water except where suitable pretreatment has been provided in accordance with this article or any other national or state pretreatment standards or requirements, whichever is more stringent.

(b) Unless authorized by the director, no person shall discharge or cause to be discharged any stormwater, surface water, groundwater, roof runoff, subsurface drainage, swimming pool drain or backwash water, uncontaminated cooling water, groundwater remediation discharge, or unpolluted industrial process water into the wastewater facility.

Sec. 78-82. Building sewers and connections.

(a) All persons shall connect to the public sewer system where the sewer system is reasonably accessible, in accordance with all applicable regulations. No person shall discharge wastewater into the stormwater system.

(b) Any person who is required to connect a building sewer to the public sewer, or who wishes to connect even though not required, must apply for and obtain a building sewer permit and comply with all applicable provisions of the standard plumbing code, as adopted by this Code. The county/city building department shall automatically notify the director of any such permit application. In addition, any resident of the Town of Indian River Shores who is required or who wishes to connect to the public sewer shall first notify and receive the permission of the director.

(1) The director may require any person described in the proceeding subsection to

provide the director with any plans, specifications, or other information which the director deems relevant.

(2) The director can impose such conditions, including the requirement that the actual connection be made in his presence and under his supervision, as he deems necessary to enforce the provisions of this article.

(c) All costs and expenses incident to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the city from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.

Sec. 78-83. Private wastewater disposal.

(a) Where a public sewer is not available for connection to a building sewer, the owner of the building sewer shall connect the building sewer to a private wastewater disposal system in accordance with this section, section 22-181, and any applicable requirements of the county public health department and the state department of health. The owner shall operate and maintain the private wastewater disposal system in a sanitary manner at all times, at no expense to the city.

(b) Within 75 days after a public sewer becomes available for connection to a property served by a private wastewater disposal system, the property owner shall directly connect the building sewer to the public sewer in compliance with this Code, including this chapter, and any applicable resolutions. The property owner shall abandon and seal off any septic tanks, cesspools, and similar private wastewater disposal facilities located within or on the property.

(c) Property owners constructing, operating, and abandoning private wastewater disposal facilities shall comply with all applicable state and local laws and regulations in addition to complying with those requirements expressly stated in this article.

Sec. 78-84. Private wastewater collection systems.

(a) *Approval required.* Any person wishing to connect a private wastewater collection system to the public sewer shall first obtain the written approval of the director.

(b) *Notification of director prior to connection.* The owner of the private wastewater collection system shall notify the director when the private wastewater collection system is ready for connection to the public sewer. The connection shall be made under the supervision of the director or his representative.

(c) *Owner to bear costs and expenses; indemnification of city.* All costs and expenses incident to the installation and connection of the private wastewater collection system shall be borne by the owner. The owner shall indemnify the city from any loss or damage that may directly or indirectly be occasioned by the installation or connection of the private wastewater collection system.

(d) *Operation and maintenance.* The owner shall operate and maintain the private wastewater collection system in a sanitary manner at all times at no expense to the city. Private wastewater collection systems shall be maintained so as to preclude the entrance of excessive amounts of infiltration and inflow. Should it be determined by the director that excessive amounts of infiltration/inflow are entering the public sewer from a private wastewater collection system, the owner shall be responsible for determining the cause and for making all necessary repairs to the system to the director's satisfaction.

(e) *City's right of inspection.* The city shall have the right to inspect all private wastewater collection systems and appurtenances and to cause discontinuance of sewer service if the private wastewater collection system is not maintained in a sanitary and effective operating condition or if the public sewer facilities may be harmed thereby.

Sec. 78-85. Regulation of wastewater received from other jurisdictions.

(a) If another governmental agency, or user located outside the city limits, contributes wastewater to the wastewater facility, the director may enter into an interjurisdictional agreement with the contributing governmental agency.

(b) Prior to entering into an agreement required by subsection (a) of this section, the director shall request the following information from the contributing governmental agency:

(1) A description of the quality and volume of wastewater discharged to the wastewater facility by the contributing governmental agency;

(2) An inventory of all users located within the contributing governmental agency that are discharging to the wastewater facility; and

(3) Such other information as the director may deem necessary.

(c) An interjurisdictional agreement, as required by subsection (a) of this section, shall contain the following conditions:

(1) A requirement for the contributing governmental agency to adopt a sewer use ordinance which is at least as stringent as this article and local limits which are at least as stringent as those set out in this article. The requirement shall specify that such ordinance and limits must be revised as necessary to reflect changes made to the city's ordinance or local limits;

(2) A requirement for the contributing governmental agency to submit a revised user inventory on at least an annual basis;

(3) A provision specifying which pretreatment implementation activities, including wastewater discharge permit issuance, inspection and sampling, and enforcement, will be conducted by the contributing governmental agency; which of these activities will be conducted by the director; and which of these activities will be conducted jointly by the contributing governmental agency and the director;

(4) A requirement for the contributing governmental agency to provide the director with access to all information that the contributing governmental agency obtains as part of its pretreatment activities;

(5) Limits on the nature, quality, and volume of the contributing governmental agency's wastewater at the point where it discharges to the wastewater facility;

(6) Requirements for monitoring the contributing governmental agency's discharge;

(7) A provision ensuring the director access to the facilities of users located within the contributing governmental agency's jurisdictional boundaries for the purpose of inspection, sampling, and any other duties deemed necessary by the director; and

(8) A provision specifying remedies available for breach of the terms of the

interjurisdictional agreement.

Sec. 78-86. Use of the public sewers.

(a) No person shall contribute or cause to be contributed, directly or indirectly, any pollutant or wastewater which will pass-through or interfere with the operation or performance of the wastewater facility. These general prohibitions apply to all users of the wastewater facility whether or not the user is subject to national categorical pretreatment standards or any other federal, state, or local pretreatment standards or requirements. A user may not contribute the following substances to the wastewater facility:

(1) Any liquid or vapor having a temperature higher than 150 degrees Fahrenheit (65 degrees Celsius) or causing the temperature of the wastewater at the introduction into the water reclamation facility to exceed 104 degrees Fahrenheit (40 degrees Celsius).

(2) Any water or waste which may contain more than 100 parts per million by weight of fat, wax, oil, grease, or any substance which may solidify or become viscous at temperatures between 32 and 150 degrees Fahrenheit (0 and 65 degrees Celsius).

(3) Any gasoline, benzene, naphtha, fuel oil, or other flammable or explosive liquid, solid or gas, including, but not limited to, waste streams with a closed-cup flashpoint of less than 140 degrees Fahrenheit (60 degrees Celsius) using the test method specified in 40 CFR 261.21.

(4) Any garbage that has not been so shredded as to render it incapable of causing obstruction to the flow in sewers or other interferences with the proper operation of the wastewater facility.

(5) Any ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, manure, or any solid or viscous substance capable of causing obstruction to the flow in sewers or other interferences with the proper operation of the wastewater facility.

(6) Any water or waste having a pH lower than 5.5 or higher than 9.0 or having any other corrosive property capable of causing damage or hazard to the wastewater facility, any structures or equipment appurtenant thereto, including public sewers, or city personnel.

(7) Any waters or wastes containing toxic or poisonous solids, liquids, or gases in sufficient quantities, either singly or by interaction with other wastes, to injure or interfere with any wastewater treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of the water reclamation facility.

(8) Any noxious or malodorous liquids, gases, or solids which, either singly or by interaction with other wastes, are sufficient to create a public nuisance, a hazard to life, or to prevent entry into the sewers for maintenance and repair.

(9) Any radioactive wastes or isotopes except as specifically approved by the director in compliance with applicable state or federal regulations.

(10) Any water or wastes which, in the opinion of the director, is capable of causing excessive discoloration not readily removable by the normal sewage treatment

process.

(11) Any substance which will cause the city to violate any of the required operating or discharge permits related to the city water reclamation facility.

(12) Any wastes containing detergents, surface active agents, or other substances in sufficient quantities to cause excessive foaming in the wastewater facility.

(13) Any substance which may cause the wastewater facility effluent or any other product of the wastewater facility, such as residues or sludges, to be unsuitable for reclamation and reuse or to interfere with the reclamation process.

(14) Any trucked or hauled pollutants without the approval of the director, which approval shall include designation of discharge points.

(15) Any pollutant, including oxygen-demanding pollutants, released at a rate of flow or concentration of pollution which will cause interference with the wastewater facility.

(16) Any sewage or refuse removed from septic tanks.

(17) Any petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin which cause interference with the proper operation of the wastewater facility or which cause the city to violate any required operating or discharge permit of the city wastewater facility.

(18) Any sludges, screenings, or other residues from the pretreatment of industrial wastes.

(19) Any medical wastes, except as specifically authorized by the director in a wastewater discharge permit.

(20) Any concentration of chlorides which may cause damage to the wastewater facility, pass-through or interfere with the treatment process.

(21) Any hazardous waste according to F.A.C. 62-730.

(22) Any wastewater containing constituents in concentrations in excess of the limits applicable to wastewater, as established by section 78-88~~,~~. unless:

a. The wastewater is industrial waste, in which case the applicable concentration limits are those applicable to industrial waste, as established in subsection 78-88~~(b);~~;

b. The user is subject to categorical pretreatment standards, in which case the user shall meet the most stringent of any applicable federal, state, and local standards; or

c. The user has been issued a permit providing a higher interim concentration level in conjunction with a requirement that the user construct a pretreatment facility or institute changes in operation and maintenance procedures to reduce the concentration of constituents to levels not exceeding the standards within a fixed period of time.

(b) When the director determines that a user is contributing to the wastewater facility any of the substances enumerated in this section in such amounts as to pass-through or interfere with the operation of the wastewater facility, the director shall: (i) advise the user of the impact of the contribution on the wastewater facility; and (ii) develop effluent limitations for the user to correct the interference with the wastewater facility.

(c) Wastes prohibited by this section shall not be processed or stored in such a manner that they could be discharged to the wastewater facility. All floor drains located in process or materials storage areas must discharge to the industrial user's pretreatment facility before connecting with the wastewater facility.

(d) No person shall discharge directly into a manhole or other opening of the city wastewater facility without the prior written approval of the director. No unauthorized person shall leave open an unprotected wastewater system manhole.

(e) If any person causes damages as a result of the discharge of improper wastes, as described in this article, the entire cost of the damages and/or judgments resulting therefrom shall be paid by that person.

(f) No person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, tamper with or prevent access to any structure, appurtenance or equipment, or other part of the wastewater facility. The entire cost of the damages and/or judgments resulting therefrom shall be paid by that person.

(g) If any wastes or wastewaters are discharged or are proposed to be discharged into the city's wastewater facility which do not meet applicable pretreatment standards and requirements, or which may have a deleterious effect upon the wastewater facility, its processes, equipment, personnel, or receiving waters, or which otherwise create a hazard to public health, safety and welfare, or which constitutes a public nuisance, the director may:

(1) Reject the wastewaters or impose specific conditions upon the introduction of new sources of wastewater into the wastewater facility;

(2) Require the user to demonstrate that in-plant improvements will modify the discharge to such a degree as to be acceptable;

(3) Require pretreatment of the user's discharge to ensure compliance with this article.

(h) The city, without limitation by other sections of this article, may authorize any person to discharge industrial wastes of unusual strength or character into the sewers of the city, under approved conditions or pretreatment. The city may prohibit entry of particular industrial wastes into the sanitary sewers whenever such action is necessary to prevent damage to the system or to determine the effects of such wastes on the wastewater facility.

Sec. 78-87. National categorical pretreatment standards.

(a) The categorical pretreatment standards found at 40 CFR chapter I, subchapter N, parts 405--471 and state requirements and limitations found in F.A.C. 62-625, are hereby incorporated in this section and made a part hereof.

(b) Where a categorical pretreatment standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the director may impose equivalent

concentration or mass limits in accordance with F.A.C. 62-625.410(4).

(c) When wastewater subject to a categorical pretreatment standard is mixed with wastewater not regulated by the same standard, the director shall impose an alternate limit using the combined wastestream formula in F.A.C. 62-625.410(6).

(d) A user may obtain a variance from a categorical pretreatment standard if the user can prove, pursuant to the procedural and substantive provisions of F.A.C. 62-625.700, that factors relating to its discharge are fundamentally different from the factors considered by the Environmental Protection Agency when developing the categorical pretreatment standard.

(e) A user may obtain a net gross adjustment to a categorical standard in accordance with F.A.C. 62-625.820.

Sec. 78-88. Standards of acceptability of wastewater.

~~(a) *Standards of acceptability of sewage.* Constituents in sewage entering the wastewater facility of the city shall not exceed the following maximum instantaneous concentration limitations:~~

~~TABLE INSET:~~

~~Material or Substance~~	~~Instantaneous Maximum Concentration, mg/l~~
~~Oil and Grease~~	~~100~~
~~pH~~	~~5.5–9.0~~
~~Cyanide, CN~~	~~0.005~~
~~Arsenic, As~~	~~0.05~~
~~Cadmium, Cd~~	~~0.01~~
~~Chromium, Cr~~	~~0.05~~
~~Copper, Cu~~	~~0.015~~
~~Lead, Pb~~	~~0.03~~
~~Mercury, Hg~~	~~0.0001~~
~~Nickel, Ni~~	~~0.1~~
~~Silver, Ag~~	~~0.00005~~
~~Zinc, Zn~~	~~0.03~~

~~(b) *Standards of acceptability of industrial wastewater.* Constituents in industrial wastewater entering the wastewater facility of the city shall not exceed the following maximum instantaneous concentration limitations:~~

~~TABLE INSET:~~

~~Material or Substance~~	~~Instantaneous Maximum Concentration, mg/l~~
~~Oil and Grease~~	~~100~~
~~pH~~	~~5.5–9.0~~
~~Cyanide, CN~~	~~0.1~~
~~Arsenic, As~~	~~0.2~~
~~Cadmium, Cd~~	~~0.1~~
~~Chromium, Cr~~	~~3.8~~
~~Copper, Cu~~	~~0.4~~
~~Lead, Pb~~	~~0.8~~
~~Mercury, Hg~~	~~0.0002~~

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~~Molybdenum, Mb~~	~~0.1~~
~~Nickel, Ni~~	~~0.4~~
~~Selenium, Se~~	~~0.4~~
~~Silver, Ag~~	~~0.5~~
~~Zinc, Zn~~	~~4.0~~

(a) No person shall discharge wastewater containing pollutants in excess of the local limits for those pollutants that have been established for the City's WWF using standard procedures, calculations and methods acceptable to FDEP to protect against pass through, interference, protection of WWF employees, and adverse affects on wastewater residuals disposal. Industrial users shall not discharge process waste streams, unregulated waste streams, or dilute waste streams in excess of the concentrations set forth by the Director. Local limits shall be included as permit conditions and attached to each SIU wastewater permit issued.

(b) The established local limits are subject to change and shall be modified as needed based on regulatory requirements and standards, WWF operation, performance and processes, the industrial user base, potable water quality and domestic wastewater characteristics. Modifications to the established local limits must be reviewed and approved by FDEP prior to implementation. Implementation shall be effective 30 days from notice of acceptance of the modified limits by FDEP. Permitted SIUs shall be issued new local limits in an addendum to their wastewater discharge permit.

(c) *Limits conditions.* The limits in ~~subsections (a) and (b) of~~ this section apply at the point where the wastewater is discharged to the wastewater facility. All concentrations for metallic substances are for ~~"~~total~~"~~ metal~~.~~ unless indicated otherwise. The director, in his discretion, may impose mass limitations, maximum daily average values, maximum monthly average values, or maximum four-day average values in addition to, or in place of the limitations listed in ~~subsections (a) and (b) of~~ this section.

(d) A copy of the approved local limits is available upon request at the City of Vero Beach Water & Sewer Department.

Sec. 78-89. Procedures for hauled or trucked wastewater.

(a) Septic tank waste may not be introduced into the wastewater facility.

(b) The director shall require haulers of industrial waste to obtain wastewater discharge permits. The director may require generators of hauled industrial waste to obtain wastewater discharge permits. The director also may prohibit the disposal of hauled industrial waste. The discharge of hauled industrial waste is subject to all other requirements of this article.

(c) Industrial waste haulers may discharge loads only at locations designated by the director. No load may be discharged without prior consent of the director. The director may collect samples of each hauled load to ensure compliance with applicable standards. The director may require the industrial waste hauler to provide a waste analysis of any load prior to discharge.

(d) Industrial waste haulers must provide a waste-tracking form for every load. This form shall include, at a minimum, the name and address of the industrial waste hauler, permit number, truck identification, names and addresses of sources of waste, and volume and

characteristics of waste. The form shall identify the type of industry, known or suspected waste constituents, and whether any wastes are RCRA hazardous wastes.

Sec. 78-90. Dilution prohibited.

No industrial user shall increase the use of process water or otherwise attempt to dilute a discharge in order to meet the requirements of any federal, state or local discharge standard, except when expressly authorized by an applicable pretreatment standard or requirement.

Sec. 78-91. City's right of revision.

The city reserves the right to establish, by ordinance or in wastewater discharge permits, more stringent standards or requirements on discharges to the wastewater facility.

Secs. 78-92--78-110. Reserved.

DIVISION 3. PRETREATMENT FACILITIES AND WASTEWATER DISCHARGE PERMITS: APPEALS; MODIFICATION; TRANSFER; REVOCATION; REISSUANCE

Sec. 78-111. Pretreatment facilities.

(a) *Operation and maintenance of pretreatment facility.* The director may require any industrial user to provide, operate and maintain a pretreatment facility in order to comply with this article and all federal categorical pretreatment standards, local limits and prohibitions. The following conditions apply to the design, construction, operation, and maintenance of any pretreatment facility required under this section:

(1) Any such facility shall be designed, constructed, operated, and maintained at the industrial user's expense; and

(2) The industrial user shall not construct, operate, or modify any such facility prior to obtaining the director's approval. The director shall have authority to approve or reject the industrial user's plans for designing, constructing, operating, maintaining, and modifying the facility and for otherwise meeting compliance schedules. The director's exercise of such authority shall not absolve the industrial user of the user's responsibility to comply with the requirements of this article. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to and acceptable to the director prior to the user's initiation of the changes.

(b) *Additional pretreatment measures.*

(1) Whenever deemed necessary, the director may require industrial users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate domestic wastestreams from industrial wastestreams, and other conditions as may be necessary to protect the wastewater facility and determine the user's compliance with the requirements of this article.

(2) The director may require any person discharging into the wastewater facility to install and maintain, on their property and at their expense, a suitable storage and flow control facility to ensure equalization of flow. A wastewater discharge

permit may be issued solely for flow equalization.

(3) Grease traps, interceptors, and/or oil/water separators (interceptors) shall be required when, in the opinion of the director, they are necessary for the proper handling of wastewater containing excessive amounts of grease and oil or sand. Interceptors shall be required in establishments such as, but not limited to, food service establishments, transportation/equipment cleaning establishments, service stations, repair shops, or other commercial or industrial facilities where wastes containing grease, oil, flammable material, sand or other harmful constituents can be discharged into the wastewater facility. Interceptors shall not be required for residential users. An engineer acting on behalf of the user shall determine the type, capacity and location of the interceptor. The interceptor shall be located so that it is easily accessible for cleaning, sampling, and inspection. The interceptors shall be inspected, cleaned, and repaired regularly, as needed, by the owner at his expense, but in no instance shall the cleaning frequency be less than once per year.

(c) *Accidental discharge/slug plan and procedure.* Each user shall provide and maintain at their expense, protection from accidental discharge of prohibited materials, slug loads or other substances regulated by this article. The director may require any user to develop and implement an accidental discharge/slug control plan. Detailed plans and operating procedures to provide this protection shall be submitted to the city for review and approval. The plan shall include, but is not limited to:

(1) Description of discharge practices, including nonroutine batch discharges.

(2) Description of all stored chemicals.

(3) Procedures to prevent accidental spills, including:

a. Maintenance of storage areas.

b. Handling and transfer of materials.

c. Loading and unloading operations.

d. Control of plant site stormwater runoff.

e. Worker training.

f. Building containment structures for equipment.

g. Measures for controlling toxic pollutants, including solvents.

h. Procedures and equipment for emergency response.

i. Follow-up practices to limit the damage suffered by the environment or the city's equipment.

Sec. 78-112. Monitoring facilities.

(a) The city may require the user to provide and maintain at his own expense monitoring facilities to allow inspection, sampling, and flow measurement of the building sewer and/or the regulated process discharge. The monitoring facility should be situated on the user's property at a location approved by the city prior to installation. There shall be ample room in or near the sampling manhole or facility to allow flow measurements, accurate sampling and preparation of samples for analysis. The sampling and

monitoring facilities shall be provided in accordance with the city's requirements and all applicable local construction standards and specifications. Construction shall be completed within 90 days following written notification by the director.

(b) The city may require the user to install and maintain at his own expense suitable flow metering and sampling equipment to facilitate the accurate observation, sampling, and flow measurement of process wastewater. The sampling and measuring equipment shall be properly operated, cleaned, and maintained in good working order at all times. The sampling and metering equipment shall be accessible at all times. The devices used to measure wastewater flow and quality shall be calibrated periodically based on manufacturer's recommendation to ensure their accuracy.

(c) The failure of an industrial user to keep his monitoring facility in good working order shall be deemed a separate violation of this article and shall not be grounds for claiming that sample results are unrepresentative of its discharge.

Sec. 78-113. Wastewater discharge permits--Procedure; contents; conditions.

(a) *Wastewater survey.* When requested by the director, any industrial user shall submit information as to the nature and characteristics of the industrial user's wastewater by completing a wastewater survey prior to commencing their discharge. The director is authorized to prepare a form for this purpose and may periodically require industrial users to update the survey. Failure to complete or update the wastewater survey shall be reasonable grounds for terminating service to the industrial user and shall be considered a violation of this article.

(b) *Users required to obtain permit.* The director shall require any industrial user who has, in the director's opinion, a reasonable potential for any of the following to obtain an industrial waste discharge permit:

(1) Violating the provisions of section 78-86;

(2) Discharging an average of 25,000 gpd or more of industrial sewage into the wastewater facility;

(3) Discharging an average daily flow which makes up five percent or more of the average daily dry weather hydraulic or organic capacity of the water reclamation facility into the public sewer; or

(4) Discharging wastes subject to categorical pretreatment standards into the wastewater facility.

(c) *Term of permit validity.* Permits shall be valid for two years, unless otherwise noted on the permit. Permit terms shall not exceed five years.

(d) *Permits for current users.* If a current industrial user has discharged wastes into the wastewater facility prior to the effective date of the ordinance from which this article is derived, the user shall apply for a permit within 90 days after the effective date of the ordinance from which this article is derived. No user required to obtain a permit under this subsection shall cause or allow discharges to continue except in accordance with a permit issued under this article.

(e) *Permits for prospective users.* Any industrial user who has not discharged wastes into the wastewater facility prior to the effective date of the ordinance from which this article is derived shall apply for a permit at least 90 days before the date on which the industrial

user proposes to commence discharging such wastes into the public sewer.

(f) *Industrial waste discharge permit application contents.* All users required to obtain an industrial waste discharge permit must submit a permit application. The director may require all users to submit as part of an application the following information:

(1) Description of activities, facilities, and plant processes on the premises, including a list of all raw materials and chemicals used or stored at the facility which are, or could accidentally or intentionally be discharged to the public sewer;

(2) Number and type of employees, hours of operation, and proposed or actual hours of operation;

(3) Each product produced by type, amount, process or processes, and rate of production;

(4) Type and amount of raw materials processed, average and maximum per day;

(5) Site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, floor drains, and appurtenances by size, location, and elevation, and all points of discharge;

(6) Time and duration of discharges; ~~and~~

~~(7) Any other information as may be deemed necessary by the director to evaluate the wastewater discharge permit application.~~

(7) Any requests for a monitoring waiver, or a renewal of an approved monitoring waiver for a pollutant neither present nor expected to be present in the discharge based on Sec.78-143.(d); and

(8) Any other information as may be deemed necessary by the director to evaluate the wastewater discharge permit application.

(g) *Application signatories and certification.* All industrial waste discharge permit applications and user reports must be signed by ~~an~~the authorized representative of the industrial user and contain the following certification statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(h) *Industrial waste discharge permit decisions.* The director will evaluate the application data furnished by the user and determine whether to issue a discharge permit. The director may require information in addition to that contained in the original application. The director may deny any application for an industrial waste discharge permit.

(i) *Permit conditions.* Permits will be issued to all users determined to be significant industrial users as defined in this article. Permits may also be issued to minor users as deemed necessary by the director to ensure compliance with this article. Wastewater discharge permits may contain, but are not limited to, the following conditions:

(1) A statement that indicates wastewater discharge permit duration;

(2) Pretreatment standards and effluent limits, including Best Management Practices, applicable to the user based on applicable standards in federal, state, and local law;

(3) Self monitoring, sampling, reporting, notification, and recordkeeping requirements;

(4) Statement of applicable civil, criminal, and administrative penalties for violation of pretreatment standards and requirements;

(5) Limits on the instantaneous, daily, monthly average and/or four-day maximum concentration, mass, or other measure of identified wastewater constituents and characteristics;

(6) Limits on the average and/or maximum rate and time of discharge and/or requirements for flow regulations and equalization;

(7) Requirements for installation and maintenance of inspection facilities, and flow metering and sampling equipment;

(8) Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices, designed to reduce, eliminate, or prevent the introduction of pollutants into the wastewater facility;

(9) Development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or routine discharges;

(10) A statement that compliance with the wastewater discharge permit does not relieve the permittee of responsibility for compliance with all applicable federal and state pretreatment standards, including those which become effective during the term of the wastewater discharge permit;

(11) Any other conditions as deemed appropriate by the director to ensure compliance with this article, and federal and state laws, rules, and regulations.

Sec. 78-114. Same--Appeals.

The director shall provide public notice to the industrial user of the issuance of a wastewater discharge permit. The user may petition the director to reconsider the terms of a wastewater discharge permit within 30 days of notice of its issuance.

(1) Failure to submit a timely petition for review shall be deemed to be a waiver of the administrative appeal.

(2) In its petition, the appealing party must indicate the wastewater discharge permit provisions objected to, the reasons for this objection, and the alternative condition, if any, it seeks to place in the wastewater discharge permit.

(3) The effectiveness of the wastewater discharge permit shall not be stayed pending the appeal.

(4) If the director fails to act within 30 days, a request for reconsideration shall be deemed to be denied. Decisions not to reconsider a wastewater discharge permit, not to issue a wastewater discharge permit, or not to modify a wastewater

discharge permit may be appealed to the city manager. ~~The user may appeal the decision of the city manager to the board of adjustment in accordance with part III, land development regulations, sections 66.01(a) and 66.06. The board of adjustment shall conduct an evidentiary hearing at which the user may be represented by counsel. Either the city manager or the user may appeal the decision of the board of adjustment to the city council.~~

(5) An industrial user aggrieved by the decision of the city manager may request a review of the decision by the Planning and Zoning Board by submitting a written appeal request to the city manager within ten days of the city manager's decision. The city manager shall cause the request to be placed on the next available agenda for an evidentiary hearing. The evidentiary hearing shall be advertised by the city clerk in a local newspaper of general circulation no less than 14 days before the date of the hearing. The Planning and Zoning Board shall consider the city manager's decision at an evidentiary hearing at which the user may be represented by counsel. The board may affirm, reverse, or modify the decision of the city manager.

(6) Either the city manager or the user may appeal the decision of the Planning and Zoning Board to the city council.

Sec. 78-115. Same--Modification.

(a) The director may modify a wastewater discharge permit for good cause, including, but not limited to, the following reasons:

(1) To incorporate any new or revised federal, state, or local pretreatment standards or requirements;

(2) To address significant alterations or additions to the user's operation, processes, or wastewater volume or character since the time of wastewater discharge permit issuance;

(3) A change in the wastewater facility that requires either a temporary or permanent reduction or elimination of the authorized discharge;

(4) Information indicating that the permitted discharge poses a threat to the city's wastewater facility, city personnel, or the receiving waters;

(5) Violation of any terms or conditions of the wastewater discharge permit;

(6) Misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge permit application or in any required reporting;

(7) Revision of or a grant of variance from categorical pretreatment standards pursuant to 40 CFR 403.13;

(8) To correct typographical or other errors in the wastewater discharge permit;

(9) To reflect a transfer of the facility ownership or operation to a new owner or operator; or

(10) Upon request of the permittee, provided such request does not create a violation of any applicable requirements, standards, laws, or rules and regulations.

(b) Industrial user requests for permit modifications shall be made in writing and include facts or reasons which support the request. When modifying a permit, the city shall allow a reasonable time frame for the user to comply with the new or changed conditions if the user cannot meet them at the time of the modification and if permitted by law. If the new or changed conditions are the result of new or changed pretreatment regulations, those regulations will stipulate the compliance period. The filing of a request by the permittee for a wastewater discharge permit modification does not stay any wastewater discharge permit condition.

Sec. 78-116. Same--Transfer.

(a) Wastewater discharge permits may be transferred to a new owner or operator only if the permittee gives at least 60 days advance notice to the director and the director approves the wastewater discharge permit transfer. The notice to the director must include a written certification by the new owner or operator which:

(1) States that the new owner and/or operator has no immediate intent to change the facility's operations and processes;

(2) Identifies the specific date on which the transfer is to occur; and

(3) Acknowledges full responsibility for complying with the existing wastewater discharge permit.

(b) Failure to provide advance notice of a transfer renders the wastewater discharge permit void as of the date of the facility transfer.

Sec. 78-117. Same--Revocation.

(a) The director may revoke a wastewater discharge permit for good cause, including, but not limited to, the following reasons:

(1) Failure to notify the director of significant changes to the wastewater prior to the changed discharge;

(2) Failure to provide prior notification to the director of changed conditions pursuant to subsection 78-113(a);

(3) Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application;

(4) Falsifying self-monitoring reports;

(5) Tampering with monitoring equipment;

(6) Refusing to allow the director timely access to the facility premises and records;

(7) Failure to meet effluent limitations;

(8) Failure to pay fines;

(9) Failure to pay sewer use charges;

(10) Failure to meet compliance schedules;

(11) Failure to complete a wastewater survey or the wastewater discharge permit application;

(12) Failure to provide advance notice of the transfer of business ownership of a permitted facility; or

(13) Violation of any pretreatment standard or requirement, or any terms of the wastewater discharge permit or this article.

(b) Wastewater discharge permits shall be voidable upon cessation of operations or transfer of business ownership. All wastewater discharge permits issued to a particular user are void upon the issuance of a new wastewater discharge permit to that user.

Sec. 78-118. Same--Reissuance.

A user with an expiring wastewater discharge permit shall apply for wastewater discharge permit reissuance by submitting a request within the time period specified in the user's existing wastewater discharge permit or, if no time is specified, within a minimum of 180 days prior to the expiration of the user's existing wastewater discharge permit. The reapplication for a permit shall consist of a written request for reissuance of the permit. The request shall state if all terms and conditions of the existing permit and ordinance are complied with and must be signed by an authorized representative of the user.

Secs. 78-119--78-140. Reserved.

DIVISION 4. PRETREATMENT REPORTING REQUIREMENTS

Sec. 78-141. Reports and information.

Industrial users shall submit to the director, at such intervals as the director may prescribe, reports accurately describing the character and quantity of the wastewater which they discharge into the wastewater facility, and any other information, including reports prescribed by federal laws, rules, or regulations, requested by the director relating to the generation of such wastewater.

Sec. 78-142. Baseline monitoring.

(a) *Reporting deadlines.* Within either 180 days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under 40 CFR 403.6(a)(4), whichever is later, existing categorical users currently discharging to or scheduled to discharge to the wastewater facility shall submit to the director a report which contains the information listed in subsection (b) of this section. At least 90 days prior to commencement of their discharge, new sources, and sources that become categorical users subsequent to the promulgation of an applicable categorical standard, shall submit to the director a report which contains the information listed in subsection (b) of this section. A new source shall report the method of pretreatment it intends to use to meet applicable categorical standards. A new source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged.

(b) *Required information.* Users described in subsection (a) of this section shall submit the information set forth as follows:

(1) *Identifying information.* The name and address of the facility, including the name of the operator and owner.

(2) *Environmental permits.* A list of any environmental control permits held by or for the facility.

(3) *Description of operations.* A brief description of the nature, average rate of production, and standard industrial classifications of the operations carried out by such user. This description should include a schematic process diagram which indicates points of discharge to the wastewater facility from the regulated processes.

(4) *Flow measurement.* Information showing the measured average daily and maximum daily flow, in gallons per day, to the wastewater facility from regulated process streams and other streams, as necessary, to allow use of the combined wastestream formula set out in 40 CFR 403.6(e).

(5) *Measurement of pollutants.*

a. The categorical pretreatment standards applicable to each regulated process.

b. The results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the standard or by the director, of regulated pollutants in the discharge from each regulated process. Instantaneous, daily maximum, and longterm average concentrations, or mass, where required, shall be reported. The sample shall be representative of daily operations.

c. Sampling must be performed in accordance with procedures set out in section 78-144.

(6) *Certification.* A statement, reviewed by the user's authorized representative and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required to meet the pretreatment standards and requirements.

(7) *Compliance schedule.* If additional pretreatment and/or operation and maintenance will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment and/or operation and maintenance. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements set out in section 78-143.

(8) *Signature and certification.* All baseline monitoring reports must be signed and certified in accordance with subsection 78-143(h).

Sec. 78-143. Compliance reports.

(a) *Compliance schedule reports.* The following conditions shall apply to the compliance schedule required by subsection 78-142(b)(7):

(1) The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (such events include, but are not limited to, hiring an

engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation);

(2) No increment referred to in subsection (a)(1) of this section shall exceed nine months;

(3) The user shall submit a progress report to the director no later than 14 days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the user to return to the established schedule; and

(4) In no event shall more than nine months elapse between such progress reports to the director.

(b) *Reports on compliance with categorical pretreatment standard deadline.* Within 90 days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source following commencement of the introduction of wastewater into the wastewater facility, any user subject to such pretreatment standards and requirements shall submit to the director a report containing the information described in subsections 78-142(b)(4) through (6). For users subject to equivalent mass or concentration limits established in accordance with the procedures in 40 CFR 403.6(c), this report shall contain a reasonable measure of the user's longterm production rate. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with subsection (h) of this section.

(c) *Periodic compliance reports.*

(1) All significant industrial users shall, at a frequency determined by the director but in no case less than twice per year (in June and December), submit a report indicating the nature and concentration of pollutants in the discharge which are limited by pretreatment standards and the measured or estimated average and maximum daily flows for the reporting period. All periodic compliance reports must be signed and certified in accordance with subsection (h) of this section. At the discretion of the director and in consideration of such factors as high or low flow rates, holidays, budget cycles, etc., the director may agree to alter the months during which the above reports are to be submitted. Falsification of self-monitoring reports shall be considered a significant violation of this article and could lead to termination of the user's wastewater discharge permit.

(2) All wastewater samples must be representative of the user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a user to keep its monitoring facility in good working order shall not be grounds for the user to claim that sample results are unrepresentative of its discharge.

(3) If a user subject to the reporting requirement in this section monitors any pollutant more frequently than required by the director, using the procedures prescribed in section 78-144, the results of this monitoring shall be included in

the report.

(4). The City may authorize an Industrial User subject to a categorical pretreatment standard to forego sampling of a pollutant regulated by a categorical pretreatment standard if the Industrial User has demonstrated through sampling and other technical factors that the pollutant is neither present nor expected to be present in the Discharge, or is present only at background levels from intake water and without any increase in the pollutant due to activities of the Industrial User. This authorization is subject to the following conditions:

a. The waiver may be authorized where a pollutant is determined to be present solely due to sanitary wastewater discharged from the facility provided that the sanitary wastewater is not regulated by an applicable categorical standard and otherwise includes no process wastewater.

b. The monitoring waiver is valid only for the duration of the effective period of the individual wastewater discharge permit, but in no case longer than 5 years. The Industrial User must submit a new request for the waiver before the waiver can be granted for each subsequent individual wastewater discharge permit. See Section 78-113(f)(7).

c. In making a demonstration that a pollutant is not present, the Industrial User must provide data from at least one sampling of the facility's process wastewater prior to any treatment present at the facility that is representative of all wastewater from all processes.

d. The request for a monitoring waiver must be signed by an authorized representative of the Industrial User as defined herein and include the certification statement at Sec 78-113 (g).

e. Non-detectable sample results may be used only as a demonstration that a pollutant is not present if the EPA approved method from 40 CFR Part 136 with the lowest minimum detection level for that pollutant was used in the analysis.

f. Any grant of the monitoring waiver by the Director must be included as a condition in the Industrial User's permit. The reasons supporting the waiver and any information submitted by the User in its request for the waiver must be maintained by the Director for 3 years after expiration of the waiver.

g. Upon approval of the monitoring waiver and revision of the User's permit by the Director, the Industrial User must certify on each report with the following statement below, that there has been no increase in the pollutant in its wastestream due to activities of the Industrial User:

"Based on my inquiry of the person or persons directly responsible for Managing compliance with the pretreatment standard for 40 CFR _____ [specify applicable National Pretreatment Standard part(s)], I certify that, to the best of my knowledge and belief, there has been no increase in the level of _____ [list pollutant(s)] in the wastewaters due to

the activities at the facility since filing of the last periodic report under Section 78-143(c)(1)."

h. In the event that a waived pollutant is found to be present or is expected to be present because of changes that occur in the Industrial User's operations, the Industrial User must immediately: Comply with the monitoring requirements of Section 78-143(c)(1), or other more frequent monitoring requirements imposed by the Director, and notify the Director.

i. This provision does not supersede certification processes and requirements established in categorical pretreatment standards, except as otherwise specified in the categorical pretreatment standard.

(d) *Reports of changed conditions.* Each user must notify the director of any planned significant changes to the user's operations or system which might alter the nature, quality, or volume of its wastewater at least 90 days before the change.

(1) The director may require the user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application.

(2) The director may issue a wastewater discharge permit or modify an existing wastewater discharge permit in response to changed conditions or anticipated changed conditions.

(3) For purposes of this requirement, significant changes include, but are not limited to, flow increases of 20 percent or greater, and the discharge of any previously unreported pollutants.

(e) *Reports of potential problems.*

(1) In the case of any discharge, including, but not limited to, accidental discharges, discharges of a nonroutine, episodic nature, a noncustomary batch discharge, or a slug load that may cause potential problems for the wastewater facility, the user shall immediately telephone and notify the director of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the user.

(2) Within five days following such discharge, the user shall, unless waived by the director, submit a detailed written report describing the cause of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the wastewater facility, natural resources, or any other damage to person or property; nor shall such notification relieve the user of any fines, penalties, or other liability which may be imposed pursuant to this article.

(3) A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees whom to call in the event of a discharge described in subsection (e)(1) of this section. Employers shall ensure that all employees, who may cause such a discharge to occur, are advised of the emergency notification procedure.

(4) Users shall repeat any sampling and analysis of any accidental spill or discharge

within 30 days after becoming aware of such spill or discharge.

(f) *Report of violation/repeat sampling and reporting.* If sampling and analysis performed by an industrial user indicates a violation, the user must notify the director within 24 hours of becoming aware of the violation. The industrial user shall also repeat the sampling and analysis and submit the results of the repeat sample analysis to the director within 30 days after becoming aware of the violation. The user is not required to resample if the city performs sampling between the industrial user's initial sampling and when the industrial user receives the results of this sampling.

(g) *Reports from unpermitted users.* All users not required to obtain a wastewater discharge permit shall provide appropriate reports to the director as the director may require.

(h) *Signatory requirements.* The reports required by section 78-143, except 78-143(c)(4), shall:

(1) Include the following certification statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(2) Be signed by a duly authorized representative of the user. The director may request verification of the representative's authority (e.g., a corporate resolution executed by the directors, or affidavit of authority executed by the general partners).

Sec. 78-144. Sample collection and analysis.

(a) To ensure compliance with this article, the director may collect and analyze wastewater samples from industrial users. All analyses, including sampling techniques, performed by the industrial user or the city shall be in accordance with techniques prescribed in 40 CFR 136, unless otherwise specified in the user's permit. If 40 CFR 136 does not contain sampling or analytical techniques for the pollutant in question, sampling and analyses shall be performed in accordance with procedures approved by the United States Environmental Protection Agency.

(b) Except as indicated in subsection (c) ~~of this section~~and (d) below, the ~~user~~Industrial User must collect wastewater samples using 24-hour flow~~-~~-proportional composite ~~collection~~sampling techniques~~. In the event flow-~~, unless time-proportional composite sampling or grab sampling is ~~infeasible,~~authorized by the ~~director may authorize the use of~~Director. Where time~~-~~-proportional composite sampling or ~~a minimum of four~~ grab sampling is authorized by the City, the samples ~~where the user demonstrates that this will provide a~~ must be representative ~~sample of~~ of the discharge. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the ~~effluent being discharged~~analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile

organics and oil and grease, the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the City, as appropriate. In addition, grab samples may be required to show compliance with instantaneous ~~discharge~~ limits.

(c) Samples for oil and grease, temperature, pH, cyanide, phenols, sulfides, and volatile organic compounds must be obtained using grab collection techniques.

~~(d) Any user subject to the reporting requirements established in this section shall retain and make available for inspection and copying by United States Environmental Protection Agency, the state department of environmental protection, and the city, all records of all information resulting from monitoring activities required by this article. Records for sampling activities shall include the following:~~

~~(1) The date, exact place, method, time of sampling and names of the person or persons taking the sample, and any appropriate field sample preservation methods;~~

~~(2) The date analyses were performed;~~

~~(3) Who performed the analyses;~~

~~(4) The analytical methods/techniques used and detection limits; and~~

~~(5) The results of the analyses.~~

(d) For sampling required in support of baseline monitoring and 90-day compliance reports required in Section 78-142 and 78-143, a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the Director may authorize a lower minimum. For the reports required by paragraphs Section 78-143.(c), the Industrial User is required to collect the number of grab samples necessary to assess and assure compliance by with applicable pretreatment standards and requirements.

(e) Any user subject to the reporting requirements established in this section shall retain and make available for inspection and copying by United States Environmental Protection Agency, the state department of environmental protection, and the city, all records of all information resulting from monitoring activities required by this article. Records for sampling activities shall include the following:

(1) The date, exact place, method, time of sampling and names of the person or persons taking the sample, and any appropriate field sample preservation methods;

(2) The date analyses were performed;

(3) Who performed the analyses;

(4) The analytical methods/techniques used and detection limits; and

(5) The results of the analyses.

Sec. 78-145. Confidential information.

(a) Information and data on an industrial user obtained from reports, questionnaires, and

inspections shall be available to the public or any governmental agency without restriction, except to the extent the industrial user demonstrates to the satisfaction of the director that such information is entitled under the state public records act or applicable federal law to protection as trade secrets.

(b) In no case shall wastewater constituents and characteristics be recognized as confidential information.

Sec. 78-146. Retention of records.

~~All industrial users shall retain and preserve for not less than three years any records, books, documents, memoranda, reports, and correspondence relating to monitoring, sampling, and chemical analyses of their discharge. Industrial users shall retain and preserve all records which pertain to matters which are the subject of enforcement or litigation activities brought by or against the city until all enforcement activities have concluded and all periods of limitation with respect to any appeals have expired.~~

Industrial Users subject to the reporting requirements of this ordinance shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this ordinance, any additional records of information obtained pursuant to monitoring activities undertaken by the User independent of such requirements, and documentation associated with Best Management Practices. Records shall include the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three (3) years. This period shall be automatically extended for the duration of any litigation concerning the User or the City, or where the User has been specifically notified of a longer retention period by the Director.

Sec. 78-147. False statements, etc., prohibited.

No person shall knowingly make any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this article; nor falsify, tamper with, or knowingly render inaccurate, any monitoring device or method.

Secs. 78-148--78-170. Reserved.

DIVISION 5. POWERS; ENFORCEMENT; PENALTIES

Sec. 78-171. Powers and authority of director and inspectors.

(a) The director shall be initially responsible for the enforcement of the provisions of this article, and shall have authority to establish limits for the discharge of toxic or objectionable substances, and to take any other necessary actions to effectuate the provisions of this article, including the authority to review and monitor the admission into the public sewers of any water or waste, and the authority to restrict, prevent, and impose sanctions for the unlawful admission of such water and waste as described in this article. Notwithstanding other provisions of this article, if in the director's opinion conditions exist which could present an imminent and substantial danger to life, safety,

or wastewater facility operation or integrity, the director may terminate service or take such other appropriate action as is necessary to avoid or abate such condition. When taking such action, the director will in good faith attempt to provide the affected user with at least informal notice prior to acting hereunder. Service shall be restored as soon as the emergency situation has been corrected.

(b) City inspectors are authorized to enter upon all properties for the purpose of inspection, observation, measurement, sampling, and testing in accordance with the provisions of this article.

(1) The powers granted under this section include the power to:

a. Inspect facilities and inspect and copy all records maintained in accordance with the provisions of this article.

b. Travel upon and occupy the user's property and use thereon such devices as are necessary to conduct sampling or metering operations.

(2) Inspector's authority shall be limited as follows:

a. Inspectors shall have no authority to inquire into any processes deemed trade secrets beyond the information necessary to determine the kind and source of discharge to the public sewers.

b. When the user has security measures in force which require proper identification and clearance before entry onto the property, the user shall make necessary arrangements for admission to the property without delay upon presentation of suitable identification.

c. While working on a user's property, inspectors shall observe all applicable safety rules established by the user.

(c) If the director has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this article, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the city designed to verify compliance with this article or any permit or order issued under this article, or to protect the overall public health, safety and welfare of the community, then the director may seek issuance of a search warrant.

(d) Unreasonable delays in allowing authorized city personnel access to the user's premises shall be a violation of this article.

Sec. 78-172. Pretreatment enforcement.

(a) *Notice of violation; correction plan.* The director shall serve notice upon any user violating any provision of this article or the condition of any permit or order ~~issued under Vero Beach Resolution No. 92-34.~~. Such notice shall state the nature of the violation with specificity and shall describe whether a correction plan must be submitted.

(1) The user shall submit any correction plan required by the director:

a. Within 30 days after the user receives notice, unless subsection (b) of this section applies.

b. Within any time frame less than 30 days time as the director deems

appropriate if the director determines that the nature of the violation posed requires a more immediate response.

(2) The corrective plan shall describe the actions which the user will take to remedy the violation and include specific dates for taking such actions.

(b) *Proposition of action.* If the user fails to submit a plan within the time frame described in subsection (a) of this section, or if the director determines that the plan submitted is unsatisfactory, the director may propose to the city manager that the city manager take any action described in subsection (c) of this section.

(c) *Action upon user's failure to submit plan or submittal of unsatisfactory plan.* Based upon the director's recommendation, the city manager may take action in accordance with the enforcement response plan, including the following:

(1) Any action reasonably necessary to abate the violation, including through discontinuation of service or requiring the construction, repair, and maintenance of pretreatment facilities;

(2) The imposition of a civil fine of up to $1,000.00 per violation for each day the violation continues. In the case of a user who has failed to submit a plan, the fine may, in the discretion of the city manager, relate back to the date of the notice of violation described in subsection (a) of this section; and

(3) The imposition of a fee in such amount as is necessary to recover the costs of any action which the city must take to remedy the violation. Such fee may be imposed as a precondition to having the user's service reestablished. Alternatively, the fee may be recorded and constitute a lien on the user's property.

(d) *Appeal of decision to ~~board of adjustment.~~Planning and Zoning Board.* Any user may appeal the decision of the city manager to the ~~board of adjustment~~Planning and Zoning Board in accordance with ~~part III, land development regulations,~~ section~~s~~ ~~66.01(a)~~78-114(5)~~ and 66.06~~. The ~~board of adjustment~~Planning and Zoning Board shall conduct an evidentiary hearing at which the user may be represented by counsel. The ~~board of adjustment~~Planning and Zoning Board may review only the following subjects:

(1) The adequacy of the notice of violation;

(2) The legality of the city manager's conclusions with respect to whether a violation occurred, and whether the corrective plan, if any, was inadequate; and

(3) The appropriateness of the fine imposed against the alleged violator.

(e) *Appeal to city council.* Either the city manager or the user may appeal the decision of the ~~board of adjustment~~Planning and Zoning Board to the city council.

(f) *Injunctive relief.* Either as an alternative to any procedure established in this article or as an enforcement action thereunder, the city may seek injunctive relief for noncompliance with any provision of this article.

Sec. 78-173. Affirmative defenses--Prohibited discharge standards.

(a) *Industrial user must prove.* An industrial user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibitions in section 78-81 or the specific prohibitions in ~~subsections~~subsection 78-86(a~~)~~() (1), (5),

(7), (15), and (17) if it can prove that:

(1) It did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass-through or interference; and

(2) Either of the following:

a. A local limit exists for each pollutant discharged and the user was in compliance with each limit directly prior to, and during, the pass-through or interference; or

b. No local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when the city was regularly in compliance with its discharge permit, and in the case of interference, was in compliance with applicable sludge use or disposal requirements.

Sec. 78-174. Same--Discharge violations; upset.

(a) *Definition.* For the purposes of this section, the term "upset" means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(b) *Effect of an upset.* An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of subsection (c) of this section are met.

(c) *Industrial users must demonstrate evidence regarding a discharge violation.* An industrial user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An upset occurred and the user can identify the cause of the upset;

(2) The facility was at the time being operated in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures;

(3) The user has submitted the following information to the director within 24 hours of becoming aware of the upset. If this information is provided orally, a written submission must be provided within five days:

a. A description of the industrial waste discharge and cause of noncompliance;

b. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and

c. Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance;

(4) In any enforcement proceeding, the user seeking to establish the occurrence of

an upset shall have the burden of proof;

(5) Industrial users shall control production of all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

Sec. 78-175. Bypass.

(a) *Permissible bypass.* An industrial user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to ensure efficient operation. These bypasses are not subject to the provision of subsections (c) and (d) of this section.

(b) *Notice.*

(1) If a user knows in advance of the need for a bypass, it shall submit prior notice to the director at least ten days before the date of the bypass, if possible.

(2) A user shall submit oral notice to the director of an unanticipated bypass that exceeds applicable pretreatment standards within 24 hours from the time it becomes aware of the bypass. A written submission shall also be provided within five days of the time the user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

(c) *Prohibited bypass.* Bypass is prohibited, and the director may take an enforcement action against a user for a bypass, unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The user submitted notices as required under subsection (b) of this section.

(d) *Approval.* The director may approve an anticipated bypass, after considering its adverse effects, if the director determines that it will meet the three conditions listed in subsection (c) of this section.

Sec. 78-176. Fees.

(a) *Purpose.* It is the purpose of this section to provide for the recovery of costs from users

of the city's wastewater facility for the implementation of the pretreatment program established in this article.

(b) *Various types.* The city may adopt charges and fees which may include the following:

(1) Fees for reimbursement of costs of setting up and operating the city's pretreatment monitoring program;

(2) Fees for monitoring, inspections, and surveillance procedures including the cost of collection and analyzing a user's discharge, and reviewing self-monitoring reports submitted by users;

(3) Fees for reviewing accidental discharge procedures and construction;

(4) Fees for wastewater discharge permit applications including the cost of processing the applications;

(5) Fees for wastewater discharge permits;

(6) Fees for filing appeals;

(7) Other fees as the city may deem necessary to carry out the requirements contained in this article.

These fees relate solely to matters covered by this article and are separate from all other fees chargeable by the city.

Sec. 78-177. Miscellaneous provisions.

(a) *List of noncompliant users.* The city shall annually publish in the largest daily newspaper published within the city a list of the industrial users who, at any time during the previous 12 months, were in significant noncompliance with applicable pretreatment requirements. ~~For purposes of this subsection, the term "significant noncompliance" shall have the meaning as set forth in F.A.C. 62-625.500(2)(b)8.~~

(b) *Tenant responsibility.* Where an owner of property leases premises to any other person as a tenant under any rental or lease agreement, if either the owner or the tenant is an industrial user, either or both may be held responsible for compliance with the provisions of this article.

Secs. 78-178--78-200. Reserved.

DRAFT

8-A)

OFFICE OF THE CITY ATTORNEY

MEMORANDUM

To: Mayor and Councilmembers

From: Wayne R. Coment, Acting City Attorney WRC

Subject: Amendment to Letter of Intent with FP&L

Date: July 13, 2011

Attached for your consideration is a proposed Amendment to the Letter of Intent regarding the potential sale transaction with Florida Power & Light Company. The proposed Amendment extends the due diligence and negotiation period provided in the original Letter of Intent to December 31, 2011. This extension is made necessary due to the previously provided expiration date of July 1, 2011. If the Council is in agreement with the proposed amendment, official action is requested to authorize the Mayor to execute same on behalf of the City of Vero Beach.

AMENDMENT
TO
LETTER OF INTENT

THIS AMENDMENT TO LETTER OF INTENT (this "**Amendment**") is entered into as of June 30, 2011 between Florida Power & Light Company, a Florida corporation ("**FPL**") and the City of Vero Beach, a municipal corporation in, and organized under the laws of, the State of Florida ("**COVB**"). FPL and COVB are jointly referred to as the "**Parties**" and individually as a "**Party**."

WHERAS, the Parties entered into a Letter of Intent as of May 6, 2011 (the "**Initial Letter of Intent**");

WHEREAS, the Parties now desire to amend the Initial Letter of Intent in the manner set forth below.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and in the Initial Letter of Intent and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

1. In the first sentence of Section 1.2 of the Initial Letter of Intent, the words "July 1, 2011" are hereby deleted and replaced with the words "December 31, 2011".

2. In the first full sentence of Section 3.1 of the Initial Letter of Intent, the words "July 1, 2011" are hereby deleted and replaced with the words "December 31, 2011".

3. Except as specifically amended hereby, all provisions of the Initial Letter of Intent shall remain in full force and effect. In the event of a conflict between the terms of the Initial Letter of Intent and the terms of this Amendment, the terms of this Amendment shall govern.

4. This Amendment may be executed in separate counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

[Signatures follow on separate page(s).]

IN WITNESS WHEROF, the Parties have caused this Amendment to be executed by their duly authorized representatives as of the first date written above.

FLORIDA POWER & LIGHT COMPANY

_____
Sam A. Forrest
Vice President

ATTEST:

_____
Tammy K. Vock
City Clerk

(City Seal)

Approved as to form and legal sufficiency:

Wayne R. Coment
Acting City Attorney

CITY OF VERO BEACH, FLORIDA

_____
Jay Kramer
Mayor

Approved as conforming to municipal policy:

Monte K. Falls
Interim City Manager

Addendum to the City Council Meeting Agenda

__ New Business ✓ Old Busir 9A-1)

Author: Pilar Turner

Council Meeting Date: July 19, 2011

Prio

1 of 3

Title: GAI Electrical Consulting Contract

Summary of your points for discussion: Progress report on evaluation of FPL offer and GAI expenditures to date. Timeline of activites to be performed.

All agenda Additions – Public need or issue addressed: Complete our due diligence to move forward on negotiations under the LOI. Contract awarded on April 5, no data received to date . We are now 11 weeks into project!

Statement of the proposed solution to the public need or issue: Provide citizens monthly reports. Control costs and maintain a schedule.

New Business Only - Relevant City Charter, code references, legal: None

Backup - additional attached documentation includes:

Old Business Only - Dates of past discussions / decisions by Council relevant to the issue: Award of contract to GAI on April 5. Requested contract updates at council meetings on May 3, May 17, and June 7. June 21 Council meeting demanded manhour estimates and schedule for reporting.

Addendum to the City Council Meeting Agenda

__ New Business ✓ Old Busir 9A-2)

Author: Pilar Turner

Council Meeting Date: July 19, 2011 Priority 2 of 3

Title: Water and Sewer Regionalization

Summary of your points for discussion: Progress on evaluation and negotiation with the County. Update on GAI contract expenditures and progress. Timeline of activities to be performed. We are now 27 days into a 100 day contract workscope with an official start date of June 10 .

All agenda Additions – Public need or issue addressed: Evaluate offer to regionalize water and sewer. Maintain control and review of consultant.

Statement of the proposed solution to the public need or issue: Perform our due diligence. Require monthly progress reports on GAI.

New Business Only - Relevant City Charter, code references, legal: None

Backup - additional attached documentation includes: Memo on questions for county.

Old Business Only - Dates of past discussions / decisions by Council relevant to the issue: April 29 Joint meeting with County vote to move forward with discussions. Requested update at Council meetings May 17, June 7, and June 21.

Addendum to the City Council Meeting Agenda

__ New Business ✓ Old Busines 9A-3)

Author: Pilar Turner

Council Meeting Date: July 19, 2011

Priority 3 of 3

Title: Go Line Bus Station

Summary of your points for discussion: Update on relocation of bus terminal.

All agenda Additions - Public need or issue addressed: Keep public informed.

Statement of the proposed solution to the public need or issue:

New Business Only - Relevant City Charter, code references, legal:

Backup - additional attached documentation includes:

Old Business Only - Dates of past discussions / decisions by Council relevant to the issue: Numerous

9A-4)

Addendum to the City Council Meeting Agenda ___New Business _x_Old Business

Author: **Tracy Carroll** **Council Meeting Date: July 19, 2011** **Priority ____ of _____**

Title: **Status of position of City Attorney**

Summary: The following issues are of utmost importance to the City of Vero Beach, and under negotiations. An outside firm with contracts exceeding one half million dollars is representing the City, and there is concern over the long-term status of the acting City attorney, who is currently seeking other employment.

Legal projects include: PSC contract, FMPA entitlements, Acquisition of Vero Beach Electric with FPL, Merger of City WSI with IR County, among many others.

All agenda Additions - Public need or issue addressed:

The City Council needs to hire the **permanent** Charter Officer.

Definitions of interim (adj)

1. having temporary effect: serving as a temporary measure until something more complete and permanent can be established
2. holding temporary office: serving temporarily until a permanent replacement can be elected or appointed
3. intervening time: a period of time between two occurrences or periods
   Synonyms: temporary, provisional, acting, short-term, intervening, pro tem, ad hoc

Statement of the proposed solution to the public need or issue:

Request Interim City Manager have HR Department post and begin the search for a City Attorney as per Charter. The current acting City Attorney is welcome to apply. Experience in transactional, corporate, and HR law will be looked upon favorably.

New Business Only - Relevant City Charter, code references, legal:

Section 3.01. Designation.
The city manager, city clerk, and city attorney are designated Charter officers.
Section 3.02. Appointment.
The Charter officers shall be appointed by the council and shall serve at the pleasure of the council subject to the provisions of section 3.03 of this article.
Section 3.06. City attorney--Powers and duties.
The city attorney shall be a member of the Florida Bar and shall be the legal advisor to the City of Vero Beach. The city attorney or his designee shall attend all city council meetings and perform such professional duties as may be required of him by law or by the council. The city attorney when necessary shall appoint, suspend, demote, or dismiss any employee in the office of the city attorney in accordance with law and the personnel rules of the city. The city attorney shall prepare an annual budget for the operation of the office of the city attorney and shall submit this budget to the city manager for inclusion in the annual city budget in accordance with uniform city procedures.

Backup - additional attached documentation includes: VeroNews.com article

Addendum to the City Council Meeting Agenda _X New Business __Old Busin 9B-1)

Author: Tracy Carroll Council Meeting Date: July 19. 2011 Priority ____ of _____

Title: Hiring of a legal firm with both transactional (mergers and acquisitions) and utility experience to negotiate on behalf of the City, and reporting to the City Council, on the sale of the Electric Utility to FPL

Summary of your points for discussion:

The following are issues the firm would be responsible for:

OUC contract

FMPA entitlements

Acquisition of Vero Beach Electric with FPL

All agenda Additions - Public need or issue addressed:

The City needs representation on the above issues. Gray Robinson has emphatically stated that they have not been hires to do so and are not negotiating on behalf of the city with other agencies, such as FMPA and OUC. (see minutes 6/21/11).

Statement of the proposed solution to the public need or issue:

Request the attached firms to bid on representing the City Council of Vero Beach as a transactional attorney to negotiate the sale of the Electrical Utility to FPL, negotiate the terms of contract resolution with FMPA, OUC and any other entities.

New Business Only - Relevant City Charter, code references, legal:

Backup - additional attached documentation includes:

Information from the web on possible firms, 6/21 council minutes

Mr. Hartman said that he did an appraisal of two different sets of assets located in the same jurisdiction, but they are totally different assets.

Mrs. Turner asked during the appraisal review, did his (Mr. Hartman's) attorney look at the franchise agreement and provide an opinion on the ownership of the assets.

Mr. Hartman said the ownership of the assets is of the effective date of the appraisal.

Mrs. Turner said the actual document states that at the end of the thirty (30) year contract, the assets would revert back to Indian River Shores. She asked did their attorney review that.

Mr. Hartman said that is another issue. He said that Indian River Shores asked for the fair market value of the assets that they owned within Indian River Shores.

Mrs. Turner said the question is did his attorney review it.

Mr. Hartman said that he reviewed the two franchise agreements, but as of that day and time. Ownership is ownership.

Mrs. Turner said that she is talking about assets reverting to Indian River Shores. She wanted to know if his attorney reviewed that to interpret that all assets within Indian River Shores revert back to Indian River Shores or if it would only be the assets that Indian River Shores had at the time of signing the initial franchise agreement.

Mr. Hartman said that he has not been asked that question. He said that both franchises, water and wastewater, were separate. From those franchises, he can value the assets as an effective date. That was what he was hired to do and that is what he did last year.

Mrs. Carroll asked wouldn't that be part of the optimization study.

Mr. Hartman answered absolutely. This Council hired him to look at Indian River Shores and the South beaches relative to the assets as of 2016 and after. That is a different task. He has read the 1989 service area agreement that the City has the South beaches and Indian River Shores that does not have a term.

Mayor Kramer asked Mr. Hartman that he continue going over his report and then after lunch more discussion on this current topic could take place.

Mr. Hartman said relative to the evaluation of the assets, they are valuing all the assets (water, wastewater, reclaimed water) and the breakdown. They have inspected and assessed the assets.

B) GAI Status Report on Electric Utility

Mr. Hartman reported that this is also a valuation project. GAI was hired to value the electric assets that the City owns. The intangible property has potential liabilities equal to the offer so they have started looking at the OUC obligations under their contract, the FMPA entitlements and value, as well as obligations if those entitlements are not sold. He noted that there is an ongoing payment associated with that. In the marketplace by looking at utilization of power reserves and power capacity of FMPA entities, there is not a tremendous shortfall of power production. The only transaction that he has received is not good comparable because it is an emergency transaction. He said that they met with FMPA and are in the process of getting numbers (the cost to get through FMPA's process) and were promised that he would have the numbers this week. He was first told that he would have the numbers last week. He said that he met with the entities and discussed the issues and is getting the information.

Mrs. Carroll said you are in no way negotiating with them (FMPA).

Mr. Hartman said that is correct.

Mrs. Carroll said that they are only asking what it is going to cost.

Mr. Hartman said that they would receive FMPA's cost and basis for the cost.

Mr. Coment explained that when Mr. Hartman is talking about cost, he is talking about FMPA's approval process, not the cost of getting rid of the obligation.

Mrs. Carroll said that members of the public have asked her if Gray Robinson was helping the City negotiate the sale of the system to FPL. She said according to the contract they signed with GAI and their consultant, they were not hired to do any negotiations on behalf of the City.

Mr. Hartman said that they were charged with assessing the intangible relative to evaluation.

Mrs. Carroll said that OUC has some number in their contract in terms of a penalty. For Mr. Hartman to value that, wouldn't he have to sit down with them (OUC) and ask what the penalty would be. She asked how the City is going to know the number.

Mrs. Turner said that is not in GAI's scope at this time. They were hired to do an appraisal. The City does not have anyone representing them in doing negotiations.

Mrs. Carroll understood that, but asked how they could evaluate the system without knowing what the possible penalties might be.

Mr. Hartman said that GAI would get the values associated with the OUC penalties and they have full capability of running that through their analysis to see if that is cost recovery. He explained that the intangible that they can document is what they show in the appraisal. A premium over what they can document is shown as a significant aspect.

He said that they will show Council both so they will know what GAI believes is the intangible value or cost. He said that Council would also know if GAI believes there is a premium being delineated for OUC.

Mrs. Carroll said Mr. Hartman is going to tell the Council what he thinks the City's penalty should be and he is not going to negotiate with OUC.

Mr. Hartman said that they would be given the information from OUC that they (GAI) run through their analysis.

Mrs. Carroll said that earlier Mr. Daige asked a question about the data room. She explained that the data room would be similar to the technological cloud. It would be a room where data is generated by FPL or by the City to place files. There would be a secret code that only the team could access. This way they all would be looking at the same numbers and they could not be accessed by the general public. Through a public information request, they could get that information.

Mr. Hartman said that FPL hired a third party contractor. They do not wish to use Gray Robinson because of certain capabilities that they had.

Mrs. Turner asked that Council receives man hours per task and dollars, tracking completion on tasks, and an overall schedule on their invoices.

Mayor Kramer noticed in the audience that there were people present that would like to speak on the issue of Live Oak Road.

Mrs. Carroll was fine with putting this utility issue on hold until after lunch.

Council agreed to put the utility issue on hold and discuss it after lunch.

At this time Council heard item 9A-7).

C) Request for Qualifications for Potential Purchase of Vero Beach Power Entitlements and Obligations

Mr. Falls said that this item ties into the status reports. He said that one of the things that they have to do to further their negotiations with FPL is allow staff to determine if there is a potential purchaser for the City's FMPA entitlements. He said that they can only be acquired by FMPA members and for the City to ascertain if there is any interest they need to do an RFQ. This item would allow them to move forward and do this. Mr. Hartman has already discussed the process of FMPA and this is the first step.

Mr. Heady said the only real buyers are the members and we know who those members are. He said that rather than spend $35,000 tax dollars, why doesn't the City send a letter to them telling them that the City has entitlements for sale.

Links:

- >> OVERVIEW
- >> WATER RESOURCES
- >> TRANSACTIONAL LAW
- >> PUBLIC UTILITIES
- >> ADMINISTRATIVE LAW
- >> REAL ESTATE
- >> ENVIRONMENTAL LAW
- >> HEALTH CARE
- >> PROFESSIONAL LICENSURE
- >> COMMUNITY DEVELOPMENT
- >> ESTATE PLANNING & ELDER CARE

Transactional Law:

Rose, Sundstrom & Bentley has broad experience in public utilities, mergers and acquisitions, public and conventional finance, and general corporate matters. Our work in this area includes utility acquisition and finance, with a concentration in water and wastewater utilities.

We are counsel to investor-owned utilities, co-operatives and governmental clients, including cities, counties and Community Development Districts. Our expertise extends from negotiation and financing of utility acquisitions and divestitures to valuation and general counsel work. We also advise clients on utility regulatory matters, infrastructure issues, territorial disputes, contract and operational matters.

We have particular experience in eminent domain cases and utility system valuations, and we practice before the Florida Public Service Commission, the Department of Environmental Protection and the various Water Management Districts.

Highlights of our transactional work:

- We have represented national water utilities on acquisition matters in other jurisdictions, and large landowners on the establishment and development of utilities serving their property.
- We acted as buyer's representative and counsel to a coalition of local governments in the acquisition of the utility assets in many of the largest water and wastewater utility system transactions in the State of Florida.
- We have acted as borrower's counsel in a large number of tax-exempt, industrial development revenue bond issues for projects throughout the state. We have also structured taxable bond issues and conventional financings for private borrowers.
- We have established for-profit utility corporations, non-profit cooperatives, and advised clients on public private partnerships and non-profit corporations acting on behalf of local governments.

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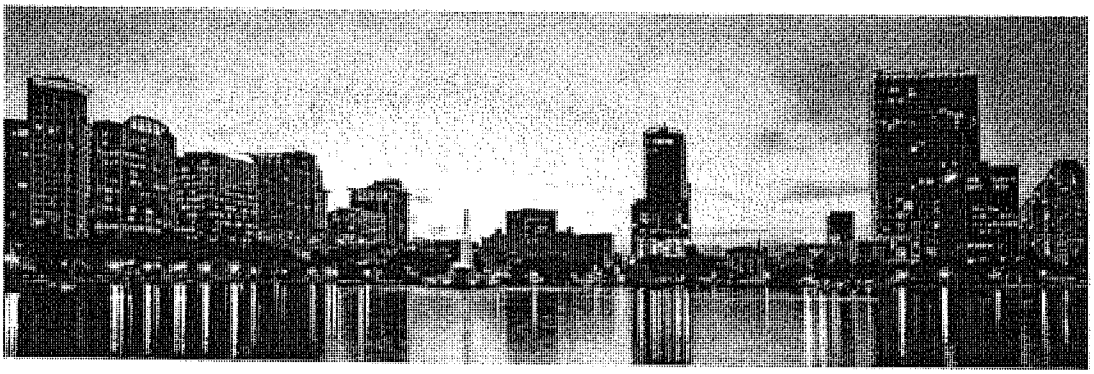

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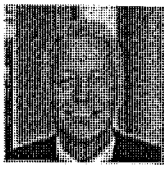

Martin S. Friedman, P.A.

Managing Partner

Areas of Practice: Utilities Law; Environmental Law; Administrative Law, Commercial Transactions and Litigation, Real Estate Transactions and Litigation

Education: B.S., Florida State University, 1972; J.D., Stetson University, College of Law, 1975

Martin S. Friedman acts as lead counsel for utilities clients before the Florida Public Commission and in their dealings with developers and city, county and governmental agencies. He has served as the Florida Assistant Attorney General in the Local Government Section and Chief of General Litigation Section. Mr. Friedman is authorized to write title insurance for First American Title Insurance Company and has acted as lead real estate counsel on more than 120 utility transactions and $3 billion in utilities' financing. Mr. Friedman regularly litigates commercial and real estate issues, and handles commercial and real estate transactions.

Mr. Friedman is a member of The Florida Bar, the American Land Title Association Legal Division, the Florida Rural Water Association and the Florida Land Title Association. He has served as a speaker on Mastering Real Estate Titles and Title Insurance in Florida.

mfriedman@rsbattorneys.com

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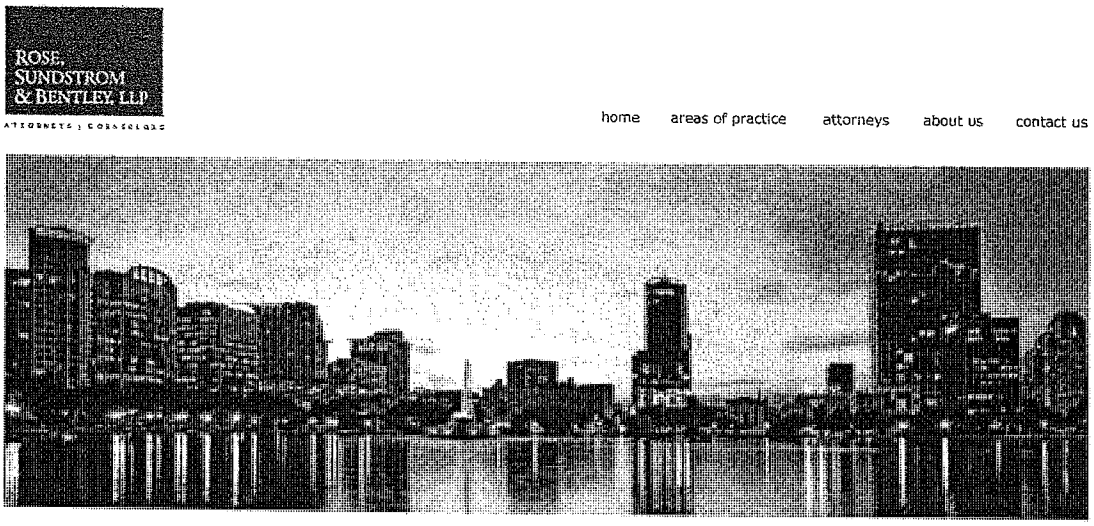

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Christian W. Marcelli

Associate

Areas of Practice: Utilities Law, Administrative Law, Corporate Law, Real Estate, Intellectual Property, and Civil Litigation

Education: B.A., Political Science, University of Central Florida, 1997; B.A., Spanish, University of Central Florida, 1997; J.D., Benjamin N. Cardozo School of Law, 2002

Christian W. Marcelli practices law in the areas of utility regulation, corporate law and civil litigation. Mr. Marcelli previously practiced as an attorney in the Energy and Utilities Department of LeBouef, Lamb, Greene & MacRae of New York, New York, where he worked on rate cases, merger approval proceedings and financing petitions. He is a member of The Florida Bar and The New York Bar.

cmarcelli@rsbattorneys.com

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UTILITIES & ENERGY

Ruden McClosky's Utilities & Energy Practice Group serves the legal, regulatory-related and planning needs of municipal and investor-owned energy companies and regulated utilities in Florida. Attorneys in the Utilities & Energy practice represent and counsel utility concerns as well as other governmental, industrial, agricultural, banking and real estate development clients throughout the State.

The statewide practice comprises attorneys in the areas of administrative, environmental, land use, litigation, public finance and lobbying, including: a former General Counsel for the Public Service Commission in Tallahassee, and previous Director of Air Resource Management for the Florida Department of Environmental Protection; a former chief contracts counsel for Orange County, FL; a former Special Counsel to United States Senator Bob Graham; and a former general counsel to St.John's Water Management District.

Ruden McClosky's Utilities & Energy Practice attorneys have substantial experience in the area of public utility & energy law and handle an array of matters involving clean air, utility plant and transmission line siting, electric generating facilities, renewable energy, water and wastewater, climate change-related issues as well as telecommunications issues.

Our attorneys have worked with early stage alternative energy and energy efficiency companies to help them identify federal, state, and local business incentives. They have assisted state agencies in rethinking their policies toward promoting alternative energy manufacturing and their regulatory approaches on energy issues, and they have worked with state universities to commercialize advanced renewable energy and energy efficiency technologies.

Our attorneys have experience representing regulated entities and public companies in regulatory and administrative matters before state courts and federal and state agencies including the Florida Public Service Commission, the Division of Administrative Hearings, the Department of Environmental Protection, the U.S. Environmental Protection Agency, the Department of Transportation, and numerous Boards of County Commissioners.

They have also represented public utility companies before and in circuit court litigation and they routinely handle appeals in the District Courts of Appeal and the Florida Supreme Court. They have also been involved in drafting legislation on behalf of public utility clients.

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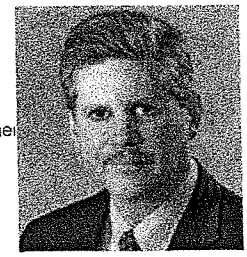

MICHAEL G. COOKE, SHAREHOLDER

401 East Jackson Street
Suite 2700
Tampa, FL 33602

TEL: 813-222-6685
FAX: 813-314-6985

EDUCATION

- J.D., The Catholic University of America Law School, 1985
- M.S., George Mason University, 1977
- B.S., George Mason College of the University of Virginia, 1974

BAR ADMISSIONS

- Florida
- Michigan

Mr. Cooke concentrates his practice in administrative law, including environmental, utility, and land use law. He represents industrial, agricultural, banking, government and developer clients on matters involving clean air; water; wastewater; climate change; utility plant and transmission line siting; electric generating facility, renewable energy, and telecommunications issues.

He has represented clients in connection with long term fuel purchase contracts, utility easements, and other utility and co-generation facility matters. He also has represented Florida citrus processors in connection with environmental matters, and automobile, building products, electronics and other manufacturing companies in various CERCLA, RCRA, TSCA, water, air, and solid waste matters. He advised a U.S. manufacturer regarding environmental requirements applicable to its facilities located in Mexico and, in particular, assisted the company in developing its program for ensuring compliance with RCRA disposal requirements and other transborder issues.

Mr. Cooke previously served as General Counsel for the Florida Public Service Commission in Tallahassee where his responsibilities included conduct of rate cases, rulemaking, enforcement proceedings, and policy decision-making involved with policy issues regarding nuclear facility site cost recovery and renewable energy. From 2003 to 2006, he was the Director of Air Resource Management for the Florida Department of Environmental Protection. In this position, he managed the air quality program for the State of Florida, interacting with federal and local agencies and overseeing the development of state regulations involving clean air rules, permitting and enforcement matters.

Previously, Mr. Cooke was a shareholder at Carlton Fields, Tampa from 1997 to 2003 and a partner at Honigman Miller Schwartz and Cohn, Detroit and Tampa from 1992 to 1997. Prior to joining Honigman Miller, Mr. Cooke served as an environmental attorney in the Office of General Counsel, General Motors Corporation from 1985 to 1992.

Mr. Cooke earned his law degree from The Catholic University of America Law School (J.D., 1985), and graduated from George Mason University (M.S., 1977 and B.S, 1974). He was an Associate Editor of the *Catholic University Law Review* and published a Note, entitled, "An Evolving Model for Judicial Review of Environmental, Safety and Health Rulemaking: Small Refiners Lead Phase-Down Task Force v. EPA," 33 C.U.L.R. 1027 (1984). While earning his law degree, Mr. Cooke worked as an information policy and legislative specialist for the Department of Energy's Energy Information Administration.

He is a member of The Florida Bar and is Board Certified in State and Federal Government

and Administrative Practice. He also is a member of the Michigan Bar and is AV rated by Martindale-Hubbell.

PUBLICATIONS

- "Helping Electric Utilities Manage New Climate Change Issues and Concerns"

SPEAKING ENGAGEMENTS

- Florida Chamber's 26th Annual Growth Management, Energy, Climate Change and the Environment Short Course
- Florida Department of Environmental Protection Central District's 13th Annual Power Generation Conference

NEWS

- Ruden McClosky Shareholder Michael Cooke to Present at The Florida Department of Environmental Protection's Power Generation Conference 2009
- Ruden McClosky Announces New Utilities & Energy Practice Group
- Michael Cooke Joins Ruden McClosky, Leads Utilities & Energy Practice

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- UTILITIES & ENERGY

INDUSTRIES

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EDUCATION

- J.D., Brooklyn Law School, 1973
- B.A., State University of New York, Buffalo, 1969

BAR ADMISSIONS

- Florida

MEMBERSHIPS

- American Bar Association
- Broward County Health Facilities Authority, Board Member
- National Association of Bond Lawyers

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Mr. Krul joined Ruden McClosky in 1975 and has chaired the Firm's Corporate and Finance Department for more than 30 years. He has experience in all areas of the department including mergers and acquisitions, securities and municipal finance transactions.

During the first eight years of his practice -- initially with a large Wall Street firm and then with Ruden McClosky -- Mr. Krul focused on litigation, defending corporations in complex securities, antitrust or other business related lawsuits. This experience enabled him to develop substantial familiarity with state and federal securities, antitrust and other business regulatory laws. It also provided him with a unique perspective on how to minimize the risk of subsequent litigation in a business transaction and maximize the client's position should litigation ensue.

Mr. Krul has represented both buyers and sellers in a multitude of merger and acquisition transactions, including numerous deals in the $50-150 million range. Whether representing buyers or sellers, Mr. Krul's primary goal is to use his knowledge and experience to resolve the inevitable issues that arise in any transaction so that the parties can close the deal on mutually acceptable terms. He takes pride in being a "deal maker," not a "deal breaker."

Mr. Krul also has substantial experience in dealing with securities laws. He has represented issuers and underwriters in securities financings, including private placements and public offerings. In addition, he has advised clients on a host of other securities laws issues, such as stock option plans, insider trading issues, public company disclosure requirements, '34 Act reporting, Rule 144 resale requirements and broker-dealer regulatory issues. Prior to attending law school, Mr. Krul was employed by the New York Stock Exchange and, as an attorney, served for many years as an arbitrator for the National Association of Securities Dealers.

In the mid-1980s, Mr. Krul expanded his practice to include municipal finance. In that capacity, he has represented numerous governmental issuers and underwriters in tax-exempt bond issues. His municipal finance knowledge, coupled with his breadth of experience in private sector corporate and finance transactions, allows him to innovate and implement creative municipal finance transactions, including many public/private partnerships. Examples of these transactions include the first public schools in Florida financed with special assessment bonds pursuant to an agreement among the county, city, school board and developers; a synthetic lease transaction that generated government profits by shifting tax benefits to the private sector; and the drafting of specialized legislation to establish a privately controlled governmental entity with the power to develop and

finance stadiums, arenas and related structures.

Mr. Krul serves as the Co-Managing Director of the Firm. He is AV rated by Martindale-Hubbell and is recognized in *The Best Lawyers in America 2011*.

PUBLICATIONS

- Florida Entities' Annual Reports Due May 1
- WHY LLCS ARE THE ENTITY DU JOUR FOR SMALL BUSINESS OWNERS

NEWS

- Twenty-One Ruden McClosky Attorneys Named "Best Lawyers in America" 2011

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MEMORANDUM

TO: The Honorable Mayor Jay Kramer, Vice Mayor Pilar Turner, Councilmember Brian Heady, Councilmember Craig Fletcher and Councilmember Tracy Carroll

FROM: Monte Falls, P.E. - Interim City Manager

DATE: July 6, 2011

SUBJECT: **ELECTRIC UTILITY**

Entered
City Clerk's Office
2011

On June 24, 2011, GAI Consultants advised the City that they had only been tasked to prepare an appraisal of the electric utility and proceed with a Request For Qualifications (RFQ) for the Florida Municipal power Agency (FMPA) entitlements (see attached e-mail sent to Council on 6/27/11). On June 29, 2011, I received the attached correspondence from GAI Consultants to Acting City Attorney Wayne Coment. This correspondence outlines GAI Consultants' preliminary and conceptual budget information for the City to undergo the process for the sale to Florida Power and Light (FPL).

This correspondence is provided for your information to give you an idea of the steps that may be necessary to complete the process with FPL.

Monte K. Falls, P.E.

MKF:jav
Attachments

xc: Wayne Coment
John Lee
James O'Connor

C:\MY DOCUMENTS\MEMOS MKF 2011\CC - ELECTRIC UTILITY - 7.06.11.DOCX

Vonada, Joyce

From: Falls, Monte
Sent: June 27, 2011 4:18 PM
To: Vock, Tammy
Cc: Lee, John; Coment, Wayne; Vonada, Joyce
Subject: FW: Electric fpl and other services

Tammy, Please see that the City Council gets this. Thanks. Monte.

From: Gerald Hartman [mailto:g.hartman@gaiconsultants.com]
Sent: Friday, June 24, 2011 4:56 PM
To: Falls, Monte; Coment, Wayne
Cc: Tara Hollis
Subject: Electric fpl and other services

Since we are not tasked to do the bi-monthly fpl conference calls or any other work outside of the appraisal and rfq for the electric---I will do the 6/30 call and go to the Indian River Farms meeting, but it looks like the city is to hire others for negotiations and issues resolution and transactional services of which there are many.

We will focus on what the city council has authorized. Historically, I was trying to help in the various areas which appeared help was needed.

The FPL sale is an expensive endeavor on both sides. I do not know if the city council wishes GAI to do what we normally do in a transaction of this type. I will await the pleasure of the City Council for these items.

My best--gerry

Gerald C. Hartman, PE, BCEE, ASA
Vice President

GAI Consultants, Inc. – We've moved. Please take note of our new address.
The GAI Building
618 East South Street, Suite 700
Orlando, Florida 32801

407.423.8398 ext. 3125 | F 407.843.1070 | C 407.341.0970 | gaiconsultants.com

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Coment, Wayne

From: Tara Hollis [t.hollis@gaiconsultants.com]
Sent: Monday, June 27, 2011 5:43 PM
To: Coment, Wayne; Thomas A. Cloud, Esquire
Cc: Gerald Hartman
Subject: FW: Wayne Coment Letter
Attachments: Wayne Coment_Sale to FPL.pdf

REC'D 6/29/3

Please see the attached from Gerry Hartman.

Thanks,
Tara

Tara L. Hollis, CPA, MBA
Environmental Group Manager

GAI Consultants, Inc. – We've moved. Please take note of our new address.
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Orlando, Florida 32801

407.423.8398 ext. 3110 | F 407.843.1070 | C 407.286.9867 | gaiconsultants.com

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June 27, 2011

Mr. Wayne Coment, Acting City Attorney
City of Vero Beach
1053 20th Place
Vero Beach, Florida 32960-5359

Re: Sale to FPL – Process and Approvals
Anticipated City Costs

Dear Mr. Coment:

Per the City's request, I am providing preliminary and conceptual budget information for the City to undergo the above referenced process:

1. Initial Issues Resolution Work - Estimated Cost - $300,000 (See 6/16/2011 letter attached)

2. FMPA costs for approval - Estimated Total Cost - $1,000,000
(This amount updates the first amount stated on 6/21/2011 of $100,000 as reasonable and may be much more) – (See 2 emails dates 6/24/2011 from FMPA attached)

3. Existing GAI contract - $238,900 (includes GAI, Gray Robinson, Power Services and Land Appraiser)

4. Industry Typical Terms and Conditions, closing costs (assumes $100 mm), recording, title insurance, environment audit, surveys. Rough Estimate - $290,000

5. Public Hearings and Related Documents - options and analysis and general fund, tax issues, etc, impacts analysis impacts. Rough Estimate - $150,000

6. Transitional Services – Labor Attorney, FPSC attorney, Federal hearing approvals, FDEP, WMD, FPUA Airport, other entities. Rough Estimate - $150,000

7. City of Vero Beach staff time and expenses - Not Estimated

8. Purchase and Sale Contract, Negotiations, Exhibits, Contract Transferring and Supporting Agreement - $175,000

9. Contingency @ 20% providing an amount of $460,000.

10. Public Responses and third party actions – Not Estimated.

The above amounts to approximately $2,764,000 rounded to $2,800,000.

This quick overview of the main items reflects the 2% to 3% of the full transaction amount for seller's costs as I mentioned previously.

If the City does not have the funds to support a transaction, then potentially the transactional costs of roughly $3 million may need to be underwritten by FPL or be a negotiated term with short-term bank loan financing.

Very truly yours,
GAI Consultants, Inc.

Gerald C. Hartman, P.E., B.C.E.E., ASA
Vice-President

cc: Tom Cloud, Esq. – Gray Robinson
Tara Hollis - GAI

ATTACHMENTS

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June 16, 2011

Mr. Wayne Comment, Acting City Attorney
City of Vero Beach
1053 20th Place
Vero Beach, Florida 32960-5359

Re: FPL Transaction
Initial Issues Resolution Work

Dear Mr. Comment:

Previously, we provided a summary of the June 8th meeting on June 9th to you for distribution as appropriate.

At the 6/21 City Council meeting we will provide a verbal status report on the Electrical System Appraisal.

You and Tom Cloud have corresponded to have the referendum on the ballot concerning this issue.

As FPL agreed a rapid RFQ process for the FMPA entitlements and obligations is necessary. The GAI Consultants, Inc. (GAI) and Gray Robinson proposal for that work for RFQ preparation, solicitation, and evaluation is to be provided under separate cover.

Three additional major areas are needed as FPL acknowledged. Those areas are:

1) Delineations, Approvals, Consents, Contract Resolution, Negotiations.
Those issue resolutions are that were identified at this time are:

(a) Fort Pierce Utility Authority – South Transmission and Switching Station Agreement. FPUA desires ownership of segment of Segment #50 (payment to COVB of 50%OCLD) and FPL to buy 100% Segment 1 from COVB (100% OCLD) and repay 50-50 COVB and FPUA for Segments #4 (switching station), #3 and #2 at OCLD. Two small purchase and sale agreements.

(b) OUC Negotiations – By the end of June, OUC is to provide the cost of termination of their agreement with COVB. GAI team to assist City in negotiating the amount to the lowest level possible or securing transfer to another FMPA member of the agreement with a payment.

(c) FMPA Approvals – FMPA approval is estimated to take 6 months following the selection of the entity which is required before starting the process of (1) SAIC review and report (FMPA Engineer's Analysis), (2) Staff financial and credit worthiness report with due diligence, (3) General Counsel review and report, (4) Tax Counsel review and report, (5) Trustee review and report and finally (6) FMPA board approval. Only one transfer has occurred during the history of FMPA (City of Homestead after the hurricane – Emergency Condition). City of Vero Beach will have to pay FMPA for the first 5 steps.

(d) Indian River Farms Easements – Resolution of their issues regarding both the high voltage transmission, distribution and gas facilities easements into a long term easement which FPL can use.

(e) Real Estate / Easement Issues – Several existing potential issues with multiple parties.

(f) FEMA Grant Asset Transfer – Approximately $15.7 million of federal funds have been used. Application for the transfer of the assets built as dedicated into public use by the public utility work to secure approval.

(g) Vero Beach Municipal Airport – Leases, issues resolutions, approach to service, etc. involving existing operations and transition of ownership.

The above seven (7) items will involve the following upset limit on fees:

- GAI - $100,000
- Gray Robinson - $50,000

Note that the COVB will be required to pay the FMPA costs.

2) FPL Due Diligence, Information, Analysis, etc.

FPL has historically requested several items and information which has been provided by the COVB.

Most recently, FPL has provided a request involving some 30 pages of determinations, audit, condition assessment, regulatory compliance, future requirements, capital planning and numerous other items and has stated that subsequent requests may be forthcoming. In addition, all meetings/coordination/background/analysis, etc. have been requested. FPSC and GAP to NARUC and Original Cost Study (for FPSC) information has been requested. Transactional determinations, environmental audits (not within the valuation scope – GAI has sent out solicitation for vendors), and other items are desired. The City staff will provide certain items and has requested support for other work to attain the schedule desired by City Council. Over the next six (6) months we have allocated for a portion of a financial, an engineer, and a transactional professional for these purposes, including conference calls every two (2) weeks with associated tasks from FPL to the City, and coordination with Ryan Fair of FPL on numerous issues and his designees.

An upset limit of $50,000 has been budgeted for these purposes plus outside vendor costs (EA, Survey, etc.).

3) FPL Negotiations and Transactional Documentation

City Staff, GAI, Gray Robinson and a City Council member will be tasked with the preparation of and refinement into a recommended purchase and sale agreement with numerous exhibits involving agreements documentation and identification of assets for a

City Council workshop and subsequent public hearing review and consideration by the FPL BOD with a franchise agreement and numerous other exhibits.

At this juncture the upset limit for these activities is delineated below as:

- GAI - $50,000
- Gray Robinson - $50,000

In order to proceed with these activities which involve significant seems of fiscal requirements, we are requesting that the City consider the above activities for approval.

Mr. Comment, please distribute as appropriate. Thank you for your consideration of these matters.

We appreciate the opportunity to serve the COVB on the FPL transactional process and providing the technical expertise which is desired.

Very truly yours,

Gerald C. Hartman, P.E., BCEE, ASA
Vice President

cc: Tom Cloud, Esq. - Gray Robinson
Tara Hollis, CPA - GAI

gai consultants
transforming ideas into reality®

Gerald Hartman

From: Mark Larson [Mark.Larson@fmpa.com]
Sent: Friday, June 24, 2011 2:56 PM
To: Gerald Hartman
Cc: Fred Bryant; Falls, Monte; Nick Guarriello; Sue Utley; Thomas A. Cloud, Esquire; Tom Reedy; 'Coment, Wayne'
Subject: RE: Vero Beach - consultant cost estimates
Attachments: NixonPeabody cost estimate 6 2011.DOC

Gerry,

Here's the document relating to NixonPeabody's estimate which I mentioned. Fred says what I have is the best at this time.

(See attached file: NixonPeabody cost estimate 6 2011.DOC)

Mark

Florida Municipal Power Agency
8553 Commodity Circle
Orlando, FL 32819-0002
Receptionist: 407-355-7767
Direct line: 321-239-1029
Fax: 407-355-5796
Cell: 407-947-4197

Community Power. Statewide Strength.

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Gerald Hartman ---06/24/2011 10:06:45 AM---Mark--- Thank you.

From: Gerald Hartman <g.hartman@gaiconsultants.com>
To: Mark Larson <Mark.Larson@fmpa.com>
Cc: Nick Guarriello <Nick.Guarriello@fmpa.com>, Tom Reedy <Tom.Reedy@fmpa.com>, Sue Utley <Sue.Utley@fmpa.com>, Fred Bryant <Fred.Bryant@fmpa.com>, "Thomas A. Cloud, Esquire" <Thomas.Cloud@gray-robinson.com>, "'Coment, Wayne'" <WComent@covb.org>, "Falls, Monte" <MFalls@covb.org>
Date: 06/24/2011 10:06 AM
Subject: RE: Vero Beach - consultant cost estimates

Mark---
Thank you.
I have not received any of the legal estimates----could you forward to me.
Do the two estimates shown in your email reflect all of the costs for the process?
It appears that possibly all of the legal is in the legal estimate and all of the financial is in the engineering estimate except for the trustee. Was there a cost for staff time as you stated in the meeting or is that at no cost due to being a member for so long?

Thank you for getting me this portion and I look forward to getting the rest as soon as you can--

My best---gerry

Gerald C. Hartman, PE, BCEE, ASA
Vice President
GAI Consultants, Inc. – We've moved. Please take note of our new address.
The GAI Building
618 East South Street, Suite 700
Orlando, Florida 32801
407.423.8398 ext. 3125 | F 407.843.1070 | C 407.341.0970 | gaiconsultants.com

gai consultants

Transforming ideas into reality for over 50 years, GAI is an employee-owned, multidiscipline engineering and environmental consulting firm, serving our clients worldwide in the energy, transportation, real estate, water, municipal, government, and industrial markets from offices throughout the Northeast, Midwest, and Southeastern United States.

CONFIDENTIALITY NOTICE: This communication contains confidential information belonging to the sender and may be legally privileged. This communication is solely for the use of its intended recipient. If you are not the intended recipient, inform the sender of the error and remove this email from your system. If this transmission includes any technical information, design data, and/or recommendations, they are provided only as a matter of convenience and may not be used for final design and/or construction.

From: Mark Larson [mailto:Mark.Larson@fmpa.com]
Sent: Friday, June 24, 2011 9:25 AM
To: Gerald Hartman
Cc: Nick Guarriello; Tom Reedy; Sue Utley; Fred Bryant
Subject: Vero Beach - consultant cost estimates

Gerry,

Good morning,

Nick asked me to check with several of the consultants that might be involved in this matter. I have heard back from RWBeck (a SAIC Company) with a rough estimate - $250k to $450k depending on multiple factors. I have attached their letter to me. *(See attached file: 6-17-11 Sale of Vero Electric System - RWBeck est of fees.pdf)*

I have not received an estimate from the Bond Trustee nor any of the three bond insurers. I believe you have already received an estimate from our Bond Counsel (minimally $250k to $300k, but higher depending on need). I think it is fair to say that given the legal risks being taken by each party opining or authorizing such a "first time" transaction in our litigious society, that the fees will be reflective not so much as to the volume of work, but the perceived financial risk. We have seen in our regular credit review processes for normal bond issuances, a much more conservative approach from Moody's and Fitch.

As I receive estimates from those parties mentioned above (Trustee and Bond Insurers), I will quickly forward to you.

If you have any questions, please don't hesitate to call.

Mark Larson
Assistant General Manager, Finance and Information Technology, CFO

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Orlando, FL 32819-0002
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You have advised us that the City of Vero Beach ("Vero") is considering a proposal to sell its electric utility system to FPL and have asked that we as bond counsel to FMPA provide you with (i) a brief outline of the tasks that would be involved to accomplish such sale in compliance with the various agreements relating to Vero's participation in multiple FMPA Projects, including both tasks we would perform and those which would be performed by others, and to assure any required payments are made or provided for, (ii) a list of the other parties who would potentially participate in such the accomplishment of such tasks, and (iii) an estimate of our costs for participating in such process. Since you have specifically told us not to start the actual detailed process of reviewing all relevant documents and developing procedures to accomplish the sale, the following information is based upon our overall experience with FMPA and knowledge of the documents relating to FMPA's Projects and would be subject to additional items being revealed if such detailed process is undertaken.

Vero Beach is currently a participant in four different FMPA Projects: three Projects which are facility specific--the Stanton Project and the Stanton II Project and the St. Lucie Project--and the All-Requirements Power Supply Project (the "All-Requirements Project"). The fundamental issues relating to accomplishing any sale of Vero's electric system to FPL are similar for all four FMPA Projects: (a) maintenance of the security provided by the various contracts to bondholders and interested other third parties as well as to other FMPA members participating in the Projects and (b) preservation of the Federal tax exemption on existing bonds and avoiding restraints on FMPA's ability to issue tax exempt bonds in the future. Among the facility specific Projects, we will treat the Stanton and Stanton II Projects, which each involve facilities for which the Orlando Utilities Commission ("OUC") is the majority owner, together.

Tasks to Be Undertaken to Determine Ability and Procedures for Accomplishing Sale

The following lists describe what would need to be done by us and others to determine what is necessary to accomplish the sale in compliance with applicable provisions of relevant documents. In each case where some specific compliance is found to be necessary, we and others would also be required to develop and implement procedures to achieve compliance.

Stanton and Stanton II Projects

1. Review of Participation Agreement with OUC relating to each Project to determine if there are applicable provisions requiring compliance, what is required to comply and who would be involved in achieving compliance.
2. Review of Bond Resolution relating to each Project to determine applicable provisions requiring compliance, what is required to comply and who would be involved in achieving compliance.
3. Review of Supplemental Bond Resolutions for each Series of Bonds for each Project which is insured, if any, to determine the rights, if any, of bond insurers.
4. Review of any credit or liquidity support documents for each Series of Bonds for each Project to determine the rights, if any, of each credit and liquidity support provider.

5. Review of any interest rate swaps relating to any Series of Bonds of each Project to determine rights, if any, of each counterparty.
6. Review of Power Sales Contract and Project Support relating to each Project to determine applicable provisions requiring compliance, what is required to comply and who would be involved in achieving compliance.
7. Review of related transmission arrangements to determine if any actions or payments are required.
8. Analysis of sale relating to protection of the tax exempt of FMPA's current and future bonds for the Projects.
9. Consideration of rights of other FMPA members participating in the Projects.

St. Lucie Project

1. Review of Participation Agreement with FPL to determine if there are applicable provisions requiring compliance, what is required to comply and who would be involved in achieving compliance.
2. Review of St. Lucie Unit No.2 Capacity and Energy Sales Contract to determine if there are applicable provisions requiring compliance, what is required to comply and who would be involved in achieving compliance.
3. Review of operating license from Nuclear Regulatory Commission and decommissioning trust to determine if any actions are required.
4. Review of Bond Resolution to determine applicable provisions requiring compliance, what is required to comply and who would be involved in achieving compliance.
5. Review of Supplemental Bond Resolutions for each Series of Bonds which is insured, if any, to determine the rights, if any, of bond insurers.
6. Review of any credit or liquidity support documents for each Series of Bonds to determine the rights, if any, of each credit and liquidity support provider.
7. Review of any interest rate swaps relating to any Series of Bonds to determine rights, if any, of each counterparty.
8. Review of Power Sales Contract and Project Support Contract to determine applicable provisions requiring compliance, what is required to comply and who would be involved in achieving compliance..
9. Review of related transmission arrangements to determine if any actions or payments are required.
10. Analysis of sale relating to protection of the tax exempt of FMPA's current and future Bonds for the Project.
11. Consideration of rights of other FMPA members participating in the Project.

All-Requirements Project

1. Review of Bond Resolution to determine applicable provisions requiring compliance, what is required to comply and who would be involved in achieving compliance.
2. Review of Supplemental Bond Resolutions for each Series of Bonds which is insured, if any, to determine the rights, if any, of bond insurers.
3. Review of any credit or liquidity support documents for each Series of Bonds to determine the rights, if any, of each credit and liquidity support provider.

4. Review of any interest rate swaps relating to any Series of Bonds to determine rights, if any, of each counterparty.
5. Review of Power Supply Contract to determine applicable provisions requiring compliance, what is required to comply and who would be involved in achieving compliance.
6. Analysis of sale relating to protection of the tax exempt of FMPA's current and future bonds for the Project.

List of Potential Parties Involved in Accomplishment of a Sale

The parties who might be involved in the process of accomplishing the sale in compliance with provisions of the relevant documents would include:

1. FMPA General Counsel's Office
2. FMPA Finance Staff
3. FMPA Engineering Staff
4. FMPA Board of Directors
5. FMPA Executive Committee
6. SAIC Energy, Environment & Infrastructure LLC as FMPA's Consulting Engineer
7. Nixon Peabody LLP as FMPA's Bond Counsel
8. Trustee and Trustee's Counsel under each Bond Resolution
9. Moody's and Fitch as providers of ratings on FMPA's Bonds
10. Insurers of FMPA's Bonds and their counsel
11. Credit and liquidity support providers for FMPA's Bonds and their counsel
12. Swap counterparties for any interest rate swaps relating to FMPA's bonds and their counsel
13. OUC and FPL as majority owners of generating facilities and any other joint owners of facilities
14. NRC and FMPA regulatory counsel
15. Other FMPA members
16. Parties to transmission arrangements

Estimated Costs

You have also asked that we attempt to estimate what we would expect to charge FMPA to perform our role as Bond Counsel in accomplishing the sale in compliance with the relevant documents relating to the Stanton, Stanton II, St. Lucie and All-Requirements Projects. Recognizing that such an estimate is dependent both the structure or structures employed in the transaction as well as the level of cooperation of multiple other parties and that we would make every effort to keep our charges to the minimum reasonably required to perform our tasks, we would estimate that even if structures were agreed to promptly, negotiations kept to a minimum and all parties were reasonably cooperative, it would still cost at least $250,000 to $300,000 in our legal fees; if any of the foregoing changed, the fees could be significantly higher.

We would also note that the costs to accomplish the sale would also include charges for time spent by FMPA staff and fees and charges for all of the other parties potentially involved other than the FMPA Board and Executive Committee.

Gerald Hartman

From: Mark Larson [Mark.Larson@fmpa.com]
Sent: Friday, June 24, 2011 9:25 AM
To: Gerald Hartman
Cc: Nick Guarriello; Tom Reedy; Sue Utley; Fred Bryant
Subject: Vero Beach - consultant cost estimates
Attachments: 6-17-11 Sale of Vero Electric System - RWBeck est of fees.pdf

Gerry,

Good morning,

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As I receive estimates from those parties mentioned above (Trustee and Bond Insurers), I will quickly forward to you.

If you have any questions, please don't hesitate to call.

Mark Larson
Assistant General Manager, Finance and Information Technology, CFO

Florida Municipal Power Agency
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Orlando, FL 32819-0002
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June 22, 2011

Via e-mail

R·W·BECK

An SAIC Company

Mr. Mark Larson
Florida Municipal Power Agency
8553 Commodity Circle
Orlando, FL 32819-0002

Subject: **Estimated Cost to Assist FMPA in Matters Pertaining to the Possible Sale of the City of Vero Beach, FL Electric System**

Dear Mr. Larson:

Pursuant to your request, we have prepared a conceptual cost estimate to provide services to the Florida Municipal Power Agency ("FMPA") as its Consulting Engineer in matters pertaining to the potential sale by the City of Vero Beach, Florida ("Vero Beach") of all or a portion of its Electric System including its interests and obligations in various power supply projects. Based on the information available today, the uncertainties associated with the potential sale, and the comprehensive list of tasks and subtasks that may be required to be performed, this estimate is conceptual and required the making of numerous assumptions. Thus, it is anticipated that as more definitive information becomes available, the specific services to be provided, the schedule and the estimated costs will be refined jointly to meet FMPA's needs. The updated estimate will be based on input and direction provided by FMPA management and staff as well as other advisors including Bond Counsel.

We understand that the contractual relationship between FMPA and Vero Beach involves four distinct and separate projects. The two "Stanton Projects" involve the joint ownership of two coal fueled generating facilities where the majority owner and operator is the Orlando Utilities Commission. The "St. Lucie Project" involves the joint ownership of a nuclear fueled generating facility where Florida Power & Light Company is the majority owner and operator. The "All Requirements Project" pertains to power supply that is to be provided by FMPA to its participants including Vero Beach. While many of the provisions of the various contracts are similar, there are some differences that may require additional or unique analyses and certifications. Because the specific terms of the proposed sale of the Vero Beach Electric System have not yet been determined, it is important to understand the effects of alternative proposals to dispose of Vero Beach's interest in the four projects and to protect FMPA, its remaining participants and its bond holders.

Some of the major assumptions underlying the cost estimate are summarized below:

1. The length of time of this assignment is approximately six months.
2. Spirited coordination, as usual, will be the norm among the FMPA management and staff, its Bond Counsel, its Financial Advisor and other advisors and consultants and the firm.
3. Vero Beach and the prospective purchaser(s) are reasonably cooperative.
4. Negotiations are limited and productive.
5. No protracted litigation or appeals will occur during the six month period.
6. Limited out of State travel.

1000 LEGION PLACE, SUITE 1100 ORLANDO, FL 32801 (P) 407.422.4911 (F) 407.648.8382

Based on a review of the comprehensive list of tasks and subtasks set forth in your e-mail of June 17, 2011, the proposed services have been divided into the following major areas: (i) reviewing, monitoring, and coordinating, (ii) analyses and reports, (iii) certifications, and (iv) project administration. Reviewing, monitoring and coordinating activities would include the review of the relevant provisions of the power sales and support contracts, research, participation in meetings and in conference calls and coordination activities. The analyses activities would include preparing specific analyses, evaluations and sensitivity studies as authorized, and the preparation of reports and presentation materials. The certification activities would include the preparation of necessary certificates as may be required by the various Bond Resolutions, the Bond Fund Trustee, the Bond Counsel, the Tax Counsel, among others, associated with the eventual disposition of the rights and obligations that are currently held by Vero Beach. Project administration activities would include services and costs associated with administering the contract, collecting costs and man hours, preparing and submitting invoices, reporting the status of work, schedule and budget, and managing the project.

Recognizing the existing commercial terms and conditions that are memorialized in the historical contract(s) between FMPA and R. W. Beck, it is estimated that the conceptual cost for these services could be in the range set forth in the table below.

	Low		High
1. Review Monitoring and Coordinating Activities (6 months)	$ 50,000	-	$75,000
2. Preparing Analyses and Reports	125,000	-	225,000
3. Preparing Required Certificates	70,000	-	125,000
4. Administrating the Project	15,000	-	25,000
Total	$250,000	-	$450,000

We envision that as some of the uncertainties are resolved, the specific services/assignments and cost estimates will be revised jointly to meet FMPA's needs.

I trust that this estimate satisfies FMPA's needs, and look forward to discussing the other assumptions underlying this cost estimate. Should you have any questions regarding the basis for this cost estimate, do not hesitate to contact me.

Sincerely,

R. W. BECK, INC.

Donna S Painter

Donna Painter
Senior Project Manager

DP/ea

R:\ Orlando \ 005186 \Misc \ 6-17-11 Sale of Vero Electric Sys.docx

9B-2)

Addendum to the City Council Meeting Agenda __x_New Business _ _Old Busi

Author: **Tracy Carroll** **Council Meeting Date: July 19, 2011** **Priority ____ of _____**

Title: Chief of Police using media to politicize budget prior to public meetings

Summary: See attached.

All agenda Additions - Public need or issue addressed:

All City Staff report to the City Manager, and should use discretion when reporting to the media.

Statement of the proposed solution to the public need or issue:

Request City Manager hold all city department heads to an equal standard in their appropriate responses to necessary budgetary constraints.

New Business Only - Relevant City Charter, code references, legal:

All City Department heads report directly to the City Manager.

Backup - additional attached documentation includes: memo from press, community, from Officer John Morrison with permission from Don Dappen, City Manager 2011-12 review of budget

MEMORANDUM

Entered
2011
City Clerk's
Office

TO: Tammy Vock, MMC – City Clerk

FROM: Monte Falls, P.E. - Interim City Manager

DATE: July 8, 2011

SUBJECT: JULY 7, 2011 E-MAIL FROM LISA ZAHNER

In response to a July 7, 2011 E-mail from Lisa Zahner (copy attached), I am forwarding documents from the June 13, 2011 City Manager's review of the Police budget.

On June 9, 2011, I met with the City's Department Directors and advised them that I had discussed our preliminary General Fund budget deficit of $1,600,000 with incoming City Manager Jim O'Connor. Mr. O'Connor and I agreed to start reducing the deficit by cutting the pay for all employees earning over $70,000 by approximately 5%. In the General Fund, this saved $140,000. Further, we agreed to spread the remaining deficit among all General Fund departments on a pro-rata basis. The Police Department's share of the remaining deficit was $552,000.

I have also included a copy of an e-mail dated June 16, 2011 from Keith Touchberry (Police Captain) to Jackie Mitts regarding adjustments to the Police Department budget.

7/8

Monte K. Falls, P.E.

MKF:jav
Attachments

xc: Jim O'Connor

C:\MY DOCUMENTS\MEMOS MKF 2011\CITY CLERK - 07.07.11 E-MAIL FROM LISA ZAHNER.DOCX

Falls, Monte

From: Lisa Zahner [lzahner@aol.com]
Sent: Thursday, July 07, 2011 3:21 PM
To: Falls, Monte; Morrison, John
Cc: Vock, Tammy
Subject: comment about June 27 email

Hi Monte -- A reader forwarded me an email dated June 27 that was sent out by the Vero Beach Police Department regarding the proposed 2011-2012 budget. The reader was concerned and asked me to look into the matter.

I would like to get your response as to the appropriateness of an email that was sent out by the Vero Beach Police Department to a crime watch list on June 27. The email states that the message was sent with the permission of Chief Don Dappen. In case you haven't seen the email, I've pasted the body of the email below.

Is the information about the requested cuts accurate?

Was it appropriate to use the citizen email contacts on the neighborhood watch alert list for this purpose?

Does this email constitute political speech using city computers and on city time, which I believe is prohibited in the Employee Handbook?

Officer Morrison -- I would like a comment from Chief Dappen for my story as to why he thought it was appropriate to take the budget battle directly to the citizens without the knowledge of the City Council or the Interim City Manager. In your capacity as PIO, If you could please email me whatever statement Chief Dappen wishes to make about this, I would appreciate it.

Also, on June 29, I requested a copy of the preliminary, proposed 2011-2012 Police Department budget, as it has been circulated amongst city staff. I have not received it. There must be a document from which the numbers in the June 27 were derived, or a document showing what cuts were requested from the Police Department and how those cuts might be implemented and I would like a copy of that correspondence.

Thanks,
Lisa

Lisa Zahner, Staff Editor
Vero Beach 32963 Newspaper
www.VeroNews.com
772-584-9121

From: "John Morrison" <JMorrison@vbpd.org>
To: "John Morrison" <JMorrison@vbpd.org>
Sent: Monday, June 27, 2011 3:54:55 PM
Subject: Neighborhood Watch - Urgent message please read

Important Neighborhood Watch Information

I am sending this e-mail due to a large number of inquiries about how the police department budget cuts will affect the neighborhood watch program. Chief Dappen has already spoken with some of the groups about the situation. He gave me permission to relay the following. Over the past several years, the department has continued to make operational cuts to the budget in the amount of approximately $250,000. We have also reduced the number of sworn police officers from 62 down to 56. This year, the Chief has been told to reduce his budget by $552,000. This is after the Chief was already prepared to reduce $92,000.00 on his own. The Chief and his staff will also have to take a 5% reduction in pay which will save approximately $45,000.00. None of these funds will apply towards the $552.000. Therefore the Chief will have to lay off approximately 9-10 more officers bringing the total to 15-16 officers out of 62 that will be gone. Last year we cut our civilian workers as far as we possibly could so we cannot reduce those numbers any lower.

In order to do this, officers will have to be moved from specialized duties to road patrol and answer calls for service. Those special duties affected are as follows. The Narcotics Unit will be gone, K-9 Unit will be gone, Traffic Unit will be reduced from 4 to 1, Marine Unit will be gone, D.A.R.E. will be gone and the Community Services Unit which consists of Neighborhood Watch, RAD Kids and RAD Women and all other programs will be gone.

The Chief wanted me to express his gratitude to all of you for all the help you have provided through the Neighborhood Watch program. The partnership established between the citizens and the police department was wonderful. Chief Dappen wants to assure you that we will continue to try and provide the best possible service that you have come to expect and deserve.

Many residents have already expressed deep concern with an interest in questioning the proposed budget cuts. If you would like to voice your opinion as an individual or a group please contact Mayor Jay Kramer, or any of our City of Vero Beach Council members. In person discussions, petitions or letters are just a few good methods of communication.

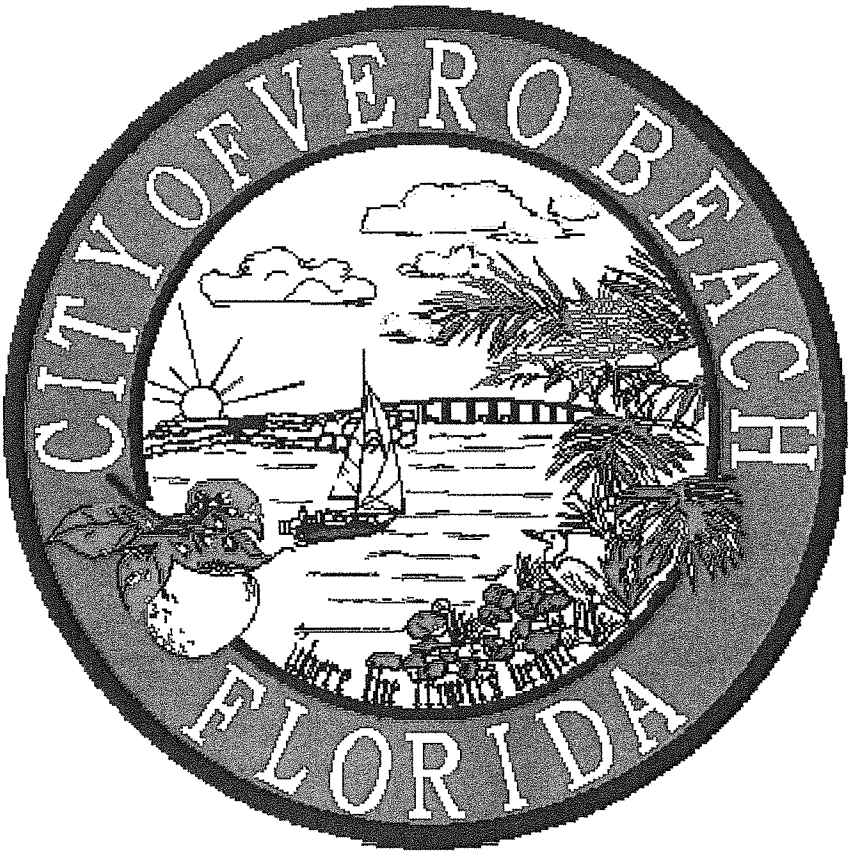
The City of Vero Beach Budget Workshop meetings begin the week of July 18th. The meetings are open to the public. I would encourage anyone that wishes to voice their opinion, to attend the meetings. I will be sending out a message with the exact dates and times as soon as they are made available.

Please feel free to contact me with any further questions you might have.

Thank you for your support in this very important matter.

Ofc. John S. Morrison #360
Community Services Division
Vero Beach Police Department
Office 772.978.4649
FAX 772.978.4694
E-Mail jmorrison@vbpd.org

City Manager's Review
2011-2012 Budget



General Fund

Revenues by Type

Fiscal Year 2011/12

Revenue type:	Budget 2010/11	Budget Request 2011-12	Change
Fund/Department: 001-General Fund			
AD VALOREM TAXES	4,166,960	3,964,909	-202,051
LOCAL OPTION GAS TAX	467,656	467,656	0
ROLL-OFF FRANCHISE FEE	30,000	30,000	0
UTILITY TAXES	2,250,000	2,000,000	-250,000
LOCAL COMMUNICATIONS SERV TAX	1,328,943	1,328,943	0
LOCAL BUSINESS TAX	155,000	155,000	0
SIGN PERMIT FEES	6,000	6,000	0
BURGLAR ALARM PERMITS	30,000	30,000	0
VEHICLES FOR HIRE PERMITS	1,050	1,050	0
BULLETPROOF VEST PARTNERSHIP	5,000	5,000	0
STATE REVENUE SHARING	554,625	554,625	0
MOBILE HOME LICENSES	40,000	40,000	0
ALCOHOLIC BEVERAGE LICENSES	45,000	45,000	0
HALF CENT SALES TAX	1,054,773	1,054,773	0
AIRPORT SECURITY	91,670	91,670	0
ADMINISTRATIVE CHARGES	2,734,660	2,734,660	0
FINES & FORFEITURES	94,000	94,000	0
BURGLAR ALARM FINES	500	500	0
CODE ENFORCEMENT FINES	2,800	2,800	0
PLANNING DEPT REVENUE	55,000	55,000	0
INTEREST ON INVESTMENTS	200,000	200,000	0
DOWNTOWN PO RENT	16,650	16,650	0
RENTAL OF PW FACILITIES	74,000	74,000	0
FOURTH OF JULY CONTRIBUTION	2,500	12,500	10,000
POLICE MISC INCOME	2,500	2,500	0
POLICE ADMIN FEES	10,000	10,000	0
MISC REVENUE	100,000	100,000	0
CONTRIBUTION FROM ELEC FUND	5,598,350	5,598,350	0
CONTRIBUTION FROM W/S FUND	859,950	859,950	0
CONTRIBUTION FROM SW FUND	153,000	153,000	0
CONTRIBUTION FROM MARINA	86,618	86,618	0
UNAPPROPRIATED SURPLUS	4,106	1,623,688	1,619,582
Total for: General Fund	**20,221,311**	21,398,842	**1,177,531**

Police

Mission

The mission of the Vero Beach Police Department is to reduce the number and frequency of all degrees of criminal behavior, motor vehicle collisions, and all other incidents which negatively impact the safety, security, and life quality of the citizens of Vero Beach.

To accomplish the above through application of the most effective police technology available to the Department and the incorporation of management principles and other resources proven to be the most conducive to the mission's success.

To diligently work to minimize the cumulative cost of operation without compromising the department's ability or desire to provide quality service which transcends community expectations.

Staffing Table

Employee Type	Budget 2011-2012	Budget 2010-2011	Change
Full Time Non Bargaining	34	34	0
Full Time Bargaining	52	52	0
Total	86	86	0
Part Time	0	0	0
Total	86	86	0

The department receives assistance from two reserve officers and 3 community service volunteers.

Major Goals and Challenges

Further enhance and expand investigative capabilities in areas of drug abuse, property crimes, and crimes against persons.

Maintain current drug control and crime prevention programs in the community, particularly with school children through the use of the D.A.R.E. and RAD Kids programs.

Continue to develop and maintain quality community training programs including RAD Systems.

Continue to develop and implement firearms training programs that emphasize officer safety.

Continue to expand and enhance Community Partnership Programs and to maintain a positive relationship with all members of the community.

Continue to monitor all facets of departmental operations to find, develop and implement more efficient, streamlined procedures without sacrifice to quality or safety.

Budget Request by Department

Fiscal Year 2011/12

2009/10 Actual	2010/11 Expected	Account Number / Account Name		Budget 2010/11	Budget Request 2011-12	Change
Fund/Department: 001-General Fund / 1801-Police						
1. Personal Expenses						
4,236,477	3,913,169	001.1801.521.112001	OPERATING SALARIES	3,913,169	4,065,834	152,665
0	2,900	001.1801.521.113002	PART TIME SALARIES	2,900	2,900	0
280,414	280,000	001.1801.521.114001	OVERTIME SALARIES	207,400	207,400	0
47,361	30,000	001.1801.521.114002	COURT OVERTIME	70,000	70,000	0
29,804	30,000	001.1801.521.115002	CAREER DEVELOPMENT	30,000	30,000	0
608	600	001.1801.521.115003	INCENTIVE PROGRAM	800	800	0
42,540	42,000	001.1801.521.115006	CITY INCENTIVE	42,000	42,000	0
29,201	29,201	001.1801.521.115007	EDUCATION	30,000	30,000	0
10,747	10,747	001.1801.521.115008	INCENTIVE OVERTIME	16,000	16,000	0
210	200	001.1801.521.115009	MEAL ALLOWANCE	300	300	0
349,471	329,910	001.1801.521.121001	SOCIAL SECURITY	329,910	341,567	11,657
123,359	67,959	001.1801.521.122001	CONTRIB TO PENSION FUND	67,959	110,941	42,982
548,910	732,000	001.1801.521.122002	CONTRIB TO POLICE PENSION	732,000	810,505	78,505
16,491	16,331	001.1801.521.123001	GROUP LIFE INSURANCE	16,331	15,419	-912
662,016	634,924	001.1801.521.123002	HOSPITALIZATION INSURANCE	634,924	652,352	17,428
6,377,609	6,119,941			**6,093,693**	6,396,018	**302,325**
2. Operating Expenses						
4,008	4,000	001.1801.521.331001	PROFESSIONAL SERVICES	8,875	10,875	2,000
417	1,500	001.1801.521.331002	STATE ACCREDITATION	1,500	1,500	0
17,219	18,000	001.1801.521.334002	CLEANING & LAUNDRY	18,000	18,000	0
49,866	67,574	001.1801.521.334007	OTHER CONTRACTUAL SERVICES	67,574	71,794	4,220
54,536	54,537	001.1801.521.334014	INDIAN RIVER CRIME LAB	54,537	56,642	2,105
22,013	22,000	001.1801.521.341001	TELEPHONE	30,776	30,776	0
3,136	3,200	001.1801.521.342001	POSTAGE	4,000	4,000	0
103,184	96,600	001.1801.521.343001	UTILITIES	96,600	96,600	0
139,914	98,494	001.1801.521.344001	VEHICLE LEASING	98,494	59,523	-38,971
19,564	20,000	001.1801.521.346001	EQUIPMENT MAINTENANCE	25,832	25,832	0
101,869	105,843	001.1801.521.346002	VEHICLE MAINTENANCE	105,843	107,255	1,412
2,984	4,000	001.1801.521.346003	BUILDING MAINTENANCE	5,590	5,590	0
1,021	1,300	001.1801.521.346004	AIR CONDITIONING MAINT	2,000	2,000	0
7,015	1,000	001.1801.521.346013	OTHER VEHICLE & BOAT MAINT	3,750	3,750	0
0	0	001.1801.521.346054	POLICE RANGE GROUND MAINT	960	960	0
200	0	001.1801.521.346064	POLICE RANGE TARGET EQUIP MAINT	200	200	0
4,466	1,200	001.1801.521.347001	PRINTING & BINDING	7,509	4,800	-2,709

Budget Request by Department

Fiscal Year 2011/12

2008/10 Actual	2010/11 Expected	Account Number/ Account Name		Budget 2010/11	Budget Request 2011-12	Change
41	80	001.1801.521.349001	ADVERTISING	500	500	0
898	897	001.1801.521.349028	LANDFILL FEES	1,900	1,900	0
17,013	15,000	001.1801.521.351001	OFFICE SUPPLIES	21,100	19,100	-2,000
138,972	130,000	001.1801.521.352001	GAS & OIL	164,450	164,450	0
20,231	25,000	001.1801.521.352004	EQUIP PARTS & SUPPLIES	40,795	27,330	-13,465
2,811	2,100	001.1801.521.352005	CONSUMABLE TOOLS	5,614	5,614	0
29,422	27,526	001.1801.521.352006	JANITORIAL SUPPLIES	27,526	27,526	0
0	0	001.1801.521.352007	SIGN MATERIAL	250	250	0
17,707	25,000	001.1801.521.352008	UNIFORMS & CLOTHING	33,180	30,000	-3,180
3,405	0	001.1801.521.352010	EMERGENCY VEHICLE EQUIP	1,125	0	-1,125
7,593	13,000	001.1801.521.352014	OTHER COMMODITIES	14,649	14,649	0
2,044	2,000	001.1801.521.352015	TRAINING AIDS	3,620	2,550	-1,070
60	0	001.1801.521.352031	PHOTOS & BLUEPRINTING	600	0	-600
1,073	500	001.1801.521.352050	CRIME PREVENTION	1,700	1,700	0
-15,039	2,500	001.1801.521.352061	INVESTIGATION EXPENSE	2,500	2,500	0
2,783	2,500	001.1801.521.352070	ID SUPPLIES	3,306	3,306	0
19,140	11,756	001.1801.521.352071	AMMUNITION	17,280	17,280	0
9,581	2,000	001.1801.521.352072	UNIFORMS/EQUIP/ACCESSORY	13,084	7,948	-5,136
2,926	3,000	001.1801.521.352074	DARE PROGRAM	3,000	3,000	0
4,282	4,320	001.1801.521.354001	SUBSCRIPTIONS/MEMBERSHIPS	4,320	4,320	0
1,235	2,500	001.1801.521.355002	MISCELLANEOUS	6,700	6,000	-700
2,518	4,500	001.1801.521.355003	K 9 EXPENSES	5,623	5,623	0
0	0	001.1801.521.355004	CODE ENFORCEMENT	1,000	1,000	0
800,108	773,427			**905,862**	846,643	**-59,219**

3. Capital Outlays

0	12,905	Capital Outlays	VARIOUS, PLEASE SEE DETAIL	12,905	23,743	10,838
0	12,905			**12,905**	23,743	**10,838**
7,177,717	6,906,273	**Total for: Police**		**7,012,460**	7,266,404	**253,944**

Capital Request by Department

Fiscal Year 2011/12

Project Id	Account Number	Project Description	Funding Method	Budget 2011-12
Department 1801 Police				
PL-01	001.1801.521.611001	CRT Ballistic Vests	GF	5,043
PL-02	001.1801.521.610001	Desktop Computers	GF	6,000
PL-03	001.1801.521.612001	CAD Stations	GF	5,400
PL-04	001.1801.521.609002	Replace Finder Server	GF	2,800
PL-05	001.1801.521.609007	Mobile Digital Video (MDT) Replacement	GF	4,500
Total for Police				23,743
Prior year capital request for Police				**12,905**

CITY OF VERO BEACH
FLORIDA

CITY OF VERO BEACH, FLORIDA
CAPITAL OUTLAY REQUEST FOR BUDGET YEAR 2011-2012

1. PROJECT TITLE: CRT Ballistic Vests

2. REQUEST NUMBER: PL-01 3. DEPARTMENT NUMBER: 1801 - Police

4. JUSTIFICATION: The Critical Response Teams ballistic vests are due to expire on 09/2011 and 10/2011. This will complete the teams needs for ballistic armor for the next five years.

5. TYPE OF EXPENSE: [ ] NEW [X] REPLACE [ ] REFURBISH [ ] OTHER _____

6. IS THIS ITEM REQUIRED TO MEET ENVIRONMENTAL REGULATIONS? [ ] YES [X] NO [ ] ALL [ ] PART

AMOUNT _____

7. ITEMS	8. QUANTITY	9. COST
	3	1,681

10. NOTES:

11. TOTAL: 5,043
12. INSTALLATION: _____
13. TRADE-IN: _____
14. NET REQUEST: 5,043

15. ANNUAL PAYMENT SCHEDULE:

PRIOR YEARS	$	2013-2014	$
2011-2012	$ 5,043	2014-2015	$
2012-2013	$	2015-2016	$

16. FUNDING SOURCE: GF 17. PROJECT NUMBER IN FIVE YEAR PLAI N/A

18. REQUESTED BY: Lt. Matthew Monaco 19. ACCOUNT NUMBER : 001.1801.521.611001

CITY OF VERO BEACH, FLORIDA
CAPITAL OUTLAY REQUEST FOR BUDGET YEAR 2011-2012

1. PROJECT TITLE: Replacement Desktop Computers

2. REQUEST NUMBER: PL-02 3. DEPARTMENT NUMBER: 1801-Police

4. JUSTIFICATION:
6 desktop computers are recommended to be replaced.Due to the computers age and expired warranty contracts, fuctional reliablilty cannot be guaranteed if the machines hardware fails. These computers have all been in use for over 5 years and should be replaced as recommended by the department hardware review report.

5. TYPE OF EXPENSE: [ ] NEW [x] REPLACE
[ ] REFURBISH [ ] OTHER _____

6. IS THIS ITEM REQUIRED TO MEET ENVIRONMENTAL REGULATIONS? [ ] YES [ ] ALL
[ ] NO [ ] PART AMOUNT _____

7. ITEMS	8. QUANTITY	9. COST
Replacement Desktop Computers	6	1,000

10. NOTES:

11. TOTAL: 6,000
12. INSTALLATION: _____
13. TRADE-IN: _____
14. NET REQUEST: 6,000

15. ANNUAL PAYMENT SCHEDULE:

PRIOR YEARS	$	2013-2014	$
2011-2012	$ 6,000	2014-2015	$
2012-2013	$	2015-2016	$

16. FUNDING SOURCE: GF 17. PROJECT NUMBER IN FIVE YEAR PLAI N/A

18. REQUESTED BY: Steve Spencer 19. ACCOUNT NUMBER : 001.1801.521.610001

CITY OF VERO BEACH, FLORIDA
CAPITAL OUTLAY REQUEST FOR BUDGET YEAR 2011-2012

1. PROJECT TITLE: Replacement CAD Stations

2. REQUEST NUMBER: PL-03 3. DEPARTMENT NUMBER: 1801-Police

4. JUSTIFICATION:
The 3 CAD computers are recommended to be replaced.Due to the computers age and soon to be expired warranty contracts, fuctional reliablilty cannot be guaranteed if the machines hardware fails. These computers are located in the dispatch center where they are used 24/7. These are the computers that run the Logisys CAD software.

5. TYPE OF EXPENSE: [ ] NEW [x] REPLACE [ ] REFURBISH [ ] OTHER _____

6. IS THIS ITEM REQUIRED TO MEET ENVIRONMENTAL REGULATIONS? [ ] YES [ ] NO [ ] ALL [ ] PART

AMOUNT _____

7. ITEMS	8. QUANTITY	9. COST
Replacement CAD Computers	3	1,800

10. NOTES:

11. TOTAL: 5,400
12. INSTALLATION: _____
13. TRADE-IN: _____
14. NET REQUEST: 5,400

15. ANNUAL PAYMENT SCHEDULE:

PRIOR YEARS	$	2013-2014	$
2011-2012	$ 5,400	2014-2015	$
2012-2013	$	2015-2016	$

16. FUNDING SOURCE: GF 17. PROJECT NUMBER IN FIVE YEAR PLAI N/A

18. REQUESTED BY: Steve Spencer 19. ACCOUNT NUMBER : 001.1801.521.612001

CITY OF VERO BEACH, FLORIDA
CAPITAL OUTLAY REQUEST FOR BUDGET YEAR 2011-2012

1. PROJECT TITLE: Replacement FINDER Server

2. REQUEST NUMBER: PL-04 3. DEPARTMENT NUMBER: 1801-Police

4. JUSTIFICATION:
The FINDER server is recommended to be replaced.Due to the servers age and soon to be expired warranty contracts, fuctional reliablilty cannot be guaranteed if the machines hardware fails. This server shares VBPDs RMS data and PAWN data with other agencys. Through this server VBPD is able to search other participating agencys RMS and PAWN data.

5. TYPE OF EXPENSE: [ ] NEW [x] REPLACE [ ] REFURBISH [ ] OTHER _____

6. IS THIS ITEM REQUIRED TO MEET ENVIRONMENTAL REGULATIONS? [ ] YES [ ] NO [ ] ALL [ ] PART AMOUNT _____

7. ITEMS	8. QUANTITY	9. COST
Replacement FINDER Server	1	2,800

10. NOTES:

11.	TOTAL:	2,800
12.	INSTALLATION:	
13.	TRADE-IN:	
14.	NET REQUEST:	2,800

15. ANNUAL PAYMENT SCHEDULE:

PRIOR YEARS	$	2013-2014	$
2011-2012	$ 2,800	2014-2015	$
2012-2013	$	2015-2016	$

16. FUNDING SOURCE: GF 17. PROJECT NUMBER IN FIVE YEAR PLA N/A

18. REQUESTED BY: Steve Spencer 19. ACCOUNT NUMBER : 001.1801.521.609002

CITY OF VERO BEACH, FLORIDA
CAPITAL OUTLAY REQUEST FOR BUDGET YEAR 2011-2012

1. PROJECT TITLE: Replacement MDTs

2. REQUEST NUMBER: PL-05

3. DEPARTMENT NUMBER: 1801-Police

4. JUSTIFICATION:
Currently there are 3 MDTs that have to be replaced. These 3 MDT's have been in use for 5+ years of extreme use in patrol cars.

5. TYPE OF EXPENSE: [ ] NEW [x] REPLACE [ ] REFURBISH [ ] OTHER _____

6. IS THIS ITEM REQUIRED TO MEET ENVIRONMENTAL REGULATIONS? [ ] YES [ ] NO [ ] ALL [ ] PART

AMOUNT _____

7. ITEMS	8. QUANTITY	9. COST
Replacement MDTs	3	1,500

10. NOTES:

11. TOTAL: 4,500
12. INSTALLATION: _____
13. TRADE-IN: _____
14. NET REQUEST: 4,500

15. ANNUAL PAYMENT SCHEDULE:

PRIOR YEARS	$	2013-2014	$
2011-2012	$ 4,500	2014-2015	$
2012-2013	$	2015-2016	$

16. FUNDING SOURCE: GF

17. PROJECT NUMBER IN FIVE YEAR PLAI N/A

18. REQUESTED BY: Steve Spencer

19. ACCOUNT NUMBER : 001.1801.521.609007

Mitts, Jackie

From: Touchberry, Keith
Sent: Thursday, June 16, 2011 3:22 PM
To: Mitts, Jackie
Cc: Currey, Dave
Subject: Budget adjustments

Jackie,

Here are the final adjustments to our budget. Please remove the following amounts from the accounts listed:

$ 2,000	351001: Office Supplies
$ 5,000	352004: Equipment Parts & Supplies
$ 5,000	352008: Uniforms and Clothing
$ 4,000	352014: Other Commodities
$ 2,000	355002: Miscellaneous
$18,000	Total

With the ammunition account previously reduced to zero from $17, 280, our FY2011-2012 budget request for operating expenses should be $811, 363, which is $94,499 less than FY2010-2011 ($905,862).

Thanks,

Captain Keith M. Touchberry
Support Services Bureau Commander
Vero Beach Police Department
1055 20th Street
Vero Beach FL. 32960
772-978-4679
ktouchberry@vbpd.org

Addendum to the City Council Meeting Agenda

_X New Business __Old Business

Author: Tracy Carroll Council Meeting Date: July 19. 2011 Priority __2__ of _____

Title: Invite FPL to assist in negotiations with OUC over our contract

Summary of your points for discussion:

Gray Robinson has emphatically stated that they have not been hired to extricate the City from the OUC contract (see minutes 6/21/11). By simply asking questions about the negative value of penalties, Gray Robinson may be defeating the City's goals.

All agenda Additions - Public need or issue addressed:

It is in the best interests of the City to extricate ourselves from the OUC's questionable penalty clause. FPL attorney's have significant experience in utility contracts and may be very helpful if they participate with us in the negotiation

Statement of the proposed solution to the public need or issue:

Invite FPL to assist the City in the negotiations with OUC

New Business Only - Relevant City Charter, code references, legal:

Backup - additional attached documentation includes:

Addendum to the City Council Meeting Agenda

__ New Business __Old Busir 9B-4)

Author: A. Craig Fletcher

Council Meeting Date: July 19Th.

Priority _1___ of _1____

Title: Council Employee Relationship

Summary of your points for discussion: Under Charter provision 2.06 Council members are not permitted to give orders to employees "other than council orders to Charter Officers."

All agenda Additions - Public need or issue addressed: Compliance with the law of the City Charter

Statement of the proposed solution to the public need or issue:

Refrain from giving orders for action to City employees other than Charter Officers.

In the past months a large portion of the correspondence I have seen come across my desk has been from individual council members to select employees other than Charter Officers giving orders for specific actions to be taken or directing such employees to perform certain task.

Any action requested by a council member must be directed to a Charter Officer not to an employee of a Charter Officer. Charter Officers "must" have control of their employees work assignments and not be controlled by random demands by Council members.

New Business Only - Relevant City Charter, code references, legal:

City Charter, section 2.05. General Powers of the City Council. Section 2.06 Council-employee relationship.

Backup - additional attached documentation includes: City Charter Section 2.05 and 2.06

Old Business Only - Dates of past discussions / decisions by Council relevant to the issue:

Section 2.05. General powers of city council.

All powers of the city shall be vested in the city council except those powers specifically given to the Charter officers or specifically reserved by this Charter to the electors of the city.

Section 2.06. Council-employee relationship.

Neither the city council nor any of its members shall in any manner dictate the appointment or removal of any city employee except the Charter officers nor shall the council or any of its members give orders to any employee other than council orders to a Charter officer. The council or its members shall deal on all matters through the appropriate Charter officer.

WORK AGREEMENT BETWEEN THE CITY OF VERO BEACH AND WAYNE R. COMENT

The City Council of the City of Vero Beach and Mr. Wayne R Coment agree to the following terms, conditions, and understandings in consideration of Mr. Coment temporarily serving the City in the capacity of acting city attorney effective the 10th day of February 2011:

1. As acting city attorney, Mr. Coment will perform the duties and responsibilities as outlined in the attached city attorney job description and the Charter of the City with the understanding and acknowledgment by the City Council that the current reduction in personnel in the office of the city attorney means that the need is likely to arise for the engagement of outside legal counsel on some matters, especially in regard to litigation, administrative actions, or specialized areas of law. Should such need arise the City Council will be consulted for action prior to any such engagement unless time constraints or pleading requirements dictate a response in such matters is necessary to protect the interests of the City before Council can meet to take official action. Any such early engagement will then be brought to the City Council for consideration and action. Only limited preliminary review and consultation on a Councilmember proposal or request (i.e. ordinance, resolution, formal legal opinion, etc.) and informal consultation with any Councilmember regarding other matters or legal interpretation or application of a statute, code provision, or the like will be undertaken absent City Council approval and guidance. Consistent with the Charter and Code of the City, any Councilmember request or direction requiring more substantial work or expenditure of time or resources by the acting city attorney or other city attorney personnel will require direction and instruction on such requested work by the City Council as a body. Further, any conflicting or competing requests or direction from Councilmembers on any matter will be brought to the Council for resolution and direction on whether or how to proceed with the requested work.

2. Mr. Coment will serve in the capacity of acting city attorney for a period of time up to 120 calendar days, unless such period is extended by mutual agreement, or until such earlier date that the City Council no longer desires for him to serve in such capacity. Upon expiration of the above-specified time period or such earlier date determined by the City Council or such later agreed date, Mr. Coment will return to his position and duties as assistant city attorney with no loss in salary, benefits, or seniority.

3. In consideration of the duties and time demands of serving in the capacity of acting city attorney, Mr. Coment will not lose any annual leave or other benefits he would have otherwise accrued but could not utilize to avoid loss of such annual leave or other benefits.

9B-5)

Addendum to the City Council Meeting Agenda

Author: BTH Council Meeting Date: 6.15.2011 Priority ____ of _____

Title: Elimination of Election fees

Summary: Discussion for possible action

Public need or issue addressed: A discussion in the public eye concerning the fee charged to candidates for election to city office.

Relevant City Charter, code references, legal: N/A

Dates of past decisions by Council relevant to the issue: N/A

Statement of the proposed solution to the public need or issue: To be determined

Additional attached documentation includes: None

9B-6)

Addendum to the City Council Meeting Agenda

Author: BTH **Council Meeting Date:** 6.15.2011 **Priority** ____ **of** _____

Title: Use of 13 to educate and inform citizens

Summary: Discussion for possible action

Public need or issue addressed: A discussion in the public eye concerning the use of Channel 13 to educate the public on issues.

Relevant City Charter, code references, legal: N/A

Dates of past decisions by Council relevant to the issue: N/A

Statement of the proposed solution to the public need or issue: To be determined

Additional attached documentation includes: None

9B-7)

Addendum to the City Council Meeting Agenda

Author: BTH **Council Meeting Date:** 6.15.2011 **Priority** ____ **of** _____

Title: Referendum on Sale of Electric Utility

Summary: Discussion for possible action to allow voters to decide.

Public need or issue addressed: A discussion in the public eye concerning the sale of the electric utility.

Relevant City Charter, code references, legal: N/A

Dates of past decisions by Council relevant to the issue: N/A

Statement of the proposed solution to the public need or issue: To be determined

Additional attached documentation includes: None

9B-8)

Addendum to the City Council Meeting Agenda

Author: BTH **Council Meeting Date:** 6.21.2011 **Priority** ____ **of** _____

Title: Saving tax dollars on consultants.

Summary: Discussion for possible action on using talents of new City Manager to eliminate or reduce use of consultants.

Public need or issue addressed: A discussion in the public eye concerning the continued tax burden of consulting fees.

Relevant City Charter, code references, legal: N/A

Dates of past decisions by Council relevant to the issue: N/A

Statement of the proposed solution to the public need or issue: To be determined

Additional attached documentation includes: None

9B-9)

Addendum to the City Council Meeting Agenda

Author: BTH **Council Meeting Date:** 6.21.2011 **Priority** ____ **of** _____

Title: Saving tax dollars and balancing future budgets.

Summary: Discussion for possible action on reducing cost without reducing staff.

Public need or issue addressed: A discussion in the public eye concerning the continued tax burden and income shortages.

Relevant City Charter, code references, legal: N/A

Dates of past decisions by Council relevant to the issue: N/A

Statement of the proposed solution to the public need or issue: To be determined

Additional attached documentation includes: None

9B-10)

Addendum to the City Council Meeting Agenda

Author: BTH **Council Meeting Date:** 6.21.2011 **Priority** ____ **of** _____

Title: Resolving traffic concerns.

Summary: Discussion for possible action on suggestions from 6/16/11 meeting.

Public need or issue addressed: A discussion in the public eye relating to the concerns of citizens in beachside neighborhoods.

Relevant City Charter, code references, legal: N/A

Dates of past decisions by Council relevant to the issue: N/A

Statement of the proposed solution to the public need or issue: To be determined

Additional attached documentation includes: None

9B-11)

Addendum to the City Council Meeting Agenda

Author: BTH **Council Meeting Date:** 6.21.2011 **Priority** ____ **of** _____

Title: Reduction in work load of staff and paper reduction.

Summary: Discussion for possible action on suggestions from City Clerk on staff time and possible paper use reduction.

Public need or issue addressed: A discussion in the public eye relating to benefits of use of new technology.

Relevant City Charter, code references, legal: N/A

Dates of past decisions by Council relevant to the issue: N/A

Statement of the proposed solution to the public need or issue: To be determined

Additional attached documentation includes: None

9B-12)

Addendum to the City Council Meeting Agenda

Author: BTH **Council Meeting Date:** 7/19/11 **Priority** ____ **of** _____

Title: Gag Orders

Summary: Council direction to staff on "gag orders"

Public need or issue addressed: Response to City Attorney

Relevant City Charter, code references, legal: N/A

Dates of past decisions by Council relevant to the issue: N/A

Statement of the proposed solution to the public need or issue: Discussion and decision by City Council

Additional attached documentation includes: N/A

9B-13)

Addendum to the City Council Meeting Agenda

Author: **BTH** **Council Meeting Date** 7/19/11 Priority ____ of _____

Title: Transactional Attorney

Summary: There are transactional attorneys proficient at handling sales and mergers of utilities and as a first step we need to hire an attorney for the FPL offer.

Public need or issue addressed: Moving FPL proposed offer forward.

Relevant City Charter, code references, legal: None

Dates of past decisions by Council relevant to the issue: N/A

Statement of the proposed solution to the public need or issue: Vote

Additional attached documentation includes:

9B-14)

Addendum to the City Council Meeting Agenda

Author: BTH **Council Meeting Date:** 7/19/11 **Priority ____ of _____**

Title: Clarification from Richard Winger on Water and Sewer report

Summary: Request to have Richard Winger clarify accuracy of his report to City Council

Public need or issue addressed: To have accurate reports to make decisions on Water and Sewer consolidation

Relevant City Charter, code references, legal: N/A

Dates of past decisions by Council relevant to the issue: N/A

Statement of the proposed solution to the public need or issue: N/A

Additional attached documentation includes: N/A